



# Restrictive Practices Authorisation Procedural Guide

Summary:

This procedural guide outlines operational processes and guiding principles for Registered NDIS Providers and Practitioners when providing behaviour support that includes restrictive practices to persons receiving funded supports through the NDIS

**Version 2.0**

# Document approval

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

---

Deputy Secretary Disability Division

Approved:

# Document version control

Distribution:	Registered NDIS Provider Organisations in NSW
Document name:	NSW Restrictive Practices Authorisation Procedural Guide
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 Procedural Guide – June 2019
Authoring unit:	Central Restrictive Practices Team
Date:	June 2019

## Table of contents

<b>1</b>	<b>Preliminary.....</b>	<b>4</b>
1.1	Purpose .....	4
1.2	Roles and responsibilities in the NDIS.....	4
1.3	Reducing and eliminating the use of restrictive practices .....	5
<b>2</b>	<b>Restrictive practices in a Behaviour Support Context .....</b>	<b>5</b>
2.1	Positive behaviour support .....	5
2.2	Behaviours of concern .....	5
2.3	Using restrictive practices in response to behaviours of concern.....	6
2.4	Descriptions - Restrictive and Prohibited Practices .....	6
2.4.1	Regulated Restrictive Practices.....	6
2.4.2	Prohibited Practices.....	9
2.6	Minimum requirements for the use of regulated restrictive practices .....	11
2.7	Guiding principles .....	11
<b>3</b>	<b>Three requirements for authorisation of restrictive practices .....</b>	<b>12</b>
3.1	A Behaviour Support Plan .....	12
3.2	Consent .....	13
3.2.1	Voluntary consent .....	13
3.2.2	Informed consent .....	13
3.2.3	Specific consent .....	13
3.2.4	Current consent .....	13
3.3	Approval by a properly constituted RPA Panel .....	13
3.4	Involving the person in the RPA process.....	14
<b>4</b>	<b>RPA Panel processes.....</b>	<b>14</b>
4.1	Submission and approval process .....	14
4.2	RPA Panel composition .....	16
4.3	Information and evidence that must be submitted to the RPA Panel .....	18
4.3.1	Demonstrating appropriate governance arrangements .....	19
4.3.2	Establishing the evidence base for a particular practice.....	20
4.4	Guidance for the RPA Panel in decision-making .....	21
4.5	Determination of RPA Applications .....	23
4.5.1	Approval .....	23
4.5.2	Conditional approval .....	23
4.5.3	Declining an application .....	25
<b>5</b>	<b>Response to a critical incident and Interim authorisation .....</b>	<b>25</b>
<b>6</b>	<b>Other Lawful Orders .....</b>	<b>28</b>
<b>7</b>	<b>Specific Exceptions relating to Restrictive Practice Authorisation .....</b>	<b>29</b>
7.1	Therapeutic and safety exemptions .....	30
7.2	Management of non-intentional risks .....	30
<b>8</b>	<b>RPA practice governance and support.....</b>	<b>30</b>
8.1	NSW Government restrictive practices support initiatives.....	32
8.2	Complaints handling .....	32
	<b>Appendix 1: Summary of Restrictive Practice Requirements .....</b>	<b>33</b>
	<b>Appendix 2: Roles and Responsibilities for RPA.....</b>	<b>34</b>
	<b>Appendix 3: Policy Context Summary.....</b>	<b>30</b>
	<b>Appendix 4: Glossary of Terms .....</b>	<b>31</b>

# 1 Preliminary

## 1.1 Purpose

This procedural guide is an extension of the Restrictive Practices Authorisation Policy (**RPA Policy**). It provides additional guidance on the Restrictive Practices Authorisation (**RPA**) mechanism outlined in the Policy.

This procedural guide applies to all NDIS registered providers (NDIS providers) and Behaviour Support Practitioners operating in NSW.

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

- RPA Policy
- NDIS Quality and Safeguards Positive Behaviour Support Capability Framework
- NDIS (Restrictive Practices and Behaviour Support) Rules 2018
- NDIS (Provider Registration and Practice Standards) Rules 2018
- NDIS (Incident Management and Reportable Incidents) Rules 2018 (the Rules)
- NDIS Act 2013
- NDIS Quality and Safeguarding Framework

Appendix 3 summarises the policy context for this guide

## 1.2 Roles and responsibilities in the NDIS

The NDIS Commission will provide leadership in relation to behaviour support, and in the reduction and elimination of the use of regulated restrictive practices (restrictive practices) by NDIS providers. It also sets the requirements for monitoring and reporting on the use of restrictive practices.

NDIS providers and Behaviour Support Practitioners in NSW must comply with the requirements set by the NDIS Commission, including those outlined in the:

- *NDIS (Provider Registration and Practice Standards) Rules 2018*
- *NDIS (Restrictive Practices and Behaviour Support) Rules 2018*
- NDIS Quality and Safeguards Positive Behaviour Support Capability Framework

Appendix 2 provides detailed information about the roles and responsibilities of the NDIS Commission, the NSW Government, and NDIS providers and Behavioural Support Practitioners.

## 1.3 Reducing and eliminating the use of restrictive practices

NSW has committed to working towards the reduction and elimination of the use of restrictive practices.

All Australian governments 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*.

This commitment is consistent with Australia's obligations under the *United Nations Convention on the Rights of Persons with Disabilities*.

Restrictive practices should be used only in limited circumstances, and as a last resort. Their use should be underpinned by a positive behaviour support framework, as discussed below. They must not be used as a first line of response to behaviours of concern<sup>1</sup> or as a substitute for adequate supervision.

Support frameworks should focus on how behavioural needs can be supported in a way that makes the use of restrictive practices unnecessary.

## 2 Restrictive practices in a Behaviour Support Context

### 2.1 Positive behaviour support

The NDIS Quality and Safeguarding Framework (the Framework) outlines the requirements for the delivery of behaviour supports.

Behaviour supports are to be provided in accordance with the NDIS Commission's requirements for positive behaviour support. The *Positive Behaviour Support Capability Framework* includes guiding principles to assist in delivering positive behaviour support.<sup>2</sup>

Behaviour support delivered to NDIS participants in NSW must promote the quality of life, and uphold the dignity and safeguard the rights of the person. It should reflect authentic consideration of the needs of the person with disability and their family, with consideration of any particular needs for participants from aboriginal backgrounds, or from culturally and linguistically diverse communities.

### 2.2 Behaviours of concern

Behaviours of concern are those that are of such intensity, frequency or duration that the physical safety of the person or others is placed in serious jeopardy, or that are likely to seriously limit the person's use of, or access to, services or community facilities.

Behaviours of concern are also known as challenging behaviours.

---

<sup>1</sup> With the exception of crisis response use of behaviour as outlined in Section 2.5, which constitutes an unauthorised use of restrictive practices.

<sup>2</sup> NDIS Quality and Safeguards Commission, *Positive Behaviour Support Capability Framework*, section 5.2.

Behaviours of concern should be understood in the social context in which they occur. They should not automatically be interpreted as an expression of deviance or abnormality in an individual.

## 2.3 Using restrictive practices in response to behaviours of concern

Behaviours of concern can typically be managed by implementing positive behaviour support strategies.

In limited circumstances, and as a last resort, a restrictive practice may be used as part of a behaviour support plan, to address a behaviour that poses a risk of harm to the person or others.

In situations where a restrictive practice is deemed necessary as part of a behaviour support plan, these practices are subject to rigorous approval, authorisation and monitoring. This procedural guide sets out the authorisation process that must be followed prior to the use of a restrictive practice. In some cases it is acknowledged that restrictive interventions may be used as last resort or an interim measure to reduce risk to individuals, while longer- term behaviour support measures are planned, developed and implemented.

In most cases, it should be possible to eliminate the use of restrictive practices by understanding and responding to the issues underlying behaviours of concern.

## 2.4 Descriptions - Restrictive and Prohibited Practices

### 2.4.1 Regulated Restrictive Practices

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.

The *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* sets out five categories of restrictive practices, which may be used in the context of behaviour support, if authorised using the mechanism set out in the RPA policy and this procedural guide.

These categories are referred to as 'regulated restrictive practices' (restrictive practices).<sup>3</sup>

Table 1 below provides further detail in relation to the five categories of restrictive practices.

Appendix 1 summarises the evidence, authorisation and consent requirements for each of the five categories.

See also Table 1 of the RPA Policy, which maps definitions previously used in NSW to the new NDIS definitions.

---

<sup>3</sup> The term 'restricted practices' was previously used in NSW.

**Table 1** Categories of Regulated Restrictive Practices

RRP Category	NDIS Rules definition	Additional notes
<b>Seclusion</b>	The sole confinement of a person with disability in a room or 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.	<ul style="list-style-type: none"> <li>• Seclusion is usually used as a crisis response.</li> <li>• This restrictive practice can only be authorised for persons aged 18 and over.</li> <li>• Seclusion incorporates the category of restrictive practice formally known in NSW as ‘exclusionary time-outs’.</li> </ul>
<b>Chemical Restraint</b>	The use of medication or chemical substance for the primary purpose of influencing a person’s behaviour. It <u>does not include</u> 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 physical condition	<p>The use of medication on either a routine or PRN basis may constitute chemical restraint.</p> <p>Chemical restraint may include psychoactive medication and androgen-reducing medication, where these are used to influence behaviour.</p> <p>The use of a medication to address behaviour should be considered in the context of the primary purpose of its prescription, as it is not the medication itself that requires authorisation but its use as a form of chemical restraint. It is possible that some medications may either be, or not be, chemical restraint, depending on the intended benefit from their use. Common <i>examples</i> to assist in determining if a medication would require authorisation as a chemical restraint are:</p> <ul style="list-style-type: none"> <li>• Diazepam prescribed (other than in relation to a diagnosed anxiety disorder) to assist a person to remain calm throughout the day to minimise the likelihood of target behaviours: the primary purpose is to address behaviours of concern. This use meets the definition of chemical restraint and requires authorisation.</li> <li>• Diazepam prescribed and used as a muscle relaxant after seizure activity: the primary purpose is to treat physical illness. This use does not meet the definition of chemical restraint and authorisation is not required.</li> <li>• Sodium valproate prescribed to treat or minimise seizure activity: the primary purpose is to treat a neurological condition. This use does not meet the definition of chemical restraint, and authorisation is not required.</li> <li>• Sodium valproate prescribed to stabilise a person’s mood in order to decrease the likelihood of target behaviours occurring: the primary purpose is to influence the person’s behaviour. This use meets the definition of chemical restraint, and requires authorisation.</li> </ul>

RRP Category	NDIS Rules definition	Additional notes
<b>Mechanical Restraint</b>	<p>The use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour.</p> <p>It <u>does not include</u> the use of devices for therapeutic or non-behavioural purposes.</p>	<p>As with chemical restraint, the purpose for which a mechanical restraint is used determines whether it constitutes a restrictive practice. For example, the following uses would not meet the definition of mechanical restraint:</p> <ul style="list-style-type: none"> <li>• Use of a device to assist a person with functional activities as part of occupational therapy, such as the use of a safety harness in a wheelchair for postural support as prescribed by an occupational therapist</li> <li>• Use of a device to allow for safe transportation such as a seat belt</li> </ul>
<b>Physical Restraint</b>	<p>The use of action or 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.</p> <p>It <u>does not include</u> 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.</p>	<p>Section 158 of the <b><i>Children and Young Persons (Care and Protection) Act 1998</i></b> includes circumstances where physical restraint may be used and the extent, and limitations which apply under these circumstances.</p> <p>Section 45 of the <b><i>Children and Young Persons (Care and Protection) Regulation 2012</i></b> identifies requirements pertaining to the procedures to be used in respect of the application of physical restraint, reporting, and post practice supports to be provided.</p>
<b>Environmental Restraint</b>	<p>Restricting a person's free access to all parts of their environment, including items and activities.</p>	<p>Examples of environmental restraint include:</p> <ul style="list-style-type: none"> <li>• Using physical barriers, such as locks, to limit access to certain items</li> <li>• Using enforceable limits or boundaries.</li> </ul>

## RRP Scenario<sup>4</sup>

Jane has a psychosocial disability. Her tenancy support provider has placed locks on the cupboards and fridges around her house to limit her access to food. This practice has occurred for years without review, with a high turnover of support workers. As a result of the recurring restriction, Jane begins to shoplift food to meet her needs. Jane's sister, Barbara, discovers that Jane has been shoplifting and gets involved, soon discovering the locks placed around Jane's house.

A routine review of Barbara's behaviour support plan notes that this restrictive practice is not part of her plan. When the NDIS Commission undertakes further queries, the NDIS provider says the restrictive practice was done 'for Jane's own good' because of her weight gain. The NDIS Commission works with Jane's Behaviour Support Practitioner to review the situation. The Practitioner requests a medical review, finding that the drugs Jane is required to take are causing her weight gain, so there is no behavioural concern that would require locks on the cupboards. The Practitioner works with Jane's support workers to educate them on Jane's condition and refine Jane's behaviour support plan.

### 2.4.2 Prohibited Practices

Prohibited means that the practice is not to be used. Some practices will never be authorised and must never be used as they are considered unlawful or unethical.

Allegations or suspicions of prohibited practices are considered reportable incidents and should be managed and reported in line with the requirements of the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.

Prohibited practices include those that constitute assault and wrongful imprisonment. Such practices are criminal offences or civil wrongs. Prohibited practices also include those that may not be unlawful but are unethical and violate the United Nations Convention on the Rights of Persons with Disabilities.

Table 2 below expands on the definitions of prohibited practices set out in **Section 3.2** of the RPA Policy.

---

<sup>4</sup> From NDIS Quality and Safeguards Commission, NDIS Code of Conduct – Guidance for Service Providers

**Table 2:** Examples across categories of prohibited practices.

Practice	Description of practice	Example of practice
<b>Aversion</b>	Any practice which might be experienced by a person as noxious or unpleasant and potentially painful.	<ul style="list-style-type: none"> <li>• An unwanted cold or hot bath in response to being late to having a bath</li> <li>• Unwanted applications of chilli powder on food in an attempt to reduce a person eating in between meals</li> <li>• Unwanted squirting of liquid on a person’s face or body parts in response to refusal to follow a request.</li> </ul>
<b>Over-Correction</b>	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.	<ul style="list-style-type: none"> <li>• Requiring a person to clean an entire dining room as a consequence of having deliberately tipped a meal on the floor</li> <li>• Insisting that a person practises arm exercises after having bitten their fingers inappropriately.</li> </ul>
<b>Misuse of medication</b>	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.	<ul style="list-style-type: none"> <li>• Use of any medication as a convenience.</li> <li>• Using a small amount of an antipsychotic medication with a sedative effect in the evening to assist a person to get to sleep, when it is only prescribed for administration in the morning to treat schizophrenia.</li> </ul>
<b>Seclusion of children or young people</b>	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	<ul style="list-style-type: none"> <li>• Sending a child to their room where they cannot leave due to an incident of physical aggression.</li> </ul>
<b>Denial of key needs</b>	Withholding supports such as owning possessions, preventing access to family, peers, friends and advocates, or any other basic needs or supports.	<ul style="list-style-type: none"> <li>• Placing an adult in seclusion for a period of time, without access to water</li> <li>• Preventing a person from being able to talk to their guardian as a form of punishment after being physically aggressive to a staff.</li> </ul>
<b>Unauthorised use of a restrictive practice</b>	Any practice that is not properly authorised and/or does not have validity or does not adhere to requisite protocols and approvals.	<ul style="list-style-type: none"> <li>• Any practice that is applied without planned positive behaviour support practices, and without following the operational procedures outlined in the RPA policy.</li> </ul>

## 2.5 Crisis response to a critical incident

A crisis response may be required in situations where there is a clear and immediate risk of harm linked to behaviour(s), specifically new or a previously unexperienced degree of severity in the escalation of behaviour, and there is no interim or comprehensive behaviour support plan in place.

In such circumstances immediate intervention may be considered necessary under the service provider's duty of care in order to manage the risk. This is referred to as a crisis response. The crisis response should involve the minimum amount of restriction or force necessary, the least intrusion and be applied only for as long as is necessary to manage the risk. A crisis response should never be used as a de facto routine behaviour support strategy.

Where such responses include the use of a restrictive practice, the use is unauthorised and constitutes a reportable incident. An NDIS provider may not need to use the practice again, however where it is anticipated it will be needed again, it must be included in a comprehensive or interim behaviour support plan (written by a Behaviour Support Practitioner) and authorisation for its use must be sought.

Until authorisation is obtained it remains an unauthorised restrictive practice and must be reported to the NDIS Commission.

**Section 5** below sets out further detail in relation to seeking interim authorisation for restrictive practices.

## 2.6 Minimum requirements for the use of regulated restrictive practices

The *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* set the minimum requirements for use of restrictive practices. The restrictive practice must:

- be clearly identified in the behaviour support plan
- be authorised in accordance with NSW processes
- be used only as a last resort in response to risk of harm to the person with disability or others, and after the provider has explored and applied evidence-based, person-centred and proactive strategies
- be the least restrictive response possible in the circumstances to ensure the safety of the person or others
- reduce the risk of harm to the person with disability or others
- be in proportion to the potential negative consequence or risk of harm, and
- be used for the shortest possible time to ensure the safety of the person with disability or others.

In addition, the person with disability to whom the behaviour support plan applies must be given opportunities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for restrictive practices in the future.

## 2.7 Guiding principles

NDIS registered practitioners and providers should consider the following set of guiding principles in deciding whether or not a restrictive practice is appropriate.

A restrictive practice is only appropriate if it:

- 1 is consistent with a sufficiently comprehensive assessment and reflective of sound evidence-based reasoning, and a contemporary approach to positive behaviour support
- 2 is part of an integrated plan for behaviour and lifestyle support, which is clearly aligned to the assessment
- 3 will enable the participant in regard to enhancement of their quality of life
- 4 represents the least restrictive of alternative options which have an adequate evidence base for reducing or eliminating the behaviour and improving personal safety and/or reduced predictable risk to others
- 5 is appropriate and is reasonably available to the participant
- 6 can be effectively and reliably implemented in the identified contexts, and
- 7 will be monitored in relation to implementation, review and evaluation for the purposes of safeguarding and timely reduction and removal as applicable.

**Section 4.4** below sets out in more detail the information the RPA Panel should consider when applying these principles.

## 3 Three requirements for authorisation of restrictive practices

Restrictive practices 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 use of restrictive practices must be authorised in NSW. There are three requirements for authorisation:

1. a behaviour support plan is developed,
2. informed consent is obtained by the participant or their guardian, and
3. authorisation is approved by an RPA Panel managed through internal policy and procedures of the registered NDIS provider.

### 3.1 A Behaviour Support Plan

Behaviour Support Practitioners should ensure that each participant's quality of life is maintained and improved by tailored, evidence-informed behaviour support plans that are responsive to the participant's needs.

A Behaviour Support Practitioner must develop a behaviour support plan that meets the requirements of the NDIS Commission. For example, it should:

- be developed in consultation with the person with a disability, their support network and implementing NDIS provider
- be based on a comprehensive biopsychosocial assessment including a functional behavioural assessment

- contain contemporary evidence-based behavioural strategies including environmental adjustments to constructively reduce behaviours of concern
- be aimed at reducing and eliminating restrictive practices
- be developed in a form approved by the NDIS Commissioner and lodged with the NDIS Commission.

The *NDIS Quality and Safeguards Commission Positive Behaviour Support Capability Framework* provides detailed guidance on the issues that should be considered when developing a behaviour support plan.

For further guidance on ‘evidence-based’ strategies, see **Section 4.3.2** below.

## 3.2 Consent

Consent must be obtained from the participant, or their guardian. Consent can be provided a number of ways including but not limited to:

- evidence of consent being provided by the person with disability at the RPA Panel meeting, where appropriate.
- documented agreement prior to or during an RPA Panel.

**Section 4.4** of the RPA Policy sets out who can consent to different categories of restrictive practices.

Consent refers to the permission given by the participant or legally appointed guardian (with authority to consent to restrictive practices). For consent to be valid it must be voluntary, informed, specific and current.

### 3.2.1 Voluntary consent

A person must be free to exercise genuine choice about whether to give or withhold consent. This means they haven’t been pressured or coerced into make a decision, and they have all the information they need in a format they understand. Voluntary consent requires that the person is not affected by medications, other drugs or alcohol when making the decision.

### 3.2.2 Informed consent

A person’s capacity to make decisions will vary depending on the type of decision or its complexity, or how the person is feeling on the day. The way information is provided to a person will also affect his or her capacity to make decisions. Choices must be offered in a way that the person understands, for example by using images or signing.

If it is required, support must be provided for the person to communicate their consent.

### 3.2.3 Specific consent

Consent must be sought for the specific restriction each time authorisation is sought.

### 3.2.4 Current consent

Consent cannot be assumed to remain the same indefinitely, or as the person’s circumstances change. People and guardians are entitled to change their minds and revoke consent at a later time.

## 3.3 Approval by a properly constituted RPA Panel

All registered NDIS providers must have a properly constituted RPA Panel. The RPA Panel acts

as the mechanism for authorisation and review. The RPA Panel should operate at arm's length from the contributors to the documented support plans or strategies. Its role is to evaluate the recommendations within the context of the provider's operations. The role of the RPA Panel is to:

1. 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
2. enable the use of restrictive practices as a component of a documented behaviour support plan
3. ensure that people who receive a behaviour support service are protected from exploitation, abuse, neglect, and unlawful and degrading treatment
4. ensure that consent is in place for any recommendation for the use of a restrictive practice
5. consider the appropriateness of a documented support plan or strategy
6. ensure the appropriate documentation is available and contains information that is sufficiently evidence-based to justify the strategies being requested, and
7. ensure that any use of restrictive practices are oriented towards the reduction and cessation of restrictive practices and a review timeframe is stipulated.

More detailed information in relation to approval by an RPA Panel is set out in **Section 4.2** of this *Procedural Guide* and **Section 4.5** of the *RPA Policy*.

### 3.4 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, providing consent, and participation in the RPA Panel meeting.

As detailed in **Section 39(3-4)** of the *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018*, 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.

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.

Where appropriate, the person with disability should participate in the RPA Panel meeting relating to their behaviour support plan.

## 4 RPA Panel processes

### 4.1 Submission and approval process

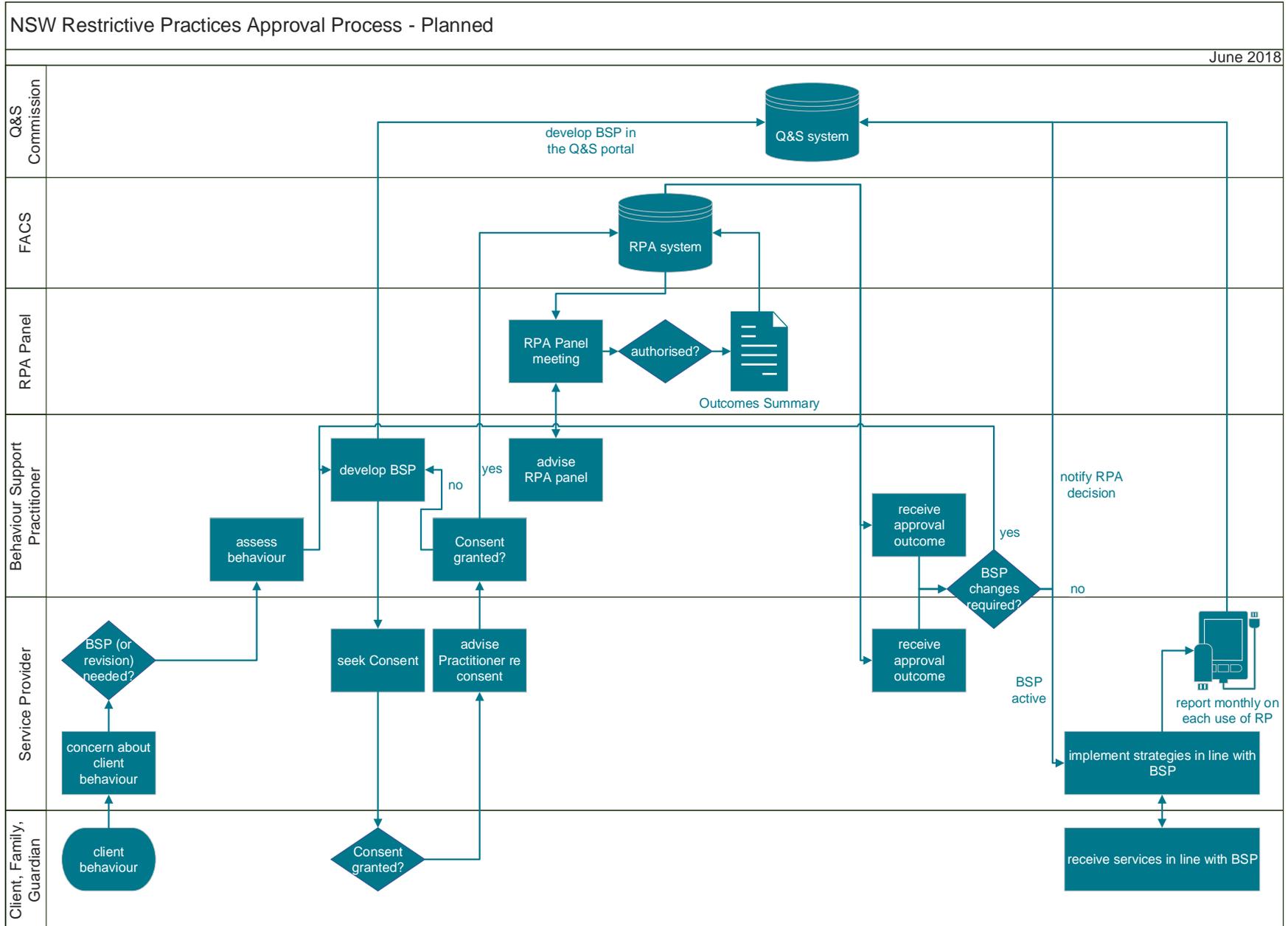
**Figure 1** below sets out the process for RPA in NSW. The following points should be noted:

- Requests for RPA must be submitted via the NSW (FACS) RPA System by the NDIS provider or Behaviour Support Practitioner.
- Decisions of the RPA Panel are recorded in a formal Outcomes Summary on the

NSW (FACS) RPA System.

- The RPA Panel comes to a decision by consensus based on the documented application and the information supplied by the presenting applicant. The decision must be unanimous.
- The discussion and determination centres on the justification for the proposed strategy, alternatives, and risks / benefits to the NDIS participant and those around the person.
- An RPA Panel is to have a regular schedule to enable (1) orderly consideration and progressing of RPA applications and (2) regular monitoring, review and reporting of restrictive practices in accord with the requirements set out by the NDIS Commission.
- NDIS providers should ensure they have a way of tracking practices nearing the end of their authorisation validity to prompt timely re-submission for renewal of authorisation.

Figure 1: Restrictive practices authorisation process



## 4.2 RPA Panel composition

An RPA Panel must include a minimum of three **roles**:

- a senior manager familiar with the operational considerations around the use of a restrictive practice in the intended service setting, who chairs the RPA Panel,
- a specialist with expertise in Behaviour Support, can be provided by FACS or sourced by other means,
- and a person who is independent of the service provider.

Where behaviour support expertise comes from a person external to the provider who is also not connected to the person with disability, they may serve both behaviour support and independent roles on the Panel. In this scenario, the Panel is made up of two **people**:

- a senior manager familiar with the operational considerations around the use of a restrictive practice in the intended service setting, who chairs the RPA Panel,
- a specialist with expertise in behaviour support, can be provided by FACS or sourced by other means, and who is independent of the service provider.

An RPA Panel may include additional members, such as a senior clinician familiar with the clinical governance considerations around the use of a restrictive practice in the intended service setting, a member of the community, or an advocate. No member of the RPA Panel can bring an application for the Panel's consideration.

For service providers who access the RPA process infrequently, it may not be necessary to convene a separate Panel. Providers are encouraged to collaborate to convene joint Panels, or access existing Panels operated by providers with greater RPA volumes. The Central Restrictive Practices Team in Family and Community Services (FACS) may be able to provide information about service providers that currently convene Panels.

The roles of the RPA Panel members are as follows:

### Senior Manager

- acts as the chair of the RPA Panel
- convenes the RPA Panel
- coordinates the resourcing of administrative support to the RPA Panel
- records information on the NSW (FACS) RPA System, and
- accepts responsibility on behalf of the organisation for implementing the strategy, training staff and providing a safe environment for NDIS participants and staff.

### Behaviour Support Practitioner

The role of this member with respect to *behaviour support expertise* includes:

- ensuring that the application is evidence-based, is the least restrictive option, and can be safely implemented.
- Ensuring the practice will address the behaviours of concern and consideration

has been given to fade out strategies

- Ensuring the decision is in keeping with the principles of the UNCRPD.

### Independent

The role of this member with respect to *independence* includes:

- ensuring that the Panel is impartial and decisions are transparent
- challenging the need and rationale for strategies, and exploring resourcing challenges.

After 1 January 2019, this member will need to meet the capabilities of a Behaviour Support Practitioner set by the NDIS Commission.

FACS can provide Independent Specialists to ensure that local RPA Panels have access to independent behaviour support expertise.

## 4.3 Information and evidence that must be submitted to the RPA Panel

The RPA Panel will need:

- A behaviour support plan prepared by a registered Behaviour Support Practitioner, including information about any proposed restrictive practice
- A functional behaviour analysis
- Evidence of consent to the use of any proposed restrictive practice (where appropriate this can be provided by the person with disability when attending the RPA Panel meeting)
- Information about previous and current use of any restrictive practice
- Supporting documentation demonstrating that behaviour support strategies are appropriate to minimise or eliminate the use of restrictive practices
- Evidence to demonstrate the existence of adequate governance arrangements, for example, information on arrangements for reporting, supervision, staff training and monitoring (see **Section 4.3.1**)
- Evidence to demonstrate compliance with any conditions imposed on a prior authorisation.

The Behaviour Support Practitioner, delivering behaviour support, must participate in the RPA Panel meeting to answer questions from the Panel. Where possible, consultation should occur between all professionals involved in the assessment and development of the behaviour support plan in preparation for a Panel.

The NSW (FACS) RPA System requests information to provide an overview of the practices that are the focus of the submission. Supporting documentation is required to provide the detail on which a decision to give or decline authorisation will be based. The documents supplied must provide:

- a clear detailed description of the proposed implementation of the practice
- the expected outcomes from using the practice
- the rationale for the use of the proposed which includes why positive practices alone are unable to achieve the intended outcome
- evidence of less restrictive options having been attempted
- the roles and responsibilities of those implementing the practice in the context of its use
- evidence of training those implementing the practice
- the anticipated frequency of use and how its use will be monitored (formal data collection procedure and the schedule of its review)
- fade-out strategies.

### 4.3.1 Demonstrating appropriate governance arrangements

Recording and monitoring the use of restrictive practices must be done in accordance with the requirements of the NDIS Commission. However, part of the RPA Panel's role is to satisfy itself of the adequacy of governance arrangements around the use of a restrictive practice. This means that an application for authorisation must be able to demonstrate that appropriate systems are in place.

In general, all applications should include copies of any information provided to the NDIS Commission in relation to the use of the restrictive practice, such as regular monitoring reports.

In addition, the following information relating to specific types of restrictive practices may assist the RPA Panel:

#### Seclusion

- Evidence that the environment used for the strategy is one which presents the minimal potential for risk of harm and meets the following criteria:
  - means of easy observation,
  - adequate light and ventilation,
  - comfortable temperature, and
  - easy access for the person to toilet facilities.
- Evidence that a system is in place for formal review of each implementation of the practice within 24 hours, or, if implementation occurs during a weekend by close of business on the next working day
- Evidence as to the matters considered on review of the strategy, including confirmation that the person was observed during implementation, that the implementation was appropriately directed and supervised, that the duration was limited to less than 15 minutes and that adequate reporting occurred.

#### Physical restraint of children and young persons

- Evidence that the child or young person has received support and/or counselling in relation to each instance.

#### Chemical restraint

- Evidence that a written protocol is in place, developed in collaboration with the prescribing physician, which contains specific directions and details regarding the use of the prescribed medication, for example:
  - The name and contact details of the prescribing health professional
  - The chemical and brand names of the medication

- Name and contact details of the person giving informed consent for the medication
- The circumstances/conditions under which the medication may be administered
- Any physical examination or investigation required prior to administration
- Instructions regarding the permissible dose, how to administer it, and how often
- Purpose of the prescribed medication and the desired outcome
- The likely time frame between administration of the drug and the onset of the beneficial effect
- The maximum dosage permissible in a 24 hour period
- Possible side effects/adverse effects (e.g. on quality of life)
- Symptoms of overdose
- Complications/interactions with other medications.
- Evidence that a system is in place for regular review of the contribution or benefit derived from the medication by the prescribing physician in consultation with a Behaviour Support Practitioner.
- Evidence that a system is in place to ensure the protocol will be made available to all carers and direct support professionals who may be administering the medication.

#### 4.3.2 Establishing the evidence base for a particular practice

When considering whether a restrictive practice is the least restrictive alternative, the key question is whether the practice is the least restrictive alternative of those options that have an evidence base for being effective in addressing the presenting behaviour of concern, within the context it presents.

This is why a comprehensive, person centred biopsychosocial assessment, which incorporates a functional behaviour analysis, is essential to inform any strategy.

There must be a good evidence base for applying the proposed restrictive practice. This means that there must be evidence that:

- the strategy is likely to result in a reduction in the frequency, severity and/or duration of the behaviour of concern
- the negative elements of the strategy are strongly outweighed by the benefits of the strategy
- the strategy will have an impact in the context within which it presents.

There are usually multiple strategies available that have some evidence base. It is therefore important to consider the relative strength of evidence supporting one strategy over another.<sup>6</sup>

In the field of behaviour support, an example of strategy with a high-level evidence base would be one where:

- there has been a published, randomised controlled trial of the strategy, and
- the participant has very similar characteristics to the study cohort, and
- the current context is similar to the study context, and
- the study demonstrated a specific and effective outcome using the strategy to address the behaviour of concern.

An example of a strategy with a moderate-level evidence base would be where:

- behavioural data regarding the participant is presented, and
- it demonstrates a history of significantly reduced behaviour when the strategy has previously been implemented, and
- it is applied in the same manner and
- it is applied in the same context.

An example of a strategy with a low level evidence base would be one:

- that has not previously been implemented with the participant, and
- there is no scientific research of the strategy being effective in addressing the behaviour for people with a disability but
- the practitioner is rationalising it based on their clinical experience.

The level of the evidence base for a strategy with some but not all of the elements above would be reduced.

#### 4.4 Guidance for the RPA Panel in decision-making

This section sets out some guiding questions which may be useful when applying the principles set out in **Section 2.7**.

**Is the restrictive practice consistent with a sufficiently comprehensive assessment and reflective of sound evidence-based reasoning, and a contemporary approach to positive behaviour support?**

- Has there been a thorough examination of the presenting issues in the context of the person and their environments?

---

<sup>6</sup> See the Centre for Evidence Based Medicine for more detailed information on selecting the best available evidence when considering the benefits and harms of interventions, <https://www.cebm.net/category/ebm-resources/loe/>

- Is there clear clinical reasoning and solid justification for the proposed restrictive practice(s)?
- Are positive strategies in place to decrease need for the restrictive practice?

Is the restrictive practice part of an integrated plan for behaviour and lifestyle support, which is clearly aligned to the assessment?

- Does the behaviour support plan adequately set out the purpose and implementation guidelines for the restrictive practice?

Will the restrictive practice enable the participant in regard to enhancement of their quality of life?

- How does the restrictive practice fit into the NDIS participant's goals?
- Is the proposed practice consistent with freedom from exploitation abuse, neglect and unlawful degrading behaviour?
- Under what conditions and how should the restrictive practice be faded out, and what is the prognosis for likely fade-out?

Does the restrictive practice represent the least restrictive of alternative options which have an adequate evidence base for reducing or eliminating the behaviour and improving the safety of the person and/or others?

- Does the proposed practice have a sufficient evidence base, either from the literature or individual data, that it may be effective?
- Are there less-restrictive alternatives that are likely to be effective?
- To what extent have other potential less restrictive alternatives been trialled, and what were the predicted and/or actual outcomes?

Is the restrictive practice appropriate and is reasonably available to the person.

- Who will use the restrictive practice, and how will they be trained in both understanding and implementation?

Can the restrictive practice be effectively and reliably implemented in the identified contexts, and

- What measures are required to enable safe implementation and how will such measures be established?
- Are there clear parameters regarding when to use/not to use the practice, how long to use it for, etc.?
- Are staff trained and supported in implementing the practice safely, and for the least duration required?
- Does the implementing provider have appropriate governance arrangements in place regarding the monitoring, recording, and reviewing of the use of restrictive practices?

Will the restrictive practice be monitored in relation to implementation, review and evaluation for the purposes of safeguarding and timely reduction and removal as applicable.

- How will implementation will be recorded and monitored?
- How, when, and by who will the restrictive practice be reviewed?

## 4.5 Determination of RPA Applications

The RPA Panel will decide whether to authorise the use of a restrictive practice and will record its decision in an Outcomes Summary. The Panel will also decide the duration (no more than 12 months) and any conditions of the authorisation. The Behaviour Support Practitioner and service provider can access a copy of the Outcomes Summary via the NSW (FACS) RPA System.

### 4.5.1 Approval

The RPA Panel may approve an application if the following conditions are met:

- All documentation is provided
- The minimum requirements in **Section 2.6** of this *procedure guide* are met
- Having applied the principles in **Section 2.7** of this *procedure guide*, the RPA Panel considers that the practice is justified.

#### Determining duration

In deciding the duration of the authorisation, the RPA Panel should consider the time required:

- to stabilise and/or resolve the presenting condition of the person, or ecological factors contributing to the presenting behaviours-of-concern, both with, and without the proposed practice
- to establish, or re-establish, a suitable suite of supports and intervention that may reduce or eliminate the requirement for the restrictive practice; and
- to complete additional work (articulated in a clear action plan) to either support a revised application or implemented recommendations to eliminate need for the proposed restrictive practice.

When conditions are imposed (see below), the RPA Panel should also consider whether a shorter duration is appropriate to enable timely monitoring of those conditions.

A panel should include a review of the practice at an interval within the authorisation period to monitor the progress of the implementation of the practice and actions identified as part of the decision to authorise.

### 4.5.2 Conditional approval

The RPA Panel may choose to grant conditional authorisation. This may be appropriate in some circumstances, for example, where:

- An alternative strategy has emerged from the Panel discussion – in this case the approval may be conditional on the applicant submitting a revised application within a specified time period
- The application is incomplete or does not meet the requirements for full approval, but the restrictive practice is an appropriate response to a behaviour of concern - in this case the approval may be conditional on the applicant providing sufficient information to enable a full authorisation, within a specified time period.

In both of the above circumstances, the conditional approval is unable to be given in the absence of the behaviour support plan (interim or comprehensive).

When electing to add conditions to an approval, the RPA Panel should specifically consider

the appropriate duration of the authorisation. A shorter duration may be appropriate if the Panel considers it would be beneficial to monitor the conditions.

The Panel is to enquire about compliance with any conditions when it next meets to consider the matter.

Conditions are at the discretion of the RPA Panel, however, examples of conditions that may be imposed include requiring:

- specific staff training
- a specialist appointment or review, for example a neuropsychologist review
- a medication review within a certain timeframe
- an assessment by an allied health professional, for example, an occupational therapy assessment
- further observations and collection of specified data, for example, a strategy to identify the trigger for a new behaviour
- development of communication interventions or support
- implementation of additional positive behaviour strategies
- availability of a particular resource, for example, approval may be conditional on a particular restraint becoming available.

#### 4.5.3 Declining an application

The RPA Panel may decline to give authorisation to an application if is not satisfied that approval or conditional approval are appropriate. For example, an application may be declined if:

- It is incomplete and there are not good reasons for granting conditional approval
- It does not meet the minimum requirements in **Section 2.6**
- Having considered the principles in **Section 2.7**, the practice is not justified.

## 5 Response to a critical incident and Interim authorisation

In 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, restrictive practices may need to be implemented. 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.

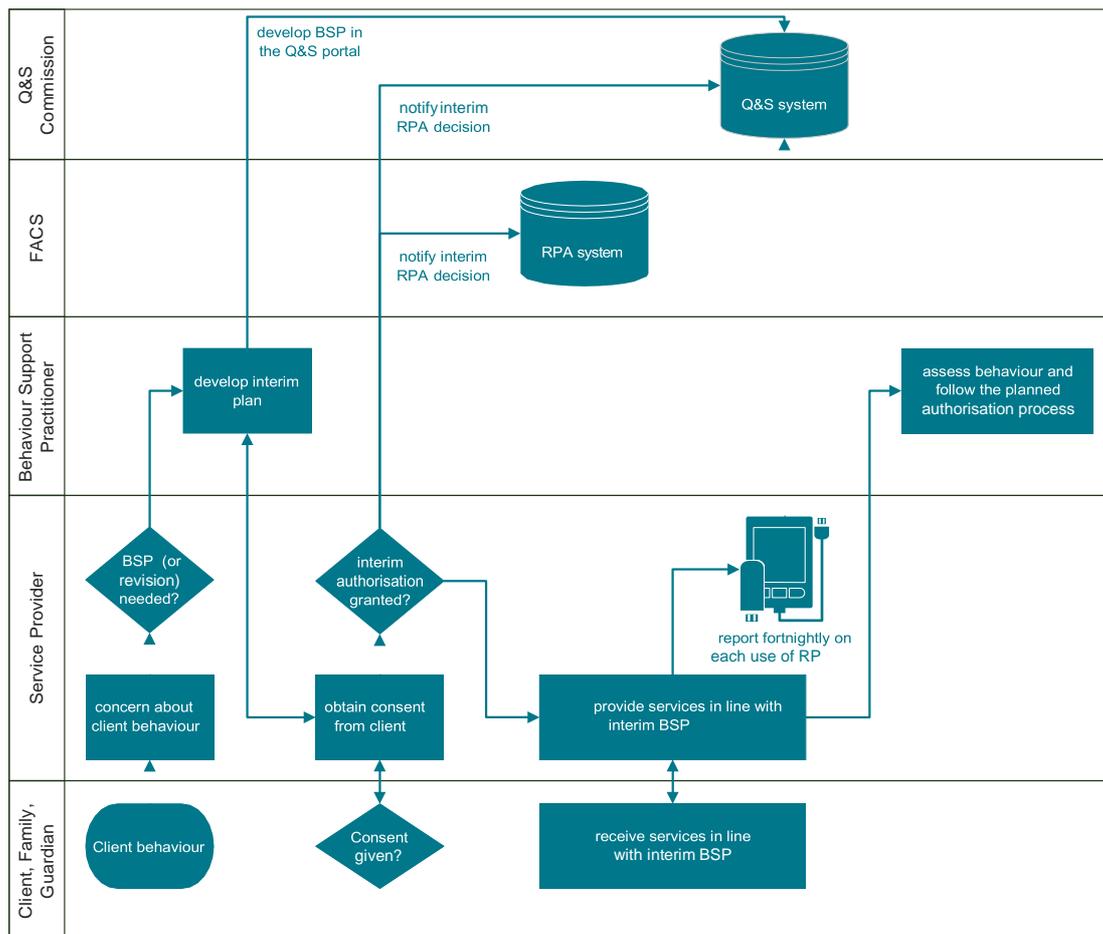
In these circumstances, the provider must take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice.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

Any use of restrictive practices prior to this point constitutes a reportable incident.

The process set out in **Figure 2** below must be followed, in line with the timeframes set out in the following sections.

Figure 2: Interim authorisation process



### Immediately

- The incident should be managed and reported in accordance with NDIS Commission requirements.
- The NDIS provider should make every effort to engage a Behaviour Support Practitioner
- A Behaviour Support Practitioner should develop an interim behaviour support plan that prescribes the following:
  - strategies to prevent the onset of the behaviour of concern
  - strategies to intervene during the escalation of the behaviour of concern
  - strategies to manage during the occurrence (i.e., incident) of the behaviour of concern in order to de-escalate and conclude the incident as quickly and safely as possible,
  - information recording including that prescribed for reporting the use of the restrictive practice.

### Within one month

- Consent should be obtained.
- Interim authorisation should be sought from a designated senior manager who

- would meet the criteria to convene an RPA Panel within the NDIS provider.
- The senior manager should consider the content of the interim behaviour support plan for and be satisfied that the strategies outlined:
    - represent the least restrictive of alternative options which have an adequate evidence base for managing the risk
    - will be used only as a last resort in response to risk of harm to the person with disability or others, and after the provider has explored and applied evidence-based, person-centred and proactive strategies
    - reduce the risk of harm to the person with disability or others
    - will be used for the shortest possible time to ensure the safety of the person with disability or others.
  - The senior manager should specify the duration of the interim authorisation, which should be the shortest duration required to manage the risk, and must not be longer than five months.
  - For the duration of the interim authorisation, the service provider must report fortnightly to the NDIS Commission on any use of restrictive practices.

### Within six months

- Follow the steps to obtain full authorisation, or
- Discontinue the use of restrictive practices.

## 6 Other Lawful Orders

**Section 4.6** of the RPA Policy deals with restrictions placed on individuals in accordance with lawful orders.

Such practices are considered 'authorised', but should be referred to an RPA Panel as soon as possible, but no later than within 6 months.

The purpose of referral to the RPA Panel is to ensure that due consideration is given to how the restrictions set out in the lawful order are integrated into the participant's behaviour support plan and implemented.

The RPA Panel should be provided with a behaviour support plan prepared by a registered behaviour support practitioner, based on a functional behaviour analysis.

The behaviour support plan should include information regarding the lawful order, and show how the restrictions under the order will be integrated with the broader plan for behaviour and lifestyle support.

The behaviour support plan must clearly set out the details and limits of the restrictions permitted under the lawful order.

Any restrictive practices beyond those permitted under the order must be authorised as usual.

If a behaviour support plan includes both restrictions under a lawful order, and restrictive practices, it must clearly delineate between restrictions permitted under the order and authorised restrictive practices.

## 7 Specific Exceptions relating to Restrictive Practice Authorisation

**Section 4.8** of the RPA Policy outlines the following circumstances that require specific exceptions or exclusions in relation to RPA processes:

- Therapeutic or safety devices, and
- Management of unintentional risks.

This section sets out further considerations in those circumstances.

## 7.1 Therapeutic and safety exemptions

As noted in the RPA Policy, certain practices impose restriction on a person's freedoms but do not constitute restrictive practices:

- 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.

## 7.2 Management of non-intentional risks

As noted in the RPA Policy, NDIS providers have a duty of care to manage risks associated with a person's behaviours. Where those behaviours are 'non-intentional' (that is, they are not seeking to meet an unmet need), a planned service response should seek to minimise the risks associated with the behaviours. Strategies to manage these 'non-intentional risk behaviours' do not require authorisation.

An appropriate allied health assessment must be used to identify whether behaviours are intentional or non-intentional. If the assessment determines that the behaviour is non-intentional, the response to this behaviour does not require authorisation under the RPA 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*.

Risk management and mitigation practices should include the following two steps:

A risk assessment. This assessment must identify the frequency and severity (i.e., rating the level of risk) and describe the conditions related or connected with the risk. This assessment must be documented.

A risk management plan, which includes each of the following five components:

- A documented plan based on assessment of causes and factors;
- identifies risk behaviour;
- plan identifies risk of what and to whom;
- specifies strategies to minimise risk; and
- date of last review as written on plan.

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.

# 8 RPA practice governance and support

The NDIS Commission will regulate behaviour support for NDIS providers and will monitor the use of restrictive practices. NDIS providers should ensure that they comply with NDIS

Commission's incident management and reporting requirements.

NSW will monitor restrictive practice authorisations. NDIS providers are required to maintain current information in the NSW (FACS) RPA System, which will meet requirements for reporting to the NSW Government. There are no additional routine reporting requirements to the NSW Government.

## 8.1 NSW Government restrictive practices support initiatives

A central team within FACS will oversee the RPA function, and support NDIS providers to comply with their obligations.

The Central Restrictive Practices Team is led by two managers:

- Manager, Policy Implementation
- Manager, Clinical Specialists.

The key functions of the team include:

- Supporting implementation of the RPA Policy and Procedural Guide and stakeholder engagement
- Embedding best practice advice and guidance in relation to the use and minimisation of restrictive practices into the authorisation process
- Providing information to registered NDIS providers and other participants in the RPA process to facilitate their engagement and compliance with the process
- Coordination and engagement with the NDIS Commission, including in the development of a consistent national framework
- Providing an online NSW (FACS) RPA System to register and manage requests for authorisation of restrictive practices
- Providing and funding access to Independent Specialists who will participate in local RPA Panels.

The team can be contacted by email at: [RestrictivePracticesAuthorisation@facs.nsw.gov.au](mailto:RestrictivePracticesAuthorisation@facs.nsw.gov.au)

## 8.2 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 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 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.

Appendix 2 provides further information about the roles and responsibilities of the NDIS Commission, the NSW Government and the NDIS provider.

## Appendix 1: Summary of Restrictive Practice Requirements

Restrictive Practice	Previous NSW term	Approval	Supporting Evidence	Author	Authorisation	Consent
<b>Seclusion</b>	- Seclusion Exclusionary - Time out	Interim	Interim behaviour support plan	Behaviour Support Practitioner	Organisation's RPA delegate	U18: Prohibited +18: Either: - The person if have capacity, or - Guardian with RP function
		General	Behaviour support plan Functional analysis of behaviour	Behaviour Support Practitioner No requirement	RPA Panel	
<b>Physical restraint</b>	Physical intervention / restraint	Interim	Interim behaviour support plan	Behaviour Support Practitioner	Organisation's RPA delegate	U16: Parent/Guardian +16: Either: - The person if have capacity, or - Guardian* with RP function
		General	Behaviour support plan Functional analysis of behaviour	Behaviour Support Practitioner No requirement	RPA Panel	
<b>Mechanical restraint</b>	Physical intervention / restraint	Interim	Interim behaviour support plan	Behaviour Support Practitioner	Organisation's RPA delegate	U16: Parent/Guardian +16: Either: - The person if have capacity, or - Guardian* with RP function
		General	Behaviour support plan Functional analysis of behaviour	Behaviour Support Practitioner No requirement	RPA Panel	
<b>Chemical restraint</b>	- PRN Psychotropic medication - Routine dose medication for behaviour	Interim	Interim behaviour support plan Medical report	Behaviour Support Practitioner Medical practitioner	Organisation's RPA delegate	U16: Parent/Guardian +16: Either: - The person if have capacity - Person responsible - Guardian*
		General	Behaviour support plan Functional analysis of behaviour Medical report	Behaviour Support Practitioner No requirement Medical practitioner	RPA Panel	
<b>Environmental restraint</b>	- Restricted access - Response cost	Interim	Interim behaviour support plan	Behaviour Support Practitioner	Organisation's RPA delegate	U16: Parent/Guardian +16: Either: - The person if have capacity - Guardian* - RPA panel <sup>‡</sup>
		General	Behaviour support plan Functional analysis of behaviour	Behaviour Support Practitioner No requirement	RPA Panel	

\* A person with court ordered parental responsibility is deemed a guardian

‡ The RPA mechanism may direct that an authorised environmental restraint strategy may be implemented in the absence of consent in certain circumstances

## Appendix 2: Roles and Responsibilities for RPA

- Under the NDIS Quality and Safeguarding Framework, states and territories are responsible for the authorisation of restrictive practices used by Registered NDIS Providers and Behaviour Support Practitioners.
- In NSW, this includes providing two key elements:
  - a policy framework for regulating Restrictive Practices Authorisation (RPA)
  - structural support to the sector through a Central Restrictive Practices Team, an online system for managing and monitoring RPA, and independent specialists to ensure that registered NDIS service providers have access to expert independent members for RPA Panels.
- NSW will not have any monitoring or support functions except as they relate to the authorisation of restrictive practices.
- NSW will continue to operate specialist accommodation disability services, e.g. Hunter Residences, in the short to medium term. These services are not regulated by the NDIS Quality and Safeguards (Q&S) Commission; however, for consistency, NSW will adopt the definitions and framework for authorising restrictive practices that applies to registered NDIS providers and Behaviour Support Practitioners operating in NSW.

### NDIS Commission

**From 1 July 2018, registered NDIS Providers in NSW will be regulated by the NDIS Q&S Commission, which will be responsible for:**

- Implementing the NDIS Quality and Safeguarding Framework
- Providing leadership in relation to behaviour support and in the reduction and elimination of the use of restrictive practices by NDIS Providers
- Specifying regulated restrictive practices for reporting purposes and related legislation and rules, including NDIS Behaviour Support Rules and NDIS Provider Registration and Practice Standards Rules
- Developing and implementing the competency framework for Behaviour Support Practitioners and determining the suitability of such practitioners

### NSW

**From 1 July 2018, the authorisation of restrictive practices by registered NDIS Providers will be regulated by the NSW Government via FACS Performance Improvement, which will be responsible for:**

- Publishing and maintaining an appropriate policy framework and procedural guidance for RPA
- Providing appropriately qualified independent specialists to serve as independent members on RPA Panels convened by registered NDIS Providers
- Embedding best practice advice and guidance in relation to the use, minimisation and elimination of restrictive practices into the authorisation process
- Providing an online NSW (FACS) RPA System to register and manage requests for authorisation of restrictive practices
- Providing information to registered NDIS Providers and other participants in the RPA process to facilitate their engagement and compliance

### Service Providers

**From 1 July 2018, Registered NDIS Providers in NSW will be regulated by the NDIS Q&S Commission, and will be responsible for:**

#### **Implementing Providers**

- Ensuring that proper consent is obtained for all use of Restrictive Practices
- Compliance with the RPA policy and guidelines issued by the NSW Department of Family and Community Services (FACS)
- Maintaining the quality and compliance aspects of RPA, including an RPA mechanism that comprises a compliant RPA Panel
- Reporting any unauthorised use of restrictive practices to the NDIS Q&S Commission and supporting participants to make and resolve complaints
- Monitoring the use of restrictive practices, including regular reporting of restrictive practice use to the NDIS Q&S Commission
- **Behaviour Support Practitioners**
- Meeting new behaviour support requirements including lodging behaviour support plans that include restrictive practices with the NDIS Q&S Commission
- Compliance with the RPA policy and guidelines issued by FACS

## Appendix 3: 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
- NDIS (Provider Registration and Practice Standards) Rules 2018
- NDIS (Incident Management and Reportable Incidents) Rules 2018 (the Rules)
- 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)

## Appendix 4: 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>Behaviours of Concern</b>	See <b>Section 2.2</b>
<b>Behaviour Support Plan (BSP)</b>	A document or series of linked documents that outline strategies designed to deliver a level of behaviour support appropriate to the needs of an individual person. A behaviour support plan is to have a <i>preventative</i> focus and is usually required to have a <i>responsive</i> focus. The plan should include multiple elements, reflecting the level of complexity, assessed needs, parameters and context of the service agreement.
<b>Behaviour Support Practitioner</b>	A Behaviour Support Practitioner is a person with tertiary qualifications in psychology, special education, speech pathology, social work or other relevant discipline and/or training and experience in the provision of behaviour support and intervention.
<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>7</sup></p> <p>See also Consent.</p>
<b>Chemical Restraint</b>	See <b>Section 2.4.1</b>

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

Term	Definition
<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. A <b>Young Person</b> is defined as a person who is aged between 16 and 18 years.
<b>Consent</b>	See <b>Section 3.2</b> . The <i>NSW Guardianship Act 1987</i> also contains specific provisions in relation to consent. See Guardianship Division of the NSW Civil and Administrative Tribunal <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a> for further information. 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>Guardian</b>	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. See Guardianship Division of the NSW Civil and Administrative Tribunal <a href="http://www.ncat.nsw.gov.au">www.ncat.nsw.gov.au</a> for further information.
<b>NDIS</b>	National Disability Insurance Scheme
<b>NSW (FACS) RPA System</b>	The NSW (FACS) RPA System is an online portal to manage and monitor the authorisation of restrictive practices in NSW. NDIS registered service providers must submit requests for RPA via the NSW (FACS) RPA System. Service providers must maintain the currency of information in the NSW (FACS) RPA System, including the details of clinicians or service providers working with a person. The system enables easy online access to manage information about RPA in a single location, minimising administrative effort for service providers and Behaviour Support Practitioners. It also assists service providers to meet their obligations under the RPA Policy, such as by issuing notifications when an authorisation is approaching its expiration date. More information is available at: <a href="https://www.facs.nsw.gov.au/providers/developer-disability-services/restrictive-practices-authorisation-portal">https://www.facs.nsw.gov.au/providers/developer-disability-services/restrictive-practices-authorisation-portal</a>

Term	Definition
<b>Person-centred</b>	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.
<b>Person Responsible</b>	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. <a href="http://www.publicguardian.justice.nsw.gov.au">www.publicguardian.justice.nsw.gov.au</a>
<b>Physical Restraint</b>	See <b>Section 2.4.1</b>
<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>	See <b>Section 2.4.2</b>
<b>Psychoactive Medication</b>	Psychoactive (or psychotropic) medications have, as their primary function, effects that influence cognitive ability (i.e. effects on thought processes, emotions and/or perception) and behaviour. In other words, psychoactive medications are those medications which exert an effect upon the mind and are capable of modifying mental activity.
<b>Regulated Restrictive Practice</b>	See <b>Section 2.4.1</b>
<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.
<b>RPA Panel</b>	Restrictive Practices Authorisation Panel. See <b>Section 4.2</b> .
<b>RPA Policy</b>	NSW Restrictive Practices Authorisation Policy
<b>Seclusion</b>	See <b>Section 2.4.1</b>