



# Unauthorised use of restrictive practices

## Questions and answers

### Background

On 16 July 2020, the NDIS Quality and Safeguards Commissioner (NDIS Commissioner), Graeme Head AO, and the Registrar, Samantha Taylor, presented an information session regarding unauthorised use of restrictive practices.

This session reinforced the requests for information sent by the NDIS Commissioner to providers in NSW and SA that have used one or more restrictive practices from 1 July 2019 to 30 June 2020, in circumstances where the use is not in accordance with:

- an authorisation and there is an authorisation process in relation to the use of the restrictive practice, and/or
- a behaviour support plan for the NDIS participant.

This document consolidates the questions asked by providers at the information session, as well as others we have received about the use of restrictive practices.

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# Questions and answers

## The NDIS Commission's responsibilities and approach

### Why is the NDIS Commission concerned about providers' approach to the use of restrictive practices?

We're concerned for a number of reasons, including:

- the number of unauthorised use of restrictive practices being notified as reportable incidents has increased since January 2020, compared to the period 1 July to 31 December 2019
- some participants who are subject to restrictive practices do not have behaviour support funding in their plans
- there appear to be NDIS behaviour support practitioners available, but many have not lodged a behaviour support plan, and
- it's not clear why so many restrictive practices are being notified as reportable incidents, rather than moving through to regulation under [National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2018](#) (Restrictive Practices and Behaviour Support Rules) with the required authorisation and behaviour support plan.

Data for 2019–20 shows an unexpectedly high number of notifications of reportable incidents involving the use of restrictive practices. The number of restrictive practices reported in the NDIS Commission Activity Report for the six months to 31 December 2019 was 65,398, and data reviewed in advance of 30 June 2020 indicates a further significant increase in the use of restrictive practices since January 2020.

It is important for oversight of quality and safeguarding that restrictive practices are used only where they're authorised and in accordance with a behaviour support plan.

### Why is the NDIS Commission asking for use of restrictive practice information?

We're asking for this information as:

- we're moving away from an education, support and encouragement approach, and increasing our compliance activity
- a way to encourage providers who have reported the use of restrictive practices to focus carefully on whether they are meeting their obligations under the Restrictive Practices and Behaviour Support Rules
- the information gathered may support further compliance action, where it is considered warranted.

### The bolded paragraph in our letter says that this is an escalation of the NDIS Commission's compliance activity, what does this mean?

As the national regulator for NDIS supports and services, we're concerned about the level of reporting of unauthorised restrictive practices. We need to be satisfied that registered NDIS providers are taking all reasonable steps to:

- achieve authorisation of the use of restrictive practices or
- put a behaviour support plan in place, including interim plans, as required under the Restrictive Practices and Behaviour Support Rules.

We have a reasonable expectation that registered NDIS providers meet their obligations with respect to the use of restrictive practices. Where we identify providers who are not doing this, we may consider further compliance or enforcement action.

### **Why is the NDIS Commission doing this in two parts?**

Our initial focus is on NSW and SA as these states have been in our jurisdiction for two years.

This approach also foreshadows our intentions to undertake similar actions in our other jurisdictions.

### **The NDIS Commission has indicated plans to reduce reportable incidents by 90%. Is this a good idea, when reducing reporting is likely to increase abuse and deaths?**

Our goal is to reduce unauthorised use of restrictive practices, which currently make up 90% of notified reportable incidents. Reducing the use of unauthorised restrictive practices and ensuring they're instead authorised, according to state or territory requirements, and used in accordance with a behaviour support plan, safeguards participants in the supports they receive, and means they're no longer reportable incidents.

### **I'm worried some providers won't report restrictive practices because they're afraid the NDIS Commission will take compliance action. What is the NDIS Commission's view on this?**

Reporting incidents helps us understand the extent to which people with disability are adversely affected by incidents, including unauthorised restrictive practices, that they're exposed to in the course of receiving NDIS funded supports and services.

The NDIS Commission's role is to determine how well registered NDIS providers are responding to incidents and meeting their compliance obligations under the *National Disability Insurance Scheme Act 2013* (NDIS Act) and the Restrictive Practices and Behaviour Support Rules.

## **Defining restrictive practices for reporting purposes**

### **What is a restrictive practice?**

The NDIS Act defines a restrictive practice as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

The primary purpose of a restrictive practice should be to protect the person with disability or others from harm. There are five categories of restrictive practices that are regulated by the NDIS Commission. These are referred to as regulated restrictive practices and are outlined in the Restrictive Practices and Behaviour Support Rules.

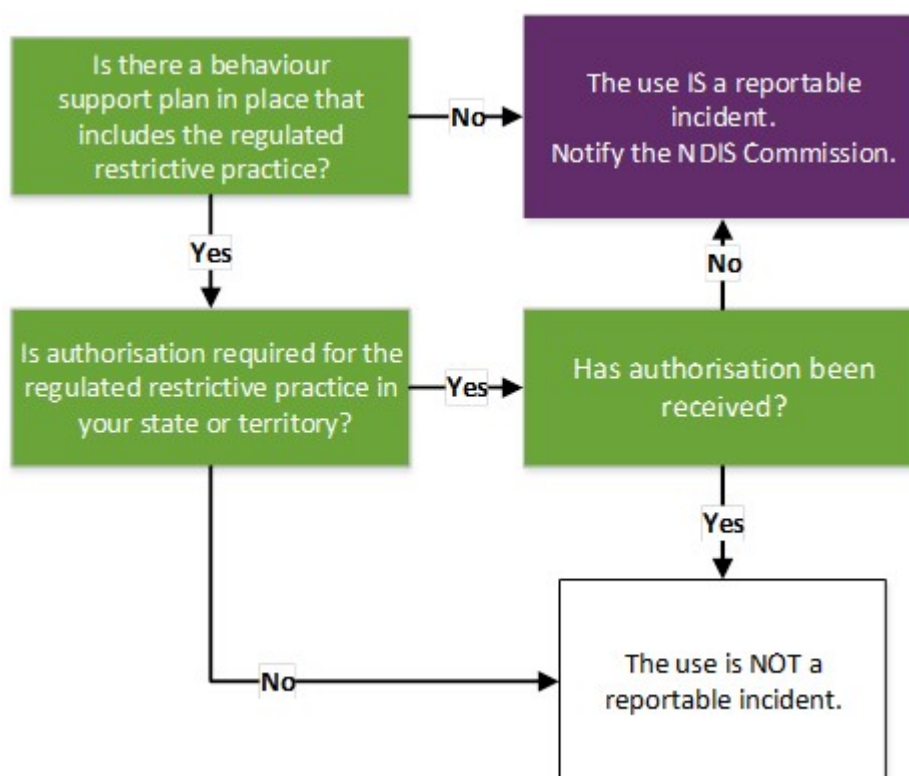
Further information is available on the [NDIS Commission's website](#).

## What is an unauthorised restrictive practice?

Section 73Z(4) of the NDIS Act and section 16(3) of the [National Disability Insurance Scheme \(Incident Management and Reportable Incidents\) Rules 2018](#) (Incident Management and Reportable Incidents Rules) defines a reportable incident as when a restrictive practice is used:

- without authorisation by the relevant state or territory (however described), or
- not in accordance with a behaviour support plan.

**Figure 1: Flow chart outlining how a reportable incident is defined**



## What should I do if I'm not sure if something is a restrictive practice or how to categorise it?

The NDIS Act defines a restrictive practice as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

Implementing providers should read the definitions of the five different types of regulated restrictive practices, and other resources, available under the Restrictive Practices and Behaviour Support Rules on the [NDIS Commission website](#), to see if a strategy or practice meets the definition of a regulated restrictive practice.

If needed, providers can seek further advice from a behaviour support practitioner, and behaviour support practitioners can seek clinical practice advice from their supervisors, consistent with the Positive Behaviour Support Capability Framework.

The NDIS Commission can also provide advice on regulated restrictive practices.

## **What is chemical restraint?**

The Restrictive Practices and Behaviour Support Rules define chemical restraint as:

- 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.

If the primary purpose of the medication is to influence behaviour, irrespective of whether the medication is routinely prescribed or PRN, then it constitutes chemical restraint and needs to be reported.

If you're unsure whether or not a participant's medication meets the definition of chemical restraint, its purpose should be confirmed with the prescriber and discussed with the behaviour support practitioner.

## **Is the practice of locking doors to keep participants safe from violence considered a restrictive practice?**

This practice may be considered seclusion or an environmental restraint. If a participant is regularly subject to a regulated restrictive practice then it needs to be contained within a positive behaviour support plan and authorised by the state or territory where the participant lives. For more information contact the [Behaviour Support Team](#).

## **Do children under 18 require behaviour support plans to approve the use of restrictive practices? Does this mean that restrictive practices used on a person under 18 are always flagged as unauthorised before they're updated on the PRODA?**

No, this is not correct. All NDIS participants (irrespective of age) who are subject to regulated restrictive practices need a behaviour support plan and the use of the regulated restrictive practice must be authorised (however described by the relevant state or territory). Practitioners must lodge behaviour support plans that contain regulated restrictive practices with the NDIS Commission.

For more information on lodging behaviour support plans, visit the [NDIS Commission website](#) and the [Lodging a behaviour support plan user guide](#).

## **What is the NDIS Commission's view on consent arrangements? Consent plays a large part in the use of restrictive practices and there is tension between state requirements when the Trustee or Guardian does not provide consent until it has been to panel.**

The consent arrangements are determined by the state or territory.

## Authorisation of restrictive practices

### Does the NDIS Commission authorise restrictive practices and/or behaviour support plans containing regulated restrictive practices?

No, we don't authorise the use of restrictive practices. Authorisation remains the responsibility of the state or territory. The Restrictive Practices and Behaviour Support Rules require regulated restrictive practices to be used according to the relevant state or territory authorisation process, however described.

Where a state or territory does not have an applicable authorisation process, the requirements under the NDIS Act and the Restrictive Practices and Behaviour Support Rules continue to apply. This means the regulated restrictive practice must be in a behaviour support plan, and lodged with the NDIS Commission by the behaviour support provider, regardless of whether state or territory authorisation is required.

Where the state or territory does have an applicable authorisation process, the Restrictive Practices and Behaviour Support Rules require the implementing provider to obtain authorisation and lodge evidence of that authorisation with us.

Further information about authorisation is available from the states and territories.

**Table 1: State and territory authorities**

States and territories	Relevant authority
ACT	<a href="#">ACT Office of the Senior Practitioner</a>
NSW	<a href="#">NSW Department of Communities and Justice</a>
NT	<a href="#">NT Department of Health</a>
QLD	<a href="#">QLD Department of Communities, Disability Services and Seniors</a>
SA	<a href="#">Office of the Public Advocate (08 8342 8200)</a>
TAS	<a href="#">Department of Communities Tasmania</a>
VIC	<a href="#">VIC Department of Health and Human Services</a>

## What is evidence of authorisation?

The Restrictive Practices and Behaviour Support Rules require that where a state or territory has an authorisation process, evidence of authorisation must be provided as soon as possible after the use of a restrictive practice.

Evidence of authorisation must be attached to a participant's behaviour support plan record in the NDIS Commission Portal under 'schedule of restrictive practice'. Refer to the [NDIS Commission Portal User Guide for Monthly Reporting of Restrictive Practices](#) for further information.

States and territories determine what documents can be used to confirm the authorisation of restrictive practices, and can provide further information (see table above).

## **Our organisation has approved the behaviour support plan lodged with the NDIS Commission, but other providers working with the participant have not. Do we have to keep reporting the use of unauthorised restrictive practices because the plan isn't fully approved? (this is an ongoing system issue)**

Where there are multiple implementing providers on a participant's behaviour support plan in the NDIS Commission Portal and only one provider has approved the plan then the implementing provider can commence reporting on a partially active plan.

However, if the implementing provider isn't authorised to use the restrictive practices in the behaviour support plan, they will need to continue reporting unauthorised restrictive practices.

## **What happens if the behaviour support plan has expired on the NDIS Commission Portal? Does that mean that a restrictive practice is unauthorised and we need to lodge it as a reportable incident?**

A restrictive practice is not a reportable incident if:

- it has current state or territory authorisation (however described), and the use of the restrictive practice is in accordance with a behaviour support plan, or
- its use is in accordance with a behaviour support plan and there is current authorisation in accordance with the relevant state or territory requirements (however described), but the behaviour support plan has not been reviewed within the required timeframes (and the plan status is expired in the NDIS Commission Portal).

Implementing providers can report monthly on behaviour support plans showing as expired through the NDIS Commission Portal.

## Reporting restrictive practices and provider's obligations

### How quickly must we report the use of an unauthorised restrictive practice to the NDIS Commission?

Registered NDIS providers are required to notify the use of a restrictive practice, that's not authorised by the relevant state or territory (where required), within five business days of becoming aware of the incident. If however, the incident has resulted in death or serious injury to a person with disability, you must report it within 24 hours.

### What's the difference if I report the use of a restrictive practice as a reportable incident or through a behaviour support plan?

The Restrictive Practices and Behaviour Support Rules provides better oversight when a restrictive practice is ongoing. This allows effective management and reduces the number of reportable incidents.

### Will the National Disability Insurance Agency (NDIA) look at providing funding in NDIS plans to help providers meet their initial and ongoing obligations for the use of restrictive practices?

It is the responsibility of the implementing provider to meet their reporting obligations and it is a condition of their registration with the NDIS Commission.

### In some cases, families and support coordinators aren't open to change and ask practitioners to submit medication changes as reportable incidents. How does the NDIS Commission suggest practitioners approach this?

When applying chemical restraint, in the context of NDIS funded supports, it should be authorised (as described by the state or territory) and used according to a participant's behaviour support plan. If the restraint does not meet these conditions, you must lodge it as an unauthorised use of a restrictive practice, which is a reportable incident.

If the use of medication changes in a material way then a review of the behaviour support plan is appropriate.

### A family we support is very opposed to us reporting an unauthorised restrictive practice they use for their child. They believe we're judging them and disrespecting their trust. How should we manage this? They are also asking for copies of any reports made, under the Freedom of Information Act 1982 (FOI Act).

Registered NDIS providers using a regulated restrictive practice when providing supports or services to a person with disability, must comply with the relevant reporting requirements under the Incident Management and Reportable Incident Rules.



However, if the family of the NDIS participant use the restrictive practice (not in connection with the NDIS funded supports or services), this falls outside the jurisdiction of the NDIS Commission and does not need to be reported.

Any information received is protected NDIS Commission information and is subject to the privacy requirements of the NDIS Act. A participant, parent or guardian can make a Freedom of Information (FOI) request, details are on the [NDIS Commission's website](#).

### **If a family applies restraint while support workers are present, what are our obligations, particularly if it is apparent the participant is not happy with the restraint?**

If a family applies a restraint that could be seen as being used in the course of a support worker delivering NDIS supports or services, it constitutes a restrictive practice. In this case, the support worker could suggest the family obtain funding for a behaviour support practitioner.

If the support worker holds concerns about the participant's welfare, then they can discuss the situation with their employer and seek further advice on how to manage the situation.

### **What is the NDIS Commission doing to check on providers who don't report? What about unregistered providers and support workers operating as a single business?**

The NDIS Commission has a range of compliance tools available to ensure both registered and unregistered providers are meeting their reporting obligations under the NDIS Act. Penalties can apply where an unregistered provider delivers supports or services that only registered NDIS providers can.

Additionally, we may take action against providers who breach the NDIS Code of Conduct. The NDIS Code of Conduct aims to promote safe and ethical service delivery by setting expectations for the conduct of both NDIS providers (registered and unregistered) and workers.

### **A participant we support has used all of their improved relationships funding and their behaviour support practitioner has stopped engaging. Are we responsible for submitting a review for the participant, and how can an implementing provider (rather than the participant, guardian or support coordinator) do this?**

The Restrictive Practices and Behaviour Support Rules, section 11(2) contains the following:

The registration of the registered NDIS provider is subject to the condition that the provider must:

- (a) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice; and
- (b) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.

For more information on demonstrating 'reasonable steps', [see our fact sheet](#).

## Why is the NDIS Commission asking me to categorise the use of restrictive practices?

The purpose of categorisation is to enable the NDIS Commission to identify:

- restrictive practices that require no additional action, being those that:
  - were only ever intended to be regulated under the reportable incidents function – Category A single emergency uses
  - have moved through to regulation under the Restrictive Practices and Behaviour Support Rules – Category B uses that are now authorised (if required) and covered by a behaviour support plan. These restrictive practices provide information on compliance, allow us to understand how long it took to move through to regulation under the Restrictive Practices and Behaviour Support Rules, and help us to understand what is reasonable to expect of providers, and
  - are not of ongoing interest to the NDIS Commission from a compliance perspective – Category C uses where authorisation and a behaviour support plan are not being pursued (but see the discussion of complicating factors below);
- use of restrictive practices which the provider is unlikely to resolve without additional support, being restrictive practices where:
  - there is no behaviour support funding available – Category D uses. This situation is likely to need a system-wide solution, which the NDIS Commission should pursue with the NDIA
  - there is no behaviour support provider or practitioner available to prepare a behaviour support plan – Category E uses. This category should identify the extent to which the volume of unauthorised restrictive practices is being driven by thin markets in behaviour support. This is a problem the NDIS Commission should pursue with the Department of Social Services; and
- restrictive practices where the provider should be able to move the participant through to regulation under the Restrictive Practices and Behaviour Support Rules – being Categories F, G and (for South Australia only) H uses, where there is no apparent impediment to the provider obtaining authorisation (if required) and a behaviour support plan.

## The NDIS Commission's requests for information

### Why is the NDIS Commission asking for this information when we have notified it as a reportable incident, and most of the information is available through the NDIS Commission Portal?

Reporting incidents helps us understand the extent to which participants are adversely impacted by incidents they're exposed to while receiving NDIS supports and services, including unauthorised restrictive practices. Our role is to determine how effectively registered NDIS providers are responding to those incidents and moving towards compliance.

Given the significant number of unauthorised restrictive practices being notified as reportable incidents, we're seeking to understand what registered NDIS providers are doing to meet their obligations.

The information contained in the NDIS Commission Portal relates to the unauthorised restrictive practice at the time of reporting. The use of restrictive practices strategy requires NDIS providers to continue to update us on actions taken to develop behaviour support plans and gain authorisation, where appropriate.

The NDIS Commissioner's reasons for requesting the information is set out in his letter, including his authority to do so under subsection 73F(2)(i) of NDIS Act.

### **Why can't the NDIS Commission provide me with a list of the unauthorised restrictive practices to report on?**

It is a requirement of registration that NDIS providers set up procedures within their own incident management system to identify, assess, manage and resolve incidents. The incident management system must provide for the collection of details including, but not limited to:

- a description of the incident
- the time, date and place that the incident occurred
- the actions taken in response to the incident.

An incident management system should allow providers to identify reportable incidents, including those that involve the unauthorised use of a restrictive practice.

Registered NDIS providers are required to keep records of the reports they make to the NDIS Commission, under section 25 of the Incident Management and Reportable Incidents Rules, for 7 years from the day the reportable incident is notified.

If a provider is not able to easily identify the reportable incidents notified to the NDIS Commission, this may indicate they're not meeting their requirements.

### **How should the provider gather the requested information if a participant is no longer at the provider where the incident occurred and the provider holds no active service agreement or ongoing consent?**

As above, it is a requirement of registration that registered NDIS providers set up procedures within their own incident management system to identify, assess, manage and resolve incidents.

### **Is there any possibility to configure the NDIS Commission Portal so that providers can export data from their systems to complete reporting obligations?**

Not at this stage.

### **Some of the data requested is already part of the notification process for the unauthorised use of restrictive practices. Will the framework change to reduce duplication and ensure the collection of all necessary information at the time of reporting?**

There are no changes to the reporting requirements planned. The current request for information is in response to a significant number of unauthorised use of restrictive practices reports. The NDIS

Commission will use this information to oversee what registered NDIS providers are doing to meet their obligations.

### **When will I hear back from the NDIS Commission?**

If we require further information, we'll be in touch shortly after the information due date.

If the NDIS Commissioner is not satisfied with the information provided, then the NDIS Commission will issue a compliance notice setting out the information you must provide. This may occur if:

- the information provided does not meet your obligations under the Restrictive Practices and Behaviour Support Rules (in terms of taking reasonable steps), or
- you haven't provide the information in full, or within the required timeframe.

### **What action will the NDIS Commission take?**

Failure by a registered NDIS provider to comply with requirements under the Incident Management and Reportable Incidents Rules or the Restrictive Practices and Behaviour Support Rules, constitutes a breach of condition of registration, under section 73F of the NDIS Act, and may lead to compliance and enforcement action, under division 8 of part 3A of the NDIS Act.

The NDIS Commission takes compliance and enforcement action according to the [NDIS Commission's Compliance and Enforcement Policy](#) (published June 2019). We aim to take a risk responsive and proportionate approach to non-compliance, with the aim of returning NDIS providers to compliance, where possible.

The NDIS Commission has a wide range of compliance and enforcement action tools including, but not limited to:

- education
- requesting remedial action
- issuing compliance or infringement notices, and
- varying, suspending and/or revoking registration.

### **What is the NDIS Commission doing with this information? How will the NDIS Commission use the information (for example, to inform registration decisions)?**

Information received will become protected NDIS Commission information and is subject to the privacy requirements of the NDIS Act. We'll use the information to:

- assess the NDIS provider's compliance with its conditions of registration
- support mid-term audits and registration renewal applications, and
- assess whether any further action is necessary.

Further action includes compliance and enforcement actions, such as decisions regarding the registration of a provider.

## Responding to the request for information

### Will there be funding available to help providers do this additional work? Will providers be able to claim for the time taken to collect data and liaise with behaviour support specialists?

No, under subsection 73F(2)(i) of the NDIS Act your registration is subject to you providing, on request, the information specified within the required period.

This request for information enables the NDIS Commission to determine if you are meeting your obligations, or if there are factors that make it difficult for you to do so (such as the availability of behaviour support practitioners to develop plans, and the funding available in a participant's plan).

### What is the NDIS Commission doing to recognise the additional work commitments reporting will place on providers?

The NDIS Commission has taken the following steps to reduce the burden the notices place on providers, without adversely affecting the information sought:

- Weekly reporting – the notices require providers to respond to each use of a restrictive practice, except when the NDIS Commission has given them permission to report the unauthorised use of a restrictive practice on a weekly basis. In these cases, providers are able to give information once for all of the uses that are under a single reportable incident ID. This streamlines the information providers are required to give in response to the notices, and avoids them providing the same information multiple times.
- Three monthly reports – it appears that reportable incidents officers, when giving providers permission to report certain restrictive practices on a weekly basis, have also required three monthly updates on the steps providers have taken to obtain authorisation or to facilitate the development of a behaviour support plan. The letters to providers proposed in this action state that, in light of the compliance activity, they are no longer required to provide three monthly updates (although they must continue to submit weekly reports notifying the NDIS Commission of the use of restrictive practices).
- Extended time to respond – notices requesting information under s73F(2)(i) of the NDIS Act must allow at least 14 days for providers to respond. The notices under s73F(2)(i) proposed in this action (if issued on Friday 3 July 2020) will allow twice this minimum amount of time, with returns required by 31 July 2020. There is no minimum timeframe specified for notices requiring providers to demonstrate compliance under ss11, 12, and 13 of the Restrictive Practices and Behaviour Support Rules. The notices under these sections proposed in this action will allow almost three months, with returns required by 30 September 2020. This is a generous amount of time, which should enable providers to take more action relevant to compliance, if they wish to do so, and to manage the additional work of responding to the notices.

### What if I can't meet the timeframes, can I get an extension?

The NDIS Commission has established timeframes for response to this notice that reflect the relative complexity of each stage. The request for information provisions under the NDIS Act allow a minimum

of 14 days for the provision of requested information. This request for information gives providers 28 days for the first step, and more than 90 days to provide information demonstrating compliance.

If there are exceptional circumstances, you can seek an extension by submitting a request to [URP Compliance](#). Your request should clearly set out your reasons for seeking an extension.

## **Can you please explain the categories on the spreadsheet that I need to use to classify these incidents?**

The categories in the spreadsheet include:

- the status of the use, categories A to C
- where there is no mechanism available to you to progress action, categories D and E, and
- how progressed the provider is in meeting their obligations, categories F and G.

Some examples are:

- Example 1: We have authorisation for all regulated restrictive practices, however, the behaviour support plan is currently under development by the behaviour support practitioner. Which category does this fall under?
  - Category F: authorisation, but no behaviour support plan.
- Example 2: I have reported an unauthorised use of restrictive practice to NDIS Commission, however we no longer provide services to that participant. Which category does this fall under?
  - Category C: otherwise not pursuing authorisation or behaviour support plan, as you are not required to take any further action.

The request for information outlines the requirements for completing the spreadsheet.

## **How do we categorise interim restrictive practice authorisations that have expired due to a provider not finalising an interim behaviour support plan?**

Place them in category F.

## **Why don't I have category H on my three step chart?**

Each state and territory has different authorisation requirements and only providers in South Australia and Queensland are required to complete category H, if applicable.

## **Why have I received a compliance request from the NDIS Commission, when I have reported another provider's use of restrictive practice in my capacity as a behaviour support practitioner?**

We are assessing the reportable incidents attributed to behaviour support practitioners concerning the use of restrictive practices.

Behaviour support practitioners who have contacted the NDIS Commission about receiving a request for information will be sent correspondence confirming whether or not they are required to comply with the request, and the requirements to demonstrate compliance once this assessment is complete.

### **How do we respond to this request if, as a registered behaviour support specialist, we did not use the restrictive practice?**

Please advise the NDIS Commission if you have received the request but are not responsible for implementing the restrictive practice.

Behaviour support specialists and behaviour support practitioners who have contacted the NDIS Commission will receive correspondence confirming whether or not they are required to comply with the request for information, and requirements to demonstrate compliance once this assessment is complete.

### **If a new provider is not yet included in a participant's behaviour support plan at the time of reporting the unauthorised restrictive practice, and the incident is closed on the NDIS Commission Portal by the time the plan is updated, do they still have to respond to the request for information?**

Yes, you will still need to respond to the request.

### **I reported a single use of a restrictive practice, but did not complete the behaviour support plan. Instead, another provider completed the plan following behaviour support plan funding. How do I report this?**

Please provide this information in your response to the request for information, and include as much detail as possible.

### **In the email sent out by the NDIS Commission, the attachment labelled 'A - Request for information - Unauthorised restrictive practices' appears to be a copy of the spreadsheet 'Requirement to demonstrate compliance - s12'. Is this correct?**

The document 'A – Request for information – Unauthorised Restrictive Practices' sets out information to be provided to the NDIS Commission by 31 July 2020. If you report the use of a restrictive practice in 'Category G: No behaviour support plan or authorisation – section 12', you are then required to demonstrate compliance by 30 September 2020, in accordance with the advice set out in document 'C – Requirement to Demonstrate Compliance – s12'.

The poster attached to the email will assist with understanding the difference between the attachments.

## **If we've reported incidents relating to a participant over a few months, can we enter a date range for the incident date field, or do we need to submit each separate incident?**

You should provide details of each use of a restrictive practice notified to the NDIS Commission, in accordance with the request for information.

## **Do I need to include incident dates for each time use of an unauthorised restrictive practice?**

You must provide details of each use of a restrictive practice notified to the NDIS Commission, in accordance with the request for information.

However, if you have been authorised to report weekly on the use of a restrictive practice, you can provide information once for all of the uses (from the first use through to the uses reported weekly) under the single reportable incident reference number you use for the weekly reports.

To do this, include the reportable incident reference number and date for the first incident, and provide all relevant information against this incident. Then, for subsequent incidents, include the reportable incident reference number, cross referenced with the first relevant incident (for example, insert "See [reportable incident reference number]" against the second and any subsequent uses).

## **Should I keep reporting on unauthorised restrictive practices through the NDIS Commission Portal while the NDIS Commission is reviewing the information requested?**

Yes, you must continue to report each unauthorised use of a restrictive practice.

## **Do I have to report on incidents that the NDIS Commission has closed?**

The request for information requires you to provide information on the incidents you notified the NDIS Commission of in the period 1 July 2019 to 30 June 2020. You can report any unauthorised restrictive practices that are closed against the relevant category outlined in the request for information.

## **I can't find some of my reportable incidents in the NDIS Commission Portal, what should I do?**

If you can't find a reportable incident in the NDIS Commission Portal you should contact the [NDIS Commission Contact Centre](#) and advise them of the participant's name and the reportable incident reference number you're trying to locate.



## About behaviour support plans

### When does a behaviour support plan need to be lodged with the NDIS Commission?

A behaviour support plan for a person with disability that contains a regulated restrictive practice, (including a reviewed plan) must be lodged with the NDIS Commissioner as soon as practicable after it is developed in accordance with section 24 of the Restrictive Practices and Behaviour Support Rules. This obligation rests with the registered behaviour support specialist.

Implementing providers must also report to the NDIS Commission on the use of regulated restrictive practices, in accordance with section 14 of the Restrictive Practices and Behaviour Support Rules, and on the use of unauthorised restrictive practices, in accordance with the Incident Management and Reportable Incidents Rules.

### What are the required timeframes for implementing providers to develop a behaviour support plan?

The Restrictive Practices and Behaviour Support Rules require, as a condition of registration, that implementing providers take all reasonable steps to facilitate the development of behaviour support plans to cover the use of a regulated restrictive practice.

### Should we date behaviour support plans at the beginning of writing or the completion? If they're dated at the completion, it reduces the length of time the plan can be used.

We expect practitioners to develop an interim behaviour support plan to enable the NDIS provider to obtain interim authorisation. This allows practitioners to date the comprehensive behaviour support plan on completion and providers to obtain authorisation at this time.

The authorisation period of time allows providers to complete monthly reports for the NDIS Commission. The length of authorisation is not determined by the behaviour support plan date.

### When a participant's funding is used to develop a behaviour support plan, is the plan the property of the participant, the practitioner or the organisation that created it?

Once the behaviour support plan is developed and finalised it belongs to the participant. If the participant decides to move to another service, the plan will move with them.

### Do we need to report on an expired behaviour support plan that didn't include authorised restrictive practices, if we've lodged a new plan that does include these?

If you've lodged a new behaviour support plan on the NDIS Commission Portal and the restrictive practice is authorised, report monthly on the new plan. Monthly reporting is a mandatory requirement in relation to the use of regulated restrictive practices.

## **Will I need to stop supporting people if they do not have a behaviour support plan?**

If a participant does not have a current behaviour support plan and is subject to restrictive practices, you should take all reasonable steps to engage a behaviour support practitioner to develop a behaviour support plan.

If the participant has a behaviour support plan that is no longer in force, you should continue to follow the strategies in the plan until a new plan is developed.

You will need to continue reporting on the use of unauthorised restrictive practices until a current behaviour support plan is in place and has received appropriate authorisation.

## **Should I refuse to take new participants who have restrictive practices without a behaviour support plan?**

No. Registered NDIS providers need to ensure that they are able to meet the goals, needs and preferences of each participant when assessing new requests for support.

This includes ensuring that, in the delivery of services, the registered NDIS provider can meet the conditions of registration related to behaviour support and regulated restrictive practices.

Any NDIS provider who implements (or is likely to implement) restrictive practices must register with the NDIS Commission for the type of support they are providing. New registrations, renewals and mid-term audits will include an assessment against Module 2A: Implementing Behaviour Support Plans. NDIS providers do not need to register specifically for behaviour support registration group 110 (unless they are providing specialist behaviour support services).

For further information see our fact sheet [How to register as an NDIS Provider](#) or contact [Registration](#).

## **We are not the primary NDIS provider working with a participant, how can we influence their funding or get a behaviour support plan?**

You may need to liaise with the participant, their support coordinator or the primary provider to deliver information that supports the plan review, and work collaboratively to engage a behaviour support practitioner.

Continue to keep records of your efforts to facilitate the development of a behaviour support plan as outlined in Implementing Providers: Facilitating the development of behaviour support plans that include regulated restrictive practices.

## **I have all my participants on a waiting list for behaviour support but no control over when they will get plans. Does that meet the requirements?**

While you are waiting for a behaviour support practitioner to commence work with your NDIS participant we recommend, in addition to your ongoing reporting requirements, that you:

- complete risk assessments to ensure the safety of participants and others
- audit current restrictive practices to ensure they are still required
- ensure current restrictive practices are the least restrictive options in the current circumstance

- ensure that medication, medical and allied health specialists' reviews are followed up within appropriate time-frames.

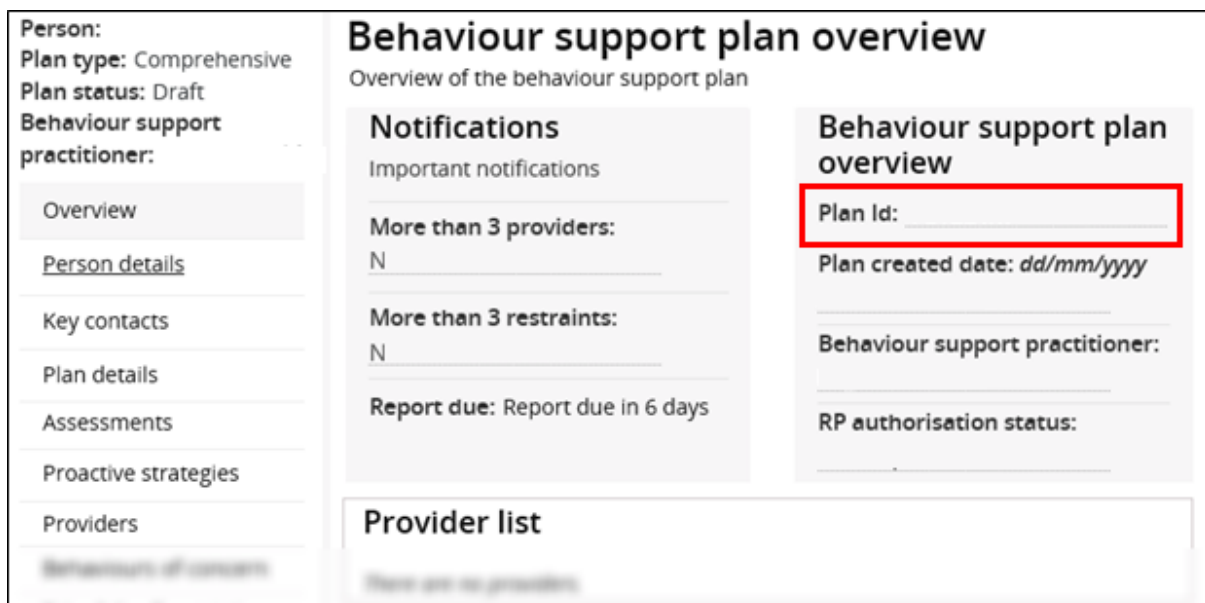
**What happens when a participant has an approved behaviour support plan and changes their day program, but does not have the funding to update the plan and add the new provider to the NDIS Commission Portal? We find that practitioners struggle to update the plans within the review time.**

The provider needs to work with the NDIS participant, or their support coordinator, to request a review of the NDIS plan. The new implementing provider must be added to the behaviour support plan so they can report monthly on the use of any regulated restrictive practices to the NDIS Commission. Providers should review the behaviour support plan to ensure the change in environment is captured and addressed.

**Where do I find the behaviour support plan reference number on the NDIS Commission Portal?**

The behaviour support plan reference number is located in the top right hand corner of the screen under the 'Overview' tab on the menu. Refer below.

**Figure 2: Finding a behaviour support plan reference number on the NDIS Commission Portal**



**Specialist behaviour support providers**

**What are the timeframes for practitioners regarding behaviour support plans?**

The Restrictive Practices and Behaviour Support Rules require, as a condition of registration, that specialist behaviour support providers must develop:

- an interim behaviour support plan that includes regulated restrictive practices within a month of being engaged
- a comprehensive behaviour support plan that includes regulated restrictive practices within six months of being engaged.

Reviews of behaviour support plans are to occur:

- if there is a change in circumstances which requires the plan to be amended. This should occur as soon as practicable after the change, or
- at least every 12 months while the plan is in force.

**Are there plans to mandate education for behaviour support practitioners on their responsibilities and the process for lodging behaviour support plans under the NDIS Commission? As a provider, we find this is a major roadblock to the authorisation of restrictive practices.**

Behaviour support practitioners are required to lodge any behaviour support plan that contains regulated restrictive practices with the NDIS Commission. There is a [user guide](#) on the NDIS Commission website. There was also a webinar with tips for using the NDIS Commission Portal, which is also available on the [NDIS Commission website](#).

**Many behaviour support practitioners and residential services providers don't seem to understand their obligations or that there has been a change to the use of restrictive practices process. Will the NDIS Commission be providing more information?**

There is information on the [NDIS Commission website](#) to help behaviour support practitioners and implementing providers understand their obligations regarding restrictive practices and behaviour support plans.

There is also more information on [NDIS Commission Portal User Guide for Monthly Reporting of Restrictive Practices](#) with specific instructions for [commencing monthly reporting for implementing providers in ACT, QLD and Vic](#) also available online.

**Will a letter go to behaviour support specialists who may not be meeting their obligations once engaged?**

Should the NDIS Commission identify any behaviour support specialists who are not meeting their obligations under the NDIS Act and the Restrictive Practices and Behaviour Support Rules, the NDIS Commission may engage with those providers with a view to returning those providers to compliance.

**What happens if there are no behaviour support practitioners in the area?**

Registration of providers delivering specialist behaviour support services is continually expanding as new providers and practitioners come into the market. Implementing providers should keep in contact with the participant's support coordinator and local area coordinator, they'll have up to date information on registered NDIS providers in your area.

You should also contact registered behaviour support providers outside your immediate area to check if they have capacity to provide a service to your participant.

### **We've had behaviour support practitioners working with our participants for months but they haven't lodged an interim plan so we're still reporting on unauthorised restrictive practices. What can we do about this?**

NDIS providers and behaviour support practitioners must work collaboratively to support participants in accordance with the requirements of the NDIS Act.

When a registered NDIS provider's action are adversely affecting the delivery of services to a participant, you can escalate matters between the provider's management arrangements and, if agreed, a provider can make a complaint about another provider not meeting their obligations. You can also support a participant to raise the issue through the provider's complaints management system.

You should keep records of your efforts to facilitate the development of an interim or comprehensive behaviour support plan, refer to [Implementing providers: Facilitating the development of behaviour support plans that include regulated restrictive practices.](#)

## **Participant funding**

### **How do we support an NDIS participant to obtain funding?**

You can assist the participant to request a plan review, and provide information on the need for behaviour support funding to support the request. This could include liaison with the participant's plan nominee and/or support coordinator.

### **What type of funding does the participant need to engage a behaviour support practitioner?**

The participant needs funding under "Improved Relationships" Line Item 0110 in their NDIS plan.

### **Is the NDIS Commission working with the NDIA to improve timeframes around the availability of behaviour support funding?**

Yes, we have been working with the NDIA regarding this issue. The NDIA has updated internal systems regarding behaviour support requirements and funding for participants.

Implementing providers should continue to work with participants and their support coordinators, or plan nominees, to seek plan reviews where required.

## New South Wales

**In NSW, do jurisdictional requirements determine both the start and end dates, as well as authorisation of the plan? With this in mind, does Category F: Authorisation but no behaviour support plan (Section 11) apply?**

Yes, in NSW the behaviour support plan is required to obtain authorisation. However, it is still possible for the authorisation end date and behaviour support plan end date to be different, as most restrictive practice authorisation panels in NSW require the behaviour support plan to help in the decision to authorise the practice.

## South Australia

**In South Australia, do you need to authorise behaviour support plans for children through SACAT?**

In SA, there is currently no authorisation process for children. This means that the restrictive practice needs to be in accordance with a behaviour support plan developed in accordance with the Restrictive Practices and Behaviour Support Rules and lodged with the NDIS Commission.

## Contact information

**Who do I speak to if we have a question about this request?**

If you have any questions about this request for information please send your query to [URP Compliance Return](#), or call 1800 035 544.