

Guidelines for authorising regulated restrictive practices in Victoria

March 2024

OFFICIAL

To receive this document in another format, phone the Victorian Senior Practitioner on 9096 8427 or email victorianseniorpractitioner@dffh.vic.gov.au

Help for people with hearing or speech communication difficulties

Contact us through the National Relay Service (NRS). For more information, visit [National Relay Service](https://www.accesshub.gov.au/about-the-nrs) (https://www.accesshub.gov.au/about-the-nrs) to choose your preferred access point or call the NRS Helpdesk on 1800 555 660. Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Australia, Department of Families, Fairness and Housing, March 2024 (v2)

ISBN 978-1-76130-487-3 (online/PDF/Word)

Available at <https://www.dffh.vic.gov.au/information-authorised-program-officers>

(2402730)

Contents

[Overview 4](#_Toc165974485)

[Purpose of these guidelines 4](#_Toc165974486)

[Principles of the Disability Act 4](#_Toc165974487)

[The Victorian Senior Practitioner 5](#_Toc165974488)

[Functions of the Victorian Senior Practitioner 5](#_Toc165974489)

[Victorian Senior Practitioner Directions 6](#_Toc165974490)

[The National Disability Insurance Scheme Act 2013 6](#_Toc165974491)

[What are restrictive practices? 8](#_Toc165974492)

[Using regulated restrictive practices in Victoria 9](#_Toc165974493)

[Step 1: Appoint an Authorised Program Officer 9](#_Toc165974494)

[Step 2: Victorian Senior Practitioner may approve, refuse or revoke appointment of the Authorised Program Officer 9](#_Toc165974495)

[Application to VCAT for review of a decision by the Victorian Senior Practitioner 10](#_Toc165974496)

[Step 3: Develop a behaviour support plan or NDIS behaviour support plan 10](#_Toc165974497)

[Disability service providers – behaviour support plan 10](#_Toc165974498)

[Registered NDIS Providers – NDIS behaviour support plan 11](#_Toc165974499)

[What to include in a behaviour support plan or NDIS support plan 11](#_Toc165974500)

[Step 4: Authorised Program Officer to consider whether a regulated restrictive practice should be authorised 12](#_Toc165974501)

[Step 5: Authorised Program Officer must ensure an independent person is available 13](#_Toc165974502)

[Independent person 13](#_Toc165974503)

[The independent person must notify the Victorian Senior Practitioner 13](#_Toc165974504)

[The independent person may notify the Public Advocate 14](#_Toc165974505)

[Step 6: Authorise the use of regulated restrictive practice 14](#_Toc165974506)

[Notifying the person 15](#_Toc165974507)

[Conflicts of interest or perceived conflict of interest 16](#_Toc165974508)

[Step 7: Additional approval from the Victorian Senior Practitioner 16](#_Toc165974509)

[Step 8: Evidence of authorisation (registered NDIS providers only) 17](#_Toc165974510)

[Step 9: Using regulated restrictive practices in an emergency 18](#_Toc165974511)

[Step 10: Reporting use of regulated restrictive practices 19](#_Toc165974512)

[Disability service providers 19](#_Toc165974513)

[Registered NDIS providers 19](#_Toc165974514)

[Glossary 21](#_Toc165974515)

[Appendix A: Flow chart registered NDIS providers authorising regulated restrictive practices 23](#_Toc165974516)

[Appendix B: Flow chart for disability service providers authorising regulated restrictive practice 24](#_Toc165974517)

[Appendix C: Victorian Senior Practitioner – special powers 25](#_Toc165974518)

[Disability service providers and registered NDIS providers must provide reasonable assistance 25](#_Toc165974519)

# Overview

## Purpose of these guidelines

These guidelines are for:

* disability service providers
* registered National Disability Insurance Scheme (NDIS) providers.

These guidelines relate to the use of regulated restrictive practices in Victoria. These are under Part 7 of the *Disability Act 2006* (Disability Act).

These guidelines provide:

* information about behaviour support and requirements for the authorisation, approval and prohibition of restrictive practices
* advice about developing a behaviour support plan or NDIS behaviour support plan
* advice about the monitoring and reporting of regulated restrictive practices.

These guidelines do not:

* include guidance for compulsory treatment and the use of detention on persons with disability (including NDIS participants). These must be authorised as part of a Supervised Treatment Order (STO) under Part 8 of the Disability Act.
	+ for information about the use of compulsory treatment, see [Victorian Senior Practitioner – Compulsory treatment](https://www.dffh.vic.gov.au/compulsory-treatment)[[1]](#footnote-2)
	+ disability service providers and NDIS registered providers can contact the Victorian Senior Practitioner’s office at 9096 8427 for further information
	+ the *Guidelines for Supervised Treatment Orders* also provide detailed information and are available at [Victorian Senior Practitioner – Compulsory treatment](https://www.dffh.vic.gov.au/compulsory-treatment)[[2]](#footnote-3)
* provide information about NDIS provider registration.
	+ For information about NDIS provider registration, see [NDIS Quality and Safeguards Commission (NDIS Commission) – Becoming a registered provider](https://www.ndiscommission.gov.au/providers/becoming-registered-provider)[[3]](#footnote-4).

## Principles of the Disability Act

Section 5 of the Disability Act sets out the principles that apply in how the Disability Act is applied. These principles ensure that persons with disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities. This includes:

* people with disability who receive state-funded disability services
* NDIS participants
* clients of the Commonwealth’s Disability Support for Older Australians program (DSOA).

Section 5(3) sets out the principles to provide disability services to persons with disability. In respect of the use of restrictive practices, sections 5(3)(m)-(mb) state that disability services should be provided in a way that:

* respects the privacy and dignity of persons accessing the disability services
* promotes the upholding of the rights, dignity, wellbeing and safety of persons with disability
* does not:
	+ tolerate abuse, neglect or exploitation of persons with disability
	+ normalise abuse, neglect or exploitation of persons with disability.

Section 5(3A) provides principles for the use of restrictive practices on NDIS participants and DSOA clients, and the use of compulsory treatment on NDIS participants.

Section 5(4) outlines that where it is necessary to restrict the rights or opportunities of a person with disability, an NDIS participant or a DSOA client, the least restrictive option should be used.

Section 5(5) and (6) outlines that it is the intention of Parliament that the section 5 principles are given effect in the administration of restrictive practices and compulsory treatment by disability service providers and registered NDIS providers.

## The Victorian Senior Practitioner

The Victorian Senior Practitioner is responsible under the Disability Act for ensuring that the rights of persons who are subject to restrictive practices and compulsory treatment are protected and that appropriate standards are complied with.

### Functions of the Victorian Senior Practitioner

Under section 24 of the Disability Act, the functions of the Victorian Senior Practitioner are:

* to develop guidelines and standards with respect to restrictive practices, compulsory treatment and the appointment of Authorised Program Officers
* to promote the reduction and elimination of the use of restrictive practices by disability service providers and registered NDIS providers to the greatest extent possible
* to provide education and information with respect to restrictive practices and compulsory treatment to disability service providers
* to provide information with respect to the rights of persons with disability, NDIS participants and DSOA clients who may be subject to the use of restrictive practices or compulsory treatment
* to provide advice to disability service providers and registered NDIS providers to improve practice in relation to the use of restrictive practices and compulsory treatment
* to give directions to disability service providers and registered NDIS providers about one or more of the following, as the case requires:
	+ restrictive practices
	+ compulsory treatment
	+ behaviour support plans
	+ treatment plans
	+ the appointment of Authorised Program Officers
* to develop connections and access to professional bodies and academic institutions for the purpose of facilitating knowledge and training in clinical practice for persons working with persons with disability
* to undertake research into restrictive practices and compulsory treatment and provide information on practice options to disability service providers and registered NDIS providers
* to evaluate and monitor the use of restrictive practices across disability services and to recommend improvements in practice to the Minister and the Secretary
* to undertake any other function relating to persons with disability as may be directed in writing by the Secretary; and
* any other functions specified by or under the Disability Act.

### Victorian Senior Practitioner Directions

The Disability Act enables the Victorian Senior Practitioner to issue directions to:

* a specified disability service provider or registered NDIS provider
* disability service providers generally
* registered NDIS providers generally
* a class of disability service provider or registered NDIS provider.

Directions issued by the Victorian Senior Practitioner are published online at [Victorian Senior Practitioner's Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[4]](#footnote-5).

Section 27 of the Disability Act provides the Victorian Senior Practitioner with special powers (see [Appendix C: Victorian Senior Practitioner – special powers](#_Appendix_C:_Victorian)). The special powers allow for the Victorian Senior Practitioner to prohibit the use of restrictive practices or a specified restrictive practice on:

* persons with disability
* NDIS participants
* DSOA clients
* persons belonging to a specified class of persons with disability, NDIS participants or DSOA clients.

The prohibition can relate to the use of restrictive practices by one or more of:

* disability service providers
* registered NDIS providers
* a person belonging to a specified class of disability service providers or registered NDIS providers.

Under section 27(5C) of the Disability Act, the Victorian Senior Practitioner must:

* provide notice of prohibition to the disability service providers or registered NDIS providers
* publish notice of the prohibition on [Victorian Senior Practitioner's Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[5]](#footnote-6).

In Victoria, in accordance with section 8 of the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (NDIS Rules), registered NDIS providers must comply with any prohibition issued by the Victorian Senior Practitioner.

## The National Disability Insurance Scheme Act 2013

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is the legislation which underpins:

* the NDIS
* the NDIS Quality and Safeguards Commission (NDIS Commission)
* the National Disability Insurance Agency (NDIA).

The NDIS Commission is responsible for quality and safeguards for NDIS participants, in line with:

* the NDIS Act
* the NDIS Quality and Safeguarding Framework (the framework).

The framework:

* provides a nationally consistent approach to regulation of services provided under the NDIS
* ensures a safe environment for all NDIS participants
* outlines that restrictive practices are a shared responsibility between the Commonwealth, states and territories.

The NDIS Commission has oversight and monitors the use of restrictive practices in Australia for NDIS services. States and territories remain responsible for authorising or prohibiting the use of restrictive practices in their jurisdiction.

The NDIS Rules:

* support the NDIS Act
* set conditions for the use of regulated restrictive practices by registered NDIS providers.

Part 2 of the NDIS Rules set out the conditions of registration that apply to all registered NDIS providers who use restrictive practices to deliver NDIS supports. Some of these requirements refer to state and territory authorisation processes. For example, the NDIS Rules require:

* a registered NDIS provider must not use a restrictive practice which is prohibited in the state or territory in which they provide supports or services
* the use of a regulated restrictive practice (other than a single emergency use) must be authorised in accordance with the authorisation process of the relevant state or territory
* a registered NDIS provider must obtain the necessary state or territory authorisation as soon as practicable, where there is an authorisation process for the use of a regulated restrictive practice in a state or territory in place
* the registered NDIS provider must lodge with the NDIS Commissioner evidence that the use is so authorised as soon as reasonably practicable after use of the practice in relation to the person
* a registered NDIS provider, if intending to continue to use a regulated restrictive practice, must ensure an NDIS behaviour support plan is developed by an NDIS behaviour support practitioner
* the registered NDIS provider must, as a condition of their registration, take all reasonable steps to facilitate the development of:
	+ an interim NDIS behaviour support plan by a specialist behaviour support provider that covers the use of the practice within one month of the first use of the regulated restrictive practice
	+ a comprehensive NDIS behaviour support plan by a specialist behaviour support provider that covers the use of the practice within 6 months of the first use of the regulated restrictive practice.

See [NDIS Quality and Safeguards Commission](https://www.ndiscommission.gov.au)[[6]](#footnote-7) for:

* a full list of NDIS provider registration requirements
* information about NDIS standards and legislation regarding restrictive practices.

# What are restrictive practices?

The Disability Act defines a restrictive practice as ‘any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability or an NDIS participant or a DSOA client’.

Regulated restrictive practices, as defined by the NDIS Rules are:

* **Seclusion –** the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted.
* **Chemical restraint** **–** 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.
* **Mechanical restraint** **–** 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.
* **Physical restraint** **–** 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.
* **Environmental restraint –** which restrict a person’s free access to all parts of their environment, including items or activities.

# Using regulated restrictive practices in Victoria

## Step 1: Appoint an Authorised Program Officer

Part 6A of the Disability Act sets out the process and requirements for appointing an Authorised Program Officer.

A disability service provider or registered NDIS provider intending to use a restrictive practice must appoint an Authorised Program Officer before using any regulated restrictive practices on a person with disability, an NDIS participant or a DSOA client in Victoria.

A disability service provider or a registered NDIS provider seeking to appoint an Authorised Program Officer must apply to the Senior Practitioner for approval of the proposed appointment. An application for approval must include the name and qualifications of the proposed Authorised Program Officer and any other information requested by the Victorian Senior Practitioner. Disability service providers and registered NDIS providers may also appoint more than one Authorised Program Officer.

Disability service providers and registered NDIS providers must submit their applications for approval of their proposed Authorised Program Officer to the Victorian Senior Practitioner. This is done through the Restrictive Intervention Data System (RIDS). Information about access to RIDS is available from the RIDS Helpdesk RIDS.Helpdesk@dffh.vic.gov.au.

The Victorian Senior Practitioner has the power to issue directions to disability service providers and registered NDIS providers in relation to Authorised Program Officers. These directions must be adhered to and may include:

* minimum qualifications
* training requirements
* any other matters.

The Victorian Senior Practitioner may also direct a disability service provider or registered NDIS provider to appoint an Authorised Program Officer (see the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline).

## Step 2: Victorian Senior Practitioner may approve, refuse or revoke appointment of the Authorised Program Officer

The Victorian Senior Practitioner:

* may approve the appointment of an Authorised Program Officer subject to any conditions the Victorian Senior Practitioner considers appropriate
* will notify disability service providers and registered NDIS providers of approval of the appointment by email
* may refuse or revoke the approval of an appointment of an Authorised Program Officer if the Victorian Senior Practitioner considers it appropriate to do so. However, before a decision to refuse or revoke is made, the Victorian Senior Practitioner must provide written notice to the disability service provider or registered NDIS provider explaining:
	+ the proposed decision and the reasons for the proposed decision
	+ that the disability service provider or the registered NDIS provider may make a written submission within 14 days after the notice is given.
* must consider any submissions made by the disability service provider or registered NDIS provider within the 14-day timeframe before a decision is made by the Victorian Senior Practitioner.
* must notify the NDIS Commissioner (if the decision relates to a registered NDIS provider) or the Secretary (in the case of a disability service provider) of a refusal to approve or revoke the appointment of an Authorised Program Officer.

### Application to VCAT for review of a decision by the Victorian Senior Practitioner

A disability service provider or registered NDIS provider can make an application to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the Victorian Senior Practitioner’s decision to refuse or revoke the appointment of an Authorised Program Officer.

An application to VCAT must be made within 28 days after the later of:

* the day on which the decision is made
* the day a statement of reasons for the decision is provided to the disability service provider or registered NDIS provider
* the day the disability service provider or registered NDIS provider is informed that the statement of reasons will not be given (where the disability service provider or registered NDIS provider has requested a statement be provided under the Victorian Civil and Administrative Tribunal Act 1998).

The Victorian Senior Practitioner must keep a register of appointed Authorised Program Officers. This will include both the name and qualifications of each approved Authorised Program Officer.

## Step 3: Develop a behaviour support plan or NDIS behaviour support plan

### Disability service providers – behaviour support plan

The Disability Act states that a disability service provider who intends to use regulated restrictive practices on a person must prepare a behaviour support plan if all criteria below are met.

* The person does not have an NDIS behaviour support plan.
* The proposed use of a regulated restrictive practice is necessary to prevent the person from causing physical harm to themselves or any other person.
* The proposed regulated restrictive practice is the option which is the least restrictive of the person as is possible in the circumstances.

If all criteria above are met, then a behaviour support plan must be developed for the person. In preparing the behaviour support plan, the disability service provider must consult with each person listed below, where applicable.

* The person for whom the behaviour support plan is prepared.
* The person’s guardian (only applicable if the person for whom the behaviour support plan is prepared has a guardian).
* A representative of each disability service provider (only applicable if other disability service providers deliver disability services to the person for whom the behaviour support plan is prepared).
* A representative of each registered NDIS provider (only applicable if any registered NDIS providers deliver services under the NDIS to the person for whom the behaviour support plan is prepared).
* Any other person specified for the person for whom the behaviour support plan is being prepared.
* Any other person that the disability service provider considers integral to the development of the behaviour support plan.

Section 7 of the Disability Act requires information, including behaviour support plans, to be explained to the person and provided in an appropriately accessible format.

### Registered NDIS Providers – NDIS behaviour support plan

The NDIS rules outline requirements for NDIS behaviour support plans. A registered NDIS provider who intends to use regulated restrictive practices on an NDIS participant must develop an NDIS behaviour support plan. An NDIS behaviour support plan must be prepared by a registered NDIS behaviour support practitioner.

An NDIS behaviour support plan must include all reasonable steps to achieve each item listed below.

* Reduce and eliminate the need for the use of regulated restrictive practices in relation to the NDIS participant.
* Consider any previous behaviour support assessments and other assessments.
* Make changes within the environment of the NDIS participant that may reduce or remove the need for the use of regulated restrictive practices.
* Consult with the NDIS participant.
* Consult with NDIS participant’s family, carers, guardian or other relevant person.
* Consult with the registered NDIS provider who may use the regulated restrictive practice and other relevant specialists.

The registered NDIS provider must provide details of the intention to include a regulated restrictive practice in the NDIS behaviour support plan, in an appropriately accessible format, to:

* the person with disability subject to the plan
* the person with disability’s family, carers, guardian or other relevant person.

In developing an NDIS behaviour support plan for an NDIS participant, the registered NDIS provider must also undertake a behaviour support assessment, including a functional behavioural assessment of the NDIS participant. More information, support and resources can be found for [Behaviour Support Practitioners](https://www.dffh.vic.gov.au/information-behaviour-support-practitioners)[[7]](#footnote-8).

### What to include in a behaviour support plan or NDIS support plan

The behaviour support plan or NDIS behaviour support plan must state the circumstances in which the proposed regulated restrictive practice is to be used for behaviour support and explain how the use of a regulated restrictive practice will be of benefit to the person.

The behaviour support plan or NDIS behaviour support plan must satisfy each item listed below.

* Provide a clear description of the behaviour causing physical harm to the person or others, including baseline data about the frequency, duration, severity and outcome of the behaviour of concern.
* Demonstrate that the use of regulated restrictive practices is the option which is the least restrictive of the person as is possible in the circumstances.
* Provide a detailed description of proactive and non-restrictive strategies to lessen the need for the behaviour of concern.
* Include changes to be made to the environment to reduce or eliminate the need for the regulated restrictive practice.
* State the necessary de-escalation (reactive) strategies that will be used to re-engage or re-direct the person when they start displaying behaviours of concern.
* Provide clear information regarding the use and form of any proposed restrictive practice, including pro re nata (PRN) (see the [glossary](#_Glossary) in this guideline) protocols.
* Consider relevant assessments.
* Include strategies to reduce and eliminate the use of the restrictive practices.
* Satisfy the NDIS rules and Disability Act requirements.

| Victorian Senior Practitioner direction |
| --- |
| The *Behaviour Support Plans and NDIS Behaviour Support Plans Direction* is available from [Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[8]](#footnote-9).See the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline for more information about directions and prohibitions.  |

## Step 4: Authorised Program Officer to consider whether a regulated restrictive practice should be authorised

An Authorised Program Officer must not authorise the use of a regulated restrictive practice on a person unless satisfied that each of the following matters set out in section 136 of the Disability Act are met.

* The proposed use of regulated restrictive practice is necessary to prevent the person from causing physical harm to themselves or another person.
* The use and form of the proposed regulated restrictive practice is the option which is the least restrictive to the person as is possible in the circumstances.
* The regulated restrictive practice is included in and used on the person in accordance with their behaviour support plan or NDIS behaviour support plan and is not applied for longer than necessary to prevent the person from causing physical harm to themselves or another person.
* The person’s NDIS behaviour support plan meets the requirements of the NDIS Rules (only applicable if the person is an NDIS participant or DSOA client and will be subject to regulated restrictive practices by a registered NDIS provider).
* The person's behaviour support plan meets the requirements of the Disability Act (only applicable if the person is receiving disability services from a disability service provider and does not have an NDIS behaviour support plan).
* The person is provided with bedding and clothing, food and drink at appropriate times, adequate toilet arrangements and access to heating and cooling as are appropriate in the circumstances, if seclusion is used.
* The Authorised Program Officer has ensured that an ‘independent person’ is available to explain the proposed use of the regulated restrictive practice to the person. (For information about an independent person see, [Step 5: Authorised Program Officer must ensure an independent person is available](#_Step_5:_Authorised) section of this guideline).
* Any other requirements imposed by the Victorian Senior Practitioner (see the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline) are complied with.
* The *Regulated Restrictive Practices Authorisation Checklist* is available at [Information for Behaviour Support Practitioners](https://www.dffh.vic.gov.au/information-behaviour-support-practitioners)*[[9]](#footnote-10)* provides more information about the requirements for authorising restrictive practices in Victoria.

| Victorian Senior Practitioner direction |
| --- |
| The Victorian Senior Practitioner *Physical Restraint Direction Paper: Guidelines and Standards* and the *Restrictive Practice Prohibition Under Section 27(5B)* are available at [Victorian Senior Practitioner's Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[10]](#footnote-11).See the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section in this guideline for further information about directions and prohibitions. |

## Step 5: Authorised Program Officer must ensure an independent person is available

Before an Authorised Program Officer can authorise the use of a regulated restrictive practice in a behaviour support plan or NDIS behaviour support plan, the Authorised Program Officer must ensure that an ‘independent person’ is made available to explain to the person:

* the proposed use of regulated restrictive practices in their plan
* that the person has the right to seek a review at VCAT regarding:
	+ the Authorised Program Officer’s decision to authorise the use of regulated restrictive practices
	+ the Authorised Program Officer’s decision to authorise and the Victorian Senior Practitioner’s decision to approve the use of regulated restrictive practices.

### Independent person

The role of the independent person is an important safeguard for persons subject to regulated restrictive practices and is unique to the Victorian authorisation process. The role of the independent person is described in the Disability Act.

An independent person must not:

* be a disability service provider or an NDIS provider for the NDIS participant
* be a representative of a disability service provider or an NDIS provider for the NDIS participant
* have any interest in a disability service provider or NDIS provider for the NDIS participant
* have any responsibility in relation to the development or review of the NDIS participant’s NDIS behaviour support plan.

### The independent person must notify the Victorian Senior Practitioner

The Disability Act requires the independent person to notify the Victorian Senior Practitioner under certain circumstances.

1. The independent person must notify the Victorian Senior Practitioner if the independent person considers that:
	* + the person is not able to understand the proposal to use the regulated restrictive practice
		+ the requirements of the Disability Act, or the relevant requirements of the NDIS Act, or NDIS Rules (as the case requires) are not being complied with.
2. The independent person must notify the Victorian Senior Practitioner, prior to explaining the behaviour support plan or NDIS behaviour support plan to the person, if the ‘independent person’ considers that:
	* + the Disability Act, or the requirements of the NDIS Act or NDIS Rules, were not complied with when the behaviour support plan or NDIS behaviour support plan for the person was being prepared or authorised.

The independent person may also consult the Victorian Senior Practitioner to discuss any concerns they have regarding potential non-compliance with the requirements of the Disability Act, NDIS Act or NDIS Rules, in the development and authorisation of a behaviour support plan or NDIS behaviour support plan.

An Authorised Program Officer is required to arrange for another independent person if the person advises the disability service provider or registered NDIS provider that they do not consider that the person assisting them is independent.

### The independent person may notify the Public Advocate

The independent person may also notify the Public Advocate if they believe the person with disability is not able to understand the proposal to use a regulated restrictive practice, and that the legislative requirements in the Disability Act, NDIS Act, or NDIS Rules are not being complied with.

Upon receiving such a notification from an independent person, the Public Advocate may:

* refer the matter to the Victorian Senior Practitioner
* initiate an application for VCAT to review the decision to authorise the use of a regulated restrictive practice by the Authorised Program Officer and the decision of the Victorian Senior Practitioner to approve the use of regulated restrictive practices, within 28 days of receiving the report
* provide information to:
	+ the Secretary, Department of Families, Fairness and Housing (when notification relates to a disability service provider)
	+ the NDIA or the NDIS Commission (when notification relates to a registered NDIS provider).

Visit the [Public Advocate](https://www.publicadvocate.vic.gov.au)[[11]](#footnote-12) for more information.

## Step 6: Authorise the use of regulated restrictive practice

After considering the requirements under section 136 of the Disability Act (see [Step 4: Authorised Program Officer to consider whether a regulated restrictive practice should be authorised](#_Step_4:_Authorised) section in this guideline), if the Authorised Program Officer is satisfied that the requirements for the use of a regulated restrictive practice have been met, the Authorised Program Officer may authorise the use of the regulated restrictive practice.

An authorisation may be subject to any conditions considered appropriate by the Authorised Program Officer other than a condition requiring the variation of the behaviour support plan or NDIS behaviour support plan.

The Authorised Program Officer must, within 2 working days of authorising the use of regulated restrictive practices, provide the following to the Victorian Senior Practitioner:

* a copy of the person’s behaviour support plan or NDIS behaviour support plan
* the name and details of the independent person who assisted the person
* any information provided to the NDIS Commission in relation to the use of a regulated restrictive practice that is not included in the person's NDIS behaviour support plan (if the person is an NDIS participant or a DSOA client)
* any other information required by the Victorian Senior Practitioner (refer to [Step 7: Additional approval from the Victorian Senior Practitioner](#_Step_7:_Additional) section in this guideline).

This information must be provided through RIDS. For assistance with obtaining access to RIDS, contact the RIDS Helpdesk via email at RIDS.Helpdesk@dffh.vic.gov.au.

### Notifying the person

After the Authorised Program Officer has authorised a regulated restrictive practice, the disability service provider or registered NDIS provider must give the person notice at least 2 working days before the use of the regulated restrictive practice. The notice must state that:

* the Authorised Program Officer has authorised the use of a regulated restrictive practice on the person and, as the case requires, the Victorian Senior Practitioner has approved that use
* the person may seek, as the case requires:
	+ a review of the Authorised Program Officer's decision to authorise the use of the regulated restrictive practice
	+ a joint review of the Authorised Program Officer's decision to authorise the use of the regulated restrictive practice and the Victorian Senior Practitioner's decision to approve that use.

The disability service provider or registered NDIS provider must explain the notice to the person and provide the notice in an accessible format that the person is most likely to understand. Where appropriate, the notice must be given both verbally and in writing. This is a legislative requirement under section 7 of the Disability Act.

An Authorised Program Officer’s authorisation is valid until either:

* the authorisation is revoked
* the person’s behaviour support plan or NDIS behaviour support plan expires
* the person is given a new behaviour support plan or NDIS behaviour support plan.

| Victorian Senior Practitioner direction |
| --- |
| The *Authorised Program Officers Direction* is available at [Victorian Senior Practitioner's Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[12]](#footnote-13).See the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline for further information about directions and prohibitions. |

### Conflicts of interest or perceived conflict of interest

These guidelines recognise that the [NDIS Practice Standards and Quality Indicators](https://www.ndiscommission.gov.au)[[13]](#footnote-14) require registered NDIS providers to have a conflict of interest policy.

The [Victorian Senior Practitioner’s Authorised Program Officers Direction[[14]](#footnote-15)](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions) outlines that an Authorised Program Officer must not authorise the proposed use of regulated restrictive practices within a behaviour support plan or an NDIS behaviour support plan which has been prepared by the Authorised Program Officer.

An Authorised Program Officer cannot authorise regulated restrictive practices where they:

* contributed to development of the behaviour support plan for that NDIS participant
* are involved in the day-to-day support or case work for the participant
* have consulted on the case or were involved in decision making regarding the participant (excluding provision of general support, supervision, or advice to staff)
* have a personal relationship with the participant being a family member or friend.

In all the above circumstances, the Authorised Program Officer should refer the matter to another Authorised Program Officer within their organisation or to the Victorian Senior Practitioner, prior to providing authorisation for the use of regulated restrictive practices.

An Authorised Program Officer should consider whether other people may perceive there to be a conflict of interest and should not authorise the proposed use of regulated restrictive practices.

Where an Authorised Program Officer has authorised a regulated restrictive practice and a conflict of interest becomes known, the Authorised Program Officer should take necessary steps to address the conflict of interest including consultation with other professionals and the Victorian Senior Practitioner. An Authorised Program Officer should be able to provide evidence of the steps taken to address this conflict of interest, if required.

An Authorised Program Officer should refer to their organisation’s conflict of interest policy to identify any other actions that may be required with regards to potential or actual conflicts of interest.

## Step 7: Additional approval from the Victorian Senior Practitioner

Approval by the Victorian Senior Practitioner to use regulated restrictive practices on a person is required if the proposed regulated restrictive practices include any of the following types:

* seclusion
* physical restraint
* mechanical restraint
* any regulated restrictive practice proposed for a person with a ‘psychosocial disability’[[15]](#footnote-16) only.

When considering an approval, the Victorian Senior Practitioner must be satisfied with each of the following.

* The proposed use of regulated restrictive practice is necessary to prevent the person from causing physical harm to themselves or another person.
* The use and form of the proposed regulated restrictive practice is the option which is the least restrictive to the person as is possible in the circumstances.
* The regulated restrictive practice is included in and used on the person in accordance with their behaviour support plan or NDIS behaviour support plan and is not applied for longer than necessary to prevent the person from causing physical harm to themselves or another person.
* The person’s NDIS behaviour support plan meets the requirements of the NDIS Rules (only applicable if the person is an NDIS participant or DSOA client and will be subject to a regulated restrictive practice by a registered NDIS provider).
* The person's behaviour support plan meets the requirements of the Disability Act (only applicable if the person is receiving disability services from a disability service provider and does not have an NDIS behaviour support plan).
* The person is provided with bedding and clothing, food and drink at appropriate times, adequate toilet arrangements and access to heating and cooling as are appropriate in the circumstances, if seclusion is used.
* Any other requirements imposed by the Victorian Senior Practitioner (see Victorian Senior Practitioner Directions) are complied with.

|  |
| --- |
| Victorian Senior Practitioner direction |
| Additional approval may be required if the Victorian Senior Practitioner has issued a direction requiring the Victorian Senior Practitioner’s approval of any applications to use a specific form of regulated restrictive practice before use on a person or a specified class of persons. An example of this is the *Psychosocial Disability Direction*, available at [Victorian Senior Practitioner's Directions and Prohibitions](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions)[[16]](#footnote-17).See the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline for more information about Victorian Senior Practitioner directions and prohibitions. |

## Step 8: Evidence of authorisation (registered NDIS providers only)

In addition to the requirement outlined in [Step 6: Authorise the use of regulated restrictive practice](#_Step_6:_Authorise) for the Authorised Program Officer to provide certain information to the Victorian Senior Practitioner within 2 working days of authorising the use of regulated restrictive practices under the Disability Act, there are further requirements on registered NDIS providers under the NDIS Rules.

Under Part 2 of the NDIS Rules, the registration of a registered NDIS provider who provides supports or services to NDIS participants in Victoria (being a state with an authorisation process for the use of a regulated restrictive practice) is subject to the following conditions:

* the use (other than a single emergency use) of the regulated restrictive practice in relation to the person must be authorised in accordance with the authorisation process for the use of restrictive practices in Victoria
* the registered NDIS provider must lodge with the NDIS Commissioner evidence that the use is authorised as soon as reasonably practicable after use of the practice in relation to the person.

See the [National Disability Insurance Scheme Act 2013](#_The_National_Disability) section of this guideline for more information about requirements for registered NDIS providers.

Further to the requirements on the NDIS provider to lodge evidence with the NDIS Commissioner under the NDIS Rules, the Victorian Senior Practitioner will routinely provide evidence to the registered NDIS provider (including both the NDIS behaviour support practitioner & NDIS provider implementing the authorised restrictive practice) that the proposed use of a regulated restrictive practice on an NDIS participant or a DSOA client is authorised by the Authorised Program Officer and, as the case requires, approved by the Victorian Senior Practitioner.

The Victorian Senior Practitioner may also lodge evidence with the NDIS Commission that the proposed use of a regulated restrictive practice on an NDIS participant or a DSOA client is authorised by the Authorised Program Officer and, as the case requires, approved by the Victorian Senior Practitioner (see [Step 1: Appoint an Authorised Program Officer](#_Step_1:_Appoint) section in this guideline).

## Step 9: Using regulated restrictive practices in an emergency

Section 145(1) of the Disability Act outlines that a disability service provider or registered NDIS provider can use regulated restrictive practices on a person in an ‘emergency’ (see [Glossary](#_Glossary)), in specific circumstances.

A disability service provider or registered NDIS provider can use regulated restrictive practices on a person in an emergency, if the person either:

* does not have a behaviour support plan or an NDIS behaviour support plan which provides for the use of regulated restrictive practices
* has a behaviour support plan or an NDIS behaviour support plan which provides for the use of regulated restrictive practices and the Authorised Program Officer has authorised that use, and if the Senior Practitioner is required to approve the use (see, [Step 7: Additional approval from the Victorian Senior Practitioner](#_Step_7:_Additional) section in this guideline), the Senior Practitioner has not done so
* has a behaviour support plan or an NDIS behaviour support plan which provides for the use of regulated restrictive practices and the Authorised Program Officer has not authorised that use.

For any the circumstances listed above, the person in charge of the disability service provider or registered NDIS provider must not use regulated restrictive practices unless:

* they have formed the opinion that there is an emergency because there is an imminent risk of the person causing serious physical harm to themselves or another person, and
* it is necessary to use the regulated restrictive practice to prevent that risk.

If this is the opinion of the person in charge, then the disability service provider or registered NDIS provider is authorised to use a regulated restrictive practice on the person, on the condition that all the requirements below are met.

* The proposed use and form of the regulated restrictive practice is the option which is the least restrictive as possible in the circumstances.
* The use is authorised by the person in charge of the disability service provider or registered NDIS provider.
* The Authorised Program Officer (if one has been appointed) is notified without delay of the use of the regulated restrictive practice.

If an Authorised Program Officer has not been appointed by the disability service provider or registered NDIS provider and the provider intends to continue to use a regulated restrictive practice on the person, they must appoint an Authorised Program Officer as soon as practicable and seek approval from the Victorian Senior Practitioner (see, [Step 1: Appoint an Authorised Program Officer](#_Step_1:_Appoint) section in this guideline).

## Step 10: Reporting use of regulated restrictive practices

### Disability service providers

For disability service providers, the Victorian Senior Practitioner monitors whether the use of regulated restrictive practice is in accordance with the Disability Act. The Victorian Senior Practitioner will advise the Authorised Program Officer as to the intervals, not exceeding 12 months, within which the Authorised Program Officer is to provide a report on the implementation of a person’s behaviour support plan.

A report must be provided within 7 days after the end of the interval advised by the Victorian Senior Practitioner (currently monthly). The report must contain information which specifies each item listed below.

* The form of the regulated restrictive practice used and, if seclusion was used the period of time during which it was used.
* The reasons why the regulated restrictive practice was used.
* The effect on the person’s behaviour.
* The name of the person who approved the use of the regulated restrictive practice.
* The name of the person who applied the use of the regulated restrictive practice, and if seclusion was used, kept the person in seclusion.

The report must also include a record of all instances in which the regulated restrictive practices have been applied during the period for which the report was prepared. It must specify any details required by the Victorian Senior Practitioner in respect of each instance included above and have attached a copy of the person’s current behaviour support plan if the use of regulated restrictive practices is to be continued.

The Victorian Senior Practitioner may issue guidelines relating to the preparation of reports including enabling the preparation of a consolidated report by an Authorised Program Officer where more than one approved disability service provider is providing disability services to a person.

#### Reporting emergency use of regulated restrictive practices – disability service providers

When reporting emergency use of regulated restrictive practices to the Victorian Senior Practitioner, the disability service provider’s report must contain information which specifies the points listed above (see [Disability service providers in Step 10: Reporting use of regulated restrictive practices](#_Disability_service_providers) section in this guideline).

If the disability service provider intends to continue to use a regulated restrictive practice on a person, a behaviour support plan must be developed as soon as possible in line with the requirements of the Disability Act (see, [Step 3: Develop a behaviour support plan or NDIS behaviour support plan](#_Step_3:_Develop) section in this guideline).

The Authorised Program Officer of a disability service provider must within 7 days of the end of each month prepare and send to the Victorian Senior Practitioner a report in respect of the use of regulated restrictive practices in an emergency.

### Registered NDIS providers

The NDIS Rules requires registered NDIS providers to report the use of regulated restrictive practices to the NDIS Commission.

Information about reporting regulated restrictive practices by registered NDIS providers is available at [NDIS Commission – Reporting the use of regulated restrictive practices](https://www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers/reporting-use)[[17]](#footnote-18).

#### Reporting emergency use of regulated restrictive practices – registered NDIS providers

The National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018 (NDIS Reportable Incidents Rules) require certain incidents that happen, or are alleged to have happened, in connection with the provision of supports or services by registered NDIS providers to be reported to the NDIS Commission. These are known as ‘reportable incidents’.

Under the NDIS Reportable Incidents Rules, the following are reportable incidents. These must be reported to the NDIS Commission in writing within 5 business days of the registered NDIS provider becoming aware of the incident:

* the use of a restrictive practice, other than where the use is in accordance with a state or territory authorisation process (section 16(1))
* the use of a restrictive practice in relation to a person where the use is in accordance with an authorisation process of a state or territory where the use is not in accordance with an NDIS behaviour support plan for the person (section 16(3)).

More information on reportable incidents is available at [NDIS Commission – Reportable incidents](https://www.ndiscommission.gov.au/providers/registered-ndis-providers/reportable-incidents-0)[[18]](#footnote-19).

# Glossary

| Term | Definition  |
| --- | --- |
| **Authorised Program Officer** | A person appointed as an Authorised Program Officer by the disability service provider or registered NDIS provider and whose appointment is approved by the Victorian Senior Practitioner. |
| **Behaviour support plan** | A plan developed for a person with disability which specifies a range of strategies to be used in supporting the person’s behaviour including proactive strategies to build on the person’s strengths and increase their life skills for use by disability service providers. |
| **Disability Act**  | The *Disability Act 2006*. |
| **Disability service provider** | The Secretary to the Department of Families, Fairness and Housing or a person or body registered on the register of disability service providers. |
| **DSOA client** | A client of the Disability Support for Older Australians program (Commonwealth). |
| **Emergency** | A sudden state of danger requiring immediate action to prevent or manage a serious and imminent risk of harm to the person or to another person or people. |
| **Independent person** | An independent person is an important safeguard for persons subject to regulated restrictive practices and is unique to the Victorian authorisation process. The role of the independent person is described in the Disability Act. For more information about the independent person, see [Step 5: Authorised Program Officer must ensure an independent person is available](#_Step_5:_Authorised). |
| **Minister** | Minister for Disability. |
| **NDIS** | The National Disability Insurance Scheme. |
| **NDIS Act**  | The *National Disability Insurance Scheme Act 2013* (Cth). |
| **NDIS Rules** | The National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (however titled) of the Commonwealth made under the NDIS Act, as in force from time to time. |
| **NDIS Reportable Incidents Rules** | The National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018. |
| **NDIS behaviour support plan** | A plan developed by an NDIS behaviour support practitioner for an NDIS participant. |
| **NDIS behaviour support practitioner** | A person the NDIS Commissioner considers suitable to undertake behaviour support assessments and to develop NDIS behaviour support plans that may contain the use of restrictive practices. |
| **NDIS Commission** | The NDIS Quality and Safeguards Commission. |
| **NDIS participant** | A person who is a participant in the NDIS. |
| **OPA** | The Office of the Public Advocate. |
| **PRN** | Pro re nata means to be used as needed or as required. |
| **Psychosocial disability** | An impairment attributable to a psychiatric condition which meets the disability requirements of section 24 of the NDIS Act. |
| **Registered NDIS provider** | A person or entity who is registered under section 73E of the NDIS Act to provide NDIS funded supports and services to NDIS participants. |
| **Regulated restrictive practice** | The Disability Act defines regulated restrictive practice as having the same meaning as in the NDIS Rules. Regulated restrictive practices are seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint. |
| **Restrictive practice** | The Disability Act defines restrictive practice as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability or an NDIS participant or a DSOA client. |
| **RIDS** | Restrictive Intervention Data System. |
| **Secretary** | Secretary of the Department of Families, Fairness and Housing. |
| **Specialist behaviour support provider** | A registered NDIS provider whose registration includes the provision of specialist behaviour support services.  |
| **STO** | A supervised treatment order that is a civil order made in respect of a person with an intellectual disability under section 193 of the Disability Act.  |
| **Treatment plan** | A plan for the use of treatment on a person with disability or an NDIS participant prepared under section 189 of Part 8 of the Disability Act.  |
| **VCAT** | The Victorian Civil and Administrative Tribunal. |
| **Victorian Senior Practitioner** | The person appointed as the Victorian Senior Practitioner under section 23 of the Disability Act.  |

# Appendix A: Flow chart registered NDIS providers authorising regulated restrictive practices



# Appendix B: Flow chart for disability service providers authorising regulated restrictive practice



# Appendix C: Victorian Senior Practitioner – special powers

The Victorian Senior Practitioner has special powers under section 27 of the Disability Act in respect of the use of restrictive practices or compulsory treatment by disability service providers and registered NDIS providers.

The Victorian Senior Practitioner may:

* in the case of a disability service provider, visit and inspect any part of the premises where disability services are being provided, other than any premises or part of any premises used as a private residence that is not a residential service or Minister approved premises
* in the case of a registered NDIS provider, visit and inspect any place (other than a place or part of a place used as a private residence that is not an SDA or short-term accommodation dwelling) where services are provided under the NDIS
* see any person who is subject to any use of restrictive practice or compulsory treatment by a disability service provider or registered NDIS provider
* investigate, audit and monitor the use of restrictive practices and compulsory treatment
* inspect and make copies of, or take extracts from, any document relating to any person who is subject to restrictive practice or compulsory treatment
* see any person who is involved in the development, implementation or authorisation of any restrictive practice or compulsory treatment upon request
* request a disability service provider or an NDIS provider to provide information about any restrictive practice or compulsory treatment
* authorise by written order given to the disability service provider or registered NDIS provider the use of a restrictive practice (the Victorian Senior Practitioner must also provide advice in writing to the person); and
* notify the NDIS Commissioner of any matter relating to a registered NDIS provider that has come to the Victorian Senior Practitioner’s attention when exercising a power or performing a function or duty under the Disability Act.

See the [Victorian Senior Practitioner Directions](#_Victorian_Senior_Practitioner) section of this guideline for more information about directions and prohibitions.

## Disability service providers and registered NDIS providers must provide reasonable assistance

On the request of the Victorian Senior Practitioner, the following persons must provide any reasonable assistance that the Victorian Senior Practitioner requires to perform or exercise a power, duty or function under the Disability Act:

* a disability service provider
* a registered NDIS provider
* a member of the staff or management of a disability service provider
* a member of the staff or management of a registered NDIS provider.

On the request of the Victorian Senior Practitioner, a person listed above must:

* reasonably assist when request by the Victorian Senior Practitioner; and
* give full and true answers to the best of their knowledge to any questions asked by the Victorian Senior Practitioner in the performance or exercise of any power, duty or function under the Disability Act.
1. https://www.dffh.vic.gov.au/compulsory-treatment [↑](#footnote-ref-2)
2. https://www.dffh.vic.gov.au/compulsory-treatment [↑](#footnote-ref-3)
3. https://www.ndiscommission.gov.au/providers/becoming-registered-provider [↑](#footnote-ref-4)
4. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-5)
5. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-6)
6. https://www.ndiscommission.gov.au/ [↑](#footnote-ref-7)
7. https://www.dffh.vic.gov.au/information-behaviour-support-practitioners [↑](#footnote-ref-8)
8. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-9)
9. https://www.dffh.vic.gov.au/information-behaviour-support-practitioners [↑](#footnote-ref-10)
10. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-11)
11. https://www.publicadvocate.vic.gov.au [↑](#footnote-ref-12)
12. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-13)
13. https://www.ndiscommission.gov.au [↑](#footnote-ref-14)
14. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-15)
15. ‘Psychosocial disability' means an impairment attributable to a psychiatric condition which meets the disability requirements of section 24 of the *National Disability Insurance Scheme Act 2013* (Cth) [↑](#footnote-ref-16)
16. https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions [↑](#footnote-ref-17)
17. https://www.ndiscommission.gov.au/providers/understanding-behaviour-support-and-restrictive-practices-providers/reporting-use [↑](#footnote-ref-18)
18. https://www.ndiscommission.gov.au/providers/registered-ndis-providers/reportable-incidents-0 [↑](#footnote-ref-19)