



**NDIS Quality
and Safeguards
Commission**

Surveillance Technology Practice Guide

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 - Department of Human Services, South Australia
 - Department of Communities, Tasmania
 - Department of Families, Fairness and Housing, Victoria
 - Department of Communities, Western Australia

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Introduction

Background

The NDIS Quality and Safeguards Commission (NDIS Commission) is a Commonwealth agency established to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the National Disability Insurance Scheme (NDIS). This includes monitoring the use of regulated restrictive practices and promoting their reduction and elimination.

Purpose of this guide

The purpose of this guide is to:

- a) Clarify what is considered ‘surveillance technology’.
- b) Assist in identifying circumstances where surveillance technology is used to facilitate the use of a *regulated restrictive practice*.
- c) Highlight the ethical, human rights, privacy and practice issues with the use of surveillance technology.
- d) Outline best practice considerations and safeguards when using surveillance technology with people with disability.
- e) Assist registered NDIS providers including specialist behaviour support providers to meet their obligations under the [*National Disability Insurance Scheme Act 2013 \(NDIS Act 2013\)*](#) and relevant Rules.

Scope of the guide

This guide is to inform registered NDIS providers including specialist behaviour support providers about the use of surveillance technology. It supports a Positive Behaviour Support contemporary evidence based framework. This guide may also be of interest to anyone who supports a person with disability. This guide should be read in conjunction with the [*Regulated Restrictive Practices Guide | NDIS Quality and Safeguards Commission \(ndiscommission.gov.au\)*](#).

Legislative context

This guide gives effect to some of the NDIS Quality and Safeguards Commissioner's specific behaviour support function as set out in [section 181H of the NDIS Act 2013](#), relevantly:

"The Commissioner's behaviour support function is to provide leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices, by NDIS providers, including by: ...

- (b) Developing policy and guidance materials in relation to behaviour supports and the reduction and elimination of the use of restrictive practices by NDIS providers;
- (c) Providing education, training and advice on the use of behaviour supports and the reduction and elimination of the use of restrictive practices;
- (e) Undertaking and publishing research to inform the development and evaluation of the use of behaviour supports and to develop strategies to encourage the reduction and elimination of restrictive practices by NDIS providers."

The *NDIS Act 2013* gives effect to Australia's obligations under the [Convention of the Rights of Persons with Disabilities](#) (CRPD). The CRPD is the first binding international human rights treaty to recognise the rights of all people with disability. Australia signed the CRPD in 2008. The NDIS Commission is committed to promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by people with disability and promoting respect for their inherent dignity.

Key points

- Surveillance technology refers to devices that collect information about an individual through electronic means.
- Whilst not a regulated restrictive practice in and of itself, in some circumstances, the use of surveillance technology may facilitate the use of a regulated restrictive practice.
- Surveillance technology can be very invasive to a person's privacy. It raises ethical issues for the rights of people with disability in relation to personal privacy and the privacy of their personal information.
- A human rights framework should guide any use of surveillance technology when supporting people with disability.
- Any proposed or actual use of surveillance technology should be embedded within a Positive Behaviour Support framework and a human rights lens.

What is surveillance technology?

Surveillance technology refers to devices that collect information about an individual through electronic means. Examples include:

- The use of Closed Circuit Television (CCTV) that captures visual and audio footage. This may include still image or live feed data obtained through camera and video devices.
- Audio monitors, such as baby monitors and intercoms.
- Global Positioning System (GPS) devices that allow a person's location to be tracked. This may include, smart phone tracking applications, wearable watches, and electronic monitoring bracelets.
- Motion sensor alarms that can detect the physical movement of a person in a certain area.

Why is surveillance technology used in the disability sector including in NDIS provider settings?

Informal feedback suggests that surveillance technology is commonly used, or is proposed for use with people with disability and in disability settings to:

- Keep the person and/ or others safe.
- Monitor the person's health (e.g., monitor seizure activity for a person with epilepsy).
- Collect data about a person's behaviours of concern.
- Facilitate increased independence.
- Prevent abuse and neglect of people with disability.

There is insufficient evidence to indicate that surveillance technology can achieve all the above goals.

Is surveillance technology effective against abuse and neglect?

The abuse of people with disability, particularly those with intellectual and developmental disabilities has been recognised for decades (Horner-Johnson & Drum, 2006). However, there is limited evidence to support the use of CCTV to prevent abuse and neglect. (Hayward, 2017; Berridge, et al., 2019). For example, in the first study to review the literature on the use of CCTV for people with disabilities, Hayward (2017) found no evidence that surveillance technology reliably protects people with disabilities from abuse and neglect in their homes. In contrast, CCTV might be an indicator of possible abuse, when its use is influenced by unethical practices such as staff convenience (Hayward, 2017; Marsland, Oakes, & White, 2012).

What is a restrictive practice?

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” (section 9).

Can the use of surveillance technology be a *restrictive practice*?

Surveillance technology used by NDIS providers in the course of delivering supports to people with disability can constitute a *restrictive practice*, if the use has the effect of restricting the rights or freedom of movement of a person with disability. This includes the person’s right to privacy and dignity as outlined in article 22 of the *UN Convention on the Rights of Persons with Disabilities* (CRPD), and given effect in the *NDIS Act 2013*, *NDIS Code of Conduct* and *NDIS Practice Standards*.

What is a regulated restrictive practice?

The five restrictive practices that are subject to regulation and oversight by the NDIS Commission are known as regulated restrictive practices, and are defined in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*. They are seclusion, chemical restraint, environmental restraint, mechanical restraint, and physical restraint. For further information about the legislative requirements and the conditions under which regulated restrictive practices can be used, see the [Regulated Restrictive Practices Guide | NDIS Quality and Safeguards Commission \(ndiscommission.gov.au\)](#).

Can the use of surveillance technology be a regulated restrictive practice?

Whilst not a regulated restrictive practice in and of itself, in some circumstances, surveillance technology may facilitate the use of a regulated restrictive practice. This is particularly the case where surveillance technology is used to *influence a person’s behaviour, stop them from accessing particular items or environments and / or restrict their freedoms of movement*. In contrast, the use of surveillance technology to *enable support or increase a person’s independence and freedom of movement* is unlikely to be a regulated restrictive practice.

Whether or not the use of surveillance technology facilitates the use of a regulated restrictive practice depends on *why* (and *how*) the surveillance technology is used. Table 1 provides examples which demonstrate how the use of surveillance technology can be used to *enable support* **or** facilitate the use of a regulated restrictive practice.

Table 1: Surveillance Technology Use

<u>To enable support (not a regulated restrictive practice)</u>	<u>To facilitate the use of a regulated restrictive practice</u>
<ul style="list-style-type: none">• A sound sensor that alerts support staff when a person with disability is getting out of bed who is at risk of falling and hurting themselves; the device is to allow support staff to attend to the person and support them	<ul style="list-style-type: none">• A sound sensor on a fridge to alert support staff to stop a person with disability accessing food (facilitates environmental restraint)• An alarm on a person's door to alert a staff member to stop a person with disability from leaving their room (facilitates seclusion)
<ul style="list-style-type: none">• The use of a GPS tracker on the person's mobile phone so that support staff can support them in the event they get lost, for example giving them directions on how to get home	<ul style="list-style-type: none">• A GPS tracker used to monitor a person with disability so that support staff can locate and prevent them from going to a certain location/place or to stop them from wandering (facilitates environmental restraint)
<ul style="list-style-type: none">• A CCTV camera installed outside a person's home to enable them to identify who is approaching the front door	<ul style="list-style-type: none">• A CCTV camera in place to alert support staff so that they can prevent a person with disability from wandering or attempting to leave the house (facilitates environmental restraint)

Note:

To enable support (not a regulated restrictive practice)

Even though some surveillance technology may be used to enable supports and not to facilitate a regulated restrictive practice, there still needs to be acknowledgement and significant consideration given to the potential infringement on a person's human rights and the impact of its use on the person.

To facilitate the use of a regulated restrictive practice

Any use of surveillance technology that facilitates the use of a regulated restrictive practice during the course of delivery of NDIS supports, needs to be clearly identified in a behaviour support plan; and authorised in accordance with any State or Territory requirements (however described). NDIS providers also need to meet their reporting requirements under the [*National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2018*](#) and the [*National Disability Insurance Scheme \(Incident Management and Reportable Incidents\) Rules 2018*](#).

Surveillance technology and the person's right to privacy

Surveillance technology can be very invasive to a person's privacy, particularly the use of CCTV. It raises ethical issues for the rights of people with disability in relation to personal privacy and the privacy of their personal information. The location of CCTV in bedrooms and bathrooms is particularly invasive, and may give rise to criminal liability (Office of the Public Advocate QLD, 2014).

The use of surveillance technology also has implications for privacy laws that need to be adhered to. There are laws in each of the Australian States and Territories, which govern the use of optical, data, tracking and listening devices. It is important for NDIS providers to be familiar with privacy laws relevant to their State or Territory. See [Privacy in your state - Home \(oaic.gov.au\)](https://www.oaic.gov.au/privacy/privacy-in-your-state-home).

In addition, the use of surveillance technology may infringe on a person's right to privacy. Article 22 of the *UN Convention on the Rights of Persons with Disabilities* (CRPD) states that:

“No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks”.

This is consistent with the United Nations Universal Declaration of Human Rights (UDHR – Article 12) and the International Covenant on Civil and Political Rights (ICCPR – Article 17).

Under the NDIS Act 2013, section 4(10) states that “People with disability should have their privacy and dignity respected”. Under the NDIS Code of Conduct, NDIS providers must respect the privacy of people with disability. The NDIS Practice Standards further require registered NDIS providers to ensure that each NDIS participant can access supports that respect and protect their dignity and right to privacy.

To demonstrate compliance with this practice standard, the Quality Indicator Guidelines provide that registered NDIS providers should:

- Have in place consistent processes and practices that respect and protect the personal privacy and dignity of each participant; and
- Ensure each participant is advised of confidentiality policies, and support each participant to understand and agree to what personal information will be collected and why, including recorded audio/visual material.

Practice considerations for the use of surveillance technology

A human rights framework should guide any use of surveillance technology when supporting people with disability. Any proposed or actual use of surveillance technology should:

- Be lawful and adhere to privacy laws in the relevant state or territory.
- Be in the best interest of the person, taking into account their needs and wishes.
- Only be used once other less intrusive alternatives to meet the person's needs have been considered.
- Balance safety and autonomy, this includes maximising involvement of the person with disability in discussions about the use of surveillance technology even when obtaining informed consent is not possible (Yang & Kels, 2017).
- Be communicated to the person with disability using appropriate communication modes.
- Consider the options for the person with disability to deactivate the device, for example, when they would like some privacy, and activate it when they would appreciate the safety and security of monitoring where possible.
- Consider who can access recordings, where recordings are stored and for how long. Only people who need to see or hear the recordings should be able to do so.
- Consider the security of the surveillance technology being used, for example, with CCTV, cyber security measures need to be put in place to protect information from unauthorised access or data theft.
- Be reviewed regularly to ensure it is the least intrusive strategy possible. This should also include assessing the impact to the person and others; and taking action to mitigate any adverse and unintended consequences.
- If surveillance technology is used as part of or to facilitate the use of a regulated restrictive practice, the [NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018](#) require that it thoroughly outlined in a behaviour support plan and reviewed at a minimum every 12 months or earlier if the person's circumstances change.
- Include training of staff that goes beyond simple instructions on how to use the device, and includes legal and ethical considerations and issues about alignment between the technology and the values of the person.

Surveillance technology should **not**:

- Be a substitute for limited staffing or to save on staffing costs. From a human rights perspective, the invasion of privacy with the use of surveillance technology cannot be justified for issues related to lack of resources, such as insufficient support staff.
- Reduce or replace human contact, personal care or social interaction leading to increased social isolation (Office of the Public Advocate QLD, 2014).
- Be a substitute for addressing a negative culture or unethical practice concerns occurring in an NDIS service setting. As stated earlier, unethical practices can become early indicators of risk for abuse (Marsland, Oakes, & White, 2012).

Limitations of surveillance technology

- Surveillance technology has practical limitations and is not always reliable (e.g., there can be poor signals, battery issues, and they do not always work).
- Proper use of technology can be demanding of staff time, for example,
 - An alarm system requires a response from support staff.
 - CCTV cannot identify meaning and purpose behind a person's behaviours, and it requires staff vigilance to observe and appropriately identify risks.
 - Surveillance technology are alert systems rather than prevention systems. That is, the use of technology does not remove the risk, for example, while CCTV may 'capture' abuse and neglect; it does not prevent it.
 - CCTV can also lead to reduced staff vigilance, and increased complacency, giving them a false sense of security (Hayward, 2017).
 - CCTV can have blind spots as homes can be too structurally complex for the equipment and fail to capture abuse and neglect.
- Ineffective technology can lead to delays or absences in staff responding. For example, an alarm sensor that is hypersensitive or does not work consistently can lead to staff not checking and responding.
- Devices can be removed, damaged, forgotten or misplaced.
- Surveillance technology can be hacked.

Checklist for considering the use of surveillance technology

The checklist below can be used to help guide decision-making where surveillance technology is being proposed for use with people with disability, or its use in a disability setting is being reviewed. The questions have been adapted from Godwin's (2012) ethical checklist for professionals assessing possible use of assistive technology.

Checklist:

- ☐ Has the person's needs and wishes been considered?
- ☐ What is the purpose of the surveillance technology? Is the surveillance technology primarily being used to meet the person's needs?
- ☐ Has the person and their family been involved in the decision making for the use of the surveillance technology?
- ☐ What is the impact on the person's privacy?
- ☐ What is the impact of the surveillance technology on the wellbeing of the person?
- ☐ Does it support the person's autonomy or does it reduce it?
- ☐ Has an individualised risk and wellbeing assessment been completed addressing the risk of the surveillance technology?
- ☐ Is there a less intrusive alternative to surveillance technology?
- ☐ Have you checked the way the surveillance technology is proposed to be used is lawful, considering the privacy laws in your state or territory?
- ☐ If the surveillance technology is used to facilitate the use of a regulated restrictive practice, have you met the relevant NDIS Rules, legislations, policy and procedures in your state or territory, including any authorisation and consent requirements?

Further information or support

Contact the NDIS Quality and Safeguards Commission

Website: www.ndiscommission.gov.au/providers/behaviour-support

Phone: [1800 035 544](tel:1800035544) (Monday to Friday)

Email: BehaviourSupport@ndiscommission.gov.au

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