Disability Act 2006

Victorian Senior Practitioner Direction

Physical Restraint Guidelines and Standards

1. Purpose

The purpose of this direction is to issue guidelines and standards for the use of physical restraint which must be complied with by the Providers as part of Victoria's authorisation process for the use of regulated restrictive practices.

2. Authorising provision

This direction is made under section 146 of the Act.

3. Application

This direction applies to:

(a) all disability service providers

(b) all registered NDIS providers.

4. Term

This direction commences on the date it is signed and continues in effect until it is revoked or modified by the Victorian Senior Practitioner.

5. Definitions

In this direction:

(a) 'Act' means the *Disability Act 2006*;

(b) 'Providers' means the providers listed in paragraph 3 who must comply with this direction;

(c) 'Victorian Senior Practitioner' means the person appointed as the Senior Practitioner under section 23 of the Act;

(d) expressions used shall, unless the contrary intention appears, have the same respective meaning as they have in the Act.

6. Directions

I, Mandy Donley, Victorian Senior Practitioner, under section 146 of the Act, direct that the Providers comply with the *Victorian Senior Practitioner Physical Restraint Direction Paper: Guidelines and Standards* attached to this direction (and as updated from time to time).

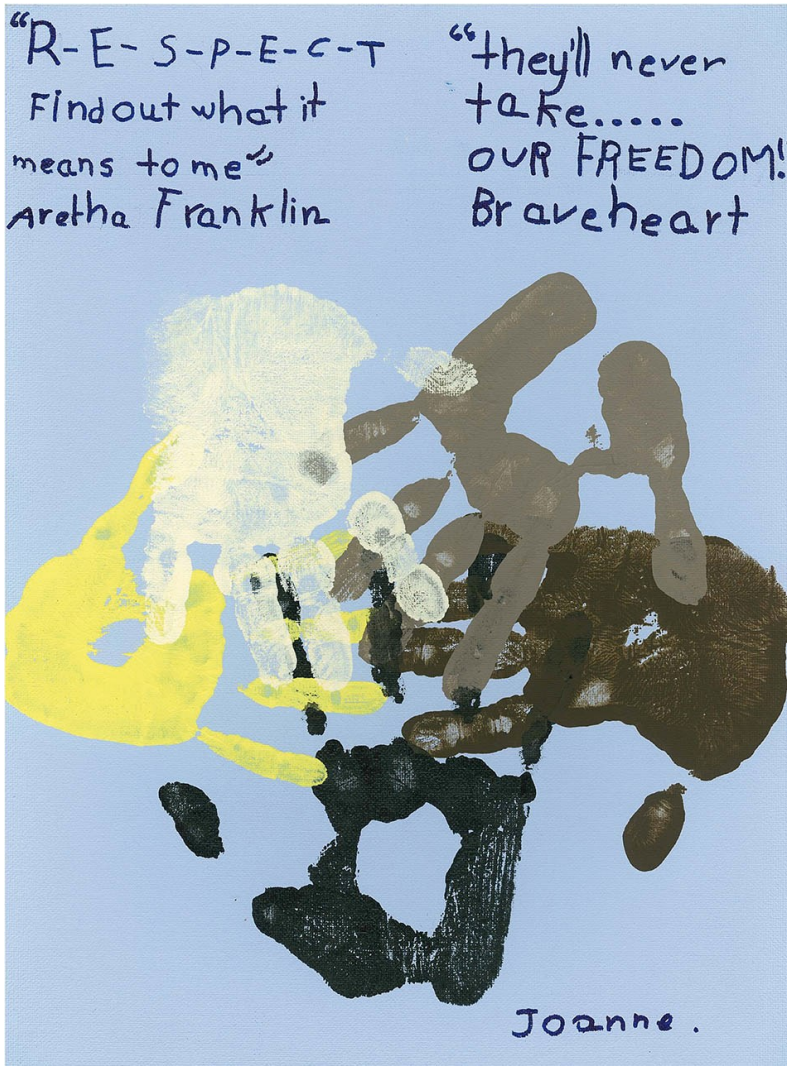
Signed this 20th day of September 2023

Mandy Donley
Victorian Senior Practitioner

Victorian Senior Practitioner physical restraint direction paper: guidelines and standards

September 2023

VICTORIA State Government | Families, Fairness and Housing



Front cover: detail from painting by Joanne Page.

To receive this publication in an accessible format phone 9096 8427, using the National Relay Service 13 36 77 if required, or email victorianseniorpractitioner@dffh.vic.gov.au.

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

ISBN 978-1-76130-394-4 (pdf/online/MS word)

Available at the Victorian Senior Practitioner webpage
https://www.dffh.vic.gov.au/victorian-senior-practitioner)

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Definitions

'Compulsory treatment' means treatment of a person who is: (a) admitted to a residential treatment facility or a residential institution under an order specified in s.152(2) of the *Disability Act 2006*; or (b) a person subject to a supervised treatment order.

'Duty of care' is defined broadly in these guidelines and standards as taking reasonable action, where reasonably required, to prevent or reduce foreseeable harm from occurring to a person. This requires that the least restrictive principle is applied in the circumstances. For example, to hold or physically guide a person away from wandering into busy traffic or prevent a person from placing their hand on a hot stove, or to prevent self-injury such as the person hitting their own body.

'DSOA client' means an older person who is receiving supports under the Commonwealth Disability Support for Older Australians program or a prescribed program, who is not an NDIS participant.

'Emergency' means a sudden state of danger requiring immediate action to prevent or manage a serious and imminent risk of harm to the person or to another person or people.

'NDIS (Restrictive Practices and Behaviour Support) Rules' means the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules (however titled) of the Commonwealth, as in force from time to time.

'Physical assistance or physical guidance' means the use, for the purpose of the wellbeing and support of a person, of **non-coercive physical contact** to enable activities of daily living or for therapeutic purposes:

- to perform activities of daily living, such as physically assisting a person with dressing or shaving
- to develop or acquire new skills such as physically assisting a person to prepare dinner where it may involve physically guiding the person's hand to use a kitchen knife to cut vegetables
- to learn, adapt or perform activities as part of a therapy program such as physically holding on or physically guiding a person in a swimming pool because they are not able to swim independently, or implementing a physiotherapy program
- to ensure a person's safety when the person is engaged in certain stereotyped movements such as guiding a person who is fixated on finger flicking away from the road

'Physical restraint' means 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 (*NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (Cth)).

'Prohibited physical restraint' are physical restraints that are prohibited by the Victorian Senior Practitioner and cannot be used by disability service providers or registered NDIS providers in Victoria. Prohibited physical restraints are listed in section 2 of these guidelines and standards.

'PRN (Pro Re Nata)' means to be used as needed or as required.

'Psychosocial disability' means an impairment attributable to a psychiatric condition that meets the disability requirements of s. 24 of the *National Disability Insurance Scheme Act 2013* (Cth).

'Regulated restrictive practices' are seclusion, chemical restraint, mechanical restraint, environmental restraint and physical restraint. These are defined in the NDIS (Restrictive Practices and Behaviour Support) Rules.

‘Restrictive practice’ means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with a disability, an NDIS participant, or a DSOA client (s.3, Disability Act).

‘Supervised treatment order’ means a civil order made in respect of a person with an intellectual disability under s. 191 of the Disability Act (to enable the detention of the person)

‘Treatment plan’ means a plan for the use of treatment on a person with disability or a NDIS participant prepared under ss. 153, 167, 180(6), 189 or 201E of the Disability Act.

Introduction

The role of the Victorian Senior Practitioner was established by the *Disability Act 2006* to protect the rights of people with disabilities who are subject to restrictive practices and compulsory treatment, and to ensure that disability service providers and registered NDIS providers comply with appropriate standards relating to restrictive practices and compulsory treatment.

The Victorian Senior Practitioner is conferred with legislative powers, duties and functions to ensure compliance with the Disability Act. This includes the power to prohibit, regulate and give directions about restrictive practices.

The Victorian Senior Practitioner has a responsibility under the Disability Act to protect the rights of people who are subject to restrictive practices and compulsory treatment.

The Victorian Senior Practitioner's vision:

To create an inclusive and safe community that supports people to achieve dignity without restraints.

Our work is guided by the underlying principles from *The Charter of Human Rights and Responsibilities Act 2006* and *United Nations Convention on Rights for People with Disabilities.*

These principles include: human rights and citizenship; quality of life and wellbeing; community inclusion; and promotion of individualised positive behaviour support.

When reading these guidelines and standards, it is essential to remember that a regulated restrictive practice, including physical restraint, must be only considered as:

- a last resort in response to risk of harm to the person with disability or others; and
- if it is the least restrictive option to prevent harm, and
- after evidence-based, person-centred, and proactive strategies have been explored and applied.

The use of physical restraint is a regulated restrictive practice under the Disability Act and the NDIS (Restrictive Practices and Behaviour Support) Rules.

Physical restraint does not include physical assistance or physical guidance, which are defined at the beginning of these guidelines and standards.

Disability service providers and registered NDIS providers must comply with the authorisation process for using physical restraint in the Disability Act. The Disability Act requires that registered NDIS providers and disability service providers must be given the Victorian Senior Practitioner's approval before using physical restraint.

These guidelines and standards set out the matters to be considered before physical restraint can be used. Therefore, registered NDIS providers and disability service providers must comply with these guidelines and standards as part of being authorised to use physical restraint.

1. Intent and application of these guidelines and standards

1.1 Intent of guidelines and standards

The Victorian Senior Practitioner has issued a direction under s. 146 of the Disability Act for disability service providers and regulated NDIS providers to comply with these guidelines and standards. The direction can be located at the Victorian Senior Practitioner webpage[1].

These guidelines and standards are issued in relation to the authorisation requirements for the use of physical restraint by disability service providers and registered NDIS providers in Victoria.

The Victorian Senior Practitioner has:

- issued a separate prohibition that prohibits the use of specific types of physical restraint listed in these guidelines (known as prohibited physical restraints) in accordance with the Victorian Senior Practitioner's powers under s. 27(5B) of the Disability Act
- issued a separate direction under s. 146 that requires all disability service providers and registered NDIS providers to seek direct approval from the Victorian Senior Practitioner to use any regulated restrictive practices on persons with a psychosocial disability.
- set out the matters that must be considered before physical restraint (that is not a prohibited physical restraint) may be authorised or used in these guidelines and standards
- specified the process for obtaining the Victorian Senior Practitioner's approval for using physical restraint (that is not a prohibited physical restraint) required under the Disability Act.

1.2 Who do these guidelines and standards apply to?

The Victorian Senior Practitioner's direction requires all disability service providers and registered NDIS providers who intend to use a physical restraint in Victoria to comply with these guidelines and standards. This includes on children and young people with a disability in receipt of a service provided by a disability service provider or registered NDIS provider.

As such, these guidelines and standards apply to employers of disability services and registered NDIS providers and their employees, contractors, volunteers, labour hire workers or anyone else engaged by them. This includes management, support professionals, clinical practitioners, and trainers.

What does this mean for disability service providers?

Disability service providers must comply with these guidelines and standards when developing a behaviour support plan, when authorising the use of a physical restraint in that plan, when developing a treatment plan, and when using physical restraint.

This may also mean changing current practice manuals, policies and procedures where relevant.[2]

1 https://www.dffh.vic.gov.au/victorian-senior-practitioner

2 Disability service providers and registered NDIS providers are also reminded of their obligations under the *Occupational Health and Safety Act 2004* and related legislation.

What does this mean for registered NDIS providers?

Registered NDIS providers must comply with these guidelines and standards when authorising the use of physical restraint in a NDIS behaviour support plan and when using physical restraint.

The NDIS (Restrictive Practices and Behaviour Support) Rules set the conditions for registered NDIS providers when using regulated restrictive practices. Part 2 of the rules outlines that it is a condition of registration that:

- a registered NDIS provider must not use a restrictive practice that is prohibited in the state or territory in which they provide supports or services
- the use of a regulated restrictive practice (other than the first use in an emergency) must be authorised in accordance with the authorisation process of the relevant state or territory.

Registered NDIS providers must lodge evidence with the NDIS Quality and Safeguards Commissioner that the regulated restrictive practice has been authorised in accordance with the authorisation process of the relevant state or territory.

Disability service providers and registered NDIS providers must comply with these guidelines and standards and must not use any form of physical restraint on a person unless that use meets the relevant authorisation and approval requirements under the Disability Act.

1.3 What is a restrictive practice?

A restrictive practice is defined in the Disability Act as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, an NDIS participant, or a DSOA client. Restrictive practices include regulated restrictive practices such as seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint. These regulated restrictive practices are defined in the NDIS (Restrictive Practices and Behaviour Support) Rules.

1.4 What is a physical restraint?

A physical restraint is a type of regulated restrictive practice.

Physical restraint means 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 using 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 exercising care towards a person.

Physical restraint includes, but is not limited to, interventions such as a prone restraint (face down), supine restraint (face up), pin down and basket hold.

1.5 What is physical assistance or physical guidance?

Physical assistance or physical guidance is **not** physical restraint as defined in these guidelines and standards.

Physical assistance or physical guidance means using, for the purpose of the wellbeing and support of a person, **non-coercive** physical contact to enable activities of daily living or for therapeutic purposes.

Physical assistance or physical guidance include, but are not limited to:

- performing activities of daily living, such as physically assisting a person with dressing or shaving
- developing or acquiring new skills, such as physically assisting a person to prepare dinner where it may involve physically guiding the person's hand to use a kitchen knife to cut vegetables
- learning, adapting or performing activities as part of a therapy program, such as physically holding on or physically guiding a person in a swimming pool because they are not able to swim independently, or implementing a physiotherapy program
- ensuring a person's safety when the person is engaged in certain stereotyped movements, such as guiding a person who is fixated on finger flicking away from the road.

It is important to consider both the extent of the use and the reasonableness in the circumstances of physical force during physical assistance or physical guidance because this may constitute physical restraint.

Example 1: A person who is led into the bathroom for a shower (physical assistance) but the force applied to lead the person into the shower is excessive and the person's arm is bruised (physical restraint).[3]

Example 2: A person who is escorted or directed to another activity or a room (physical assistance) but the force applied is excessive (physical restraint), leading to a soft tissue injury, pain or psychological harm (physical restraint).

Careful consideration and planning must be given when escorting a person to a seclusion room if physical restraint is part of escorting the person. If physical restraint is being considered part of the escort, then the requirements of these guidelines and standards apply.[4]

3 These examples may also be considered as a possible physical assault. Disability service providers are reminded of their obligations under the Disability Services' policy, *Responding to allegations of physical or sexual assault*. Registered NDIS providers are reminded of their obligations under the Commonwealth's *National Disability Insurance Scheme (Code of Conduct) Rules 2018*.

4 Where physical restraint is not applied during the escort, disability service providers and registered NDIS providers need to be aware of and caution staff of other types of restrictive practices such as 'psychosocial restraint' or 'consequence-driven strategies' that may be inadvertently used in lieu of physical restraint.

2. Victorian Senior Practitioner's prohibition

The Victorian Senior Practitioner has issued a prohibition under s. 27(5B) of the Disability Act prohibiting the use of the following forms of physical restraint in relation to all people with disabilities (including NDIS participants and DSOA clients) by disability service providers and registered NDIS providers:

- prone restraint (subduing a person by forcing them into a face-down position)
- supine restraint (subduing a person by forcing them into a face-up position)
- pin downs (subduing a person by holding down their limbs or any part of the body, such as their arms or legs)
- basket holds (subduing a person by wrapping your arm(s) around their upper and or lower body)
- takedown techniques (subduing a person by forcing them to free-fall to the floor or by forcing them to fall to the floor with support)
- any physical restraint that has the purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning
- any physical restraint that has the effect of pushing the person's head forward onto their chest
- any physical restraint that has the purpose or effect of compelling a person's compliance through the infliction of pain, hyperextension of joints, or by applying pressure to the chest or joints.

Appendix 1 discusses why this prohibition has been made.

3. Approval and use of physical restraint

3.1 Using physical restraint

A disability service provider or a registered NDIS provider must appoint at least one Authorised Program Officer (APO) if the provider intends to use—

(a) restrictive practices on a person under Part 7 of the Disability Act; or

(b) compulsory treatment or restrictive practices on a person under Part 8 of the Disability Act.

A disability service provider or a registered NDIS provider who proposes to appoint an APO must apply to the Victorian Senior Practitioner for approval of the proposed appointment. Until the Victorian Senior Practitioner has approved the APO appointment, the provider must not use regulated restrictive practices (including physical restraint) on a person, except in emergencies (see 3.2 Using physical restraint in an emergency).

Disability service providers and registered NDIS providers can only use physical restraint (unless it has been prohibited by the Victorian Senior Practitioner – see 2. Victorian Senior Practitioner's prohibition) if the following conditions are satisfied:

- physical restraint is included as a PRN response in a behaviour support plan developed by a disability service provider (taking into consideration the relevant factors in Appendix 3), or in an NDIS behaviour support plan developed by a NDIS behaviour support practitioner, to prevent or manage a risk of harm to the person or to any other person;
- the use of physical restraint is authorised by the APO for the disability service provider or registered NDIS provider (see the matters in Appendix 3 for matters that must be considered by authorised program officers when approving the proposed use of physical restraint)
- the use of physical restraint is approved by the Victorian Senior Practitioner (see 3. Approval and use of physical restraint)
- at the time of using the physical restraint, the relevant legislative requirements in Checklist C in Appendix 3 are met and the factors in Checklist B in Appendix 3 have been considered.

Disability service providers and registered NDIS providers must **immediately** stop using physical restraint if the person subject to the restraint shows signs of any of the conditions in item 2 of Checklist B in Appendix 3.

3.2 Using physical restraint in an emergency

Disability service providers and registered NDIS providers may use physical restraint (unless it has been prohibited by the Victorian Senior Practitioner – see 2. Victorian Senior Practitioner's prohibition) in an emergency, on the condition that:

- there is an imminent risk of the person causing serious physical harm to themselves or another person; and
- using physical restraint is necessary to prevent that risk; and
- it is the least restrictive option in the circumstances; and
- the person in charge[5] of the disability service provider or registered NDIS provider authorises the use and notifies the APO (if one has been appointed) without delay.

5 The person in charge is the most senior person available at the time.

In accordance with the Disability Act, if a disability service provider or registered NDIS provider that has not appointed an APO uses physical restraint in an emergency *and* the provider intends to continue to use physical restraint, the provider must:

- appoint an APO as soon as practicable, and
- obtain the authorisation of the appointed APO, and
- obtain approval by the Victorian Senior Practitioner to use regulated restrictive practices.

Any emergency use of regulated restrictive practices, including physical restraint, must meet the necessary reporting requirements (see 4. Reporting of physical restraint).

3.3 Using physical restraint on people subject to compulsory treatment

Compulsory treatment means the treatment of a person who is:

(a) admitted to a residential treatment facility under an order specified in s. 152(2) of the Disability Act; or

(b) a person subject to a **supervised treatment order**.

A supervised treatment order is a civil order made in respect of a person with an intellectual disability under ss. 191 and 193 of the Disability Act and enables the person to be detained.

Disability service providers

For people subject to compulsory treatment from a disability service provider, a disability service provider must prepare a treatment plan[6] for them. As required by the Disability Act, the treatment plan must include provisions that specify any regulated restrictive practices (including physical restraint) that are to be used.

If physical restraint is proposed as part of the treatment plan, it must be included in the treatment plan and may only be used if:

- it is not a prohibited physical restraint (see 2. Victorian Senior Practitioner's prohibition)
- it is included in the treatment plan as a PRN response
- the relevant legislative criteria in Checklist C in Appendix 3 are satisfied
- the factors in Checklist B in Appendix 3 have been considered
- the treatment plan including the use of physical restraint has been approved by the Victorian Senior Practitioner.

The treatment plan must be developed and authorised in accordance with the relevant factors in Appendix 3 as required by these guidelines and standards.

Registered NDIS providers

Registered NDIS providers may only use physical restraint on a NDIS participant subject to a supervised treatment order obtained by the registered NDIS provider if:

- it is not a prohibited physical restraint
- the use is included in the person's treatment plan[7]

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6 See ss. 153, 167, 180(6) and 191, which require disability service providers to prepare treatment plans.

7 A treatment plan prepared for an NDIS participant by or on behalf of an APO for a registered NDIS provider will also be taken to be the NDIS participant's NDIS behaviour support plan. The treatment plan must be developed in accordance with the relevant factors in Appendix 3 as required by these guidelines and standards.

- it is a PRN response
- the relevant legislative criteria in Checklist C in Appendix 3 are satisfied
- the factors in Checklist B in Appendix 3 have been considered
- the person's treatment plan has been approved by the Victorian Senior Practitioner.

3.4 Obtaining the Victorian Senior Practitioner's approval

Under s. 143 of the Disability Act, the Victorian Senior Practitioner must approve the use of physical restraint by a disability service provider or a registered NDIS provider on a person, as part of Victoria's authorisation requirements.

For people subject to compulsory treatment, the Victorian Senior Practitioner must approve their treatment plan. The treatment plan must include any proposed use of physical restraint, either within the treatment plan itself or within the NDIS behaviour support plan attached to the treatment plan.

The Victorian Senior Practitioner may only approve the physical restraint of people who are not subject to compulsory treatment if satisfied of the matters specified at s. 143(2) of the Disability Act; including that the use is necessary to prevent the person from causing harm to themselves or to another person, and is the least restrictive option as is possible in the circumstances. These requirements are set out in Checklist C in Appendix 3 at the back of these guidelines and standards. These requirements will also be considered by the Victorian Senior Practitioner when approving a treatment plan which includes using physical restraint on people subject to compulsory treatment.

The Victorian Senior Practitioner may only approve the use of physical restraint on any person if it is not a form of prohibited physical restraint (see 2. Victorian Senior Practitioner's prohibition).

Before approving a physical restraint on any person, the Victorian Senior Practitioner must also be satisfied that the disability service provider or registered NDIS provider has demonstrated:

- the proposed use of the physical restraint is included in a behaviour support plan as a PRN response
- evidence that positive behaviour support alternatives are being trialled or implemented over a period of time, such as more than a year
- evidence that a comprehensive review or assessment and analysis have been conducted to determine whether a behaviour or an incident is foreseeable, and the behaviour(s) or incident is more likely to re-occur
- evidence that a comprehensive treatment plan or behaviour support plan has been implemented and evaluated over time, such as more than a year
- evidence that implementing the treatment or behaviour support plan, and analysis of the plan, yielded no significant gains or outcomes for the person
- other less restrictive options (under the circumstances) have been considered and are not feasible in the circumstances (see Appendix 2 for a summary of alternatives to physical restraint)
- appropriate arrangements are in place to ensure that the person's physical condition[8] is closely observed and documented during the period of the physical restraint[9] and for at least one hour after applying the physical restraint

8 Observations of a person's physical condition include (but are not limited to): a person's breathing; skin colour; body temperature; any signs of distress or pain; any bleeding or bruising (such as nose bleeds or bruises); and signs of aspiration or choking. See also advice on when to cease physical restraint (footnote 7).

9 Physical restraint must cease immediately if the person demonstrates any of the following conditions: breathing difficulties; fits or seizures; choking; vomiting; blue colouration of the hands, feet, lips or other parts of the body; paleness or yellowing of the skin; bone fractures; or any other signs of distress or pain.

- that clear directions are in place to ensure the proposed or administered physical restraint ceases immediately when the serious risk of harm to the person or to others is no longer present.

Disability service providers and registered NDIS providers must apply for the Victorian Senior Practitioner's approval for any proposed use of physical restraint and must satisfy all the requirements above.

Compulsory treatment

For people subject to compulsory treatment, the Victorian Senior Practitioner's approval of the person's treatment plan (including the use of physical restraint) is in force until the supervised treatment order expires, or the supervised treatment order or treatment plan is varied or revoked in accordance with the Disability Act.[10]

3.5 Offences

Section 149 of the Disability Act makes it an offence for a disability service provider or a registered NDIS provider to use any form of regulated restrictive practice (including physical restraint) on a person, unless that use is in accordance with requirements specified in the Disability Act. This includes adhering to the necessary authorisation and approval requirements, and to the authorisation requirements for use of regulated restrictive practices in emergencies.

It is also an offence under section 149 for a disability service provider or registered NDIS provider to use a restrictive practice on a person if the Victorian Senior Practitioner has not approved the appointment of the provider's APO, except in emergencies (see 3.2 Using physical restraint in an emergency).

3.6 How long is the Victorian Senior Practitioner's approval to use physical restraint in force?

The Victorian Senior Practitioner's approval to use physical restraint on a person not subject to compulsory treatment is in force until:

- the approval given by the Victorian Senior Practitioner is revoked
- a new behaviour support plan is developed by a disability service provider, or a new NDIS behaviour support plan is developed by a NDIS behaviour support practitioner, or
- the person's plan expires.

A person's behaviour support plan must be reviewed at least every 12 months. If a behaviour support plan is reviewed by a disability service provider, or a NDIS behaviour support plan is reviewed by a NDIS behaviour support practitioner, and a new plan is developed, the use of physical restraint in the new plan must be in accordance with these guidelines and requirements of the Disability Act. The Victorian Senior Practitioner must approve the use of physical restraint in the new plan.

For further guidance refer to the Victorian Senior Practitioner webpage[11].

For guidance regarding including physical restraint in treatment plans, email compulsorytreatment@dffh.vic.gov.au.

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10 See ss. 195 and 196 of the Disability Act and the *Guidelines for Supervised Treatment Orders* – available at the Victorian Senior Practitioner's webpage, https://www.dffh.vic.gov.au/victorian-senior-practitioner.

11 https://www.dffh.vic.gov.au/victorian-senior-practitioner

4. Reporting of physical restraint

4.1 Disability service providers

All episodes of physical restraint used in accordance with a person's behaviour support plan or NDIS behaviour support plan, or used in an emergency, must be reported to the Victorian Senior Practitioner via the Restrictive Interventions Data System (RIDS) within seven days after the end of the month following the application of the physical restraint.

For people subject to compulsory treatment, the authorised program officer must provide a report on the use of all instances of regulated restrictive practices (including physical restraint) to the Victorian Senior Practitioner at intervals (not exceeding six months) as directed by the Victorian Senior Practitioner. This report must:

- be provided within seven days after the end of the interval advised by the Victorian Senior Practitioner
- include all instances in which physical restraint was applied during the period for which the report is prepared
- specify any details required by the Victorian Senior Practitioner in respect of each use of physical restraint during the interval for which the report is prepared
- have attached a copy of the person's current treatment plan if the use of regulated restrictive practice (including physical restraint) is continued.

The above reporting requirements captures uses of all physical restraint and all other regulated restrictive practices (including uses in accordance with a person's treatment plan, outside of the treatment plan and use of a prohibited physical restraint).

4.2 Registered NDIS providers

The use of regulated restrictive practices on NDIS participants must be reported monthly to the NDIS Quality and Safeguards Commissioner, as required by the NDIS (Restrictive Practices and Behaviour Support) Rules. This includes using physical restraint as part of a NDIS behaviour support plan and using physical restraint on a NDIS participant who is subject to a supervised treatment order in accordance with the NDIS behaviour support plan[12]

The following are considered a reportable incident and must be reported to the NDIS Quality and Safeguards Commissioner within five business days:

- the use of restrictive practices in an emergency
- the use of a prohibited physical restraint
- the use of physical restraints other than in accordance with the NDIS participant's NDIS behaviour support plan, or when it is not authorised by the registered NDIS provider's authorised program officer or the Victorian Senior Practitioner (as part of Victoria's authorisation requirements)
- for NDIS participants subject to supervised treatment orders, the use of physical restraint other than in accordance with the NDIS participant's NDIS behaviour support plan attached to the person's treatment plan, or when the treatment plan is not approved by the Victorian Senior Practitioner.

12 A treatment plan prepared for an NDIS participant by or on behalf of an Authorised Program Officer for registered NDIS provider will also be taken to be the NDIS participant's NDIS behaviour support plan.

If the NDIS participant was seriously harmed or injured during the use of the physical restraint, the incident must be reported to the NDIS Quality and Safeguards Commissioner within 24 hours.[13]

Further information on reporting regulated restrictive practices to the NDIS Quality and Safeguards Commissioner is available at the NDIS Commission Portal User guide for monthly reporting of restrictive practices webpage[14].

Visit the NDIS Quality and Safeguards Commission's website for more information about incident management and reportable incidents[15].

13 See the *NDIS (Incident Management and Reportable Incidents) Rules 2018*.

14 https://www.ndiscommission.gov.au/document/1536

15 https://www.ndiscommission.gov.au/providers/provider-responsibilities/incident-management-and-reportable-incidents

5. Good practice standards

Appendix 4 sets out additional good practice standards that disability service providers and registered NDIS providers who use physical restraint should consider adopting.

Appendix 1: Explanatory notes

Can a person's guardian authorise a prohibited form of physical restraint?

No.

The prohibition issued by the Victorian Senior Practitioner (see 2. Victorian Senior Practitioner's prohibition) applies to disability service providers and registered NDIS providers in all aspects of service provision, regardless of the environment or whether the service is being provided by a disability service provider's or registered NDIS provider's paid employee, contractor, labour hire worker or volunteer. For example, it applies to a paid employee or volunteer respite worker supporting a person in their family home, or to a paid or volunteer disability support professional who is assisting a person to participate in the community.

The prohibition applies even if the person's guardian has, or would be prepared to, authorise a department-provided or funded disability service or registered NDIS provider to use a prohibited physical restraint. To be clear: **prohibited physical restraint cannot be used at all**, irrespective of the views of a person's guardian.

A disability service provider or registered NDIS provider may not use any form of other types of physical restraint unless the requirements of the Disability Act, NDIS (Restrictive Practices and Behaviour Support) Rules (if relevant), and these guidelines and standards have been met. This is the case even if a person's guardian has, or would be prepared to, authorise the use of the physical restraint.

Why has the direction requiring compliance with these guidelines and standards and the prohibition been given?

The Victorian Senior Practitioner has a responsibility under the Disability Act to protect the rights of people who are subject to restrictive practices and compulsory treatment. As with all public authorities, the Victorian Senior Practitioner also has a responsibility under the *Charter of Human Rights and Responsibilities Act 2006* to act compatibly with human rights and to take human rights into account in the office's decision making.

Physical restraint is a very serious form of restrictive practice that limits the human rights of people who are subject to the practice. It is associated with a high risk of injury and harm (including death) to those upon whom it is used. It is also associated with a high risk to the wellbeing of employees who administer physical restraint.

Disability service providers, registered NDIS providers and their staff, contractors, volunteers and labour hire workers should develop their capacity to provide alternative positive behaviour support strategies to people with disabilities, NDIS participants and DSOA clients who engage in behaviours of concern.

Can physical restraint ever be used?

Yes. Physical restraint (that is not a prohibited physical restraint) may be used if it is necessary:

- in an emergency (if the relevant criteria in these guidelines and standards are satisfied)
- where the use of physical restraint is included as a PRN response in a behaviour support plan or an NDIS behaviour support plan, authorised by the relevant authorised program officer, and

- approved by the Victorian Senior Practitioner, and is in accordance with these guidelines and standards for persons subject to compulsory treatment, where the use of physical restraint is included as a PRN response in the person's treatment plan, the treatment plan is approved by the Victorian Senior Practitioner, and
- the use is in accordance with these guidelines and standards.

Section 3 of these guidelines and standards provides details about when physical restraint may be used.

These guidelines and standards do not change a disability service provider or registered NDIS provider's duty of care to take reasonable action to protect the person or another person from foreseeable harm in an emergency.

Does the use of physical restraint have to be reported?

Yes.

Disability service providers must report all incidents of physical restraint, including any emergency use of physical restraint, to the Victorian Senior Practitioner via RIDS.

Registered NDIS providers must report the use of physical restraint on NDIS participants to the NDIS Quality and Safeguards Commission.

Section 4 of these guidelines and standards provides more information about the reporting requirements.

Why isn't the Victorian Senior Practitioner ruling out physical restraint altogether?

The aim of the direction requiring compliance with these guidelines and standards is to work towards eliminating physical restraint over time.

However, the Victorian Senior Practitioner recognises that, for some people and in some environments, it will take time to institute alternative and safer behaviour support practices. In these exceptional situations, physical restraints (that are not in the form of prohibited physical restraints) may need to continue in the immediate future but will be subject to strict safeguards aimed at minimising potential harm and that positive behaviour support alternatives will be actively trialled and instituted.

Appendix 2: Summary of evidence-based positive alternatives to physical restraint

See: McVilly K 2008, *Physical restraint in disability services: Current practices, contemporary concerns and future directions*, The Office of the Victorian Senior Practitioner, Department of Health and Human Services, Melbourne.

1. Multi-element systemic intervention, including person-centred planning, active support and positive behaviour support
2. Counterintuitive intervention strategies including:
    - providing high-density non-contingent reinforcement of the desired behaviour
    - early attention provided to behaviours of concern and avoiding ignoring behaviours that could escalate; avoiding natural consequences likely to escalate behaviour
    - avoiding punishment that can exacerbate behaviour and that is not an effective teaching method for people with cognitive impairment
3. Room-based interventions including:
    - sensory rooms
    - relaxation rooms
    - safe/comfort rooms
4. Sensory interventions, including providing preferred sensory stimulation and eliminating non-preferred stimulation
5. Low-arousal techniques including minimising the complexity, frequency and duration of demands and expectations of the person and minimising the intensity of how these demands are delivered
6. Intensive interaction for people with severe, profound and multiple disabilities
7. Mindfulness techniques for both people with disabilities and those providing support services

Appendix 3: Checklists for using physical restraint as a PRN response

These checklists are not intended to be exhaustive guides, rather they should act as a prompt for disability service providers and registered NDIS providers to reduce the risks associated with using physical restraint.

When developing behaviour support plans and treatment plans, disability service providers should refer to local organisational or departmental policy and related legislative compliance (such as the *Occupational Health and Safety Act 2004*). In particular, disability service providers must consider the objectives and principles of the *Disability Act 2006* (ss. 4 and 5) and the *Charter of Human Rights and Responsibilities Act 2006*, and registered NDIS providers must consider the principles of ss. 5(3A), (4) and (6) of the Disability Act.

There are specific risks[16] associated with using physical restraint that disability service providers must consider when developing behaviour support and treatment plans, and that authorised program officers for disability service providers and registered NDIS providers must consider when authorising the use of physical restraint. These risks include:

- the physical health condition(s) of the person
- the weight of the person
- the particular syndrome of the person (there are particular physical conditions that increase risks, such as people with Down and Turner syndromes who may have cervical spine instability or abnormality)
- current medication that may also increase risks (for example, medication such as chlorpromazine and amitriptyline, which may affect heart function)
- neurological or psychological factors.

As outlined in Checklist A it may also be essential to consult with a medical or allied health professional.

Disability service providers must include the proposed use of physical restraint as a PRN response in behaviour support plans. NDIS behaviour support practitioner must do the same for NDIS participants in their NDIS behaviour support plan. The authorised program officer of the disability service provider or registered NDIS provider must authorise the proposed use of physical restraint, with additional approval from the Victorian Senior Practitioner.

For people subject to compulsory treatment, disability service providers or registered NDIS providers must include the proposed use of physical restraint as a PRN response in the person's treatment plan, or in their NDIS behaviour support plan attached to the treatment plan. The Victorian Senior Practitioner must approve the treatment plan.

Prohibited physical restraint must never be used. Physical restraint must never be used on a person with a psychosocial disability unless the service provider has sought prior direct approval from the Victorian Senior Practitioner.

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16 Perry DW, White G, Norman G, Marston G, Auchoybur R 2006, 'Risk assessment and the use of restrictive physical intervention in adults with a learning disability', *Learning Disability Practice, vol. 9, no. 6,* pp. 30–36. This article provides a comprehensive list of risks associated with physical restraints.

Checklist A: Contraindications of physical restraint related to health[17,18]

Medical or allied health professional advice on using physical restraint should be sought:

- when disability service providers propose including physical restraint in a behaviour support plan or treatment plan as a PRN response
- before authorised program officers of registered NDIS providers approve physical restraint as a PRN response
- before a registered NDIS provider provides a treatment plan[19] to the Victorian Senior Practitioner for approval that includes the proposed use of physical restraint as a PRN response (unless the NDIS behaviour support practitioner who prepared the plan sought medical or allied health professional advice when preparing the plan)
- if the person to be subject to the proposed use of physical restraint:
  - has a known history of heart or vascular problems (such as a history of arrhythmias, high blood pressure or low blood pressure)
  - has a known history of or has difficulty breathing, or a history of respiratory illness (such as asthma, sleep apnoea or chronic chest illness)
  - has a known history of musculoskeletal problems (such as abnormal curvature of the spine (scoliosis and kyphosis), neck and or back problems, arthritis, recent fractures or history of dislocated joints or osteoporosis)
  - has a known history of neurological conditions such as epilepsy or cerebral palsy
  - has a known history of metabolic disorders[20]
  - has a syndrome that increases risk in any of the above factors (for example, people with Down syndrome often have unstable neck joints – known as atlantoaxial instability; people with Rett syndrome are prone to scoliosis; or a person with cerebral palsy may have impaired respiratory function)
  - has a sensory impairment (visual or hearing) because the person may experience further stress from not understanding what is occurring to them
  - has a communication impairment (ensure support staff know how the person communicates such as understanding if the person is showing visible distress and therefore is unable to respond appropriately)
  - is an older person
  - is obese, underweight or has other problems with weight that may increase risks
  - is a person with a known mental health condition (such as anxiety or depression) or a known history of posttraumatic stress disorder (such as a previous history of adverse experience relating to restraints that may further trigger stress symptoms)
  - is on current medication that increase risks in any of the above factors.

17 Harris J, Cornick M, Jefferson A, Mills R 2008, *Physical interventions: A policy framework* (2nd edn), BILD Publications, Worcestershire.

18 Perry et al. 2006.

19 A treatment plan prepared for an NDIS participant by or on behalf of an Authorised Program Officer for registered NDIS provider will also be taken to be the NDIS participant's NDIS behaviour support plan.

20 Metabolism is the process the body uses to get or make energy from the food consumed, such as proteins, carbohydrates and fats. Chemicals in the digestive system break the food down into sugars and acids. The body uses the sugars and acids as fuel that can be stored or used immediately. The energy is stored in the body tissues such as the liver, muscles and body fat. A metabolic disorder occurs when abnormal chemical reactions in the body disrupt this process. A common metabolic disorder is diabetes.

Checklist B: Other contextual and environmental factors that may be contraindications of physical restraint[21,22]

1. Disability service providers and registered NDIS providers should consider the following factors **before** using physical restraint in accordance with a person's behaviour support plan, treatment plan or NDIS behaviour support plan. Providers must consider if the person:
   (a) has been physically unwell recently (such as had a cold or flu, or has undergone medical or dental treatment)
   (b) has experienced recent bereavement or distress
   (c) has experienced significant change in their daily routine and hence may be in a heightened state of anxiety (such as having been transferred to new or different accommodation or has had new people introduced to their environment)
   (d) is having a meal or drink, or has just finished eating or drinking
   (e) is in an environment that may increase risks to self or to staff (such as in traffic or by a road (this does not include duty of care expectations), in confined spaces such as a bathroom, or in a context that may contribute to suffocation or injury to the person and staff).
2. Disability service providers and registered NDIS providers must **stop the physical restraint immediately** if the person subject to the physical restraint shows signs of any of the following conditions:
   (a) breathing difficulties – very rapid or slow breathing
   (b) fits or seizures
   (c) choking[23]
   (d) vomiting
   (e) blue colouration of the hands, feet, lips or other parts of the body (indicates reduced oxygen circulation in the blood)
   (f) mottling (paleness/yellowing of skin due to restricted blood circulation)
   (g) bone factures
   (h) any other signs of distress or pain.

21 Harris et al. 2008.

22 Perry et al. 2006.

23 Choking, or when someone is aspirating, may indicate constriction of the windpipe, or that a person may have food or fluid stuck in their throat. There may be 'gurgling', 'raspy' or bubbling-type sounds or vocalisations produced by the person being physically restrained, indicating difficulty in breathing.

Checklist C: Legislative criteria before using or authorising physical restraint

1. Before a registered NDIS provider or a disability service provider uses physical restraint as a PRN response, the following criteria must be met:
   (a) the use must be included in the person's treatment plan, behaviour support plan or NDIS behaviour support plan (as the case requires)
   (b) the Authorised Program Officer must have authorised the proposed use of the physical restraint (note this is not necessary for people subject to compulsory treatment because the Victorian Senior Practitioner must approve the person's treatment plan)
   (c) the Victorian Senior Practitioner must have approved the proposed use of the physical restraint and, for people subject to compulsory treatment, the person's treatment plan:
   (d) the use must be necessary to prevent the person from causing physical harm to the person or another person
   (e) the use must be the least restrictive option in the circumstances
   (f) the use must be in accordance with the person's behaviour support plan, treatment plan or NDIS behaviour support plan (as the case requires)
   (g) the use must not be applied for longer than the shorter of the following periods: the period necessary to prevent physical harm to the person or another person; or the period authorised by the Authorised Program Officer
   (h) any other Victorian Senior Practitioner's requirements must have been complied with (see the factors for consideration in Checklist B).
2. Before the Authorised Program Officer of a disability service provider or a registered NDIS provider authorises the proposed use of regulated physical restraint in a PRN response, or before a treatment plan is submitted to the Victorian Senior Practitioner for approval, the following criteria must be met:
   (a) the criteria in paragraph 1 of this checklist must be met
   (b) for disability service providers, the person's behaviour support plan must have been developed in accordance with the Disability Act
   (c) for a NDIS participant, the participant's NDIS behaviour support plan must have been developed in accordance with the NDIS (Restrictive Practices and Behaviour Support Plan) Rules
   (d) an independent person has explained the matters required by s. 140 of the Disability Act (as relevant) to the person with disability or NDIS participant (note this requirement does not apply to people subject to compulsory treatment)
   (e) for those subject to compulsory treatment, the person's treatment plan must have been prepared in accordance with the Disability Act.

   In addition to these legislative criteria, the factors in Checklist A (disability service providers and registered NDIS providers) and Checklist D (disability service providers only) must be considered.
3. Before the Victorian Senior Practitioner approves the proposed use of physical restraint in a PRN response, the Victorian Senior Practitioner must be satisfied of the following:
   (a) it is necessary to prevent the person from causing physical harm to themselves or another person

(b) it is the option that is the least restrictive in the circumstances

(c) it is included in the person's behaviour support plan or NDIS behaviour support plan

(d) it is in accordance with the person's behaviour support plan or NDIS behaviour support plan

(e) it is not applied for longer than necessary to prevent the physical harm to the person or another person.

The Victorian Senior Practitioner will also consider the matters in section 3.3 (Obtaining the Victorian Senior Practitioner's approval) of these guidelines and standards.

Checklist D: Developing behaviour support plans or treatment plans with physical restraint as a PRN response by disability service providers

1. **Note:** Behaviours that are known or can be predicted to occur in a potentially known situation, and where physical restraint is considered as a last resort, and a planned response to be used in an emergency only, must be documented as a physical restraint – PRN response in a behaviour support plan or treatment plan. Physical restraint is not to be used as part of a person's routine behaviour support.
2. In developing a behaviour support plan or treatment plan that will include physical restraint in a PRN response, disability service providers must consider all aspects outlined in this Appendix 3 and document relevant information within the plan including:
    - the specific risks associated with using physical restraint
    - a checklist on contraindications of physical restraint related to health
    - a checklist for other contextual and environmental factors that may be contraindications of physical restraint
    - consideration of the factors outlined in Checklists B and C before using physical restraint as a PRN response
    - stopping the physical restraint immediately if the person with disability shows signs of any of the conditions outlined in paragraph 2 of Checklist B.
3. In including physical restraint as a PRN response in a behaviour support plan or treatment plan, disability service providers must consider all aspects outlined above and provide details of the following in the behaviour support plan or treatment plan:
    - the behaviour(s) of concern that is necessitating the proposed use of physical restraint (describe each in detail, including the impact of the behaviour of concern on the person and others, the predictors for the behaviour(s) and the frequency, intensity and duration of the behaviour(s) and why physical restraint is viewed as an intervention necessary in an emergency)
    - evidence that a comprehensive review or assessment and analysis have been conducted to determine whether a behaviour or an incident is foreseeable, and if the behaviour or incident is likely to re-occur
    - how often physical restraint has been used with this person during the last year (include the number of episodes, the location of each episode and the duration of each episode of physical restraint)
    - how the proposed PRN physical restraint will be applied (only include the process of the hands-on restraint, how exactly the person will be restrained, how many staff will be involved in the restraint and how the restraint will be concluded)
    - appropriate arrangements to ensure the person's physical condition is closely observed and documented during the period of the physical restraint and for at least one hour after the application of restraint
    - evidence that directions are in place to ensure that the proposed or administered physical restraint ceases immediately when the serious risk of harm to the person or to other people is no longer present

- the consultation report from the regional behaviour intervention support team (BIST), specialist services or equivalent that provides an opinion about using PRN physical restraint (attach a copy).

4. The behaviour support plan or treatment plan and any associated assessments and reviews must provide evidence that:
    - positive behaviour support alternatives are being trialled or implemented as alternatives to using physical restraints over a period of time, such as more than a year
    - a comprehensive treatment or behaviour support plan has been implemented and evaluated overtime, such as more than a year
    - implementation of the treatment or behaviour support plan and analysis of the plan yielded no significant gains or outcomes for the person
    - other less restrictive options in the circumstances are considered and outlined in the person's treatment or behaviour support plan.

Appendix 4: The role of senior management of disability service providers and registered NDIS providers

In addition to departmental or local organisational policy and procedures, and the requirements set out in this direction, disability service providers and registered NDIS providers may wish to consider the following good practice:

1. Provide regular training updates about safely applying physical restraint. Training should include current first aid competency, positive behaviour support strategies and standard defusing or de-escalation techniques when a person is showing behaviours of concern, and explanations regarding the prohibited physical restraints that must never be used.
2. Ensure people who have been physically restrained are safe, supported and have had a medical or allied health review where the circumstances indicate this is necessary (for example, the person might have had a nosebleed during the administration of emergency physical restraint, or the person complains of pain after emergency physical restraint that might indicate bone fractures or muscle pain).
3. Establish a restraint review committee to provide:
    - debriefing to disability support professionals involved in developing and applying the guidelines for using physical restraint, and use the debriefing as a reflective learning opportunity to find alternative and positive options
    - a review of each application of physical restraint to ascertain whether its use was warranted
    - assurance that legislative requirements are met
    - a strategic plan to work towards eliminating physical restraint use on a person
    - a report on the findings of the restraint review committee to the senior management and Victorian Senior Practitioner (if such a committee is established).