



# 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 2.0**

# Document approval

The Restrictive Practices Authorisation Policy (June 2019) has been endorsed and approved by:

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Deputy Secretary Disability Division

Approved:

# Document version control

Distribution: Registered NDIS Provider Organisations in NSW

Document name: Restrictive Practices Authorisation Policy

Trim Reference AT18/11144

Version: Version 2.0 (June 2018, revised June 2019)

This document replaces Behaviour Support Policy (January 2009, Revised April 2011, Revised March 2012, Revised October 2016)

Document status: Final

File name: NSW Restrictive Practices Authorisation Policy – June 2019

Authoring unit: Central Restrictive Practices Team

Date: June 2019

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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 (NDIS providers) and Behaviour Support Practitioners supporting people under the National Disability Insurance Scheme (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.

Restrictive Practices Authorisation (RPA) is endorsement for identified restrictive practices to be implemented in relation to a particular individual with disability, 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.

Authorisation does not constitute consent, or replace the requirement for consent to use a regulated restrictive practice (restrictive practice) (refer **Section 4** for more detail about authorisation in NSW).

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

- NDIS Quality and Safeguards Positive Behaviour Support Capability 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 this policy

This policy applies to all NDIS 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 Commission and its functions. The relevant Rules for restrictive practices are:

- *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (the Rules)*
- *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*
- *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018.*

The *Quality and Safeguards Positive Behaviour Support Capability 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 in the Disability Service Sector*, such as a rights-based 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 Safeguards 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 which are

reportable incidents in accordance with the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.

## 3 Definitions - Restrictive and Prohibited Practices

### 3.1 Regulated Restrictive Practices

A regulated restrictive practice (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 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 restrictive practices used by the Commonwealth.

Definitions previously used in NSW prior to 1 July 2018	Definitions in effect from July 2018
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 to *NSW Restrictive Practices Authorisation Procedural Guide - Description of restrictive practices*

## 3.2 Prohibited practices

The following practices are prohibited in NSW:

- a) **Aversion**, which is any practice which might be experienced by a person as noxious or unpleasant and potentially painful, in order to manage behaviour
- 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 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

In addition, it is prohibited to act in any way which:

- degrades or demeans a person
- may reasonably be perceived by the person as harassment or vilification
- is 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 person<sup>1</sup>.

# 4 Restrictive Practices Authorisation Mechanism in NSW

## 4.1 Overview

NSW has committed to working towards the reduction and elimination of the use of restrictive practices. Along with all other Australian governments, NSW has endorsed the 2014 *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*. This commitment was reaffirmed in the *NDIS Quality and Safeguarding Framework*.

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

The authorisation of restrictive practices in NSW is intended to ensure that restrictive practices are only used when they are the least restrictive alternative in the circumstances, and that they are used for the shortest time possible. Over time, it is anticipated that the RPA mechanism will work to reduce and/or eliminate the use of restrictive practices. In order to achieve these objectives, RPA requires:

1. A behaviour support plan written by a behaviour support practitioner deemed suitable by the NDIS Commission
2. Informed consent by the participant or their guardian
3. Approval by a RPA Panel managed through internal policy and procedures of the registered NDIS provider.

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
- enable 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 reduction and elimination of restrictive practices is the primary focus of positive behaviour support. The NDIS Commission has responsibility for providing clinical leadership in behaviour support and promoting the reduction and elimination of restrictive practices. The Commission's advice and guidance in relation positive behaviour support should inform RPA in relation to 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 Involving the person in the RPA process

To the extent possible, the person with disability should be engaged throughout the RPA process. This includes the development of the behaviour support plan, obtaining consent, and the authorisation panel process. As detailed in Section 39(3-4) of the *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018*, NDIS participants should be engaged in discussions about the need for restrictive practices, and the development of behaviour support strategies that are proportionate to the risk of harm to the participant or others. Further information on the behaviour support plan is at **Section 4.3**.

The person with disability or their guardian should provide voluntary, informed, specific and current consent to the use of restrictive practices as set out in the behaviour support plan. Further information on consent requirements is at **Section 4.4**.

Where appropriate, the person with disability should be invited to attend the RPA Panel meeting relating to their behaviour support plan.



## 4.3 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 2018*. 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 NDIS 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 2018*
- *Quality and Safeguards Positive Behaviour Support Capability Framework Refer NSW*
- *NSW Restrictive Practices Authorisation Procedural Guide 2018 – behaviour support plan requirements.*

## 4.4 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 restrictive practices are summarised in [Table 2: Summary Guide to RPA consent requirements](#). Evidence of consent must be provided to the RPA Panel in order to obtain authorisation. For example where appropriate, evidence of consent may be provided by the person with disability in the course of attending the RPA Panel meeting.

### 4.4.2 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 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).

### 4.4.3 Consent for Young People<sup>2</sup> and Adults<sup>3</sup>

Where the person does not have the capacity to consent to the use of a 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

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<sup>2</sup> Aged 16 or 17 years and not under the care of the Minister for Family and Community Services

<sup>3</sup> Aged 18 years and over

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.

#### 4.4.4 Chemical restraint in behaviour support

The *NSW Restrictive Practices Authorisation Procedural Guide 2018* outlines specific requirements for consent associated with the use of chemical restraint, for both children and adults.

#### 4.4.5 Exception to the requirement for consent for the use of environmental restraint

Under certain circumstances, the use of environmental restraint does not require consent. The requirement for consent for environmental restraint can be waived only 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.

Table 2: Summary Guide to RPA consent requirements

PERSON	PRACTICE			
	Physical or Mechanical Restraint	Chemical Restraint	Environmental Restraint	Seclusion
<b>Children (under 18 years)</b> <i>not</i> subject to court order reallocating parental responsibility	parent or guardian*	parent or guardian*	parent or guardian*	PROHIBITED
<b>Children (under 18 years)</b> subject to court order reallocating parental responsibility	person with parental responsibility+	person with parental responsibility+	person with parental responsibility+	PROHIBITED
<b>Young people (16 or 17 years)</b>	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
<b>Adults (18 years and over)</b>	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 strategy may be implemented in the absence of consent in certain circumstances.</p>	<p><b>Notes:</b></p> <ol style="list-style-type: none"> <li>Androgen-reducing medications prescribed to control behaviour, while not psychotropic, fall under Special Medical (or dental) Treatment and only the Guardianship Division can consent.</li> <li>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.</li> </ol>
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## 4.5 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 NDIS provider who has experience in behaviour support and restrictive practices
- an experienced specialist Behaviour Support Practitioner **and** is independent of the NDIS provider and the person with disability.

Additional panel members may be included according to an individual NDIS provider's preference and the specific circumstance of the person with disability.

The senior manager of the NDIS provider is to be the chair of the RPA Panel. Members of the RPA Panel cannot bring forward an application for the RPA Panel's consideration.

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

Any recommendation for the use of a 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. 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. This should be for the shortest amount of time possible, not exceeding 12 months.

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

## 4.6 Other Lawful Orders

In NSW a range of lawful orders can impose legally binding restrictions on an individual. For example, extended supervision orders can direct that supervision, monitoring and management conditions (including electronic monitoring) are imposed on a person convicted of an offence after they are released into the community upon sentence expiry. Orders can be in place for up to five years, after which the extended supervision order can be renewed by the Supreme Court.

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.

## 4.7 Response to a critical incident and Interim authorisation

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, the NDIS provider must take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice. The NDIS provider should also seek interim

authorisation as soon as practicable, not exceeding 1 month after the first use of the restrictive practice.

Interim authorisation can be provided by a senior manager of the NDIS provider. The senior manager should have regard to the interim plan for behavior supports, including restrictive practices, and the context of the NDIS provider's authorisation. In providing interim authorisation the senior manager of the NDIS provider specifies the length of time for which the interim authorisation applies, not exceeding 5 months. The use of restrictive practices is not authorised until the senior manager provides interim authorisation for the use of restrictive practices outlined in interim behaviour support plan. Any use of restrictive practices prior to this point constitutes a reportable incident.

## 4.8 Specific Exceptions relating to Restrictive Practices Authorisation

Authorisation is not required when the practices are related to:

- therapeutic or safety measures
- the management of unintentional risks.

### 4.8.1 Therapeutic and safety exceptions

Some devices or practices used for therapeutic or safety purposes impose a level of limitations on a person's freedoms, but do not constitute restrictive practices. The *NDIS (Restrictive Practices and Behaviour Support) Rules* (Rule 6) set out the following exceptions:

- Chemical restraint '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'.
- Mechanical restraint 'does not include the use of devices for therapeutic or non-behavioural purposes'.
- '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.'

Assessments as to whether a practice is used for a behavioural or non-behavioural purpose typically involve a health or allied health discipline e.g. occupational therapy, physiotherapy or behaviour support practitioner.

Where a person objects to a therapeutic or safety device or practice, its application should be considered a restrictive practice. In such cases, authorisation is required.

### 4.8.2 Management of non-intentional risks

NDIS providers have a duty of care to their clients to manage risks associated with behaviours that are not attempting to meet an unmet need. These 'non-intentional risk behaviours' must be identified through a functional behaviour assessment as not serving a function or purpose for the person. Management of unintentional risks associated with these behaviours does not require authorisation under this policy. Instead, a planned service response should seek to minimise risks associated with these behaviours.

Non-intentional risk behaviours include:

- 1. Behaviours that create physical risk:** behaviours that involve a risk to the person related to mobility, transitioning or accidental movement issues. These are risks which are present due to the existence of a physiological or neurological condition that may result in poor motor control (eg. tardive dyskinesia, Parkinsons-like conditions and reflexive jerky movements) that may result in another person being accidentally struck, the person accidentally hitting walls or other solid objects or being at risk of slips, trips and falls.
- 2. Resistance to support for activities of daily living:** behaviours that demonstrate discomfort associated with daily activities e.g. shaving, tooth brushing, or therapy routines. Assisting the person to complete activities of daily living may involve light physical support to assist the person to complete the activity. Resistance to this support may indicate that the person is experiencing an issue greater than discomfort, which will require further assessment to determine the cause of the resistance such as health/medical issues and the potential function of the behaviour.
- 3. Unsafe actions:** behaviours that unintentionally place the client at personal risk. This may include having no knife safety or sun safety awareness, inadvertently reaching for a hot kettle or stove, or wandering out the front door towards roads without awareness of road safety issues.

Non-intentional risk behaviour must be identified through an appropriate allied health assessment to determine and understand the function or purpose behind a person's behaviour.

If the assessment determines that the behaviour is non-intentional, the response to this behaviour does not require authorisation under this policy. However, providers should be guided by the NDIS Commission as to whether the circumstance requires a behaviour support plan and should comply with reporting and other requirements in line with the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018*.

Regardless of whether reporting is required under the *NDIS (Restrictive Practices and Behaviour Support Rules) Rules 2018*, the risk mitigation and management practices should be monitored and used as a part of planned approach to manage a person's needs.

## 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 restrictive practice within its jurisdiction, NSW will monitor authorisation mechanisms.

The NSW Government requires registered NDIS providers and behaviour support practitioners using restrictive practices in NSW to use the online FACS RPA System. This system has been designed to facilitate the authorisation process of restrictive practices for people with disability receiving NDIS funding. The system improves the way in which

information is collected, decisions are documented and captures key information relating to RPA submissions. The system also supports the legislative requirements as outlined the *NDIS Commission's (Behaviour Support and Restrictive Practices) Rules 2018*.

## 5.1 Restrictive Practices Authorisation Practice Governance and Support

NDIS Providers and behaviour support practitioners are required to actively maintain the quality and compliance aspects of RPA and related requirements. The NSW Government is providing specific structural support to the sector in NSW through the FACS Central Restrictive Practices Team and the FACS Independent Specialists.

### Central Restrictive Practices Team

Functions of this team 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 FACS Independent Specialists.

### Restrictive Practices Authorisation Independent Specialists

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

The NSW Government has established and maintains a pool of accredited Behaviour Support Specialists to ensure that registered NDIS providers have access to appropriately qualified behaviour support practitioners to support the operation of RPA Panels.

## 5.2 Complaints handling

If a person has a complaint regarding any aspect of the RPA process that is not adequately addressed by raising the issue with the RPA Panel, the person should be offered the opportunity to raise the issue with senior management within the registered NDIS provider operating the RPA Panel.

Alternatively, the person can provide feedback directly to FACS (<https://www.facs.nsw.gov.au/about/contact/complaints>) for issues related to the authorisation of restrictive practices including FACS Independent Specialists, or the NDIS Commission (<https://www.ndiscommission.gov.au/participants/complaints>) for issues relating to restrictive practices and behaviour support beyond the authorisation process.

## 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 Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018
- National Disability Insurance Scheme (Incident Management and Reportable Incidents) 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).
- FACS Behaviour Support in Out-of-Home Care Guidelines (2018)



## 7 Appendix 2: Glossary of Terms

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

Term	Definition
<b>Abuse</b>	Abuse, refers to sexual assault, physical, emotional, financial and systemic abuse, domestic violence, constraints and restrictive practices and to neglect.
<b>Aversion</b>	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.
<b>Behaviours of Concern</b>	<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.”<sup>4</sup></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.<sup>5</sup></p>
<b>Behaviour Support Plan (BSP)</b>	Is defined by the NDIS Commission in <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>
<b>Behaviour Support Practitioner</b>	Is defined by the NDIS Commission in <i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>
<b>Capacity</b>	<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.<sup>6</sup></p> <p>See also Consent.</p>

<sup>4</sup> Banks et al 2007, pg 14

<sup>5</sup> Emerson 1995, pg 5

<sup>6</sup> Adapted from *Best Practice Guide: Privacy and people with decision-making disabilities*, Privacy NSW 2004

Term	Definition
<b>Chemical Restraint</b>	The use of medication or chemical substance for the primary purpose of influencing a person's behaviour. Chemical restraint 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.
<b>Children and Young Persons</b>	Under the <i>NSW Children and Young Persons (Care and Protection) Act 1998</i> , a <b>Child</b> is defined as a person under the age of 16 years. <b>A Young Person</b> is defined as a person who is aged 16 years or above but who is under the age of 18 years.
<b>Consent</b>	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.  Consent also has specific meaning under the <i>NSW Guardianship Act 1987</i> . See: <a href="http://www.lawlink.nsw.gov.au/opg">www.lawlink.nsw.gov.au/opg</a>  See also <i>Capacity</i> above.
<b>Critical Incident</b>	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
<b>Environmental Restraint</b>	Strategies which restrict a person's free access to all parts of their environment, including items and activities.
<b>Guardian</b>	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.  See Guardianship Division of the NSW Civil and Administrative Tribunal <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a>
<b>Guardianship Division</b>	A Division of the NSW Civil and Administrative Tribunal, 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.
<b>Mechanical Restraint</b>	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.
<b>NDIS</b>	National Disability Insurance Scheme

Term	Definition
<b>Office of the Children’s Guardian</b>	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.  <a href="http://www.kidsguardian.nsw.gov.au/about-us/the-childrens-guardian">http://www.kidsguardian.nsw.gov.au/about-us/the-childrens-guardian</a>
<b>Person</b>	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.
<b>Person-centred</b>	An approach 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.
<b>Person with Parental Responsibility</b>	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.
<b>Person Responsible</b>	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.
<b>Physical Restraint</b>	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.
<b>PRN</b>	A term used generally in the administration of medication, which is an abbreviation of the Latin term “Pro re nata” meaning “as required”.
<b>Prohibited Practice</b>	Practices which interfere with basic human rights, are unlawful and unethical in nature, and are incompatible with the objects and principles of the <i>Disability Inclusion Act 2014</i> .
<b>Restrictive Practice</b>	Any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

Term	Definition
<b>Restrictive Practices Authorisation (RPA)</b>	<p>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. Authorisation of a restrictive practice requires:</p> <ul style="list-style-type: none"> <li>• Behaviour support plan</li> <li>• Legal consent</li> <li>• Authorisation by an internal RPA Panel</li> </ul>
<b>Restrictive Practices Authorisation Panel</b>	<p>A panel comprising as a minimum, a senior manager of an NDIS provider and a specialist in behaviour support who is independent of the service provider. The RPA Panel authorises the use of a restrictive practice based on supporting information, such as a behaviour support plan.</p>
<b>Seclusion</b>	<p>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</p>