Practice Alert

High-risk restrictive practices

January 2023

Key points

- Section 9 of the NDIS Act 2013 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'.
- High-risk restrictive practices covered in this alert include restrictive practices that fall within the definitions of the five restrictive practices that are 'regulated restrictive practices', and other practices that are not regulated restrictive practices but that restrict the rights of a person with disability.
- High-risk restrictive practices place participants at high risk of harm and are associated with adverse and catastrophic outcomes for participants such as long-term psychological or physical injury and death.
- The NDIS Commissioner remains concerned about the use of high-risk restrictive practices in the sector. The NDIS Commissioner's position on high-risk restrictive practices is clear. They should never be used. Use of these practices by NDIS providers constitutes a serious breach of the NDIS Code of Conduct.
- The NDIS Commissioner will take strong action against any provider and individuals that engage in these practices.
- High-risk restrictive practices include specific forms of physical restraint and punitive approaches. Some of these practices are prohibited by law in some states and territories.
- Use of these practices may constitute abuse and / or neglect of a participant.
- Any high-risk restrictive practices must be ceased immediately and replaced with proactive and evidence- informed alternatives.

The practices outlined below are considered high risk restrictive practices. These practices place participants at high risk of harm and may constitute or result in abuse, unlawful physical contact or neglect of a participant. The NDIS Commissioner and Senior Practitioner will take action where any of these practices are being used.

For some high-risk restrictive practices, use is inconsistent with Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and presents serious breaches of the rights of persons with disabilities. Use of these practices are unethical, transgress participants' dignity, and use of the practices by registered or unregistered NDIS providers constitute breaches of the NDIS Code of Conduct. The use of these practices may be reportable to the NDIS Commissioner and/or other statutory bodies including police.

In some circumstances, providers, including unregistered providers, using these practices may be liable to prosecution under applicable state or territory civil or criminal legislation. Additionally, there are practices not referred to in this document that are prohibited in the state or territory in which providers and workers may operate. Providers and workers should be aware of the practices that are prohibited by law in the state or territory in which they operate.

Types of high-risk restrictive practices

Specific forms of physical restraint

Unsafe physical restraint can lead to trauma, injury or death. The use of prone restraint for instance, can cause sudden death, due to risk of the restraint causing a cardiac event. Use of these types of restraints are further associated with the risk of postural asphyxiation, and asphyxiation by choking or vomiting and obstruction of a person's airways.

Adverse non-lethal outcomes can also result from the use of these forms of restraint. Participants may suffer bruising, tissue damage, fractures, broken bones, concussions, and/or long term injury as a consequence of these practices. The psychological and emotional impacts on participants subject to a high risk physical restraint may lead to overall poorer quality of life outcomes, adverse relational impacts, trauma or post-traumatic stress disorder. Physical restraints that are high-risk restrictive practices and should not be used, some examples of these, and some examples of associated risks are outlined in Table 1.

Table 1: Specific forms of physical restraint that present high risk to participant health, wellbeing and safety: definitions, examples and risks

High-risk restrictive practice	Example	Associated risks
Basket hold **Subduing a person by wrapping your arm/s around their upper and or lower body.**	a) A support worker hugs a participant from behind, wrapping their arms around the participant, to prevent the participant from engaging in self-harm. b) An 8 year old participant is being supported in their family home by a support worker. The participant becomes frustrated during a game and starts to hit their sibling. The support worker grabs the participant in a bear hug, with the support worker wrapping their arms around the participant's chest to prevent them from continuing to hit.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.

High-risk restrictive practice	Example	Associated risks
Prone restraint **Subduing a person by forcing them into a face-down position**	In response to a participant damaging property one support worker holds the participant's arms down along their body and a second support worker moves the participant onto the participant's stomach on the floor, then holds their legs down while the other support worker continues to hold the participant's arms down.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.
Supine restraint **Subduing a person by forcing them into a face-up position.**	In response to a participant damaging property one support worker holds the participant's arms down along their body and a second support worker moves the participant onto the participant's back on the floor, then holds their legs down while the other support worker continues to hold the participant's arms down.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.
Pin downs **Subduing a person by holding down their limbs or any part of the body, such as their arms or legs.**	While one support worker administers a COVID rapid antigen test on a participant, a second support worker holds the participants arms down, and a third support worker places their hands on the participant's thighs applying pressure to prevent the participant from moving.	Physical harm including risk of injury. Psychological and/or emotional harm.
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.**	To stop a participant from continuing to engage in property damage, a support worker runs at the participant and 'tackles' them onto the floor.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.
Any physical restraint that has the purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning.	A support worker places both palms onto a participant's chest and applies pressure, pushing the participant against a wall, to prevent the participant from moving closer to another participant.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.

High-risk restrictive practice	Example	Associated risks
Any physical restraint that has the effect of pushing the person's head forward onto their chest.	A participant is biting onto a pillow. A support worker places their hand on the participants head and pushes the participants head towards their chest in attempt to have the participant release the bite.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.
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.	A participant is grabbing at the TV remote that is in a support workers hand. The support worker grabs the participants hand and bends the participants hand back from the participant's wrist towards the arm, causing pain.	Physical harm including risk of injury. Psychological and/or emotional harm.

Punitive approaches

The use of punitive approaches may constitute emotional, psychological and/or social abuse of a participant. These practices are not aligned with contemporary positive behaviour support approaches, and are unethical. Participants may experience emotional and/or psychologically harm and poorer social, relational, and overall quality of life outcomes as result of punitive practices. Practices that are punitive approaches and should not be used, some examples of these, and some examples of associated risks, are outlined in Table 2.

Table 2: Punitive approaches that present high risk to participant health, wellbeing and safety: definitions, examples and risks

High risk practices	Example	Associated risks
Aversive practices **Any practice which might be experienced by a person as noxious or unpleasant and potentially painful. For example, threats, deliberate cold baths, applying chilli powder to the hands to prevent biting, sitting on a person to prevent them from self-harming.**	a) A support worker applies chilli powder to a participant's nails so that the participant will stop biting their nails. b) To prevent a participant from running away from staff, a support worker grabs the participant's shoulder and twists the skin slightly to inflict pain which causes the participant to stop running. c) A support worker tells a participant that they will throw the participant's family photos out, and that they won't be able to see their family again if they continue to scream.	Psychological and/or emotional harm

High risk practices	Example	Associated risks
Response Cost **A punishment of a person who forgoes a positive item or activity because of the person's behaviour. For example, a planned outing is cancelled because the person did not follow the morning routine.**	A participant's provider cancels a participants outing to attend a barbeque with friends and family because the participant refused to brush their teeth as part of their morning routine.	Psychological, emotional and/or social harm
Practices that limit or deny access to culture. **Actions that limit participation opportunities or access to community, culture and language, including the denial of access to interpreters.**	A participant speaks Anindilyakwa fluently, and some English. The participant is being supported by a new worker who does not speak Anindilyakwa and is not sure how to access an interpreter. The participant expresses that they wish to access an interpreter, however the worker tells the participant that they will just have to get by with English.	Psychological, emotional, and/or social harm
Overcorrection **Any practice where a person is required to respond disproportionately to an event, beyond that which may be necessary to restore a situation to its original condition. This is often used as a punitive measure. For example, a child draws all over their desk at school and they are made to clean the whole classroom.**	A participant resides in supported independent living arrangement. The participant independently accesses the community and one day, the participant returns home with some alcohol and proceeds to drink it. The next day a support worker found the participant intoxicated in the bedroom. In response, the provider makes the participant clean the bedroom and the entire apartment. In addition, the provider makes the decision to limit the pocket money of the participant and the participant can only access the community with staff support.	Psychological, and/or emotional harm

High risk practices	Example	Associated risks
Denial of key needs **Withholding supports such as owning possessions, preventing access to family, peers, friends and advocates, or any other basic needs or supports. For example, denying access to basic needs such as toilet paper, sanitary items, stopping a person from seeing their friends or family.**	a) A participant requests support to access an advocacy service. The participant's provider refuses to facilitate access to an advocacy service, telling the participant that they do not think the participant requires an advocate. b) Support workers repeatedly fail to ensure that a participant has adequate access to sanitary items.	Physical harm or injury. Psychological, emotional, and/or social harm.
Practices related to degradation or vilification. **Practices that are degrading or demeaning to the person; may be perceived by the person or their guardian as harassment are unethical.**	a) A participant refuses to take their medication. In response, a support worker swears at the participant and calls them derogatory names. b) Support workers force a male participant to wear a dress, women's shoes and makeup and dance around in the backyard, as the support workers consider this entertaining.	Psychological, emotional, and/or social harm

Practice remediation

If a provider identifies that use of a practice described above has occurred with a participant, the practice must be ceased. If the practice is included in a positive behaviour support plan for a participant, the practice must be ceased and removed from the plan.

The following steps are recommended for immediate remediation of the practice:

- **If a behaviour support plan is available for the participant:**
  Review of the participant's behaviour support plan to be conducted to ensure only strategies that are safe, uphold the dignity of the participant, and promote the safety of workers or other persons, are used. This may include a provider seeking an independent review of the behaviour support plan.
- **If a behaviour support plan is not available for the participant:**
  Providers to undertake assessment including risk assessments immediately, to determine the circumstances surrounding the use of the practice, ensure safe cessation of the practice and ensure that alternative strategies that are safe for all and uphold the dignity of the participant are implemented. Risk assessment should consider whether the participant has unmet behaviour support needs.

General expectations and recommendations

- Provider risk assessment should consider the safety of the participant and affected others, including staff, when the cessation of a practice is required. Appropriate planning should occur to address any risks associated with the cessation of the practice and ensure any risk is mitigated.
- Providers should take steps to ensure that participants who have behaviour support needs, whether or not these include the use of regulated restrictive practices, are supported to access behaviour support that meets the needs of the participant.
- If regulated restrictive practices are or will be used, implementing providers must take reasonable steps to facilitate the development of a behaviour support plan that includes the regulated restrictive practice/s and seek authorisation (if required). See Regulated Restrictive Practices guide and Implementing providers: Facilitating the development of behaviour support plans that include regulated restrictive practices
- Providers need to consider their obligations to report the use of a high-risk restrictive practice to the NDIS Commission. For details on reporting to the NDIS Commission, see How to notify the NDIS Commission about a reportable incident.
- Providers, workers, NDIS participants and other persons/parties can contact the NDIS Commission if they are aware of any high-risk practices being used. See General enquiries.

Practice considerations

- A range of evidence-informed alternative practices that promote the rights and dignity of a participant must be considered by a behaviour support practitioner and providers. These may include:
  - Positive behaviour support
  - Environmental modifications and supports, including sensory based interventions and low-arousal techniques
  - High-density non-contingent reinforcement of desired behaviour
  - Intensive positive interaction
  - Person-centred planning
  - Multi-systemic interventions
  - Mindfulness techniques
- Unmet health needs can contribute to behaviours of concern. Providers should ensure proactive support for participant's around their holistic health care needs, which may include supporting participants to access a comprehensive health assessment. See Practice alert – Comprehensive health assessment (PDF, 316 KB).
- Providers should undertake practice reviews to examine organisational or contextual factors contributing to the use of high-risk practices. See Practice Reviews - A framework for NDIS Providers (PDF, 309 KB).

Practices used by a family or non-NDIS provider

If a high-risk restrictive practice is implemented by a non-NDIS provider (i.e. persons or parties that are not regulated by the NDIS Commissioner), and a specialist behaviour support provider has been engaged to develop a positive behaviour support plan for the participant, the provider and any behaviour support practitioner they engage, are to:

- Consider their ethical and legal obligations to report the use of a practice to relevant authorities (i.e. police, child protective services, Aged Care Commissioner , NDIS Commissioner)
- Submit a report to the Reportable Incidents function of the Commissioner.
- See How to notify the NDIS Commission about a reportable incident
- Provide clear information to the implementing party regarding the risks and concerns around the use of the practice/s
- Support the implementing party to understand the risks and concern around the use of the practice/s. This may include the provision of educational resources, and advice regarding the provider registration obligations
- Support the implementing party to understand alternative approaches and options grounded in contemporary positive behaviour support
- If continuing to deliver behaviour support services to the participant, document the practice in the positive behaviour support plan. In the plan, clearly identify that the practice is not recommended by the specialist behaviour support provider

In some circumstances, providers and behaviour support practitioners may determine that it is not appropriate to develop a behaviour support plan for the participant in the context of ongoing use of the high-risk practice/s.

Provider and worker obligations

All NDIS providers are bound by the NDIS Code of Conduct. The NDIS Code of Conduct applies to providers (registered and unregistered) and workers are also held to account in a personal capacity. High-risk restrictive practices may equate to a breach of the NDIS Code of Conduct. Code of Conduct breaches may result in administrative or court-based compliance and enforcement action, including formal warning letters, compliance notices, penalties, or in the most serious cases, banning workers, de-registering providers and seeking civil penalties. For registered providers, including behaviour support practitioners, recommending and implementing high-risk restrictive practice may also result in other compliance and enforcement activities that include but is not limited to revocation of registration.

The NDIS Commissioner will take strong legal and/or regulatory action against any provider and individuals, including specialist behaviour support practitioners and other NDIS workers, who engage in these practices.

Resources

- Convention on the Rights of Persons with Disabilities, United Nations General Assembly
- Implementing providers: Facilitating the development of behaviour support plans that include regulated restrictive practices, NDIS Quality and Safeguards Commission
- Practices proposed to be prohibited, NDIS Quality and Safeguards Commission
- Practice reviews - A framework for NDIS Providers, NDIS Quality and Safeguards Commission
- Regulated restrictive practices guide, NDIS Quality and Safeguards Commission

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General enquiries

Call: 1800 035 544 (free call from landlines). Our contact centre is open 9.00am to 4.30pm in the NT, 9.00am to 5.00pm in the ACT, NSW, QLD, SA, TAS and VIC Monday to Friday, excluding public holidays.

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