Position Statement

Practices that present high risk of harm to NDIS participants

Updated July 2023

1. Key points

- Certain practices place NDIS participants at high risk of harm and are associated with adverse and catastrophic outcomes such as long-term psychological or physical injury and death.
- The use of some of these practices may constitute abuse and/or neglect of an NDIS participant. These include specific forms of physical restraint and punitive approaches.
- Some of these practices are also prohibited by law in some states and territories.
- The NDIS Commission is concerned about the use of practices that present a high and unacceptable risk of harm to NDIS participants.
- The NDIS Commission's position on these practices is clear, that is, they should **not** be used.
- Use of these practices by NDIS providers, both registered and unregistered, constitutes a serious breach of the NDIS Code of Conduct.
- The NDIS Commission will take strong action against any provider and individuals that engage in these practices.
- Any practice that presents a high risk of harm to NDIS participants must be **immediately** ceased and appropriate action taken to ensure participant safety, health and well-being.
- The practice should be replaced with proactive and evidence-informed alternatives that have been based on a risk assessment.

2. Purpose and Overview

The use of practices that present high risk of harm to participants is inconsistent with Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The practices present serious breaches of the rights of people with disability, are unethical, and violate a person's dignity. Practices that present harm may result in abuse, unlawful physical contact or neglect when used with NDIS participants.

Therefore, this position statement aims to help protect NDIS participants from unacceptable and catastrophic outcomes. It describes specific forms of physical restraint and punitive approaches that present an unacceptable risk of harm and must not be used. It also explains the corrective action providers must take immediately to uphold participants rights and dignity, and provide safe and quality services which comply with their legislative requirements.

The NDIS Commission will take action where they aware that any of these practices are being used by NDIS providers (registered or unregistered providers) as they constitute a breach of the NDIS Code of Conduct. Any provider supporting NDIS participants and 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 states or territories. Providers should also be aware that it is a condition of their registration not to use any practice that is prohibited in a state or territory in which they operate.

3. Types of practices that present high risk of harm

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 a risk of the restraint causing a cardiac event. Use of these types of restraints are further associated with the risk of postural asphyxiation, 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 may lead to overall poorer quality of life outcomes, adverse relational impacts, trauma or post-traumatic stress disorder. Some specific forms of physical restraints that present a high risk of harm to participants and should not be used, are outlined in Table 1 below.

Table 1: Specific forms of physical restraint that present a high risk of harm to participants: definitions, examples and risks

Physical restraints that present a high risk of harm	Example	Associated risks
Basket hold Subduing a person by wrapping your arm/s around their upper and/ or lower body.	• A support worker hugs a participant from behind, wrapping their arms around the participant, to prevent the participant from engaging in self-harm. • 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.
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.

Physical restraints that present a high risk of harm	Example	Associated risks
Pin downs Subduing a person by holding down their limbs or any part of the body, such as their arms or legs.	• A participant is laying on their back. To stop them from getting up, a support worker stands over the participant and pushes the participant's arms against the ground holding the participant down.	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 prevent a participant from grabbing another person across a table, the participant's chair is taken away from underneath them causing them to fall to the floor. • To prevent a participant from running into a shop, they are tripped causing them to fall to the ground.	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. • A support worker puts their hands on a participant's neck to pressure them to release from biting something.	Physical harm including risk of asphyxiation, injury or death. Psychological and/or emotional harm.
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.

Physical restraints that present a high risk of harm	Example	Associated risks
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 worker's hand. The support worker grabs the participant's hand and bends the participant's 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 psychological harm and poorer social, relational, and overall quality of life outcomes as a result of punitive practices. Specific examples of punitive practices that should not be used, are outlined in Table 2.

Table 2: Punitive approaches that present a high risk of harm to participants: definitions, examples and risks

Punitive approaches that present a high risk of harm	Example	Associated risks
Aversive practices Any practice which might be experienced by a person as noxious or unpleasant and potentially painful.	• A support worker applies chilli powder to a participant's nails so that the participant will stop biting their nails. • 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. • 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. • A provider uses high pitched alarms or noises to prevent a participant from doing something, or to make them do something.	Psychological and/or emotional harm

Punitive approaches that present a high risk of harm	Example	Associated risks
Response Cost A punishment of a person who forgoes a positive item or activity because of the person's behaviour.	• 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 refuses to use an interpreter and tells the participant that they will just have to get by with English. • A participant is prevented from going to a place of religious worship because their support worker does not believe in the religion.	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.	• A participant resides in a 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 finds 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 restrict the participant's access to their own money and decides that the participant can only access the community with staff support.	Psychological, and/or emotional harm

Punitive approaches that present a high risk of harm	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.	• 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. • 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 participant refuses to take their medication. In response, a support worker swears at the participant and calls them derogatory names. • Support workers force a participant to dress up in a costume and dance around in the backyard, as the support workers consider this entertaining.	Psychological, emotional, and/or social harm

4. Practice remediation – What to do if a high risk practice is being used with an NDIS participant?

Providers must **immediately** cease using practices that present a high risk of harm to participants. Appropriate action must also be taken to ensure participant safety, health and well-being. This should include the use of an alternative strategy that has been based on a risk assessment. The following steps should be followed for immediate remediation of any unacceptable practice.

If a practice has been included in a behaviour support plan:

- If the practice is included as a recommended strategy in a positive behaviour support plan for a participant, the practice must be immediately ceased.
- The specialist behaviour support provider who developed the behaviour support plan should be consulted and a review of the plan conducted to ensure only strategies that are safe, and uphold the dignity of the participant are used.
- The practice should be removed from the plan, or the plan should be clearly amended to highlight that the practice should not be used under any circumstances.

- The specialist behaviour support provider should work closely with providers that implement the behaviour support plan to mitigate potential risks as any high risk practices are ceased and alternative strategies are implemented. This will also ensure that workers have the knowledge and skills needed for the implementation of strategies that promote safety for the participant, workers and others.

- The provider may need to seek an independent review of the behaviour support plan. This may involve contacting an alternate specialist behaviour support provider, or discussing the participant's circumstances further with the NDIA.

If there is no behaviour support plan and a practice is used by an NDIS provider:

- Providers must provide supports and services in a safe and competent manner and should undertake a risk assessment immediately.

- The risk assessment should determine the circumstances surrounding the use of the practice and implement alternative strategies that are safe for all and uphold the dignity of the participant. The risk assessment should consider whether the participant has unmet behaviour support needs that may require the development of a behaviour support plan.

- The continued use of any practice described in this document under any circumstances, including as an 'emergency' measure is unacceptable and not appropriate. For instance, if a basket hold was previously used as a response to behaviours of concern, alternative strategies that can safely replace the practice should be immediately implemented. This may include (but is not limited to) increasing staffing levels to support a participant while a risk assessment and actions to develop safe, proactive and evidence-informed strategies are undertaken.

- NDIS Providers must take reasonable steps to facilitate the development of a behaviour support plan and obtain authorisation in accordance with the state or territory process (however described) if any regulated restrictive practices are being used with the participant. For further details see Understanding behaviour support and restrictive practices - for providers | NDIS Quality and Safeguards Commission (ndiscommission.gov.au).

- NDIS Providers need to consider their obligations to report to the NDIS Commission when a practice is being used that may present a high risk of harm to a participant – see How to notify the NDIS Commission about a reportable incident.

5. Legislative obligations and regulatory actions

- All NDIS providers are bound by the NDIS Code of Conduct. This applies to providers (registered and unregistered) and workers are also held to account in a personal capacity.

- Providers and workers have obligations under the NDIS Code of Conduct to provide supports and services in a safe and competent manner, with care and skill. Use of practices that present a high risk of harm to participants breaches this part of the NDIS Code of Conduct.

- The NDIS Commission will take strong legal and/or regulatory action against any provider or individual, including NDIS behaviour support practitioners and other NDIS workers, who engage in these practices.
- Such Code of Conduct breaches will result in the NDIS Commission taking compliance and enforcement action. This may be administrative in nature or court-based, and include compliance or infringement notices, banning of a worker or revoking of practitioner suitability, and civil penalties [for more details see Compliance and Enforcement | NDIS Quality and Safeguards Commission (ndiscommission.gov.au)].

6. Additional considerations

- A range of evidence-informed alternative practices that promote the rights and dignity of a participant should be considered by an NDIS behaviour support practitioner and providers. These may include positive behaviour support, trauma informed practice, environmental modifications, person-centred planning, and mindfulness techniques.
- A participant's unmet health needs can contribute to behaviours of concern. Providers should provide proactive support to ensure a holistic approach to a participant's health care needs. This may include supporting the participant to access a comprehensive health assessment. See Practice alert – Comprehensive health assessment (PDF, 316 KB).
- Providers should also undertake practice reviews to examine organisational or contextual factors that may be contributing to the use of practices that present a high risk of harm to participants. See Practice Reviews - A framework for NDIS Providers (PDF, 309 KB).
- Providers also need to consider their ethical and legal obligations to notify other relevant authorities of the use of the practice. These authorities may include police, child protective services, Aged Care Commission, National Disability Insurance Agency and other state or territory based authorities with safeguarding responsibilities.
- Additionally, providers, workers, participants and other persons can contact the NDIS Commission if they are aware of any practices being used that present a high risk of harm to participants - see General enquiries.

7. Resources

- Convention on the Rights of Persons with Disabilities, United Nations General Assembly
- Evidence Matters, NDIS Quality and Safeguards Commission
- Implementing providers: Facilitating the development of behaviour support plans that include regulated restrictive practices, 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

- Regulated restrictive practices with children and young people with disability practice guide, NDIS Quality and Safeguards Commission
- Resources to support incident reporting, management and prevention, NDIS Quality and Safeguards Commission

8. Further information

Contact the NDIS Quality and Safeguards Commission

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

Phone: 1800 035 544 (Monday to Friday)

Email: BehaviourSupport@ndiscommission.gov.au

9. References

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