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| Overview of changes to provisions for restrictive practices |
| *Disability and Social Services Regulation Amendment Act 2023* |
| OFFICIAL |

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# Introduction

The *Disability and Social Services Regulation Amendment Act 2023* (the **Amendment Act**) became law on Tuesday 23 May 2023.

The Amendment Act makes changes to the *Disability Act 2006* (**Disability Act**) and other relevant Acts. The changes strengthen rights, protections and safeguards for people with disability in Victoria.

This summary sets out key changes to provisions (rules) in the Disability Act for the authorisation and use of restrictive practices.

The changes:

* expand protections for people with disability who access services from registered National Disability Insurance Scheme (**NDIS**) providers under the Commonwealth Disability Support for Older Australians (**DSOA**) program
* consolidate previously separate rules for the use of restrictive practices by disability service providers and registered NDIS providers
* reduce duplication for providers that are both disability service providers and registered NDIS providers
* strengthen the role of the Victorian Senior Practitioner. This includes a new function to promote the reduction and elimination of restrictive practices
* expand the offence for using restrictive practices without authorisation to include registered NDIS providers
* introduce a new offence for disability service providers or registered NDIS providers who use restrictive practices if they have not appointed an Authorised Program Officer (**APO**) approved by the Victorian Senior Practitioner (except in emergencies)
* strengthen rules for the approval of the appointment of APOs by the Victorian Senior Practitioner
* enable the Victorian Senior Practitioner to bring proceedings against a provider for offences under the Disability Act
* strengthen rules for the preparation and review of NDIS and non-NDIS Behaviour Support Plans (**BSP**)
* strengthen the role of the **independent person**.

For information on changes to rules for the use of restrictive practice on persons subject to compulsory treatment, see *Overview of changes to provisions for compulsory treatment* factsheet.[[1]](#footnote-2)

This summary is provided as general information only and is not legal advice. Readers should refer directly to the latest version of the Disability Act (and other Acts as relevant) and seek independent legal advice if required.

Links to more information, contacts and guidance for providers are provided at the end of this document. A glossary of key terms used in this paper is provided at [Table 2](#_Glossary_of_terms).

# When will the changes commence?

These changes commenced on 24 May 2023.

# Summary of the changes

## Disability Support for Older Australians

Previously, the Disability Act only included rules for the authorisation and approval of the use of regulated restrictive practices with:

* people with disability who access services from disability service providers
* NDIS participants who access services from registered NDIS providers.

The rules did not cover older people with disability who access support from registered NDIS providers funded under the DSOA program.

DSOA clients of NDIS providers are now covered under the restrictive practices rules in the Disability Act. This is consistent with the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (**NDIS Rules**).

## Consolidation of rules for restrictive practices

Previously, the Disability Act included separate rules for the authorisation and use of regulated restrictive practices on persons not subject to compulsory treatment by:

* registered NDIS providers (old Part 6B)
* disability service providers (old Part 7).

The two Parts have been consolidated to ensure clarity, in recognition that most disability service providers are also registered NDIS providers. This means they may provide state-funded disability services and NDIS services to a person with disability. The two Parts also created complexity for the Victorian Senior Practitioner in administering similar – but not identical – requirements for restrictive practices by registered NDIS providers and disability service providers.

The rules have been consolidated into a new Part 7 of the Disability Act. The new Part 7 has been modelled on the old Part 6B. The new rules align the obligations and responsibilities of disability service providers and registered NDIS providers.

## Appointment of Authorised Program Officers

The Amendment Act strengthens and aligns rules for the appointment and role of APOs under the Disability Act.

Before the changes, the approval process for the appointment of APOs was different for disability service providers and registered NDIS providers. The Victorian Senior Practitioner, instead of the Secretary of the Department of Families, Fairness and Housing, will now approve, refuse or revoke the appointment of APOs for both disability service providers and registered NDIS providers. The change will make the approvals process the same for disability service providers and registered NDIS providers. The change will also increase clinical oversight of appointments.

Disability service providers and registered NDIS providers must appoint at least one APO if they intend to use regulated restrictive practices on a person under Part 7 of the Disability Act.[[2]](#footnote-3) The appointment must be approved by the Victorian Senior Practitioner (see also, [Offences](#_Offences)).

The Victorian Senior Practitioner must now provide notice to a disability service provider if the Victorian Senior Practitioner intends to refuse or revoke the appointment of APO. Previously, this notice to revoke or refuse the appointment of an APO was only needed for registered NDIS providers.

Both disability service providers and registered NDIS providers can now seek a review by the Victorian Civil and Administrative Tribunal (**VCAT**) of the Victorian Senior Practitioner's decision to refuse or revoke an APO appointment.

## Behaviour Support Plans

The changes align and strengthen rules for the development, review and expiry of Behaviour Support Plans (**BSP**) and NDIS BSPs.

### Primary and secondary service providers

Primary service providers are now defined in the Disability Act. The disability service provider or registered NDIS provider who provides most of the support to a person within the person’s accommodation is the primary service provider. If the providers offer an equal amount of support, the Victorian Senior Practitioner may decide who will be the primary service provider.

### Requirements for BSPs where a person is accessing services from both a registered NDIS provider and a disability service provider

When a NDIS participant is accessing services from both a registered NDIS provider and a disability service provider, only one BSP is now required. A disability service provider is not required to prepare a separate BSP if an NDIS BSP is already in place.

### Requirements for BSPs where a person only accesses services from a disability service provider

Disability service providers must continue to prepare a BSP in consultation with specified persons (including the person proposed to be subject to the BSP) and include specified matters. This requirement has not changed.

The changes expand the range of specified matters that:

* must be included in a BSP
* must be considered when a plan is reviewed.

These new requirements are to:

* include strategies to reduce and eliminate the need for restrictive practices
* consider previous behavioural and other relevant assessments
* include environmental changes to reduce or eliminate the need for restrictive practices.

Disability service providers must continue to review BSPs every 12 months, or more often if the APO or Victorian Senior Practitioner specifies it. The person subject to a BSP has the right to review a review; this has not changed.

## Independent person

The changes strengthen the role of the independent person.

An APO must ensure that an independent person is available to explain to the person:

* the proposed regulated restrictive practices that will be used on them; and
* that the person may seek:
	+ a review of the APO’s decision to authorise the use of a regulated restrictive practice on them; or
	+ a joint review of the APO’s decision to authorise, and the Victorian Senior Practitioner's decision approve, the use of a regulated restrictive practice on them.

The changes:

* require that the independent person *must* notify the Victorian Senior Practitioner if at any time they believe the person does not understand the proposal to use regulated restrictive practices, and that legislative requirements are not being met
* require that the independent person *must* notify the Victorian Senior Practitioner if at any time they believe that legislative requirements were not met when the BSP or NDIS BSP was being prepared for the person. The independent person must do this before explaining the plan to the person
* state the independent person may notify the Public Advocate of these matters.

## Role of the Victorian Senior Practitioner

The Amendment Act strengthens the role of the Victorian Senior Practitioner. The functions of the Victorian Senior Practitioner have been changed to:

* give the Victorian Senior Practitioner a new function to promote the reduction and elimination of restrictive practices
* enable provision of information about the rights of DSOA clients who may be subject to the use of restrictive practices or compulsory treatment
* allow the Victorian Senior Practitioner to develop guidance on the appointment of APOs
* allow the Victorian Senior Practitioner, instead of the Secretary, to approve the appointment of APOs for disability service providers and registered NDIS providers (also see [Appointment of Authorised Program Officers](#_Appointment_of_Authorised)).

The changes also enable the Victorian Senior Practitioner to bring proceedings against a provider for an offence under Parts 6A, 7 or 8 of the Disability Act (see also, [Offences](#_Offences)).

## Offences

It is now an offence for a registered NDIS provider to use a regulated restrictive practice unless in accordance with requirements under the Disability Act. Previously, this offence only applied to state-funded disability service providers.

The changes also introduce a new offence. It is now an offence for a provider to use restrictive practices if they have not appointed an APO approved by the Victorian Senior Practitioner (except in specified circumstances, including emergencies) (see also, [Appointment of Authorised Program Officers](#_Appointment_of_Authorised)).

Failure to comply with these requirements is punishable by a maximum penalty of 240 penalty units. For the period 1 July 2023 to 30 June 2024, the value of one penalty unit is set at $192.31.

# More information

Links to the Amendment Act and other Acts mentioned in this factsheet are listed in **Table 1**.

For specific information and guidance on provider obligations about restrictive practices and compulsory treatment regulated under the Disability Act, visit the [Victorian Senior Practitioner’s website](https://www.dffh.vic.gov.au/victorian-senior-practitioner) or contact the Office of the Victorian Senior Practitioner by phone (03) 9096 8427 or email victorianseniorpractitioner@dffh.vic.gov.au.

A factsheet and other summaries about the changes made by the Amendment Act are available on the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023).[[3]](#footnote-4)

## Acts

Table 1. Links to relevant Acts

|  |  |
| --- | --- |
| Act | Where to find it |
| ***Disability and Social Services Regulation Amendment Act 2023* (Amendment Act)** | [Victorian Legislation's *Disability and Social Services Regulation Amendment Act 2023* page](https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023)[[4]](#footnote-5) |
| ***Disability Act 2006* (Disability Act)** | [Victorian Legislation's *Disability Act 2006* page](https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006)[[5]](#footnote-6) |
| **NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (NDIS Rules)** | Available from the [Federal Register of Legislation NDIS (Restrictive Practices and Behaviour Support) Rules 2018 page](https://www.legislation.gov.au/Series/F2018L00632)[[6]](#footnote-7) |

## Glossary of terms

Table 2. Key terms

|  |  |
| --- | --- |
| Term | Meaning |
| **Act** | In Victoria, an Act is a law that has been passed by both houses of Parliament and assented to by the Governor (Royal Assent). |
| **Amendment** | An amendment is a change made to an existing law or regulation. It is a formal process that involves changing, adding, or deleting provisions in a law or regulation. |
| **APO** | Authorised Program Officer |
| **BSP** | Behaviour Support Plan |
| **Commencement** | Commencement means the time when provisions (rules) in an Act come into effect. Commencement provisions are included in an Act. They specify the date on which a whole Act, or different parts of an Act, come into effect. |
| **DSOA** | Disability Support for Older Australians program (Commonwealth) |
| **Independent person** | Under the Disability Act, an independent person must not:* be a disability service provider or an NDIS provider for the person; or
* be a representative of a disability service provider or an NDIS provider for the person; or
* have any interest in a disability service provider or an NDIS provider for the person; or
* have any responsibility in relation to the development or review of the person's behaviour support plan or NDIS behaviour support plan.
 |
| **Legislative requirements** | ‘Legislative requirements’ include any relevant requirements of the Disability Act, the NDIS Act, and the NDIS Rules. |
| **NDIS** | National Disability Insurance Scheme |

To receive this document in another format, phone (03) 9821 6113 or email the Disability Act Review Team DisabilityActReview@dffh.vic.gov.au

**Help for people with hearing or speech communication difficulties**

Contact us through the National Relay Service (NRS). For more information on the NRS:

* visit [**National Relay Service**](https://www.accesshub.gov.au/about-the-nrs) https://www.accesshub.gov.au/about-the-nrs
* call the NRS Helpdesk on 1800 555 660.

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Available at the [department's Disability and Social Services Regulation Amendment Act 2023 web page](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023)
https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023.

1. Available from the Department of Families, Fairness and Housing [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-2)
2. Disability service providers and registered NDIS providers must also appoint at least one APO if they intend to use compulsory treatment under the new Part 8 of the Disability Act. For more information, please see *Overview of changes to provisions for compulsory treatment* factsheet, available from the department’s [*Disability and Social Services Regulation Amendment Act 2023* website](https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023) https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023. [↑](#footnote-ref-3)
3. https://www.dffh.vic.gov.au/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-4)
4. https://www.legislation.vic.gov.au/as-made/acts/disability-and-social-services-regulation-amendment-act-2023 [↑](#footnote-ref-5)
5. https://www.legislation.vic.gov.au/in-force/acts/disability-act-2006 [↑](#footnote-ref-6)
6. https://www.legislation.gov.au/F2018L00632/latest/versions [↑](#footnote-ref-7)