



Government  
of South Australia

Department of Human Services

## New NDIS Restrictive Practice Authorisation Process for South Australia

### Frequently Asked Questions

#### What is the National Disability Insurance Scheme?

The [National Disability Insurance Scheme](#) (NDIS) will provide more than \$22 billion in funding a year to an estimated 500,000 Australians over the next five years who have permanent and significant disability. For many people, it will be the first time they receive the disability support they need.

The NDIS can also provide all people with disability with information and connections to services in their communities such as doctors, sporting clubs, support groups, libraries and schools, as well as information about what support is provided by each state and territory government.

The NDIS has legislation and rules that apply to all registered NDIS providers who use regulated restrictive practices while delivering NDIS supports, as well as conditions that apply to the provision of specialist behaviour support services.

#### What is a behaviour support plan?

Under the NDIS it is a requirement that a behaviour support plan must be developed if there are behaviours of concern and there are certain conditions that a registered provider must meet.

The goal of behaviour support in the NDIS is to improve quality of life outcomes for people. The aim of positive behaviour support is to reduce and eliminate restrictive practices. There is a primary emphasis on upholding the rights of the person with disability by looking to support the person through evidence-informed, person-centred strategies reflected in a behaviour support plan. There may be limited circumstances in which a regulated restrictive practice is used.

#### Do people with a disability have a say in the behaviour support plan?

A Specialist Behaviour Support Provider/Practitioner (Practitioner) **must** ensure each NDIS participant, their family, carers and other support network and stakeholders (which may include a Guardian or a GP) are fully engaged in the development of the behaviour support plan to ensure a NDIS participant's quality of life is maintained and improved by tailored, evidence-informed behaviour support plans that are responsive to their needs. They must also fully engage in discussions about the need for restrictive practices to be included in a plan and understand the risks associated with their use.

The Practitioner will also work with the registered NDIS provider who may use a restrictive practice to ensure the behaviour support plan is implemented effectively to meet the participant's behaviour support needs.

## What is the consultation paper about?

The paper considers how restrictive practices authorisation arrangements can be streamlined as well as the need to make changes to achieve national consistency and support the reduction and elimination of restrictive practices under the NDIS.

The new legislative framework through amendments to the [Disability Inclusion Act 2018](#) provides greater protection and safeguards for people with disability who may be subject to the use of restrictive practices and those who administer them, as well as enabling South Australia's compliance with the national principles for restrictive practices authorisation.

As much as possible, there should be national consistency so that everyone using NDIS funded supports has assurances about quality and safeguards across Australia.

We want to hear from people with disability, families, carers and service providers and the sector to inform final policy directions and the development of regulations regarding the new regime for the authorisation of the use of restrictive practices under the NDIS in South Australia.

## What is a restrictive practice?

A restrictive practice is any intervention that restricts the rights or freedom of movement of a person with disability who displays behaviours of concern, where the primary purpose of that intervention is to protect that person or others from harm. This may include using restraint (physical, chemical, mechanical and environmental) and seclusion.

The definitions of restrictive practices outlined in the proposed amendments to the [Disability Inclusion Act 2018](#), have the same definition as those outlined in the [NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018](#).

## How do the changes protect and safeguard NDIS participants?

The proposed amendments to the [Disability Inclusion Act 2018](#) will commit to reducing and eliminating the use of restrictive practices and provides additional safeguards to ensure a practice is implemented legally, ethically, and minimally, including regular monitoring and review.

The authorisation framework outlined in the legislation provides the strongest safeguards and will ensure any restrictive intervention, consistent with the NDIS Rules, is only used as a last resort, is the least restrictive, is proportionate, is only used for the shortest possible time to ensure the safety of the person or others and is in accordance with a behaviour support plan, and where its use is not prohibited.

## How are a person's rights protected?

An effective framework must protect the rights of the NDIS participant but be flexible enough to allow service providers to fulfil their duty of care to their staff and ensure that the participant is not at risk of harm to themselves and others. The authorising framework will take account of a behaviour support plan which has a primary emphasis on upholding the participant's rights, is evidence-informed and includes person-centred and proactive strategies.

The proposal is also founded on and guided by the [UN Convention on the Rights of Persons with Disabilities](#), the [National Disability Strategy 2010-2020](#), and the [National Disability Scheme Act 2013](#).

## What are low level (level 1) and high level (level 2) restrictive practices?

### Low level restrictive practices

A low level restrictive practice is considered less intrusive and would have a lower impact on the person's dignity, freedoms, and human rights. Examples of low level restrictive practices include:

- Locked cupboards or fridges (environmental restraint)
- Locked windows or gates (environmental restraint)
- A buckle guard to keep a person in their seat whilst being transported and to stop a behaviour of concern (mechanical restraint).

### High level restrictive practices

A high level restrictive practice is one or multiple restrictive practices that combined can have a greater impact on a person's dignity, freedoms, and human rights. Examples of high level restrictive practices include:

- Clothing that limits someone's movement and which the person cannot remove (mechanical restraint)
- Certain ways of holding a person to stop them moving (physical restraint)
- Keeping a person physically separated from others in their household (seclusion).

## What is detention and what practices are considered detention under the amendments to the *Disability Inclusion Act 2018*?

Detention is broadly defined in the proposed amendments to the [Disability Inclusion Act 2018](#) and includes:

- Any direct or indirect curtailment of a person's ability to leave a premises whether physical or by other means
- A requirement that a person be and remain in premises or a part of premises
- Refusal or limitation of access to means of leaving e.g. unable to get access to a wheelchair.

This means seclusion and some environmental restraints, such use of overnight curfews or locking doors for limited periods, would be considered 'detention'.

However, the proposed amendments to the [Disability Inclusion Act 2018](#) allows for sophisticated regulations to be drafted to exclude practices which are not intended to be captured as 'detention'.

The proposed new regime does not seek to authorise detention. For example, directing where someone is to reside will remain the responsibility of South Australian Civil and Administrative Tribunal (SACAT) through its powers under the [Guardianship and Administrative Act 1993](#) (*Guardianship Act*).

Therefore, we are seeking your views on the types of restrictive practices (environmental or seclusion as defined under the NDIS and outlined in the [Regulated Restrictive Practices Guide](#) issued by the NDIS Commission that **should not be captured** as 'detention' and would require the authorisation under the *Disability Inclusion Act 2018* by either the authorised program officer or the senior authorising officer and those that should be classed as 'detention' and require an order by SACAT under the [Guardianship Act](#).

### What does an Authorised Program Officer do?

An Authorised Program Officer will be able to authorise the use of lower level, less intrusive restrictive practices.

The Officer will need to follow the principles outlined in the proposed amendments to the [Disability Inclusion Act 2018](#) as well as guidelines that will be published by the Minister for Human Services.

### What does the Senior Authorising Officer do?

The Senior Authorising Officer, which will be established within the Department of Human Services, will

- Educate NDIS service providers on the authorisation processes
- Oversee the training and accreditation of Authorised Program Officers within registered NDIS providers and oversight of low-level authorisation
- Authorise higher-risk restrictive practices
- Provide guidelines on authorisation and prohibited practices
- Provide ongoing sector education, and training with a focus on the reduction and elimination of restrictive practices based on best practice including positive behaviour support and emerging new practice evidence.

### What happens if a NDIS participant is not happy about a decision to authorise a restrictive practice?

If a participant is not happy with a decision made by an Authorised Program Officer about the authorisation of a restrictive practice at any time, the participant 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, registered 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).

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

The Senior Authorising Officer will provide practice leadership and evidence-informed directions about restrictive practices authorisation as well as policy and service design to promote continuous improvement in participant outcomes in South Australia. 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.

They would also make natural connections with state and territory counterparts and other entities in the South Australian Government, including mental health, justice/corrections, child protection, Office of the Public Advocate and SACAT to reinforce collaboration and consistency.