



Government
of South Australia

Department of Human Services

Restrictive Practice — Frequently Asked Questions

What is a restrictive practice?

Restrictive practices are any actions that limit a person's rights or stop them from moving around freely. Restrictive practices are sometimes called restraints. Under the NDIS there are different types of restrictive practices:

- **Chemical restraint** – giving someone a medication to change their behaviour when it is not needed for a medical condition
- **Environmental restraint** – limiting a person's access to their environment, including items, activities and places
- **Mechanical restraint** – using a device to prevent or limit a person's movement because of their behaviour
- **Physical restraint** – using force to hold a person's body or part of their body to limit their movement
- **Seclusion** – keeping a person in a room or space by themselves where they cannot leave (or believe they cannot leave).

What is a Level 1 restrictive practice?

Level 1 restrictive practices are considered less intrusive and tend to have a lower impact on the person's dignity, freedoms, and rights. Examples of low-level restrictive practices include:

- Locked cupboards or fridges (environmental restraint)
- Wearing gloves to prevent skin picking (mechanical restraint).

Level 1 restrictive practices can be authorised by the Authorised Program Officer.

What is a Level 2 restrictive practice?

Level 2 restrictive practices are considered more intrusive and tend to have a higher impact on the person's dignity, freedoms and rights. Examples of high-level restrictive practices include:

- Physical restraint
- Seclusion.

Level 2 restrictive practices can only be authorised by the Senior Authorising Officer.

What are Behaviours of Concern?

Behaviours of concern are behaviours that hurt the person or any other person, or damage things. Restrictive practices may be used to prevent people being hurt or things being damaged by behaviours of concern.

What is detention?

Detention is broadly defined in the amendments to the Disability Inclusion Act 2018 and includes:

- Any direct or indirect curtailment of a person's ability to leave a premises
- A requirement that a person be and remain in premises or a part of premises
- Refusing or limiting a person's means of leaving, for example, access to their wheelchair.

The regulations may exclude practices which are not intended to be captured as 'detention'.

The new authorisation regime does not authorise detention. For example, directing where someone is to reside will remain the responsibility of SACAT through its powers under the *Guardianship and Administration Act 1993*.

What is a behaviour support plan?

A behaviour support plan is a structured plan that identifies:

- The behaviours of concerns that may pose a risk to a person with disability and others
- The function of the behaviours
- Positive strategies to teach replacement behaviours and help the person to meet their needs in a safe way
- The role of the support team to implement the plan.

The goal of positive behaviour support is to improve quality of life outcomes for people with disability, and to reduce and eliminate restrictive practices.

Under the NDIS Rules, it is a requirement that a behaviour support plan be developed if there are behaviours of concern that require the use of restrictive practices.

Are people with disability consulted on their behaviour support plan?

A Specialist Behaviour Support Practitioner must take all reasonable steps to ensure the NDIS participant, their family, carers and other support network and stakeholders are fully engaged in the development of the behaviour support plan. They must also discuss the need for restrictive practices to be included in the plan and explain the risks associated with their use.

The Specialist Behaviour Support Practitioner will work with the registered NDIS provider to ensure the behaviour support plan is implemented effectively to meet the participant's behaviour support needs. The new laws refer to the national requirement for the service provider to consult with the prescribed person as part of the development of their behaviour support plan.

What are regulations? How are they different from Acts?

Regulations are "subordinate legislation". They give more detail about how an Act must be implemented.

The *Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021* made changes to the *Disability Inclusion Act 2018* and created new laws that people must follow if they need to use restrictive practices. The regulations describe how the laws are applied by the people using them.

What are guidelines? How are they different from regulations?

The guidelines are rules that people must follow in using restrictive practices. They provide step-by-step details to help people follow the regulations and Act. The guidelines are approved by the Minister, who must publish the guidelines in the Government Gazette.

How do the changes protect NDIS participants?

The changes create rules that NDIS providers must follow if they need to use restrictive practices to keep people with disability and others safe. The rules mean that restrictive practices can only be used:

- As a last resort
- Where there is a risk of harm to the person or others
- In the least restrictive way possible
- The use is the least restrictive way and for the shortest period of time
- The use is not prohibited
- Where there is a behaviour support plan that is aimed at reducing the need for restrictive practices in the future.

There will be two new roles that will review applications to use restrictive practices (the Authorised Program Officer and the Senior Authorising Officer) and they can only give their approval if the requirements in the Act, regulations and guidelines have been followed.

How are NDIS participants' rights protected?

The Act, regulations and guidelines will provide detailed requirements that must be met if a provider believes a restrictive practice is needed. This includes:

- Consulting with the NDIS participant and their family on a behaviour support plan
- Seeking expert advice from a Specialist Behaviour Support Practitioner
- Seeking approval from an Authorised Program Officer or the Senior Authorising Officer.

These are all important safeguards to protect the rights of NDIS participants. The NDIS Participant also has a right of review of decisions that they are not happy with.

What does the Senior Authorising Officer do?

The Senior Authorising Officer is able to authorise the use of more intrusive restrictive practices. This includes Level 2 restrictive practices, combinations of Level 1 and 2, or several Level 1s. The Senior Authorising Officer is also responsible for:

- Monitoring the use of restrictive practices in South Australia
- Providing training and education to help providers reduce their use of restrictive practices
- Promoting the reduction and elimination of restrictive practices.

What happens if an NDIS participant does not agree with a decision?

If an NDIS participant does not agree with a decision made by an Authorised Program Officer about a restrictive practice, they can ask the Senior Authorising Officer to review the decision.

If a participant is not happy with a decision made by the Senior Authorising Officer, an application can be made to SACAT to have the decision reviewed.

What happens if NDIS providers breach the Act?

As part of their registration with the NDIS, NDIS providers must comply with state and territory laws. The body responsible for ensuring compliance of registered NDIS providers is the NDIS Quality and Safeguards Commission.

Any incidents identified through the authorisation process will be referred to the NDIS Commission. If an incident is possibly criminal in nature, it will also be referred to the South Australia Police (SAPOL).

If an Authorised Program Officer is in breach of the Act, the Senior Authorising Officer has powers to revoke the approval of that person to be an Authorised Program Officer.

What is the relationship between the NDIS Quality and Safeguards Commission and the South Australian Senior Authorising Officer?

The Senior Authorising Officer will provide practice leadership and evidence-informed directions about restrictive practices in South Australia. They will inform policy and service design to promote continuous improvement for NDIS participants.

The Senior Authorising Officer will work closely with, alongside and complement – but not duplicate – the functions of the national Senior Practitioner in the NDIS Quality and Safeguards Commission.

Why do the new laws permit NDIS service providers to search prescribed persons, including NDIS participants?

The provisions are aimed at supporting the safety of prescribed persons. This includes NDIS participants who may:

- Obtain and conceal food which may pose a choking hazard or serious health risk
- Obtain and conceal unsafe items including sharp objects that place themselves and others at risk.

The government will provide additional requirements through the guidelines about the safe and respectful conduct of these processes to maintain the dignity of the prescribed person. These will include limitations on bodily contact.

Is there a conflict of interest in the Authorised Program Officer being employed by the NDIS Service Provider?

The national NDIS Rules and the new laws provide strong safeguards against any perceived conflict of interest in the Authorised Program Officer role.

The Authorising Program Officer can only approve the use of a restrictive practice if it is in a behaviour support plan that has been developed in consultation with the person with disability and their family/carer/guardian. This is a requirement of the NDIS Rules. The new laws reflect these existing national requirements.

The Authorised Program Officer is required to be authorised by the Senior Authorising Officer and comply with the legislation and guidelines for the role. The Authorised Program Officer's decisions can be reviewed by the Senior Authorising Officer, who also has an ongoing role in education and training of NDIS providers.