



Restrictive Practices Authorisation Policy

Summary:

This policy outlines principles and requirements for Registered NDIS Providers and Practitioners in NSW when providing behaviour support services that include restrictive practices to persons receiving funded supports through NDIS

Version 1.0

Document approval

The Restrictive Practices Authorisation Policy (June 2018) has been endorsed and approved by:

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1 Purpose of the Policy

1.1 Purpose

Under the *NDIS Quality and Safeguarding Framework* states have responsibility for the authorisation of restrictive practices.

This policy outlines the minimum requirements relating for the authorisation of restrictive practices by NDIS registered providers and behaviour support practitioners supporting people under the NDIS.

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

Authorisation is endorsement for identified restrictive practices to be implemented with a certain individual, in a particular service setting, by associated staff and under clearly defined circumstances. The decision to provide authorisation will be based on a collection of supporting information such as a behaviour support plan, which is informed by a functional assessment of behaviour.

A critical role of the authorisation process is to support the reduction and elimination of the use of restrictive practices and to ensure that when they are used, the least restrictive option is implemented.

Authorisation does not constitute consent, or replace the requirement for consent to use a regulated restrictive practice.

The requirements set out in this policy are additional to those set by the NDIS Quality and Safeguards Commission. This policy should therefore be read in conjunction with the:

- NDIS Behaviour Support Competency Framework
- NDIS (Restrictive Practices and Behaviour Support) Rules 2018 and the
- NDIS Quality and Safeguarding Framework

Further guidance on the NSW requirements is available in the NSW Restrictive Practices Authorisation Procedural Guide.

A list of other relevant policies and legislation is at Appendix A.

1.2 Target group for policy

This policy applies to all NDIS registered providers and behaviour support practitioners operating in NSW.

2 Policy and Legislative Context

2.1 Overview

The NDIS represents a fundamental change to the way supports and services are delivered to people with disability. Under the NDIS, the Commonwealth sets the policy framework for quality and safeguarding.

2.2 National Disability Insurance Scheme Act

The *National Disability Insurance Scheme Act 2013* and associated rules establish the NDIS Quality and Safeguards Commission (NDIS Commission) and its functions. The relevant Rules for restrictive practices are:

- NDIS (Behaviour Support Rules)
- NDIS (Provider Registration and Practice Standards) Rules

The *Behaviour Support Competency Framework* has also been developed to support NDIS behaviour support practitioners.

2.3 The NDIS Quality and Safeguarding Framework

The NDIS Quality and Safeguarding Framework (the Framework) was agreed by all States at the Council of Australian Governments (COAG) in December 2016. The Framework outlines the national quality and safeguards arrangements that will support people with disability accessing safe and quality services under the NDIS. The Framework is underpinned by the same high-level guiding principles as the National Framework for Reducing and Eliminating the use of Restrictive Practices, such as human rights and a person-centred approach.

Under the Framework, the Commonwealth is responsible for the oversight of practitioners and providers providing behaviour support to NDIS participants as well as the provision of best practice advice and reviewing and reporting on the use of restrictive practices. States have agreed to continue to manage the authorisation of restrictive practices. The Framework also restates the commitment by the Commonwealth and States and Territories to work towards the reduction of restrictive practices.

2.4 The role of the NDIS Quality and Safeguarding Commission

The NDIS Commission is an independent body established to oversee the delivery of quality supports and services under the NDIS. Behaviour support functions within the NDIS Commission are led by a national Senior Practitioner responsible for leadership in behaviour support practice development and in the reduction and elimination of restrictive practices by NDIS providers.

The Senior Practitioner is supported by a team of practitioners with relevant training and experience in behaviour support, as well as data analysts and research and education for staff. Some of the NDIS Commission staff will be based in state and territory offices to provide oversight and guidance to NDIS providers using behaviour support. The NDIS Commission will also lead national work to develop a nationally consistent model for the authorisation of restrictive practices.

A Complaints Commissioner has been established to work with the NDIS Senior Practitioner on matters relating to inappropriate or unauthorised use of restrictive practices.

3 Definitions - Restrictive and Prohibited Practices

3.1 Regulated Restrictive Practices (RRP)

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

Under the NDIS (Restrictive Practices and Behaviour Support) Rules there are five categories of regulated restrictive practice:

- a) **seclusion**, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;
- b) **chemical restraint**, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;
- c) **mechanical restraint**, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- d) **physical restraint**, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.
- e) **environmental restraint**, which restrict a person's free access to all parts of their environment, including items and activities.

The NDIS definitions are categorised differently to what has previously been used by NSW.

Table 1 Definitions of restrictive practices used in NSW mapped against the definitions of regulated restrictive practices used by the Commonwealth.

NSW Definitions	Commonwealth Definition
Seclusion	Seclusion
Exclusionary Time Out	
Physical Intervention / Restraint	Physical Restraint
	Mechanical Restraint
PRN Chemical Restraint	Chemical Restraint
Routine dose Chemical Restraint*	
Restricted Access	Environmental Restraint
Response Cost	

*Not previously a Restrictive Practice in NSW – to be included hereafter.

Refer NSW Restrictive Practices Authorisation Procedural Guide - Description of restrictive practices

3.2 Prohibited practices

A prohibited practice is any of the following:

- a) **Aversion**, which is any practice which might be experienced by a person as noxious or unpleasant and potentially painful
- b) **Overcorrection**, which is any practice where a person is required to respond disproportionately to an event, beyond that which may be necessary to restore a disrupted situation to its original condition before the event occurred
- c) **Misuse of medication**, which is administration of medication prescribed for the purpose of influencing behaviour, mood or level of arousal contrary to the instructions of the prescribing general practitioner, psychiatrist or paediatrician
- d) **Seclusion of children or young people**, which is isolation of a child or young person (under 18 years of age) in a setting from which they are unable to leave for the duration of a particular crisis or incident
- e) **Denial of key needs**, which is withholding supports such as owning possessions, preventing access to family, peers, friends and advocates, or any other basic needs or supports
- f) **Unauthorised use of a restrictive practice**, which is the use of any practice that is not properly authorised and /or does not have validity or does not adhere to requisite protocols and approvals

Or

- are degrading or demeaning to the person
- may reasonably be perceived by the person as harassment or vilification, or
- are unethical.

The following practices are also prohibited in accordance with the *Children and Young Persons (Care and Protection) Regulation 2012* in relation to participants aged 18 and under:

- any form of corporal punishment
- any punishment that takes the form of immobilisation, force-feeding or depriving of food, and
- any punishment that is intended to humiliate or frighten the person¹.

4 Restrictive Practices Authorisation Mechanism in NSW

4.1 Overview

In NSW, there are three requirements for the use of a regulated restrictive practice:

1. A Behaviour support plan is developed, and
2. Informed consent is obtained by the participant or their guardian, and
3. Authorisation is approved by a restricted practice authorisation panel (RPA Panel) managed through internal policy and procedures of the registered NDIS provider.

¹ The NSW Children and Young Persons (Care and Protection) Regulation 2012 Clause 45 (2) (e)

Restricted Practice Authorisation (RPA) serves to:

- appraise the need, risk, applicability and outcome of a restrictive practice for a person with disability with reference to the person's needs, quality of life and living context
- sanction the use of restricted practices as a component of a documented behaviour support plan
- ensure that people who receive a behaviour support service are protected from exploitation, abuse, neglect, and unlawful and degrading treatment
- ensure that consent is in place for any recommendation for the use of a restrictive practice
- consider the appropriateness of a documented support plan or strategy
- ensure the appropriate documentation is available and contains information that is sufficiently evidence based to justify the strategies being requested, and
- ensure the timely reduction and cessation of restrictive practices.

The NSW Restrictive Practices Authorisation Procedural Guide contains further information about the roles and responsibilities of the RPA Panel and its members.

4.2 Behaviour Support Plan

Where a restrictive practice is recommended to address behaviours of concern, the practice is to be supported by a behaviour support plan. This plan is based on a functional assessment of behaviour which identifies the reason for the behaviour. The requirements for developing a behaviour support plan are set out in the NDIS (Restrictive Practices and Behaviour Support) Rules. The NDIS Commission provides oversight of the development and form of a behaviour support plan.

Only behaviour support practitioners who have been assessed against suitability criteria by the Senior Practitioner are permitted to write behaviour support plans containing restrictive practices. Behaviour support practitioners who develop behaviour support plans follow the requirements set out in the following documents:

- NDIS (Restrictive Practices and Behaviour Support) Rules
- Behaviour Support Guidelines and Competency Framework

4.3 Consent requirements

Consent is the permission given by the person (where they have the capacity to consent) or the person with authority to consent on the person's behalf (where they do not have capacity to consent). Consent is needed to use a restrictive practice as a component of an overall behaviour support plan. Consent requirements for regulated restrictive practices are summarised in Table 4: RPA Consent Requirements.

4.3.1 Consent for Children

Consent for a child as a component of a behaviour support plan should be obtained from the parent or guardian. Where a child is under the parental responsibility of the Minister for Family and Community Services, consent for the use of a regulated restrictive practice, including chemical restraint, must be obtained from the *person with parental responsibility*.

This consent must be documented in the child or young person's case plan. The behaviour support plan must be approved by the Director, Child and Family, Community Services.

Note: The *NSW Guardianship Act 1987* defines a child as being under 18 years of age.

The *NSW Children and Young Persons (Care and Protection) Act 1998* distinguishes between a child (under 16 years) and a young person (16-18 years).

4.3.2 Consent for Young People² and Adults³

Where the person does not have the capacity to consent to the use of a regulated restrictive practice as a component of a behaviour support plan, and where there is no appropriate person(s) to consent or agree to the use of the practice on their behalf, a legally appointed guardian is required. In such cases specific authority to consent may be granted to a guardian by the Guardianship Division of the NSW Civil and Administrative Tribunal. This guardian will have a restrictive practice function.

A guardian is not required where:

- Restraint is being used as part of risk management or safety, unless the person or someone else is objecting to the practice or strategy; or
- Minimum force or confinement is used in a crisis to prevent harm.

Where an application to the Guardianship Division has been made, a copy must be provided to the RPA Panel as evidence at the earliest opportunity. Responses from the Guardianship Division to all applications should also be provided to the RPA Panel. The RPA Panel will then provide direction in relation to the RPA Application.

4.3.3 Chemical restraint in Behaviour Support

Specific requirements for consent associated with the use of chemical restraint, as a component of behaviour support for both children and adults, are outlined in the *NSW Restrictive Practices Authorisation Procedural Guide 2018*.

4.3.4 Exceptional capacity of the Restrictive Practice Authorisation Panel in relation to consent

Under certain circumstances an RPA Panel has the capacity to provide consent in order to meet policy requirements. This capacity applies only to Environmental Restraint.

This capacity is only appropriate where:

- a strategy has been authorised by the RPA panel, **and**
- the person is unable to consent, **and**
- there is no close friend or relative who can support the person to consent, **and**
- in the opinion of the RPA Panel, based on precedent and in consultation with relevant stakeholders, the Guardianship Division is considered unlikely to appoint a guardian with a restrictive practice function, **or**
- an Application has been made to the Guardianship Division in accordance with a direction from the RPA Panel but a decision has not yet been reached, **or**
- an Application has been made but the Guardianship Division has declined to appoint a guardian with a restrictive practice function.

² Aged 16–18 years and not under the care of the Minister for Family and Community Services

³ Aged 18 years and over

Table 4: Summary Guide to RPA consent requirements

PERSON	PRACTICE			
	Physical or Mechanical Restraint	Chemical Restraint	Environmental Restraint	Seclusion
Children (under 18 years) <i>not</i> subject to court order reallocating parental responsibility	parent or guardian*	parent or guardian*	parent or guardian*	PROHIBITED
Children (under 18 years) subject to court order reallocating parental responsibility	person with parental responsibility+	person with parental responsibility+	person with parental responsibility+	PROHIBITED
Young people (16-18 years)	Either: a) the person where they have the capacity, or b) guardian with a restrictive practices function	Either: a) the person where they have the capacity b) the person responsible c) the Guardianship Division	Either: a) the person where they have the capacity, or b) guardian with a restrictive practices function, or c) the RPA Panel mechanism‡	PROHIBITED
Adults (18 years and over)	Either: a) the person where they have the capacity, or b) guardian with a restrictive practices function	Either: a) the person where they have the capacity b) the person responsible c) the Guardianship Division	Either: a) the person where they have the capacity, or b) guardian with a restrictive practices function, or c) The RPA Panel mechanism‡	Either: a) the person where they have the capacity, or b) guardian with a restrictive practices function

<p>* With approval of the principal officer of the designated agency in accordance with Clause 26 of the Children and Young Persons (Care and Protection) Regulation 2012 as appropriate.</p> <p>+ For children who are subject to a court order reallocating parental responsibility, evidence of the court order must be provided.</p> <p>‡ The RPA mechanism may direct that an authorised environmental restraint (e.g. response cost or restricted access) strategy may be implemented in the absence of consent in certain circumstances.</p>	<p>Notes:</p> <ol style="list-style-type: none"> 1. Androgen-reducing medications prescribed to control behaviour, while not psychotropic, fall under Special Medical (or dental) Treatment and can only the Guardianship Division can consent. 2. The consent of the person(s) with appropriate legal authority does not release the registered NDIS provider from the ethical imperative to have access to or to establish and maintain a RPA mechanism which evaluates, authorises and monitors all instances of the use of a regulated restrictive practice by its staff.
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4.4 Authorisation requirements

All registered NDIS providers must have an RPA mechanism that comprises a properly constituted RPA Panel which meets membership requirements. Membership will comprise as a minimum, a senior manager of the provider and a specialist who is independent of the service provider and the person. Additional panel members may be included according to an individual provider’s preference.

The senior manager of the provider is to be the chair of the RPA Panel. No member of the RPA Panel can also bring forward an application for the RPA Panel's consideration.

The NSW government has established a pool of Restrictive Practices Authorisation Independent Specialists to ensure that registered NDIS service providers have access to appropriately qualified behaviour support practitioners to support the operation of provider RPA Panels.

Any recommendation for the use of a regulated restrictive practice requires formal authorisation from the RPA Panel. The Panel considers the appropriateness of a documented behaviour support plan and evaluates the recommendations in the context of the provider's operations, as well as the appropriateness of the strategy to achieve the intended therapeutic outcomes. Core to the Panel's decision making is whether the proposed strategy is the least restrictive option available and whether there are appropriate plans to reduce or eliminate the use of restrictive practices for the participant.

The Panel's decision to authorise a restrictive practice is to be unanimous. On making its determination the Panel specifies the length of time for which the authorisation applies, not exceeding 12 months.

Refer NSW Restrictive Practices Authorisation Procedural Guide for determination of RPA applications, Authorisation options and minimum standards for limiting and monitoring regulated restrictive practices.

4.5 Other Lawful Orders

In NSW a range of lawful orders can impose legally binding restrictions on an individual. These orders can direct that supervision, monitoring and management conditions (including electronic monitoring) are imposed on a person who has come into contact with the criminal justice system after they are released into the community.

Lawful orders are considered an 'authorised' restrictive practice for the purpose of this policy. However, the practice should be referred to an RPA Panel for the purposes of considering how the requirements are integrated into the participant's behaviour support plan and its implementation.

4.6 Interim authorisation in response to a critical incident

In exceptional circumstances, restrictive practices may need to be rapidly implemented in response to situations where there is a clear and immediate risk of harm linked to behaviour(s) of concern and there is no behaviour support plan in place. As with restrictive practices generally, these restrictive practices should involve the minimum amount of restriction or force necessary, the least intrusion and be implemented only for as long as is necessary to manage the risk.

In these circumstances, interim authorisation for the use of restrictive practices is required pending the development of a behaviour support plan and authorisation by an RPA Panel. This should be sought as soon as practicable, not exceeding 1 month.

A senior manager of the provider can provide this interim authorisation having regard to the interim plan for behavior supports, including restrictive practices, and the context of the provider's authorisation. In providing interim authorisation the senior manager of the provider specifies the length of time for which the interim authorisation applies, not exceeding 5 months.

4.7 Transitional Requirements for Restrictive Practice Authorisation

It is acknowledged that existing providers will need time to become compliant with this policy. **Table 5** provides a summary of transition requirements and timings as they pertain to the NSW Restrictive Practices Authorisation policy.

Table 5: Transitional requirements

Specific Circumstances	Authorised under previous NSW Policy	Behaviour Support Plan	Transition arrangements
Use of regulated restrictive practice with a behaviour support plan and in accordance with an authorisation process	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Rule 26 applies. Within 3 Months of 1 July 2018 (by 30 September 2018) notify the Commissioner of the existence of behaviour support plan, including the regulated restrictive practices it contains and the expiry date of the plan (s26(3)).</p> <p><u>NSW Policy Requirement</u> Renew behaviour support plan and obtain authorisation in accord with this policy as per expiry date (no more than 12 months) or when change of circumstances demand (whichever happens first)</p>
Use of a regulated restrictive practice in accordance with a behaviour support plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>No specific transition arrangement set by Commission.</p> <p><u>NSW Policy Requirement</u> Obtain authorisation in accord with this policy within 3 months of 1 July 2018 (by 30 September 2018).</p>
Use regulated restrictive practice in accordance with an authorisation process but not a behaviour support plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Rule 27 applies Behaviour Support Plan to be developed (that meets the requirements of Division 2 of Part 3 of the <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>) within 6 months of 1 July 2018 (by 31 December 2018).</p> <p><u>NSW Policy Requirement</u> Obtain authorisation in accord with this policy within 6 months (by 31 December 2018) utilising newly developed behaviour support plan.</p>
Use of a regulated restrictive practice other than in accordance with behaviour support plan or State or Territory authorisation	<input type="checkbox"/>	<input type="checkbox"/>	<p>Rule 28 applies. Within 1 month of 1 July 2018 (by 31 July 2018) notify the Commissioner of the regulated restrictive practice used by the person or entity. Interim Authorisation obtained asap, but Interim plan developed within 3 months (by 30 September 2018). Comprehensive Behaviour Support Plan to be developed within 6 months (31 December 2018)</p> <p><u>NSW Policy Requirement</u> Obtain interim authorisation in accord with this policy within 3 months (by 30 September 2018) Obtain authorisation in accord with this policy within 6 months (by 31 December 2018) utilising newly developed behaviour support plan).</p>

4.8 Specific Exceptions relating to Restrictive Practice Authorisation

A number of circumstances exist that require specific exceptions or exclusions in relation to RPA processes.

4.8.1 Therapeutic or Safety Devices⁴

Some devices or practices used for therapeutic or safety purposes impose a level of limitations on a person's freedoms. Registered NDIS providers must assess whether the application of any specific safety or therapeutic device or practice constitutes a restrictive practice for the purpose of managing risk associated with a behaviour of concern.

Commonly, these assessments involve a health or allied health discipline e.g. occupational therapy, physiotherapy or behaviour support practitioner, to assess non-purposeful risk behaviour (refer Section 4.8.2).

Two specific practice categories are included within this classification under this policy, they are:

- a. Health / Medical support practices used/recommended by health or allied health professionals (e.g., occupational therapists) for therapeutic purposes, are not considered as restrictive practices under this policy.

Support needs associated with choking, falls, seizures, nutrition, swallowing requirements fall into this classification. These needs may be related to specific conditions (e.g. diabetes, epilepsy) or specific management (e.g. dietary, positioning and lifting routines).

- b. Use of seatbelt buckle covers - strategies used for safe travel purposes are not considered to be restrictive practices, where the person's action are deemed to fall into the category of non-purposeful risk (refer Section 4.8.2).

Restrictive practice requirements only apply to these practice categories when used to manage behaviour of concern (e.g., if the primary purpose of the device or practice is to control or restrict the person's behaviour or free movement).

Where a person objects to a therapeutic or safety device or practice, its application may be considered a restrictive practice. In such cases, the RPA processes apply.

Particular care and consideration is required in these matters due to the potential for therapeutic or safety devices, or practices to be misused.

4.8.2 Management of Non-Purposeful Risk Behaviour

There are three (3) *categories* of 'Non-purposeful' Risk Behaviour. The categories are:

1. **"Physical Risk"** behaviour - is behaviour that involves a physical risk to the client e.g., mobility, transitioning, accidental movement, going missing / wandering, etc;
2. **Resistance to activities of daily living (ADL) support** - is behaviour that demonstrates discomfort associated with daily activities e.g. shaving, tooth brushing, therapy routines, etc;

⁴ Adapted from the Restrictive Practices Reference Guide for the South Australian Disability Sector 2017

3. **Unsafe actions** - is behaviour associated with actions that directly place the client at personal risk e.g. exposure to sharps or poisons, road and electrical unawareness, etc.

Examples of such behaviour might also be described as unintentional. Each of these categories of 'non-purposeful' risk necessitates a planned service response to minimise the risk rather than functional behavioural assessment and intervention.

Risk mitigation and management practices should be monitored including those practices / strategies which are restrictive in definition, and used as a part of a planned approach to managing a person's behaviours of concern.

5 Performance against NDIS Safeguarding Requirements

All registered NDIS providers will be required to report a range of restrictive practices matters to the NDIS Commission. The NDIS Commission will monitor plans containing restrictive practices, as an integral part of the Quality and Safeguards Framework.

As part of NSW's responsibilities for determining authorisation requirements for regulated restrictive practice within its jurisdiction, NSW will monitor authorisation mechanisms.

The NSW Government requires registered NDIS Registered Providers and behaviour support practitioners using restrictive practices in NSW to use the RPA ICT system. This system has been designed to improve the way in which information is collected about the authorisation of restrictive practices. This includes existing information captured on the authorisation application form and outcome summary.

5.1 RPA Practice Governance and Support

NDIS Registered Providers and behaviour support practitioners are required to actively maintain the quality and compliance aspects of restrictive practice authorisation and related requirements. The NSW Government is providing specific structural support to the sector in NSW through:

Central Restrictive Practices team

Functions of this team will include:

- oversight of the administration and implementation of policy and guidelines
- provision of information to the sector
- monitoring the authorisation of restrictive practices in NSW
- engagement with the NDIS Commission and other key stakeholders
- participation in the national work on consistent standards for behaviour support
- development of a long-term RPA model, and
- management of the Independent Specialists.

Restrictive Practices Authorisation Independent Specialists

This Policy requires that RPA Panels convened by registered NDIS service providers are to include Behaviour Support Specialists.

The NSW government will establish and maintain a pool of accredited Behaviour Support Specialists to ensure that registered NDIS service providers have access to appropriately qualified behaviour support practitioners to support the operation of RPA Panels.

6 Appendix 1: Policy Context Summary

International

- UN Convention on the Rights of Persons with Disability

National

- National Disability Strategy 2010–2020
- NDIS Quality and Safeguarding Framework
- National Disability Insurance Scheme Act 2013.
- National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018
- National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector 2014
- Disability Discrimination Act 1992
- The Privacy Act 1988 and the Australian Privacy Principles (March 2014)

NSW

- Disability Inclusion Act 2014 and Disability Inclusion Regulation 2014
- Children and Young Persons (Care and Protection) Act 1998 and the Children and Young Persons (Care and Protection) Regulation 2012
- NSW Guardianship Act (1987) and Guardianship Regulations 2010
- Child Protection (Working with Children) Act 2012.
- NSW Anti-Discrimination Act 1977
- Mental Health Act 2007
- Mental Health (Forensic Provision) Act 1990
- Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017 (WHS Regulation).
- NSW Child Safe Standards for Permanent Care 2015, NSW Office of the Children’s Guardian.
- Child Protection (Working with Children) Act 2012.
- Living in the Community: Putting Children First (July 2002).
- Individual planning for children and young people living in out-of-home care: Policy and practice guide (January 2011).
- NSW Interagency Guidelines for Child Protection Intervention (2006).

7 Appendix 2: Glossary of Terms

The table below is a list of terms, keywords, and/or abbreviations used throughout this document.

Term	Definition
Abuse	Abuse, refers to sexual assault, physical, emotional, financial and systemic abuse, domestic violence, constraints and restrictive practices and to neglect.
Aversion	An unpleasant stimulus (e.g. an unwanted cold bath, excessive chilli powder on food, liquid sprayed into a person’s face etc). Aversion is often used with the intention of manipulating behaviour. Such practices are prohibited.
Behaviours of Concern	<p>Also known as challenging behaviour may be defined as: <i>“Behaviour ... of such intensity, frequency or duration as to threaten the quality of life and/or the physical safety of the individual or others and is likely to lead to responses that are restrictive, aversive or result in exclusion.”⁵</i></p> <p>Any behaviour displayed by a person which is considered challenging or inappropriate by others, or which gives rise to reasonable concern, may be considered as challenging. However, the use of the term challenging should be understood in terms of the social context in which behaviour occurs, rather than a symptom of individual pathology.⁶</p>
Behaviour Support Plan (BSP)	Is defined by the NDIS Commission in <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>
Behaviour Support Practitioner	Is defined by the NDIS Commission in <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>

⁵ Banks et al 2007, pg 14

⁶ Emerson 1995, pg 5

Term	Definition
Capacity	<p>A person has capacity to consent if they are able to demonstrate an understanding of the general nature and effect of a particular decision or action, and can communicate an intention to consent (or to refuse consent) to the decision or action.</p> <p>A person's capacity to make a particular decision should be doubted only where there is a factual basis to doubt it. It should not be assumed that a person lacks capacity just because he or she has a particular disability. A person may have the capacity to exercise privacy rights even if they lack the capacity to make other important life decisions.⁷</p> <p>See also Consent.</p>
Chemical Restraint	<p>The use of medication or chemical substance for the primary purpose of influencing a person's behaviour.</p>
Children and Young Persons	<p>Under the <i>NSW Children and Young Persons (Care and Protection) Act 1998</i>, a Child is defined as a person under the age of 16 years.</p> <p>A Young Person is defined as a person who is aged between 16 and 18 years.</p>
Consent	<p>Generally, the term consent refers to permission given by a person with capacity to do so, or person(s) with legal authority to do so, on behalf of the person. For consent to be valid it must be voluntary, informed, specific and current. A person must be free to exercise genuine choice about whether or not to give or withhold consent but it is only genuine if the person giving consent has the capacity and authority to do so.</p> <p>Consent also has specific meaning under the <i>NSW Guardianship Act 1987</i>. See: www.lawlink.nsw.gov.au/opg</p> <p>See also <i>Capacity</i> above.</p>
Critical Incident	<p>An unexpected or unplanned action or event which results in or has the potential to result in actual harm to persons or damage to property</p>
Guardian	<p>A guardian is a legally appointed substitute decision maker granted the authority to make personal, medical, lifestyle and in some cases financial decisions on behalf of a person with decision-making disabilities.</p> <p>See Guardianship Division of the NSW Civil and Administrative Tribunal www.ncat.nsw.gov.au</p>

⁷ Adapted from *Best Practice Guide: Privacy and people with decision-making disabilities*, Privacy NSW 2004

Term	Definition
Guardianship Division	The <i>Guardianship Division</i> of the NSW Civil and Administrative Tribunal is a statutory body established under the <i>NSW Guardianship Act 1987</i> . Its function is to consider applications for guardianship of persons 16 years and over who cannot make their own major life decisions.
NDIS	National Disability Insurance Scheme
Office of the Children’s Guardian	The NSW Office of the Children’s Guardian is an independent statutory authority that works to improve the protection of children in NSW by helping organisations, employers and individuals understand the meaning, importance and benefit of being child safe. Its regulatory functions relate to statutory out-of-home care, voluntary out-of-home care, adoption services, and the Working with Children Check and child safe organisations. http://www.kidsguardian.nsw.gov.au/about-us/the-childrens-guardian
Person	The recipient of a positive behaviour support service is referred to within this document as the ‘person’ or where additional clarity is needed to person supported.
Person-centred	A person-centred approach is one which involves the person to gather information about that person’s lifestyle, skills, relationships, preferences, aspirations, and other significant characteristics, in order to provide a holistic framework in which appropriate respectful and meaningful behaviour supports may be developed.
Person with Parental Responsibility	There is provision under the <i>NSW Children and Young Persons (Care and Protection) Act 1998</i> to enable the Secretary of Family and Community Services to apply to the Children’s Court to remove a child from the family home and place them under the parental responsibility of another suitable person or of the Minister for Family and Community Services.
Person Responsible	This is a person with legal authority to make decisions about medical or dental treatment for a person who lacks capacity to give informed consent. The “person responsible” is defined in the <i>NSW Guardianship Act 1987</i> . The person responsible is not the same as the next of kin. www.publicguardian.justice.nsw.gov.au
Physical Restraint	The restriction of a person’s movement or behaviour by the use of a device or physical force.
PRN	A term used generally in the administration of medication, which is an abbreviation of the Latin term “Pro re nata” meaning “as required”.
Prohibited Practice	Practices which interfere with basic human rights, are unlawful and unethical in nature, and are incompatible with the objects and

Term	Definition
	principles of the <i>Disability Inclusion Act 2014</i> .
Response Cost	This is the withholding from a person of positively valued items or activities in response to a particular behaviour or set of behaviours (e.g. access to a computer or TV program). A response cost strategy is classified a restrictive practice.
Restricted Access	The use of physical barriers such as locks or padlocks, the use of increased supervision, or the imposition of enforceable limits or boundaries in an environment beyond normally accepted community practices (e.g. front door locked) in order to limit a person’s access to items, activities or experiences, with the intention of manipulating a particular behaviour or managing risk.
Regulated Restrictive Practice	<p>A distinct number of restrictive strategies also have significant additional safeguards placed upon their use. Such strategies are classified as regulated restrictive practices.</p> <p>The use of a regulated restrictive practice must be informed by strict written guidelines which provide clear conditions and limitations on their use. Implementation of a regulated restrictive practice requires:</p> <ul style="list-style-type: none"> • Behaviour support plan • Legal consent • Authorisation by an internal RPA Panel
Restrictive Practice	Any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.
Restrictive Practice Authorisation (RPA)	Authorisation is endorsement for identified restrictive practices to be implemented with a certain individual, in a particular service setting, by associated staff and under clearly defined circumstances.
Restricted Practice Authorisation Panel	A panel comprising as a minimum, a senior manager of an NDIS provider and an independent specialist, who authorise the use of a restrictive practice based on supporting information, such as a behaviour support plan.
Seclusion	The sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted

8 Appendix 3: Policy Summary

What will change and what will stay the same from 1 July?

Before 1 July

- Restrictive practices should be minimised or eliminated
- Restrictive practices should only be used in the context of a Behaviour Support Plan based on an assessment of behaviour
- Consent is required for the use of restrictive practices
- NSW oversees behaviour support and authorisation of restrictive practices under the NSW policy
- ‘Restricted’ practices are defined by the NSW Government
- Routine psychotropic medication is not a restrictive practice
- Unauthorised use of restrictive practices is a reportable incident
- Service providers convene or access RPA Panels to obtain authorisation
- Service providers administer and manage requests for authorisation using a range of different systems
- Service providers identify and coordinate access to independent members of RPA Panels
- Service providers report on restricted practices to the NSW Government

After 1 July

- Restrictive practices should be minimised or eliminated
- Restrictive practices should only be used in the context of a Behaviour Support Plan based on an assessment of behaviour
- Consent is required for the use of restrictive practices
- **NDIS Quality and Safeguards Commission oversees behaviour support; restrictive practices authorisation is required in accordance with NSW policy**
- **Restrictive practices are defined by the NDIS Quality and Safeguards Commission’s Rules**
- **Chemical restraint includes the routine use of psychotropic medication and is defined as a restrictive practice**
- Unauthorised use of restrictive practices is a reportable incident
- Service providers convene or access RPA Panels to obtain authorisation
- **Service providers administer and manage requests for authorisation through one online system provided by FACS**
- **FACS provides independent specialists for RPA Panels**
- **Service providers report on the use of restrictive practices to the NDIS Quality and Safeguards Commission**

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