Reportable Incidents Involving the Use of Restrictive Practices

POLICY NUMBER: NDIS SER DEL 35

INTENT

The intent of the policy is to ensure as far as practicable that the use of any restrictive practices are reported to the required regulatory bodies.

DEFINITION

Restrictive Practices - are defined in the National Disability NDIS Act 2013 as 'any practice or intervention that has the effect of restricting the rights of freedom of movement of a person with a disability'.

Regulated Restrictive Practices – A restrictive practice is a *regulated restrictive practice* if it is or involves any of the following:

(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 or activities.

POLICY STATEMENTS

- Real Living Options Association Inc. is responsible for ensuring as far as practicable the safety and wellbeing of its Participants.
- In response to an emergency or unauthorised use of the restrictive practice, Real Living Options Association Inc will collaborate with mainstream providers as required, including:
    - police or other emergency services
    - mental health and emergency departments
    - treating medical practitioners
    - other allied health professionals.

- After an incident, the Support Manager and/or Senior Support Facilitator will conduct a debriefing session with relevant employees to identify improvement areas to inform and document future practices. If required, a debriefing with the Participant and/or Representative/Nominee will also be held and documented.
- The use of any restrictive practice will be reported to the relevant authorities as per the NDIS (Restrictive Practices and Behaviour Support) Rules 2018.

PROCEDURES

Crisis response

- 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 inexperienced degree of severity in the escalation of behaviour.
    - There is no interim support plan or behaviour support plan in place.
- Any crisis response should:
    - Involve the minimum amount of restriction or force necessary.
    - Use the least intrusive restrictive practices, which must only be applied for as long as is needed to manage the risk.
    - Never be used as a systematic behaviour support strategy.
- A crisis response involving the application of an unauthorised regulated restrictive practice constitutes a reportable incident. Until authorisation is obtained, it remains an unauthorised restrictive practice. Each occasion where the practice is used constitutes a reportable incident.
- If it is anticipated that the crisis response may be needed again for the Participant, the practice must be included in the Behaviour Support Plan (or Interim Behaviour Support Plan) and appropriate authorisation sought for its use.
- A registered Behaviour Support Practitioner must be engaged to develop a Behaviour Support Plan and must develop:
    - An Interim Behaviour Support Plan that includes provision for the use of the regulated restrictive practice within one month after being engaged to create the plan.
    - A Behaviour Support Plan that includes provision for the regulated restrictive practice within six months after being engaged to develop the plan.

Restrictive practice authorisation

- A regulated restrictive practice may only be used as part of a planned response to a Participant's behaviour that causes harm and where it has been demonstrated that such a response is the least restrictive way of ensuring the safety of the Participant and others (as is practicable in the circumstances). The Specialist Behaviour Support Provider's role is to undertake an appropriate assessment and develop a suitable Behaviour Support Plan for the Participant.

- Under the NDIS (Restrictive Practices and Behaviour Support) Rules, there are five categories of restrictive practice:
    1. **Seclusion** is the confinement of a Participant in a room or a physical space at any hour of the day or night where the voluntary exit is prevented, or not facilitated, or implied that voluntary exit is not permitted.
    2. **Chemical restraint** is the use of medication or chemical substances for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner to treat or enable treatment of a diagnosed mental disorder, a physical illness or a physical condition.
    3. **Mechanical restraint** uses 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.
    4. **Physical restraint** 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 reflexively using a hands-on technique 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.
    5. **Environmental restraint** restricts people's free access to all parts of their environment, including items and activities.
- There are three types of restrictive practices (in order of the level of intrusiveness):
    1. **Containment and seclusion**
        - ***Containment:*** A Participant cannot physically leave the place where they receive disability services, including locking doors, windows, or gates. It is not considered containment if an adult lacks road safety skills and a door is locked to prevent them from wandering close to a road.
        - ***Seclusion:*** A Participant is confined in a room or a physical space at any hour of the day or night where the voluntary exit is prevented, or not facilitated, or implied that voluntary exit is not permitted.
    2. **Chemical, physical and mechanical restraint**
        - **Chemical restraint:** Involves using medication to control the Participant's behaviour; this does not include medication used for treating a diagnosed mental illness or physical condition.
        - **Physical restraint:** The use of any part of another person's body to restrict a Participant's free movement to control the Participant's behaviour.
        - **Mechanical restraint:** A device to restrict the Participant's free movement or prevent or reduce self-injurious behaviour.
    3. **Environmental**
        - Limiting the Participant's access to an object (e.g. kitchen drawer with knives), preventing the Participant from using the object to cause harm to themselves or others.
- Queensland state legislation requires organisations to only to use a restrictive practise where:

- It complies with the consent of the relevant decision-maker.
- Is necessary to prevent the Participant's behaviour from causing harm to themselves or others.
- Is the least restrictive way of ensuring the safety of the Participant or others (as is practicable in the circumstances).
- It complies with the Participant's Behaviour Support Plan.

- Authorisation of the restrictive practice depends on:
  - whether the use of the restrictive practice is planned or unplanned
  - the type of restrictive practice (containment or seclusion, chemical, mechanical, physical restraint, or environmental)
  - the type of disability service the adult receives (respite or community access only, accommodation and community support alone, together, or in conjunction with respite and/or community access).

Table 1. Restrictive Practices Reporting Requirements – excluding respite care or community access

The following approvals are required for adult services, except when the adult receives only respite care and/or community access.

Restrictive practice	Authorising body approval
Containment or seclusion	Queensland's Civil and Administrative Tribunal (QCAT)
Mechanical, physical or chemical restraint	Guardian for restrictive practice (general) appointed by QCAT
Restricting access to an object	Guardian for restrictive practice (general) appointed by QCAT or an informal decision-maker (see section 144 of the *Disability Services Act 2006*)
Any form of restrictive practice plus containment and seclusion	Queensland's Civil and Administrative Tribunal (QCAT)

Table 2. Restrictive Practices Reporting Requirements – only receiving respite care or community access

The following approvals are required when the Participant only receives respite and/or community access services:

Restrictive practices	Approval required from
Containment or seclusion	Guardian for restrictive practice (respite) appointed by Queensland's Civil and Administrative Tribunal (QCAT)
Restricting access to an object	Guardian for restrictive practice (respite) appointed by QCAT or if no guardian appointed, an informal decision-maker

Mechanical or physical restraint	Guardian for restrictive practice (respite) appointed by QCAT or if no guardian appointed, an informal decision-maker
Chemical restraint - (as and when needed) for an adult in respite	Guardian for restrictive practice (respite) appointed by QCAT
Chemical restraint - (as and when needed) for an adult with community access	Guardian for restrictive practice (respite) appointed by QCAT
Chemical restraint - fixed doses for an adult in respite	An informal decision maker or guardian for restrictive practices (respite) appointed by QCAT
Chemical restraint - fixed doses for an adult with community access	Guardian for restrictive practice (respite) appointed by QCAT

- Restrictive practices must be accompanied by a Behaviour Support Plan that emphasises positive, socially valued skills using strategies for reducing challenging behaviour. The plan's objective is to eliminate, as much as possible, the need for restrictive practice.
- Real Living Options Association Inc. will collaborate with all service providers currently providing the Participant services and follow the Participant's Behaviour Support Plan. The comprehensive Behaviour Support Plan will detail the restrictive practice requirements, including planned responses, such as if Real Living Options Association Inc. is using (or proposing to use) physical restraint only, or in combination with mechanical or chemical restraint, then the use of physical restraint (as written in the Behaviour Support Plan) can only be authorised by a guardian for restrictive practices (general), appointed by the Queensland Civil and Administrative Tribunal (QCAT).
- For containment and seclusion, lodging is done jointly with Disability Services and QCAT – except if the Participant is receiving respite and/or community access services only, in which case it is the relevant service provider's responsibility. The Behaviour Support Plan Provider will work closely with the Participant and their Representative/Nominee to support and initiate the application process.
- Generally, only QCAT can approve the use of containment and seclusion. However, if a guardian for restrictive practices (respite) has been appointed, they can approve the use of containment and seclusion, but only when the Participant is receiving respite or community access services.

QCAT Application Process – appointment of a guardian

- To appoint an individual as a guardian, Real Living Options Association Inc. must demonstrate to QCAT that there is a specific need for the appointment and that the existing arrangements for decision-making are inadequate. Before lodging an application the Organisation must:
    - Advise the Participant concerned about the Organisation's intentions.
    - Check whether the Participant has given anyone power under an enduring document such as an Enduring Power of Attorney.
    - Inform the proposed person to be appointed of Real Living Options Association Inc.'s intentions.

Making an Application

Appointment of a guardian

- To request the appointment of a guardian, Real Living Options Association Inc will complete and lodge two QCAT documents - Form 10: Application for administration/guardianship appointment or review and a Health Professional Report.

Review of guardian appointment

- To request a review of a guardian appointment, Real Living Options Association Inc. will complete and lodge a Form 10: Application for administration/guardianship appointment or review

Interim order

- To make an application for an interim order, if there is an immediate risk of harm to the health or welfare of the Participant (including because of the risk of abuse, exploitation, neglect or self-neglect), Real Living Options Association Inc. will complete and lodge an Application for Interim Order.

Other Matters

- Real Living Options Association Inc will use the QCAT forms below when applying for a range of matters, including resigning as guardian or attorney:
    - Form 11: Application for a declaration about capacity
    - Form 12: Application for miscellaneous matters
    - Form 15: Application for stay of a decision pending a hearing.

Reporting to the Department of Communities Disability Services and Seniors

- Real Living Options Association Inc. must notify the Department of Community Disability Services and Seniors (DCDSS) regarding all approvals received, including Short Term Approvals and Behaviour Support Plan approvals, via the Online Data Collection Services portal.
- To use a restrictive practice, Real Living Options Association Inc. must notify the DCDSS by submitting Form 6-4: Notification of Approval or Consent to the Use of Restrictive Practices via the Online Data Collection Services portal.
- Real Living Options Association Inc. must also report the usage frequency of approved restrictive practices to the NDIS Commission.

Reporting Restrictive Practice Usage

- The Department of Community Disability Services and Seniors Online Data Collection portal allows for two kinds of restrictive practice usage reporting:
    1. **Episodic restrictive practice usage:** Refers to each instance of a restrictive practice in response to behaviour that causes harm to the Participant or others. Usage is reported for each instance of restrictive practice used, i.e. on date 'X' restrictive practice, 'Y' was used.

2. **Routine restrictive practice usage:** Refers to the use of restrictive practice that is consistently used or applied each day, e.g. medications are given each day (chemical restraint) or headgear worn during awake hours (mechanical restraint).

- Real Living Options Association Inc. must submit the following information regarding the use of restrictive practices:
    - Complete and submit a restrictive practices identification tool.
    - Commencement date of the use of the regulated restrictive practice through to the end of use for the month.
    - Start of the reporting month to the end of the reporting month (if used every day).
    - For part of the month due to participants transitioning in or out of care.
    - Change of participant's circumstances.

Minimum Requirements for the Use of Regulated Restrictive Practice

- A regulated restrictive practice must be:
    - Identified in the Behaviour Support Plan.
    - Authorised under Queensland State Government legislative requirements and processes.
    - Used only as a last resort in response to the risk of harm to the Participant or others, and after Real Living Options Association Inc has explored and applied evidence-based, person-centred and proactive strategies.
    - The least restrictive response possible in the circumstances to ensure the safety of the person or others.
    - Used to reduce the risk of harm to the Participant or others.
    - In proportion to the potential negative consequence or risk of harm.
    - Used for the shortest possible time to ensure the safety of the Participant or others.
- The Participant to whom the Behaviour Support Plan applies must be provided opportunities to participate in community activities and develop new skills that may potentially reduce or eliminate the need for regulated restrictive practices in the future.

Consent

- Consent must be obtained from the Participant or their guardian before authorising a regulated restrictive practice using either the Consent Form Restrictive Practice – General or the Consent Form Restrictive Practice – Submission Consent. Consent must be gained for each specific submission.
- A new Consent Form must be obtained if a new submission is entered in the Restrictive Practice Authorisation Submission Portal. Consent must be voluntary, informed, specific and current:
    - **Voluntary consent**: A person must be free to exercise genuine choice about whether to give or withhold consent, meaning they have not been pressured or coerced into a decision, and they have been provided all the information they need in a format they understand. Voluntary consent requires that the Participant not be affected by medications or other drugs or alcohol when deciding.

- **Informed consent**: A Participant's capacity to make decisions will vary depending on the type of a decision, its complexity or how they feel on the day. The way information is provided to a Participant will also affect their capacity to make decisions. Choices must be offered in a way that the Participant understands, e.g. use images or signing. Advocacy and support, where required, must be provided for the person to communicate their consent.
- **Specific consent:** Consent must be sought for the particular restriction each time authorisation is requested.
- **Current consent:** Consent cannot be assumed to remain the same indefinitely or as the Participant's circumstances change. Participants or their guardians are entitled to change their minds and revoke consent at a later date.

Regulated Restrictive Practices as Reportable Incidents

- The unauthorised use of the restrictive practice is a reportable incident and must be reported to the NDIS Commissioner.

Immediate notification – report within 24 hours

- Real Living Options Association Inc must complete an Immediate Notification online form through the 'My Reportable Incident' page on the NDIS Commission Provider Portal. This form must be completed within 24 hours of Real Living Options Association Inc. becoming aware of a reportable incident or allegation occurring in connection with NDIS supports or services and the event of:
    - The death of an NDIS Participant.
    - Serious injury of an NDIS Participant.
    - Abuse or neglect of an NDIS Participant.
    - Unlawful sexual or physical contact with, or assault of, an NDIS Participant.
    - Sexual misconduct committed against, or in the presence of, an NDIS Participant, including rooming of the NDIS Participant for sexual activity.
    - Unauthorised use of the restrictive practice.

5-day notification

- Real Living Options Association Inc must complete a 5-Day Notification online form through the 'My Reportable Incident' page on the NDIS Commission Provider Portal. In the case a Participant discloses an incident that has occurred in the past, it will be treated in the same way as any other reportable incident, noting that the immediate response may differ.

DELEGATIONS

Management Committee

The Management Committee is responsible for ensuring as far as practicable that:

- The Organisation adheres to all relevant legislation.
- The Organisation has the resources to meet its legislative requirements in relation to Regulated Restrictive Practices.

General Manager

The General Manager is responsible for ensuring as far as practicable that:

- The Organisation adheres to all reporting requirements in relation to the use of restrictive practices.
- All employees have training to understand what restrictive practices are.
- Relevant employees are provided with training specific to a Participants Behaviour Support Plan.
- The use of any restrictive practices have been reported to the NDIS Quality and Safeguards Commission and the Department of Communities, Disability Services and Seniors.
- The use of any restrictive practices is reported to the Management Committee.

Support Manager

The Support Manager is responsible for ensuring as far as practicable that:

- All employees are provided training to understand what restrictive practices are.
- Relevant employees are provided with training specific to a Participants Behaviour Support Plan.
- The use of any restrictive practices are reported to the Quality and Safeguards Commission and the Department of Communities, Disability Services and Seniors.
- The use of any restrictive practices is reported to the General Manager.

Senior Support Facilitator

The Senior Support Facilitator is responsible for ensuring a far as practicable that:

- A registered Behaviour Support Practitioner has been engaged to work with a Participant to develop a Behaviour Support Plan.
- The Lifestyle Assistants who support the Participants are engaged in the process of data collection as required by the Behaviour Support Practitioner.
- Team meetings and training is provided to the relevant Lifestyle Assistants.
- Information and feedback is provided to the Positive Behaviour Support Practitioner as requested.
- The use of any restrictive practice is reported to the NDIS Quality and Safeguards Commission and the Department of Communities, Disability Services and Seniors.

Relevant Employees

- Attend training and team meetings as required.
- Report the use of any restrictive practices to the Senior Support Facilitator or Support Manager.
- Follow the Participants Behaviour Support Plan when providing support and assistance.

RELATED DOCUMENTATION

Department of Communities, Disability Services and Seniors Forms:

- Form 10: Application for administration/guardianship appointment or review
- Form 11: Application for a declaration about capacity
- Form 12: Application for miscellaneous matters
- Form 15: Application for stay of a decision pending a hearing
- Health Professional Report

- Application for Interim Order
- Form 6-4: Notification of Approval or Consent to the Use of Restrictive Practices

Incident Report
Behaviour Support Plan and Functional Behaviour Assessment
NDIS Comprehensive Behaviour Support Plan

REFERENCES

Queensland Civil and Administrative Tribunal Act 2009
Guardianship and Administration Act 2000 (QLD)
NDIS (Provider Registration and Practice Standards) Rules 2018
NDIS (Restrictive Practices and Behaviour Support) Rules 2018
NDIS (Incident Management and Reportable Incidents) Rules 2018
NDIS Practice Standards and Quality Indicators 2021
Disability Services Act 2006 (QLD)

AMENDMENTS/REVIEWS