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| Guidelines for Supervised Treatment OrdersFebruary 2024 |

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# Overview and information about supervised treatment

## Overview

### Purpose of these guidelines

This document provides disability service providers and registered National Disability Insurance Scheme (NDIS) providers operating in Victoria with guidance and information about supervised treatment under Part 8 of the *Disability Act 2006* (Disability Act), and how to apply for a Supervised Treatment Order.

Supervised treatment is a form of compulsory treatment under Part 8 of the Disability Act and for registered NDIS providers is considered a regulated restrictive practice under the *National Disability Insurance Scheme (NDIS) (Restrictive Practices and Behaviour Support Rules) 2018* (NDIS Rules*)*.

Supervised treatment is sometimes used in providing support to a very small number of people with an intellectual disability who are considered to pose a significant risk of serious harm to others and are residing in a restrictive environment in the community.

A disability service provider or registered NDIS provider who intends to use supervised treatment on a person must apply to the Victorian Civil and Administrative Tribunal (VCAT) for a Supervised Treatment Order (STO). An STO is a civil order made by VCAT under section 193 of the Disability Act that enables the detention of a person with an intellectual disability who poses a significant risk of serious harm to others.

These guidelines are arranged in two parts:

* **Part One** provides an overview of restrictive practices and supervised treatment.
* **Part Two** provides information about how to apply for an STO.

### Disability Act 2006

In Victoria, the Disability Act provides the framework for the use, authorisation and approval of restrictive practices and compulsory treatment.

The principles of the Disability Act (sections 5(3) and (3A) of the Disability Act) provide that the use of restrictive practices and compulsory treatment on people with disability, NDIS participants, and Disability Support for Older Australian (DSOA) clients should be provided in a manner that:

* respects the privacy and dignity of the person;
* promotes the upholding of the rights, dignity, wellbeing and safety of the person; and
* does not:
	+ tolerate abuse, neglect or exploitation; or
	+ normalise abuse, neglect or exploitation.

In addition, if a restriction on the rights or opportunities of a person is necessary, the option chosen should be the least restrictive of the person as is possible in the circumstances.

### 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.

The Victorian Senior Practitioner has a range of powers and functions under the Disability Act in relation to restrictive practices and compulsory treatment.

Under section 24 the functions of the Victorian Senior Practitioner include:

* 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 information with respect to the rights of persons with a 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 (APO).

Under section 27 the powers of the Victorian Senior Practitioner include:

* prohibition of the use of restrictive practices or a specified form of restrictive practice (see [Chapter 3](#_Prohibition_of_restrictive) for more information).
* giving written directions to service providers regarding the use of restrictive practices or a specified restrictive practice.

The Victorian Senior Practitioner must publish a report annually with information on the performance of the functions of the Victorian Senior Practitioner and data relating to the use of restrictive practices and compulsory treatment.

For further information regarding the powers and functions of the Victorian Senior Practitioner refer to Appendix C and the [Victorian Senior Practitioner webpage](https://www.dffh.vic.gov.au/victorian-senior-practitioner) https://www.dffh.vic.gov.au/victorian-senior-practitioner.

### The National Disability Insurance Scheme Act 2013

The National Disability Insurance Scheme Act 2013 (NDIS Act) is the legislation which establishes the National Disability Insurance Scheme (NDIS), NDIS Quality and Safeguards Commission (NDIS Commission) and National Disability Insurance Agency (NDIA).

The *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (NDIS Rules) support the NDIS Act and sets conditions for the use of regulated restrictive practices by registered NDIS providers.

The NDIS Rules outlines that it is a condition of registration that:

* 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; and
* 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.

The NDIS Rules require that the registered NDIS provider lodge evidence to the NDIS Quality and Safeguards Commission (NDIS Commission) that the regulated restrictive practice has been authorised in accordance with the authorisation process of the relevant state or territory.

### The NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission (NDIS Commission) is responsible for quality and safeguards for NDIS participants and DSOA clients in line with the NDIS Act and the NDIS Quality and Safeguarding Framework (the Framework).

The NDIS Commission has oversight and monitors the use of restrictive practices on NDIS participants and DSOA clients, while states and territories remain responsible for authorising or prohibiting the use of restrictive practices in their jurisdiction.

All service providers who wish to become registered NDIS providers must apply to the NDIS Quality and Safeguards Commission (NDIS Commission) for approval. The NDIS Commission also considers the suitability of and registers NDIS behaviour support practitioners, who undertake behaviour support assessments (including functional behavioural assessments) and develop behaviour support plans that may contain the use of restrictive practices.

An NDIS behaviour support plan is required for an NDIS participant subject to restrictive practices and must be prepared by an NDIS behaviour support practitioner (in accordance with any state or territory authorisation requirements). NDIS behaviour support plans must be lodged with the NDIS Commission.

Registered NDIS providers must submit monthly reports on the use of restrictive practices to the NDIS Commission and report any unplanned or unauthorised use of restrictive practices on NDIS participants as a reportable incident (more information is available at NDIS Commission – Which restrictive practices are regulated and what providers are required to do https://www.ndiscommission.gov.au/regulated-restrictive-practices).

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| **Key points*** The Disability Act provides the framework for the use, authorisation and approval of restrictive practices and compulsory treatment for disability service providers and registered NDIS providers in Victoria.
* The Disability Act establishes the Victorian Senior Practitioner, who is responsible for protecting the rights of persons who are subject to restrictive practices and compulsory treatment and ensuring that appropriate standards are complied with.
* The NDIS Act is the legislation which establishes the NDIS, the NDIS Commission, and the NDIA.
* The NDIS Rules support the NDIS Act and sets conditions for the use of regulated restrictive practices by registered NDIS providers
* The NDIS Commission monitors the use of restrictive practices on NDIS participants, while states and territories remain responsible for authorisation and prohibition.
* Registered NDIS providers must report the use of restrictive practices to the NDIS Commission, including unauthorised use of restrictive practices.
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## 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 a disability or an NDIS participant or a DSOA client.

The Disability Act includes a definition of **regulated restrictive practices,** which **refers** to the definition of regulated restrictive practices in the NDIS Rules. Regulated restrictive practices are seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint. The NDIS Rules defines these practices as:

1. **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.
2. **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.
3. **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.
4. **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.
5. **environmental restraint**, which restrict a person’s free access to all parts of their environment, including items or activities.

### What is detention?

The Disability Act also includes a definition of **detain** which means:

a form of restrictive practice used on a person for the purpose of reducing the risk of violence or the significant risk of serious harm the person presents to another person and includes:

* physically locking a person in any premises; and
* constantly supervising or escorting a person to prevent the person from exercising freedom of movement.

A disability service provider or registered NDIS provider cannot detain a person with a disability unless the requirements of Part 8 of the Disability Act are met.

The detention of an NDIS participant by a registered NDIS provider is considered an environmental restraint under the NDIS Rules. This means that any detention of an NDIS participant must be reported to the NDIS Commission as an environmental restraint and must meet the requirements of the NDIS Commission for the use of restrictive practices.

The making of an STO for an NDIS participant by VCAT constitutes Victorian authorisation of detention (environmental restraint) and any regulated restrictive practices that are contained in the person’s treatment plan[[1]](#footnote-1).

Service providers should contact compulsorytreatment@dffh.vic.gov.au for further information about STOs under Part 8 if they are detaining or proposing to detain a person with a disability.

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| **Key points*** A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with a disability or an NDIS participant or DSOA client.
* Regulated restrictive practices are seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint.
* Supervised treatment is a form of compulsory treatment and is considered an environmental restraint under the NDIS Rules.
* A person must not be detained unless the specific requirements contained in Part 8 of the Disability Act are met.
* The detention of an NDIS participant must be reported to the NDIS Commission as an environmental restraint.
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## Prohibition of restrictive practices in Victoria

The Victorian Senior Practitioner has special powers under section 27(5B) of the Disability Act to prohibit the use of restrictive practices or specified restrictive practices.

These prohibitions prohibit the use of a restrictive practice on:

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

The prohibitions can apply to:

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

Under section 8 of the NDIS Rules, a registered NDIS provider must not use a restrictive practice which has been prohibited by a state or territory in relation to an NDIS participant.

Under section 27(5C) of the Disability Act, when issuing a prohibition, the Victorian Senior Practitioner must provide the notice of prohibition to applicable providers and publish the prohibition on the [Victorian Senior Practitioner’s Directions and Prohibitions webpage](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions) https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions.

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| **Key points*** Service providers must not use a restrictive practice in Victoria if prohibited by the Victorian Senior Practitioner.
* All Prohibitions issued by the Victorian Senior Practitioner are available on the [Victorian Senior Practitioner’s Directions and Prohibitions webpage](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions) https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions.
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## Supervised Treatment Orders

### What is a Supervised Treatment Order?

Supervised treatment is a form of compulsory treatment under Part 8 of the Disability Act.

A Supervised Treatment Order (STO) is a civil order made by VCAT under section 193 of the Disability Act that enables the detention of a person with an intellectual disability who poses a significant risk of serious harm to others. Detention involves physical locking the person in a premise or constantly supervising or escorting the person to prevent freedom of movement.

### When can supervised treatment be used?

Supervised treatment can only be used on a person who poses a significant risk of serious harm to others, which cannot be reduced by less restrictive means, and where it is necessary to detain the person to provide treatment and prevent the risk of serious harm to others.

Under section 191(1) of the Disability Act, an application for a STO can only be made if:

* the person has an intellectual disability; and
* the person is residing in:
	+ a residential service[[2]](#footnote-2); or
	+ a Specialist Disability Accommodation (SDA) enrolled dwelling[[3]](#footnote-3) as an SDA resident under an SDA residency agreement[[4]](#footnote-4); or
	+ accommodation approved by the Victorian Senior Practitioner under section 187 of the Disability Act[[5]](#footnote-5)
* the Victorian Senior Practitioner has approved a treatment plan prepared under section 189 by or on behalf of the applicant;
* the APO considers that the person meets the criteria in section 193(1A) of the Disability Act (see [Chapter 4.3](#_Criteria_for_Supervised)).

### Criteria for Supervised Treatment

For a STO to be made by VCAT, the person subject to the order must first meet specific criteria outlined under section 193(1A) of the Disability Act. These criteria are outlined below:

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| **Disability Act 2006 – section 193(1A)**VCAT can only make an STO if VCAT is satisfied that:* the person has previously exhibited a pattern of violent or dangerous behaviour causing serious harm to another person or exposing another person to a significant risk of serious harm; and
* there is significant risk of serious harm to another person which cannot be substantially reduced by using less restrictive means; and
* the services to be provided to the person in accordance with the treatment plan will be of benefit to the person and substantially reduce the significant risk of serious harm to another person; and
* the person is unable or unwilling to consent to voluntarily complying with a treatment plan to substantially reduce the significant risk of serious harm to another person; or
* it is necessary to detain the person to ensure compliance with the treatment plan and prevent a significant risk of serious harm to another person.
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### Which providers can use Supervised Treatment?

If a person is subject to an STO, only a disability service provider or registered NDIS provider may provide disability services or NDIS services to the person. All service providers that are delivering services to a person subject to a supervised treatment order must be:

* identified in the treatment plan; and
* registered NDIS providers or disability service providers; and
* have an APO approved by the Victorian Senior Practitioner.

### Who can apply for a Supervised Treatment Order?

#### Primary Service Provider

An APO for a primary service provider may apply to VCAT for a supervised treatment order to be made in respect of a person, if the person meets the criteria under section 191(1)(a) to (c) and section 193(1A).

Under section 3C(1) of the Disability Act, a primary service provider is defined as the disability service provider or registered NDIS provider providing the majority of support to the person within the person's accommodation. In cases where a person receives an equal amount of support within their accommodation from two or more service providers, the Victorian Senior Practitioner may appoint a primary service provider from amongst those providers (section 3C(2)).

Section 3C(3) of the Disability Act provides that following an STO being made, the primary service provider for the person is the disability service provider or registered NDIS provider that appointed the APO stated in the order as being responsible for implementation. This applies regardless of whether the primary service provider continues to provide the majority of the support to the person.

Service providers are also encouraged to contact the Victorian Senior Practitioner’s office on **9096 8427** if they are considering making an application for an STO.

#### Victorian Senior Practitioner

The Victorian Senior Practitioner has powers to direct an APO to apply to VCAT for an STO to be made for a person with an intellectual disability, if the Victorian Senior Practitioner considers the person is being detained to prevent a significant risk of serious harm to others without an STO being in place and meets all criteria set out in section 191(1)(a) to (c) and section 193(1A) (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)).

#### Public Advocate

The Public Advocate has powers to apply to VCAT for an order directing the APO (APO) to make an application for an STO, if the Public Advocate considers a person is being detained to prevent a serious risk of harm to others without an STO. After receiving this application, VCAT may order the APO to make an application for an STO within 28 days of the date that the order is made, and the Public Advocate is to be party to the application.

The Public Advocate can also raise any concerns regarding STOs directly with the Victorian Senior Practitioner.

### How long can supervised treatment be used?

An STO can be made for a maximum period of one year. However, the APO can apply for another STO if they believe the person continues to meet the criteria under section 191(1)(a) to (c) and section 193(1A) (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)). Sixty days before the expiry of an STO, the APO must notify relevant parties of whether they intend to apply for another STO (see [Chapter 11](#_Expiry_of_a) for more information on the expiry of an STO).

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| **Key points*** An STO is a civil order made by VCAT under s193 of the Disability Act to enable the detention of a person with an intellectual disability who poses a significant risk of serious harm to others.
* An APO for a primary service provider may apply to VCAT for an STO to be made in respect of a person if the person meets the criteria under section 191(1)(a) to (c) and section 193(1A) of the Disability Act.
* The Victorian Senior Practitioner can direct a service provider to apply for an STO.
* The Public Advocate can apply to VCAT for an order directing the APO to make an application for an STO.
* An STO can only be made for a maximum of 12 months, but additional applications can be made.
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# How to apply for a Supervised Treatment Order (STO)

## Application to use supervised treatment

### Step 1: Appoint an APO

A disability service provider or a registered NDIS provider who intends to use restrictive practices on a person under Part 7 or supervised treatment or restrictive practices on a person under Part 8 of the Disability Act, must appoint one or more APOs. The service provider must then apply for approval of the appointment for the proposed APO from the Victorian Senior Practitioner.

The application is submitted through the Restrictive Intervention Data System (RIDS) and must include the name and qualifications of the proposed APO, and any other information requested by the Victorian Senior Practitioner. The Victorian Senior Practitioner may require additional information for the appointment of APOs for supervised treatment.

More information, including an application guide is available at the [Information for Authorised Program Officers webpage](https://www.dffh.vic.gov.au/information-authorised-program-officers) https://www.dffh.vic.gov.au/information-authorised-program-officers.

The Victorian Senior Practitioner may issue directions to registered NDIS providers in relation to APOs. These directions may include:

* minimum qualifications required to be held by persons who are proposed APOs;
* training to be completed by APOs; and
* any other matter in relation to APOs.

These directions will be provided directly to registered disability service providers and NDIS providers and published online. The directions and prohibitions of the Victorian Senior Practitioner are available at the [Victorian Senior Practitioner’s Directions and Prohibitions webpage](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions) https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions.

The Victorian Senior Practitioner may also direct a disability service provider or a registered NDIS provider to appoint an APO.

On commencement of amendments to Part 6A of the Disability Act, for those disability service providers who were previously approved by the Secretary of the Department of Families, Fairness and Housing (the Secretary) as a disability service provider who could use supervised treatment under Part 8, Division 5 of the Disability Act, the existing appointments of their APOs as approved by the Secretary will be recognised by the Victorian Senior Practitioner.[[6]](#footnote-6)

The Victorian Senior Practitioner must keep a register of appointed APOs, including their names and qualifications.

#### Victorian Senior Practitioner may approve, refuse or revoke appointment of an APO

The Victorian Senior Practitioner may approve the proposed appointment of an APO subject to any conditions the Victorian Senior Practitioner considers appropriate. Service providers will be notified of approval of the appointment by email.

The Victorian Senior Practitioner may also refuse or revoke the approval of an appointment of an APO 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 service provider explaining:

* the proposed decision and the reasons for the proposed decision; and
* that the service provider may make a written submission within 14 days after the notice is given.

Any submissions made by the service provider within the 14-day timeframe must be considered before a decision is made by the Victorian Senior Practitioner.

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

An application can be made to VCAT by a service provider for a review of a decision of the Victorian Senior Practitioner to refuse or revoke the appointment of an APO. An application by a service provider must be made within 28 days after the **later** of:

* the day on which the decision was made; or
* if the service provider requests a statement of reasons, the day a statement of reasons is given to the service provider, or the service provider is informed that a statement of reasons will not be given.

#### Additional information for registered NDIS providers

The Victorian Senior Practitioner must notify the NDIS Commission of a refusal to approve, or revocation of, the appointment of an APO for a registered NDIS provider.

### Step 2: Assessment Order – Victorian Senior Practitioner

**Note: if there is not a significant and imminent risk of harm requiring detention to enable the urgent development of a treatment plan, please skip this step and go to** [**Step 3**](#_STEP_3:_Prepare)**.**

Under section 199 of the Disability Act, the Victorian Senior Practitioner may make an Assessment Order to allow the detention of a person with an intellectual disability, to prevent a **significant and imminent risk of harm** to others to enable relevant assessments to be completed and enable the urgent development of a treatment plan to be prepared for the person.

An Assessment Order lasts for 28 days and cannot be extended or renewed. Only one application can be made in respect of a person.

An APO can only make an application for an Assessment Order for a person if:

* the person has an intellectual disability;
* the person is residing in:
	+ a residential service; or
	+ an SDA enrolled dwelling as an SDA resident under an SDA residency agreement; or
	+ accommodation approved by the Senior Practitioner under section 187; and
* it is necessary to detain the person to prevent a significant and imminent risk of harm to another person; and
* an assessment needs to be undertaken to enable the urgent development of a treatment plan for the purposes of making an application for an STO.

If the person meets the criteria above, the APO may apply to the Victorian Senior Practitioner for an Assessment Order. The Victorian Senior Practitioner’s office can be contacted to provide advice on submitting applications at compulsorytreatment@dffh.vic.gov.au.

The Victorian Senior Practitioner may make an Assessment Order if satisfied that the above specific conditions are met. The Victorian Senior Practitioner will write to the person subject to the order within 72 hours outlining the details of the order and how they can apply for a review by VCAT under section 199A of the Disability Act.

The Victorian Senior Practitioner must also notify the Public Advocate, and if the order relates to an NDIS participant, the NDIS Commissioner, that an Assessment Order has been made.

If the STO application cannot be heard within 28 days of the Assessment Order and it is necessary for the person to continue to be detained, the APO may only do so if the APO applies for an interim STO and one is granted (see [Chapter 5.5](#_Step_5:_Apply)).

#### Additional information for registered NDIS providers

The making of an Assessment Order by the Victorian Senior Practitioner constitutes Victorian authorisation of detention (an environmental restraint) for an NDIS participant until the Assessment Order expires or is replaced by an STO (if required). Registered NDIS providers must continue to meet any reporting requirements of the NDIS Commission when an Assessment Order is in place.

### Step 3: Prepare a treatment plan

The primary service provider must prepare or arrange for a treatment plan to be prepared, if they are seeking to make an application for an STO. The treatment plan outlines the scope of treatment to be provided to the person to substantially reduce the significant risk of serious harm to others.

Section 189(1) of the Disability Act requires the treatment plan to include provisions that:

* specify the treatment that will be provided to the person during the period of the supervised treatment order; and
* state the expected benefit to the person of the treatment; and
* specify any restrictive practices to be used; and
* set out the details of each disability service provider and registered NDIS provider that will be providing services to the person and the nature of those services; and
* state the level of supervision which will be required to ensure that the person participates in the treatment; and
* set out a proposed process for transition of the person to lower levels of supervision and, if appropriate, to living in the community without a supervised treatment order being required.

The APO must authorise the treatment plan and submit an electronic treatment plan on RIDS.[[7]](#footnote-7)

Supporting documents such as risk assessments should also be submitted on RIDS. If approved, a **Treatment Plan Certificate** will be provided by the Victorian Senior Practitioner and will specify that the person:

* has an intellectual disability;
* is either:
	+ receiving residential services; or
	+ an SDA resident living in an SDA enrolled property under an SDA residency agreement; or
	+ living in accommodation approved by the Victorian Senior Practitioner under section 187; and
* poses a significant risk of serious harm to others that cannot be reduced by less restrictive means than a supervised treatment order
* has a treatment plan approved by the Victorian Senior Practitioner.

If the person is living in accommodation approved by the Victorian Senior Practitioner under section 187, the application must include a copy of the written approval.

A Treatment Plan Certificate from the Victorian Senior Practitioner is required for the APO to apply to VCAT for an STO.

#### Service provider must provide treatment plan to the person

Prior to applying for an STO, the primary service provider must ensure that the treatment plan approved by the Victorian Senior Practitioner is provided to the person and the person’s guardian (if applicable). The treatment plan must be explained to the person and their guardian and must be provided in a mode or form of communication the person is most likely to understand (in line with the information provision requirements of section 7 of the Disability Act).

##### Additional information for registered NDIS providers

The Victorian Senior Practitioner must provide written notice to the NDIS Commissioner that a Treatment Plan Certificate has been given for an NDIS participant.

Where the primary service provider for the NDIS participant is a registered NDIS provider, the treatment plan must meet NDIS requirements including being prepared by a registered NDIS behaviour support practitioner, and being reported to the NDIS Commission in line with the NDIS Rules*.* The use of all regulated restrictive practices (seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint) must be included in the treatment plan.

Where the registered NDIS provider is a secondary provider and the treatment plan is developed or arranged by a disability service provider and does not meet the requirements of the NDIS Rules, a separate NDIS behaviour support plan must be developed for the use of restrictive practices by the registered NDIS provider. The behaviour support plan would need to meet the authorisation requirements for restrictive practices in Part 7 of the Disability Act.

The treatment plan is not considered finalised and able to be lodged with the NDIS Commission until the Victorian Senior Practitioner has provided a Treatment Plan Certificate and VCAT has made the STO (as VCAT may request a variation prior to the treatment plan).

### Step 4: Apply to VCAT for a Supervised Treatment Order

If the APO is satisfied that the person with an intellectual disability meets the criteria under section 191(1)(a) to (c) and section 193(1A) of the Disability Act (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)), and the person needs to be detained to prevent a significant risk of serious harm to others, the APO may apply to VCAT for an STO under section 191.[[8]](#footnote-8)

The application for an STO must include a treatment plan and Treatment Plan Certificate from the Victorian Senior Practitioner. The application should also include any risk assessment reviewed by the Victorian Senior Practitioner that informed the Treatment Plan Certificate.

After an application for an STO is made the APO must notify the person subject to the proposed STO, the Victorian Senior Practitioner, and the Public Advocate. The person (for whom the application is proposed to be made) should also be supported to access legal representation.

After receiving an application for an STO from the APO, VCAT can only make an STO if satisfied that the person meets the following criteria under section 191(1):

1. the person has an intellectual disability; and
2. the person is residing in:
	* + a residential service; or
		+ an SDA dwelling as an SDA resident under an SDA residency agreement; or
		+ accommodation approved by the Senior Practitioner under section 187; and
3. the Victorian Senior Practitioner has approved a treatment plan.

VCAT must also be satisfied that the person meets the criteria under section 193(1A) of the Disability Act (see [Chapter 4.3](#_Criteria_for_Supervised)) and that the disability service provider or registered NDIS provider can implement the treatment plan.

**Note:** The making of an STO for an NDIS participant by VCAT constitutes Victorian authorisation of detention (environmental restraint) and any regulated restrictive practices contained in the treatment plan.

#### VCAT processes

In determining whether an STO should be made, VCAT can consider all information provided through the application including the risk assessment. VCAT may also request additional assessments (except an assessment that a person has an intellectual disability) and consider material put before VCAT at a previous proceeding, if VCAT considers it desirable to do so.

The APO and the person (for whom the application is proposed to be made) are parties to VCAT hearings, The Public Advocate and Victorian Senior Practitioner may apply to be joined as parties to a proceeding and VCAT must join them to proceedings if requested.

### Step 5: Apply for interim Supervised Treatment Order (if required)

In some cases, the APO may request that VCAT make an interim STO that will be in effect until the final determination of an application for an STO. An interim STO can only be made under section 192 of the Disability Act if:

* an application for an STO has been made under section 191 of the Disability Act (see [Chapter 5.4](#_Step_4:_Apply).); and
* the APO has requested VCAT to make an interim STO; and
* VCAT is satisfied that it is necessary for the person to be detained to ensure compliance with the treatment plan to prevent a significant risk of serious harm to others.

To request an interim STO for a person, a treatment plan must be developed with a Treatment Plan Certificate provided by the Victorian Senior Practitioner.

The APO may contact VCAT and make an application under section 192, stating the date the application was made under section 191 of the Disability Act, and the dates of the Treatment Plan and the Treatment Plan Certificate.

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| **Key points*** A service provider who intends to use restrictive practices on a person under Part 7 or compulsory treatment or restrictive practices under Part 8 of the Disability Act, must seek approval from the Victorian Senior Practitioner to appoint one or more APOs.
* The Victorian Senior Practitioner may make an Assessment Order to allow the immediate detention of a person with an intellectual disability to enable a treatment plan to be prepared. An Assessment Order lasts for 28 days and cannot be extended or renewed. Only one application can be made in respect of a person.
* An APO for a primary service provider may make an application under section 191(1) to VCAT for an STO.
* STO applications require a treatment plan and Treatment Plan Certificate from the Victorian Senior Practitioner.
* VCAT can only make an STO if the person meets the criteria under section 191(1)(a) to (c) and section 193(1A) (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised))
* For NDIS participants, the making of an STO by VCAT constitutes authorisation of the detention (environmental restraint) and any regulated restrictive practices contained in the treatment plan (if developed in line with the NDIS Rules).
* If required, an APO can make an application to VCAT for an interim STO to enable the detention of a person prior to an STO being approved, if an application for an STO has already been made.
 |

## Implementing a Supervised Treatment Order

An STO must:

* state that the APO from the person’s primary service provider who applied for the STO is responsible for implementation of the STO
* require the person to reside in accommodation outlined in the Treatment Plan certificate.
* refer to the treatment plan which must be attached to the STO.
* specify the period for which the STO is to continue to be in force, not exceeding 12 months.

The STO may specify the conditions to which the person is subject; require the person to participate in treatment specified in the treatment plan or the STO; or state the intervals at which the STO is to be reviewed.

The Victorian Senior Practitioner is responsible for supervising the implementation of an STO (section 195(1) of the Disability Act). The APO (APO) from the persons’ primary service provider who applied for the STO is responsible for implementation of the STO (section 193(3)). The APOs of all service providers, both primary and secondary providers, listed in the treatment plan must ensure they implement any part of the treatment plan that applies to their service (section 194C).

Where secondary providers are providing services to a person under an STO, the APO from the primary service provider must notify all other service providers listed in the treatment plan of the conditions and requirements of the STO.

If the APO from the primary service provider is aware that another service provider providing support as part of the STO is not following the conditions of the STO or is enabling the person subject to the order to breach the STO by allowing the person to engage in activities inconsistent with the STO, the APO from the primary service provider must report the matter to the Victorian Senior Practitioner.

The APO who applied for the STO, must provide a report on the implementation of the STO to the Victorian Senior Practitioner.

The Implementation Report must contain the progress of the treatment outlined in the treatment plan and any additional areas which the Victorian Senior Practitioner or VCAT has directed to be completed. The Victorian Senior Practitioner has provided a template to guide the contents of the Implementation report.[[9]](#footnote-9)

The Implementation Report must be provided to the Victorian Senior Practitioner through RIDS at intervals of no more than six months or at intervals directed by the Victorian Senior Practitioner. The Implementation Report dates are outlined in the Treatment Plan Certificate.

The APOs of secondary providers listed in the treatment plan must report on the implementation of the treatment plan at intervals and in the format determined by the Senior Practitioner.

All providers listed in the treatment plan must report on the use of restrictive practices on the person subject to the treatment plan at intervals of no more than six months or at intervals directed by the Victorian Senior Practitioner.

##### Additional information for registered NDIS providers

The use of regulated restrictive practices (seclusion, chemical restraint, mechanical restraint, physical restraint, or environmental restraint which includes detention) included in a treatment plan or NDIS behaviour support plan must be reported to the NDIS Commission in line with the NDIS (Restrictive Practices and Behaviour Support) Rules.[[10]](#footnote-10)

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| **Key points*** An APO from the primary service provider is responsible for the implementation of the STO and must provide reports to the Victorian Senior Practitioner at intervals of no more than six months or as specified by the Victorian Senior Practitioner.
* Secondary providers listed in the treatment plan must report to the Senior Practitioner on implementation at intervals determined by the Victorian Senior Practitioner.
* The Victorian Senior Practitioner is responsible for supervising the implementation of the STO
* The APO of the primary provider is responsible for ensuring that all other service providers are aware of the conditions and requirements of the STO.
* The use of regulated restrictive practices included in the treatment plan or NDIS behaviour support plan for an NDIS participant must be reported to the NDIS Commission.
 |

## Use of restrictive practices on people subject to supervised treatment

Part 8, Division 6 of the Disability Act provides requirements for the use of restrictive practices when a person has a treatment plan. The Division protects the rights of people by ensuring that restrictive practices are only used if included in a treatment plan and the requirements of the Division are met.

The only exception to this requirement is where a treatment plan has been prepared by a disability service provider that does not meet the requirements of the NDIS Rules. In this circumstance, an NDIS provider providing services under the STO would need to have a separate NDIS behaviour support plan for the use of restrictive practices.

Section 201B(1) outlines that a disability service provider or a registered NDIS provider must not use a regulated restrictive practice on a person subject to an STO, unless:

1. there is a treatment plan in force for that person; and
2. the treatment plan includes the restrictive practice; and
3. if the restrictive practice is a regulated restrictive practice, section 201D and section 201E are complied with.

Section 201D outlines that regulated restrictive practices must not be used by a disability service provider or a registered NDIS provider on a person unless:

* the use of regulated restrictive practices is necessary to prevent the person from causing physical harm to themselves or any other person; or
* the use and form of regulated restrictive practices is the option which is the least restrictive of the person as is possible in the circumstances; and
* the use and form of regulated restrictive practice is included in, and is in accordance with the person’s treatment plan; and
* the use of the regulated restrictive practice is not applied for longer than necessary; and
* if seclusion is used the person is provided with appropriate bedding and clothing, food and drink and adequate toilet arrangements and access to adequate heating and cooling; and
* any other requirements imposed by the Victorian Senior Practitioner are complied with;

Section 201E outlines that the person who is preparing the treatment plan must include provisions in the treatment plan which:

1. state the circumstances in which the proposed form of the regulated restrictive practice is to be used for treatment;
2. explain how the use of the regulated restrictive practice will be of benefit to the person;
3. demonstrate that the use of the regulated restrictive practice is the option which is the least restrictive of the person as is possible in the circumstances.

The person who is preparing the treatment plan must, in preparing the plan, consult with:

1. the person for whom the treatment plan is prepared;
2. if the person for whom the treatment plan is prepared has a guardian, the guardian;
3. if other disability service providers provide disability services to the person for whom the treatment plan is prepared, a representative of each disability service provider;

(ca) if any registered NDIS providers provide services under the NDIS to the person for whom the treatment plan is prepared, a representative of each registered NDIS provider;

1. any other person that the person who is preparing the treatment plan considers integral to the development of the treatment plan.

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| **Key point*** Disability service providers and a registered NDIS providers must not use a restrictive practice on a person subject to an STO unless in accordance with the treatment plan, Disability Act and, where appropriate, NDIS Act requirements.
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## Applying for a Material Change

When VCAT makes an STO, VCAT will include the treatment plan approved by the Victorian Senior Practitioner in the STO. A Material Change is where the treatment plan no longer reflects the terms that were approved by VCAT. To be material, the change must be ‘significant and relevant’, affecting an important part of the treatment plan and the rights of the person subject to the STO. Material Changes to a treatment plan require approval **before** the change is enacted.

Material Changes can relate to:

* increases in supervision or restriction such as the addition of a restraint or increases to supervision that is not in the approved treatment plan,
* changes that do not affect levels of supervision or restriction such as significant changes to living arrangements or the treatment provided, or
* a change to the primary service provider[[11]](#footnote-11), or
* decreases in supervision or restriction beyond what is in the approved treatment plan, for example if the person has progressed through all their step downs in the plan sooner than anticipated.

Material changes can be either planned or are in response to an emergency.

The APO should contact the Victorian Senior Practitioner immediately should a material change be either planned to be enacted or has been enacted due to an emergency[[12]](#footnote-12).

A Material Change to a treatment plan cannot be made unless the change is approved by the Victorian Senior Practitioner. **The Victorian Senior Practitioner cannot approve planned material changes that increase restriction or supervision** beyond what is stated in the approved treatment plan. Only VCAT can approve this type of material change (see [Chapter 8.2](#_Emergency_Material_Change)).

### Planned Material Change

The process for material changes in non-emergency situations will depend on whether the planned material change will result in an increase to the level of supervision or restriction of the person subject to the STO.

#### Planned material change where there is no increase to the level of supervision or restriction

A Material Change that **does not result in an increase in supervision or restriction** to a treatment plan cannot be made unless the change is approved by the Victorian Senior Practitioner.

The Victorian Senior Practitioner **must not** approve a Material Change to a treatment plan where the change relates to an **increase** in the level of supervision or restriction **unless** in an emergency (refer to [Chapter 8.2](#_Emergency_Material_Change)).

#### Planned Material change where there is an increase in the level of supervision or restriction

If there is no emergency and an **increase** in the level of restriction or supervision is necessary (Planned Material Change), the APO must apply to VCAT for a variation to the treatment plan.

Applications for a Planned Material Change are submitted on RIDS[[13]](#footnote-13) and include details of the proposed changes. The APO and the Victorian Senior Practitioner need to both agree on the proposed changes before an application form is submitted to VCAT. VCAT must approve the Planned Material Change before changes can be made to the treatment plan if it relates to the increase of restriction or supervision. (If the proposed changes relate to the use of regulated restrictive practices by a registered NDIS provider - see [Chapter 8.2](#_Emergency_Material_Change)).

### Emergency Material Change

In an emergency, an application to VCAT may not be possible, and approval must be sought as soon as possible. An emergency means there is an imminent risk of the person causing serious physical harm to another person and it is necessary to increase the level of supervision or restriction to prevent that risk.

If the Material Change relates to an **increase** in the level of supervision or restriction and it is an emergency, the Victorian Senior Practitioner may approve the change to the person’s treatment plan.

Following approval, if the Supervised Treatment Order was obtained by an APO for a disability service provider, the Victorian Senior Practitioner must apply to VCAT for a variation of the treatment plan.

#### Additional information for registered NDIS providers

If the Supervised Treatment Order was obtained by an APO for a registered NDIS provider, for either an Emergency Material Change or a Planned Material Change, any changes relating to regulated restrictive practices in the treatment plan must be madeby an NDIS behaviour support practitioner and meet the requirements of the NDIS Rules.

After granting approval for an Emergency Material Change, the Victorian Senior Practitioner must as soon as possible:

* if the increase does not relate to a regulated restrictive practice, apply for a variation of the treatment plan;
* if the increase relates to a regulated restrictive practice, obtain a review of the NDIS participant’s treatment plan, or request that the APO obtain a review.
* If after review of the NDIS participant’s NDIS treatment plan or behaviour support plan, a material change is made to that plan relating to the use of a regulated restrictive practice, apply to VCAT for a review of the STO.

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| **Key points*** A Material Change to a treatment plan cannot be made unless the change is approved by the Victorian Senior Practitioner
* A Material Change is a change that is ‘significant and relevant’, affecting an important part of the treatment plan and the rights of the person subject to the STO
* The APO should contact the Victorian Senior Practitioner immediately should a material change be either planned to be enacted or has been enacted due to an emergency
* Only VCAT can approve material changes that increase restriction or supervision, unless in emergency situations
* Any changes relating to regulated restrictive practices in a treatment plan for an NDIS participant must be made by an NDIS behaviour support practitioner.
 |

## Review, variation or revocation of a Supervised Treatment Order or treatment plan

Under section 196 of the Disability Act, an application to VCAT can be made by the Victorian Senior Practitioner, the APO for a primary service provider, or the person subject to the STO, for a review, variation, or revocation of an STO or treatment plan.

The Victorian Senior Practitioner and the APO must notify the Public Advocate that an application has been made for the review, variation, or revocation of an STO or a treatment plan.

If the Public Advocate considers that an STO should be reviewed by VCAT, the Public Advocate may request the Victorian Senior Practitioner to make an application for review. If the Victorian Senior Practitioner declines, then the Public Advocate may make an application for review by VCAT.

### Review

For an application for a review of an STO or treatment plan, if VCAT is satisfied that the matters specified in section 191(1)(a) to (c) and section 193(1A) of the Disability Act (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)) continue to apply:

The person:

1. has an intellectual disability;
2. is residing in:
	1. a residential service[[14]](#footnote-14); or
	2. a Specialist Disability Accommodation (SDA) dwelling as an SDA resident under an SDA residency agreement[[15]](#footnote-15); or
	3. accommodation approved by the Victorian Senior Practitioner under section 187 of the Disability Act;
3. has a treatment plan approved by the Victorian Senior Practitioner; and
4. meets the criteria under section 191(1)(a) to (c) and section 193(1A) of the Disability Act (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)).

Then VCAT may:

1. confirm the STO or treatment plan;
2. confirm the STO or treatment plan subject to any variations that VCAT considers appropriate (except a variation relating to regulated restrictive practices for an NDIS participant or where a variation would result in the NDIS participant’s treatment plan being unable to be implemented.)

If VCAT is not satisfied that the matters specified in section 191(1)(a) to (c) and section 193(1A) continue to apply (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)), VCAT may revoke the STO.

### Variation

For an application for a variation of the STO or treatment plan, if VCAT is satisfied that the variation is appropriate, VCAT may:

* confirm the variation to the STO or treatment plan;
* confirm the variation to the STO or treatment plan subject to any further variation that VCAT considers appropriate.

If VCAT is not satisfied that the variation is appropriate, VCAT may reject the application for a variation.

VCAT must not confirm the variation of an STO or treatment plan unless:

* satisfied that the disability service provider or registered NDIS provider can implement the variation of the STO or treatment plan;
* if the STO is for an NDIS participant, the proposed variation does not relate to any regulated restrictive practices and would not result in the NDIS participant's treatment plan being unable to be implemented;
* if the proposed variation is to change the primary service provider stated in the STO that the proposed primary service provider meets the requirements outlined in section 3C(1) & (2) (see [Chapter 4.5](#_Who_can_apply))

### Revocation

Before applying for revocation, evidence should be provided to VCAT to illustrate which criteria the person no longer meets under section 191(1)(a) to (c) and/or section 193(1A) of the Disability Act (see [Chapter 4.2](#_When_can_supervised) and [Chapter 4.3](#_Criteria_for_Supervised)). The submission should also contain what the plan for the person will look like post revocation.

For an application to revoke an STO, if VCAT is satisfied that the matters specified in section 191(1)(a)-(c) and section 193(1A) no longer apply to the person, then VCAT may revoke the STO.

If VCAT is satisfied that the matters specified in section 191(1)(a) to (c) and section 193(1A) continue to apply, VCAT may:

* confirm the STO; or
* confirm the STO subject to any variations that VCAT considers appropriate (except a variation relating to regulated restrictive practices for an NDIS participant which would result in the NDIS participant’s treatment plan being unable to be implemented.)

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| **Key points*** Any decision regarding review, variation or revocation of an STO or treatment plan must be made by VCAT
* An application can be made by the Victorian Senior Practitioner, the APO, or the person subject to the STO
* The Victorian Senior Practitioner and the APO must notify the Public Advocate when an application of this type has been made.
 |

## Rehearing an application for supervised treatment

The Victorian Senior Practitioner, APO, or the person subject to an STO may apply to VCAT for a rehearing of any determinations made regarding STOs. This includes where VCAT makes a decision to grant an STO, decision to vary or revoke an STO, or a decision on an application regarding the expiry of an STO.

An application for rehearing, or for leave to apply for a rehearing, must be made within 28 days after the day on which VCAT made the determination regarding an STO.

Making an application for rehearing does not affect the operation of any STO unless VCAT makes an order stating the operation of an STO is until the rehearing has concluded.

In determining a rehearing, VCAT may:

* affirm the determination of VCAT at first instance;
* vary the determination of VCAT at first instance;
* set aside the determination of VCAT at first instance and make another determination in substitution for it.

## Expiry of a Supervised Treatment Order

Prior to expiry of an STO the APO of the primary service provider must determine whether the person still meets the criteria for an STO and whether a new application is required. No less than 60 days before the STO expires, an APO for the primary service provider must notify the following people of the expiry of the STO:

* the person who is subject to the current STO;
* the Public Advocate;
* the Victorian Senior Practitioner;
* any secondary service provider specified in the treatment plan under the current STO.

The APO must include the following information when they make the notification:

* the expiry date of the supervised treatment order; and
* whether the APO intends to apply under section 191(1) for another STO to be made in respect of the person who is subject to the STO; and;
* if the APO is not eligible to apply for another STO because the disability service provider or registered NDIS provider that appointed them will not be the primary service provider, whether the APO considers that an STO is necessary.

If the Victorian Senior Practitioner considers that a new STO is required as the person continues to present a significant risk of serious harm to another person, they may direct the APO of the primary service provider to make an application.

The Public Advocate may apply to VCAT for an order directing the APO to make an application for an STO if they consider the person continues to present a significant risk of serious harm to another person.

## Notifying the NDIS Quality and Safeguards Commission

**For NDIS participants** subject to an STO obtained by the APO of a registered NDIS provider, the Victorian Senior Practitioner is required under section 196B of the Disability Act to give written notice to the NDIS Commissioner when:

* VCAT makes an interim STO or an STO;
* the Victorian Senior Practitioner approves a material change made to a treatment plan;
* VCAT confirms the variation to a treatment plan; or
* the STO is varied, revoked, or when it expires.

The Victorian Senior Practitioner is also required under section 199B to provide written notice to the NDIS Commission that an Assessment Order is made or revoked in relation to an NDIS participant.

## Apprehension

If a person subject to an STO is absent without approval from the accommodation that the person is required to reside in under the order, the person may be apprehended at any time and returned to their residential service or SDA enrolled dwelling by:

1. a police officer; or
2. the person in charge of the disability service provider providing disability services at the accommodation; or
3. the person in charge of the registered NDIS provider providing daily independent living supports at the accommodation; or
4. a person employed or engaged by the registered NDIS provider or the disability service provider and authorised by them to apprehend the person subject to the STO.

A person is considered absent without approval if the absence is contrary to conditions specified in the STO, the absence breaches the treatment plan, or it requires the prior approval of the APO and no approval was granted.

## Glossary

| Term | Description |
| --- | --- |
| Assessment Order | An order made by VCAT to enable a person to be detained for the purposes of a treatment plan to be prepared for that person |
| APO (APO) | A person appointed as an APO by the service provider and whose appointment is approved by the Victorian Senior Practitioner |
| Compulsory treatment | Treatment of a person who is: admitted to a residential treatment facility or residential institution under an order specified in section 152(2); or subject to a supervised treatment order under section 193 of the *Disability Act 2006* |
| Detain | A form of restrictive practice used on a person for the purpose of reducing the risk of violence or the significant risk of serious harm the person presents to another person and includes physically locking a person in any premises and constantly supervising or escorting the person to prevent the person from exercising freedom of movement |
| Disability service | A disability service funded by the State under the *Disability Act 2006* |
| Disability service provider | Either the Secretary to the Department of Families, Fairness and Housing; or a person or body registered on the register of disability service providers under section 46 of the *Disability Act 2006* |
| DSOA Client | A Commonwealth Disability Support for Older Australians program client |
| Environmental restraint | To restrict a person’s free access to all parts of their environment, including items or activities |
| Intellectual disability | A person over the age of 5 years with the concurrent existence of (a) significant sub-average general intellectual functioning and (b) significant deficits in adaptive behaviour, each of which became manifest before the age of 18 years |
| 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 |
| NDIS Rules | The National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018  |
| NDIS Act | The *National Disability Insurance Scheme Act 2013*  |
| NDIS behaviour support plan | A plan developed by an NDIS behaviour support practitioner for an NDIS participant |
| NDIS behaviour support practitioner | A person whom the NDIS Commissioner considers is 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. |
| NDIS provider | A person or entity who provides NDIS funded supports or services to NDIS participants |
| NDIS service | An NDIS service funded by the NDIA under the *National Disability Insurance Scheme Act 2013* |
| 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 |
| Primary Service Provider | The disability service provider or registered NDIS provider who has made an application for a Supervised Treatment Order and provides the majority of support to the person within the person’s accommodation. Following a Supervised Treatment Order being made the primary service provider is the provider stated in the Supervised Treatment Order as being responsible for the implementation of the order, regardless of whether they continue to provide the majority of the support to the person.  |
| Psychosocial disability  | An impairment attributable to a psychiatric condition which meets the disability requirements of section 24 of the *National Disability Insurance Scheme Act 2013*  |
| Registered NDIS provider | A person or entity registered under section 73E of the *National Disability Insurance Scheme Act 2013.* |
| Regulated restrictive practice | A restrictive practice that is or it involves seclusion, chemical restraint, mechanical restraint, physical restraint or environmental restraint |
| Restrictive practices | Any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with a disability or of an NDIS participant |
| SDA | Specialist Disability Accommodation  |
| SDA enrolled dwelling | A permanent dwelling that provides long term accommodation for one or more SDA residents and is enrolled as an SDA enrolled dwelling under the NDIS (Specialist Disability Accommodation) Rules  |
| SDA residency agreement | An agreement entered into or established under section 498F of the *Residential Tenancies Act 1997* between an SDA provider and an SDA resident in respect of an SDA enrolled dwelling |
| 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 |
| Service Provider  | The disability service provider or registered NDIS provider who is either the primary service provider responsible for implementation of the STO, or a secondary provider listed in the treatment plan for the STO. |
| STO (Supervised Treatment Order) | A civil order made by VCAT in respect of a person with an intellectual disability under section 193 of the *Disability Act 2006* |
| Supervised treatment | Treatment used on a person with an intellectual disability under a supervised treatment order |
| Treatment plan | A plan for the use of treatment on a person with a disability or an NDIS participant prepared under Part 8 of the *Disability Act 2006* |
| VCAT | The Victorian Civil and Administrative Tribunal |
| Victorian Senior Practitioner | The person appointed as the Senior Practitioner under section 23 of the *Disability Act 2006* |

##

## Appendix

### Appendix A – Disability service providers applying for a Supervised Treatment Order



#### Text equivalent of Appendix A flowchart – Disability service providers applying for a Supervised Treatment Order

* Disability service provider may apply to use supervised treatment on a person.
* The person must have an intellectual disability and reside in either a residential service, or accommodation approved by the Victorian Senior Practitioner (VSP) under section 187.
* The person must meet the criteria under section 191(1)(a) to (c) and section 193(1A) of the Disability Act (see [Chapter 5.3](#_STEP_3:_Prepare)).
* The disability service provider must be approved to use supervised treatment, with at least one appointed APO who has been approved by the VSP.
* APO may request an Assessment Order from the VSP under section 199 **only if** there is a significant and imminent risk of harm requiring detention to enable assessments to be undertaken to enable an urgent development of a treatment plan.
* Prepare a treatment plan under section 189(1) that includes: treatment to be provided to the person; the benefit to the person; any restrictive practices to be used; the required level of supervision; transition process to lower levels of supervision and living without the STO.
* Ensure the treatment plan is approved by the VSP and a treatment plan certificate is provided. The treatment plan must be explained to the person prior to an application being made.
* APO to apply to VCAT under section 191(1) for an STO and provide the treatment plan and approval certificate from the VSP. Notify the person who will be subject to the STO and the Public Advocate of the application.
* After submitting an application for the STO, an APO can request VCAT to make an interim STO under section 192 **only if** it is necessary to detain the person to prevent a significant risk of serious harm to others.
* If satisfied the criteria in section 191(1) and section 193(1A) apply, VCAT will make the STO under section 193 of the Disability Act.
* The APO must provide a report on the implementation of the STO to the VSP of intervals, not exceeding 6 month, specified by the VSP.

### Appendix B – Registered NDIS providers applying for a Supervised Treatment Order



#### Text equivalent of Appendix B flowchart – Registered NDIS providers applying for a Supervised Treatment Order

* Registered NDIS provider may apply to use supervised treatment on a person.
* The person must be an NDIS participant with an intellectual disability residing in an SDA enrolled dwelling under an SDA residency agreement or accommodation approved by the Victorian Senior Practitioner (VSP) under section 187.
* The NDIS participant must meet the criteria under section 191(1)(a) to (c) and section 193(1A) of the Disability Act (see [Chapter 5.3](#_STEP_3:_Prepare)).
* The registered NDIS provider must ensure an APO is approved by the Victorian Senior Practitioner under Part 6A of the Disability Act.
* APO may Request an Assessment Order from the Victorian Senior Practitioner under section 199, **but** **only if** there is a significant and imminent risk of harm requiring detention to enable assessments to be undertaken to enable an urgent development of a treatment plan.
* A treatment plan should be developed by a registered NDIS **behaviour support practitioner and meet the requirements** for the use of regulated restrictive practices in line with the NDIS (Restrictive Practices and Behaviour Support) Rules.
* Prepare a treatment plan under section 189(1) that outlines the scope of treatment to be provided to the person; the benefit to the person; any restrictive practices that are not regulated restrictive practices to be used; the required level of supervision; transition process to lower levels of supervision and living without the STO.
* Ensure the treatment plan is approved by the Victorian Senior Practitioner and a treatment plan certificate is provided. The treatment plan must be explained to the person prior to an application being made.
* APO to apply to VCAT under section 191(1) for an STO and provide the treatment plan with certificate of approval from the Victorian Senior Practitioner. Notify person to be subject to the STO and the Public Advocate of the application.
* After submitting an application for an STO, an APO can request VCAT to make an interim STO under section 192 **only if** it is necessary to detain the person to prevent a significant risk of serious harm to others.
* If satisfied the criteria in section 191(1)(a) to (d) and section 193(1A) apply, VCAT will make the STO under section 193 of the Disability Act.
* The APO must provide a report on the implementation of the STO to the VSP at intervals, not exceeding 6 months, specified by the VSP.

### Appendix C – Victorian Senior Practitioner – functions and powers

#### Victorian Senior Practitioner – Functions and Powers

The Victorian Senior Practitioner is responsible for ensuring that the rights of people who are subject to restrictive practices and compulsory treatment are protected and appropriate standards in relation to restrictive practices and compulsory treatment are complied with.

The Victorian Senior Practitioner has a range of functions under section 24 of the Disability Act in regard to restrictive practices and compulsory treatment, in addition to special powers which are listed under section 27.

##### Disability Act, Section 24 – Functions of the Senior Practitioner:

(1) The functions of the Victorian Senior Practitioner are:

(a) 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

(ab) to develop guidelines and standards with respect to restrictive practices, compulsory treatment and the appointment of APOs

(b) to provide education and information with respect to restrictive practices and compulsory treatment to disability service providers;

(c) to provide information with respect to the rights of persons with a disability, NDIS participants and DSOA clients and NDIS participants who may be subject to the use of restrictive practices or compulsory treatment;

(d) 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

(e) to give directions to disability service providers and registered NDIS providers about one or more of the following, as the case requires—

(i) restrictive practices;

(ii) compulsory treatment;

(iii) behaviour support plans;

(iv) treatment plans;

(v) the appointment of APOs;

(f) to develop links and access to professionals, professional bodies and academic institutions for the purpose of facilitating knowledge and training in clinical practice for persons working with persons with a disability

(g) to undertake research into restrictive practices and compulsory treatment and provide information on practice options to disability service providers and registered NDIS providers;

(h) to evaluate and monitor the use of restrictive practices across disability services and to recommend improvements in practice to the Minister and the Secretary;

(i) to undertake any other function relating to persons with a disability as may be directed in writing by the Secretary;

(j) any other functions specified by or under this Act.

(2) The Senior Practitioner must publish annually—

(a) information on the performance of the functions of the Senior Practitioner;

(b) data relating to the use of restrictive practices and compulsory treatment.

##### Disability Act, Section 27 – Special powers of the Senior Practitioner:

(1) This section applies—

(a) in respect of the use of restrictive practices or compulsory treatment by a disability service provider or a registered NDIS provider; or

(b) if the Senior Practitioner believes on reasonable grounds that the use of restrictive practices or compulsory treatment is occurring as part of the provision of a disability service or a service provided by a registered NDIS provider whether or not an order specified in section 152(2) or a supervised treatment order is in effect.

(2) If this section applies, the Victorian Senior Practitioner has the power to—

(a) 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;

(ab) 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 dwelling, a short-term accommodation dwelling, NDIS dwelling or Minister approved premises) where services are provided under the NDIS;

(b) if paragraph (a) or (ab) applies, see any person who is subject to any restrictive practice or compulsory treatment;

(c) investigate, audit and monitor the use of restrictive practices and compulsory treatment;

(d) inspect and make copies of, or take extracts from, any document relating to any person who is subject to any restrictive practice or compulsory treatment;

(e) see any person involved in the development, implementation or authorisation of any restrictive practice or compulsory treatment upon request;

(f) request a disability service provider or an NDIS provider, as the case requires, to provide information about any restrictive practice or compulsory treatment;

(g) authorise by written order given to the disability service provider or registered NDIS provider the use of a restrictive practice.

(3) The Senior Practitioner may by written order direct a disability service provider—

(a) to discontinue or alter as specified in the order, a practice, procedure or treatment observed or carried out by the disability service provider;

(b) to observe or carry out a practice, procedure or treatment specified in the order;

(c) to provide a practice, procedure or treatment, or a particular practice, procedure or treatment specified in the order, to a person with a disability who is specified in the order.

(4) If the Senior Practitioner gives a direction under subsection (3)(a) to discontinue a practice, procedure or treatment, the Senior Practitioner must provide assistance in developing alternative strategies for the management of the behaviour of the person affected.

(5) The Senior Practitioner must as soon as practicable advise in writing the person with a disability, the NDIS participant or the DSOA client or the NDIS participant, as the case requires, of—

(a) any authorisation given under subsection (2)(g); or

(b) any direction given under subsection (3).

(5A) The Senior Practitioner may notify the NDIS Commissioner of any matter relating to an NDIS provider that has come to the Senior Practitioner's attention in the course of exercising a power or performing a function or duty under this Act.

(5B) The Senior Practitioner may prohibit the use of restrictive practices or a specified form of restrictive practice on—

(a) persons with a disability; or

(b) NDIS participants; or

(ba) DSOA clients; or

(c) persons belonging to a specified class of persons with a disability, NDIS participants or DSOA clients disability or NDIS participants—

by one or more of the following—

(d) disability service providers;

(e) registered NDIS providers;

(f) a person belonging to a specified class of disability service providers or registered NDIS providers.

(5C) Notice of a prohibition referred to in subsection (5B) must be—

(a) published on the Department's internet site; and

(b) given to each applicable provider referred to in that subsection.

6) On the request of the Senior Practitioner, the following persons must provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner requires to perform or exercise a power, duty or function under this Act—

(a) a disability service provider;

(b) a registered NDIS provider;

(c) a member of the staff or management of a disability service provider;

(d) a member of the staff or management of a registered NDIS provider.

(7) A person referred to in subsection (6) must—

(a) reasonably render assistance when required to do so under subsection (6);

(b) give full and true answers to the best of that person's knowledge to any questions asked by the Senior Practitioner in the performance or exercise of any power, duty or function under this Act.

Under section 27(5C) of the Disability Act, when issuing a prohibition, the Victorian Senior Practitioner must provide the notice of prohibition to applicable providers and publish the prohibition on the [Victorian Senior Practitioner’s Directions and Prohibitions webpage](https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions) https://www.dffh.vic.gov.au/victorian-senior-practitioners-directions-and-prohibitions.

For more information, please visit the [About the Victorian Senior Practitioner webpage](https://www.dffh.vic.gov.au/about-victorian-senior-practitioner) https://www.dffh.vic.gov.au/about-victorian-senior-practitioner.

#### Directions of the Victorian Senior Practitioner with respect to service providers

Under section 146(1) and section 201H(2), the Victorian Senior Practitioner may give written directions to disability providers and/or registered NDIS providers, including specified disability providers and/or registered NDIS providers, or disability providers and/or registered NDIS belonging to a specified class of disability providers and/or registered NDIS providers regarding the following matters:

* prohibiting the use of a specified restrictive practice;
* prohibiting the use of a specified class of restrictive practice;
* regulating the use of a specified restrictive practice;
* regulating the use of a specified class of restrictive practice;
* prohibiting or regulating the use of a specified restrictive practice on a person belonging to a specified class of persons with a disability or specified class of NDIS participants;
* prohibiting or regulating the use of a specified class of restrictive practices on a person belonging to a specified class of persons with a disability or specified class of NDIS participants;
* requiring approval from the Victorian Senior Practitioner for the use of a specified restrictive practice;
* requiring approval from the Victorian Senior Practitioner for the use of a specified class of restrictive practice;
* requiring approval from the Victorian Senior Practitioner for the use of a specified class of restrictive practice on a person belonging to a specified class of persons with a disability or specified class of NDIS participants.
1. s189(2) of the Disability Act outlines that a treatment plan prepared for an NDIS participant by or on behalf of the APO for a registered NDIS provider, must be prepared by a registered NDIS behaviour support practitioner, in accordance with Part 8 of the Disability Act and the NDIS Rules and is taken to be the NDIS participant's NDIS behaviour support plan. [↑](#footnote-ref-1)
2. For more information on residential services, please visit the [Disability – Residential services webpage](https://services.dffh.vic.gov.au/residential-services) https://services.dffh.vic.gov.au/residential-services. [↑](#footnote-ref-2)
3. After amendments to the Residential Tenancies Act 1997 (RTA) made by the Disability and Social Services Regulation Amendment Act are proclaimed, a person may reside in an ‘SDA dwelling’. [↑](#footnote-ref-3)
4. For more information on Specialist Disability Accommodation, please visit [Consumer Affairs Victoria – Specialist disability accommodation](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation) https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation. [↑](#footnote-ref-4)
5. For accommodation approved by the Victorian Senior Practitioner under s187 of the Disability Act, an NDIS provider is considered to be a disability service provider and the accommodation is considered to operate as a residential service under the Disability Act (section 3B). [↑](#footnote-ref-5)
6. Commencement of amendments to Part 6A of the Disability Act occurred on 24 May 2023. [↑](#footnote-ref-6)
7. For e-treatment plan training please contact the Victorian Senior Practitioner’s office on 03 9096 8427 or refer to the e-treatment plan RIDS user guide. [↑](#footnote-ref-7)
8. Application forms can be found at [VCAT – Apply for an order under the Disability Act](https://www.vcat.vic.gov.au/case-types/disability-act/apply-for-an-order-under-the-disability-act) https://www.vcat.vic.gov.au/case-types/disability-act/apply-for-an-order-under-the-disability-act. [↑](#footnote-ref-8)
9. Further information on details on the content of the Implementation Report, see [Victorian Senior Practitioner – Compulsory treatment](https://www.dffh.vic.gov.au/compulsory-treatment) https://www.dffh.vic.gov.au/compulsory-treatment. [↑](#footnote-ref-9)
10. Further information on how to report the use of regulated restrictive practices to the NDIS Commission 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, or email behavioursupport@ndiscommission.gov.au. [↑](#footnote-ref-10)
11. The Victorian Senior Practitioner may approve a change to a specified service provider (other than the primary service provider) in a treatment plan. [↑](#footnote-ref-11)
12. The APO of any service provider providing services to the person who is subject to the treatment plan may make a request to the Victorian Senior Practitioner to make a material change to that treatment plan. [↑](#footnote-ref-12)
13. Further information on how to access RIDS for a Material Change see the e-Treatment Plan Manual 7.0. [↑](#footnote-ref-13)
14. For more information on residential services, please visit [Disability – Residential services](https://services.dffh.vic.gov.au/residential-services) https://services.dffh.vic.gov.au/residential-services. [↑](#footnote-ref-14)
15. For more information on Specialist Disability Accommodation, please visit [Consumer Affairs Victoria – Specialist disability accommodation](https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation) https://www.consumer.vic.gov.au/housing/specialist-disability-accommodation. [↑](#footnote-ref-15)