



NDIS Quality
and Safeguards
Commission

The Justice System and Lawful Orders: A guide for supporting people with disability

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NDIS Quality and Safeguards Commission

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Definitions

The meaning of key terms and abbreviations in this procedure are set out in the table below.

Table 1 – Definitions, key terms and abbreviations used in this document

Term or Abbreviation	Description
Behaviour Support Plan (BSP)	A behaviour support plan (BSP) is a document prepared in consultation with the person with disability, their family, carers, and other support people. The BSP contains person-centred, proactive, and evidence-informed strategies to enhance the person's quality of life. It addresses the needs of the person and reduces the likelihood and impact of behaviours of concern
Behaviour Support Rules	National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (Cth).
Disability Liaison Officer (DLO)	A professional who supports people with disability by helping them access services, navigate complex systems, and make necessary reasonable adjustments.
Justice Liaison Officer (JLO)	A NDIA professional who works collaboratively with state and territory government agencies to support people with disability in custody and to transition back into the community.
Justice System	Refers to the police, courts, prisons or corrective services, juvenile institutions and other corrective and treatment services.
Lawful Orders	Used in this guide to describe formal orders or conditions placed on a person by a court of law, or a tribunal. These place restrictions on a person's freedoms and rights, and may require a person to meet specific obligations or conditions under the lawful order.
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Commission	NDIS Quality and Safeguards Commission
NDIS Commissioner	In accordance with section 181C of the NDIS Act, the Commissioner of the NDIS Quality and Safeguards Commission.

Table 2 – Definitions, key terms and abbreviations used in this document (continued)

Term or Abbreviation	Description
NDIS participant	A person with disability who is a participant in the National Disability Insurance Scheme (NDIS). They have a NDIS plan and use the funding in that plan to purchase supports and services.
NDIS Practice Standards	National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Cth).
NDIS provider	A person, entity, business, or organisation that receives NDIS funding or who is a NDIS provider as prescribed by the NDIS rules.
Regulated restrictive practice (RRP)	A restrictive practice is a regulated restrictive practice if it is or involves any of the five types of restrictive practices that are subject to regulation and oversight by the NDIS Commission: (1) seclusion; (2) chemical restraint, (3) mechanical restraint, (4) physical restraint, and (5) environmental restraint.

Introduction

- Research shows that people with disability and those who have complex needs are overrepresented in the justice system (Fogden, et al., 2016; Rose, Cutler, Tresize, Novak, & Rose, 2008). This includes an overrepresentation of Aboriginal and Torres Strait Islander people with disability (Baldry, 2014), and children with intellectual or psychosocial disability (Law Council of Australia, 2018).
- The ‘justice system’ refers to the police, courts, prisons or corrective services, juvenile institutions and other corrective and treatment services (Australian Institute of Criminology, 2010). Each Australian state and territory has its own legislation and independent justice system.
- Studies show that approximately 15-30% of people in correctional facilities (or prison) have an intellectual or cognitive impairment (Baldry, et al., 2013). This is starkly disproportionate when compared to the prevalence of cognitive disability in the general population of around 2.9% (ABS, 2014). Furthermore, in NSW 1 in 4 Aboriginal and Torres Strait Islander young people in custody have an intellectual disability (JHFMHN and Juvenile Justice NSW, 2017).
- Research also suggests that a person with disability is more likely to receive a custodial sentence than someone without a disability and their sentences are likely to be of a longer duration (Human Rights Commission, 2020).
- People with cognitive impairment and complex needs who also come from disadvantaged social circumstances are predisposed to significant and ongoing involvement with the justice system (Baldry, et al., 2012).
- There are many factors that contribute to the complexity of issues experienced by people with disability in contact with the justice system. These factors include a range of physical, psychological, and social issues that may be the result of experiences such as abuse, neglect, institutionalisation, and disruptive family histories (Søndenaa, et al., 2019). These factors may not be the reason why a person with disability has contact with the justice system, but in some cases, they may increase the risk.
- The impact of social, economic, political, and environmental issues on people with disability and complex needs in contact with justice system is significant (McCausland & Baldry, 2023). This may result in infringement of human rights, reduced access to formal support systems including NDIS and health services, reduced access, or loss of connection with family, friends or community, and restrictions due to lawful orders or the use of restrictive practices.

Purpose

The purpose of this guide is to:

- Promote and increase awareness of the rights and inherent dignity of people with disability who are in contact with the justice system.
- Increase understanding of lawful orders and the intersection with the use of regulated restrictive practices by NDIS providers.
- Provide guidance to NDIS behaviour support practitioners that is consistent with a positive behaviour support framework that strives to reduce and eliminate the use of restrictive practices.
- Assist registered NDIS providers to understand their obligations under the *National Disability Insurance Scheme Act 2013 (NDIS Act 2013)* and applicable Rules.

Scope

- This guide provides guidance to NDIS providers supporting NDIS participants who are or have previously been in contact with the justice system.
- This guide is an introduction to issues that NDIS participants may experience if they come into contact with the justice system.
- More specifically, this guide focuses on NDIS participants who have been subject to lawful orders in the community, not orders where a participant has been detained or is in custody in a facility, such as a mental health facility or in gaol.
- This guide covers community-based orders, but it does not include all the different types of lawful orders issued in each state or territory. This guide should be read in conjunction with the [Regulated Restrictive Practices Guide | NDIS Quality and Safeguards Commission \(ndiscommission.gov.au\)](#).

Out of scope

- Issues for NDIS participants who are detained in Forensic Disability Units, though transition from these settings to the community will be briefly considered.
- Funding implications and oversight between state/territory and federal governments.
- NDIS funding issues:
 - The NDIS does not provide funded supports for the purpose of complying with a lawful order. For example, providers are not funded to supervise, monitor or prevent offending or monitor adherence to justice system imposed conditions in a lawful order [Schedule 2, s21, *NDIS (Getting the NDIS (Getting the NDIS Back on Track No. 1) Transitional Rules 2024)*].
 - The National Disability Insurance Agency (NDIA) has a specialised pathway for participants with 'complex support needs' (includes specialist planners, support coordinators, and Justice Liaison Officers). For more details see [Improved NDIS planning for people with complex support needs | NDIS](#). Also see link to the NDIA's justice guideline [Our Guidelines | NDIS](#).

Key points

- The term ‘lawful orders’ is used in this guide to describe formal orders or conditions placed on a person by a court of law, or a tribunal. These place restrictions on a person’s freedoms and rights and may require them to meet specific obligations or conditions under the lawful order.
- This guide focuses on community-based sentencing orders, specifically non-custodial orders, pre-sentencing orders, and post custodial orders. This guide does not include orders where a NDIS participant is detained or in custody in a facility, such as a mental health facility, forensic disability unit or in gaol.
- The NDIS Commission does not regulate lawful orders or have oversight of compliance with lawful orders that may apply to NDIS participants.
- The obligations, conditions, or restrictions placed on a NDIS participant as outlined in a lawful order are not considered regulated restrictive practices (RRP) *per se* under the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (Behaviour Support Rules).
- The role of a NDIS provider is not to enforce compliance with a lawful order.
- The role of a NDIS provider is to support the NDIS participant and assist them to develop the capacity to understand the nature, obligations, and ramifications of non-compliance to the conditions of a lawful order.
- It may be that a NDIS provider is delivering supports of a nature that incidentally assists the participant to comply with the lawful order, for example the implementation of a behaviour support plan (BSP) that includes specific skill development strategies.
- However, if a NDIS provider uses practices that result in the NDIS participant meeting the conditions in a lawful order, and the practices also meet the definition of a RRP under section 6 of the Behaviour Support Rules, then the NDIS provider must meet their legislative obligations. That is, the use of the RRP must be contained in a BSP (developed by a NDIS behaviour support practitioner) and authorised in accordance with State or Territory authorisation processes (however described). The provider must also meet their reporting requirements to the NDIS Commission around the use of the RRP.
- Additionally, if a NDIS provider applies the same level of restrictions that were in a NDIS participant’s lawful order, when it is no longer in force, then this is an infringement on the rights of the participant and may also meet the definition of a RRP under the Behaviour Support Rules.
- NDIS providers and NDIS behaviour support practitioners need to consider issues relating to confidentiality and consent when sharing sensitive information about a NDIS participant who is subject to a lawful order. For example, some information about a person who has a lawful order is bound by state or territory law and cannot be disclosed without explicit consent; in other instances, there may be memorandums of understanding between state/ territory agencies that remove information sharing constraints under the requirements of law.

People with disability and contact with the justice system

- The first contact that a person with disability may have with the justice system is often with police officers. This may be due to situations that require police intervention due to the risk of harm to the person with disability or others.
- Sometimes the person with disability may need to be taken to a police station to give a statement or be questioned in relation to an incident. At this point of contact, people with a disability may be vulnerable and require additional support such as a Disability Liaison Officer, which may or may not be available in all jurisdictions. Difficulties with information processing, communication, and problem solving may mean that participants do not understand questioning and their rights, or may be prone to making false confessions in an investigative process (Barron, et al., 2002).
- A person with disability is more likely to receive a custodial sentence than someone without a disability and these sentences are likely to be of a longer duration (Human Rights Commission, 2020).
- Once in custody people with disability may lose access to formal support systems that help to reduce the risk of harm to themselves and others. This may lead to the deterioration of the person's mental health and a higher risk of recidivism when released (Australian Human Rights Commission, 2020).
- Aboriginal and Torres Strait Islander people with disability face additional challenges and are often forced into the justice system at a young age. A study in NSW by Baldry, and colleagues (2015) found that Aboriginal and Torres Strait Islander people with disability who had been in prison were more likely to have early lives marked by poverty, instability and violence, poor access to primary health care or early childhood education, been in out-of-home-care as children, and have complex needs (multiple diagnoses and disability).
- There are also people with disability who overstay their sentences because there is no suitable housing to enable their release from custodial care (Arstein-Kerslake, 2017).
- Rehabilitation programs in custody have higher dropout rates for people with disability due to difficulties in accessing appropriate programs tailored to their learning needs (Ellem, et al., 2013).
- Additionally, for people with disability there can be significant challenges associated with the transition from custody to the community. Establishing a support system can be complex, particularly in circumstances where the person's support needs have changed. There are challenges accessing mainstream services, placement breakdowns, inappropriate placements, and increased risk of recidivism (Abbott & McConkey, 2006).

The rights of people with disability in contact with the justice system

What are lawful orders?

Defining lawful orders

- Lawful orders is a general term used in this guide that describes formal orders imposed by a Court or Tribunal¹. When an order is made, a person bound by the order must follow it. The order places restrictions on a person's freedoms and rights and may require a person to meet specific obligations or conditions.
- Lawful orders are a compliance or monitoring tool used by Courts and Tribunals under a range of criminal or civil laws.
- It should be noted that,
 - The person who is the subject of a lawful order must comply with the stated conditions.
 - Lawful orders do not provide an authority for the enforcement of that order by unspecified third parties.
- Non-compliance with lawful orders may result in penalties being applied to the person including custodial sentences.
- Lawful orders can direct that supervision, monitoring, and management conditions are imposed on a person who has come into contact with the justice system.
- Lawful orders can also require a person to take a particular form of medication, abstain from substance use or undergo specific therapeutic or medical treatment.
- The application of lawful orders is broad however, they generally seek to manage the risk of harm the person may pose to themselves and others.

Types of lawful orders

- This guide focuses on orders that are served in the community instead of in custody, that is community-based orders. These types of lawful orders tend to be the most relevant to people with disability in the community who have had contact with the justice system.
- This guide does not include orders where a person is detained in a health or other facility or in custody. For example, where a person is detained involuntary in a mental health facility following an order under a state or territory mental health legislation as these are not settings where NDIS services and supports are likely to be delivered.
- Community-based sentencing orders in the justice system are the responsibility of state and territory governments to monitor compliance with and enforce conditions. These are mostly administered by community corrective services.

¹ Note: This does not include Supervised Treatment Orders (STOs) under the Victorian Disability Act (2006).

- Community-based orders include:
 - Bail - These orders are served in the community while a person is awaiting attendance in court. Generally, bail is the time after release from custody to when a court decision is made, or a verdict is given after a trial and can be amended, granted, and revoked at any time during the process. Subject to the offence a person has been charged with, a decision to grant bail is made by either the police or a court, and certain conditions or requirements may be attached to the grant of bail (Australian Law Reform Commission, 2019).
 - Non-Custodial Orders – These are orders that do not include time in custody and can be served in the community. A good behaviour bond is a commonly known form of a community-based order (Australian Law Reform Commission, 2019). These orders vary in the extent and nature of supervision, the conditions of the order (e.g. a community work component or a requirement to attend an offender program) and the level of restriction placed on the person's freedom of movement in the community (e.g. home detention) (Australian Law Reform Commission, 2019).
 - Post Custodial Orders - Community corrective services are also responsible for managing people in custody who are released into the community and continue to be subject to corrective services supervision. These are referred to as post custodial orders, for example parole (Australian Law Reform Commission, 2019).

Variations across state and territory jurisdictions

- The way that community correction services are delivered varies across Australian state and territory jurisdictions. They do, however, generally provide a non-custodial sentencing alternative or a post custodial pathway for reintegrating people into the community under continued supervision. Depending on the jurisdiction and conditions of the order, some of these can include (but are not limited to)²:
 - ACT - Good Behaviour Order, Intensive Correction Order, Suspended Sentence
 - NSW – Community Service Order, Conditional Release Order, Intensive Correction Order, Compulsory Drug Treatment Order, Extended Supervision Orders
 - NT – Community Based Order, Community Work Order
 - QLD – Probation Order, Community Service Order, Intensive Correction Order
 - SA – Bond, Community Service Order, Suspended Sentence
 - TAS – Probation Order, Community Service Order, Drug Treatment Order
 - VIC - Supervision Treatment Order, Community Correction Order
 - WA - Community Based Order, Intensive Supervision Order.

² (Adapted from Australian Law Reform Commission. (2019), see [fr133_07_community_based_sentences.pdf \(alrc.gov.au\)](fr133_07_community_based_sentences.pdf)

Examples of conditions as part of a lawful order

Examples of conditions or obligations that a Court or Tribunal may place on a person as part of a lawful order include:

- supervision, monitoring, and management conditions such as electronic monitoring (e.g. ankle bracelet)
- application of a curfew
- requirement to attend treatment and rehabilitation
- requirement to take medication
- unpaid community work
- prohibition from
 - entering specified areas or places
 - entering certain licensed premises or drinking alcohol in licensed premises
 - contacting or associating with specific people or groups
- residential restrictions or exclusions relating to the person's accommodation
- scheduling of activities that require approval prior to access when under a supervision order.

Lawful orders apply to a person, not a NDIS provider

- In Australia, lawful orders can impose legally binding restrictions on a person that impacts on their liberty and rights.
- Even where that person is also a NDIS participant, the obligation to comply with the lawful order rests with the person.
- A lawful order does not provide an authority for the enforcement of that order by unspecified third parties, for example NDIS providers.

Are lawful orders Regulated Restrictive Practices?

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.
- Regulated restrictive practices (RRP) are defined in the *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (Behaviour Support Rules) and are seclusion, chemical restraint, environmental restraint, mechanical restraint, and physical restraint.
- For further information about the each regulated restrictive practice and the conditions under which regulated restrictive practices can be used, see the [Regulated Restrictive Practices Guide](#).

Are conditions set out in a lawful order a regulated restrictive practice?

- Conditions set out in a lawful order while in force are **not** regulated restrictive practices.
- The conditions may be the same as, or similar to, practices that also fall within the definition of regulated restrictive practices. This may cause confusion or uncertainty for NDIS providers who are aware that the person they support are subject to lawful orders.
- However, there are two key distinctions between a lawful order and a regulated restrictive practice. These are:
 - the person who is the subject of the order is responsible for complying; and
 - the purpose of the lawful order relates to legal processes that are not within the scope of the NDIS Commissioner's functions and powers.
- A lawful order binds the participant, but it does not create an authority for a NDIS provider to enforce that restriction. However, if a NDIS provider is applying restrictions to enforce the lawful order, it is a regulated restrictive practice.

When may a practice be a Regulated Restrictive Practice?

- If a NDIS provider delivers supports to a participant who has a lawful order, any use of restrictive practices that are not explicitly set out in the order (i.e., goes beyond the bounds of the specific conditions), may constitute a regulated restrictive practice as defined in section 6 of the NDIS Behaviour Support Rules.
- If a NDIS provider uses a restrictive practice that meets the definition of a regulated restrictive practice in order to apply the conditions of a lawful order, then the provider must meet all the requirements under the legislation (see [Appendix 2](#)). This includes having a behaviour support plan that contains the regulated restrictive practice, and obtaining authorisation at the state or territory level (noting that each jurisdiction has different requirements for authorisation where it is related to a lawful order, see [Restrictive Practices Authorisation Frameworks for Australian States and Territories 2025 Edition](#)).

- Further, if the restrictions in the lawful order continue to be applied by the NDIS provider when the lawful order is no longer in force, this can also constitute as a regulated restrictive practice under the Behaviour Support Rules. The consideration for the use of a regulated restrictive practice must be based on a risk assessment of the harm associated with a behaviour of concern giving due consideration to the person's dignity of risk and human rights.
- See Table 2 (below) for examples to support understanding of when a practice is, and is not a regulated restrictive practice. Note, the examples in Table 2 explain the difference in supporting a person to understand a condition in a lawful order and putting in place a restriction that meets the definition of a regulated restrictive practice under the Rules.

Table 3 - Examples that support understanding of when a practice is and is not a regulated restrictive practice.

Situation	Not a Regulated Restrictive Practice	Involves the use of Regulated Restrictive Practice
A NDIS participant in Supported Independent Living (SIL) is subject to a curfew as part of their lawful order.	<p>A NDIS participant has difficulties with time management. The NDIS provider works with the participant to put supports in place to help them to understand their curfew condition and manage their time.</p> <p>This includes a support worker helping the NDIS participant to set up a reminder on their phone, and calling them 1 hour before the curfew time to remind them to start heading home.</p>	<p>The NDIS provider locks the front and back door to stop the participant from leaving their home during curfew hours. This is an environmental restraint. This is a deprivation of the right to liberty.</p>
A NDIS participant is not permitted to attend specified locations as part of bail conditions.	<p>The NDIS participant asks to attend one of the locations specified in the order where they are not permitted to visit. The support worker respectfully reminds the participant that they are not allowed to attend the location as part of their bail conditions. The NDIS participant and support worker agree on somewhere else to go.</p>	<p>The NDIS provider locks the participant's bike in the garage to stop them from going to the locations specified in the order where they are not permitted to visit. This is environmental restraint.</p>

Situation	Not a Regulated Restrictive Practice	Involves the use of Regulated Restrictive Practice
A NDIS participant is not permitted to access the internet as part of their supervision order.	<p>The NDIS provider assists the NDIS participant to adjust the computer and phone settings so they cannot access the internet but can access other functions such as allowable gaming applications and phone contacts.</p> <p>The NDIS provider also talks to the NDIS participant about using other devices that are not internet enabled so that they do not need to be reminded not to use the internet.</p>	The NDIS provider removes access to the participant's computer and smart phone. This is an environmental restraint.
A NDIS participant is subject to 2:1 supervision in the community places as part of their conditions in a lawful order.	The NDIS provider plans with the NDIS participant a schedule of community outings for the week where two support staff are available to access preferred activities with the community.	The NDIS provider locks the front and back door during times when 2:1 community access is not scheduled to prevent the participant from leaving the house and breaching their conditions. This is an environmental restraint.
A NDIS participant is required to take anti-libidinal medication as a condition of their lawful order.	The NDIS provider supports the NDIS participant to take the medication and assists with reminders.	The support worker holds down the participant's hand when they are being administered an anti-libidinal injection as the participant is scared of needles and tries to move away. This is a physical restraint.
A NDIS participant is only able to be out in the community with supervision. The participant decides to leave the home unaccompanied.	The support staff follow the agreed safety plan by offering to drive the participant to their destination. When the NDIS participant declines, the support staff reminds them of the conditions in their lawful orders. The participant leaves anyway.	The support staff locks the side gates to prevent the participant from leaving the property. This is an environmental restraint.

The role of NDIS providers when a lawful order is breached

- NDIS providers need to understand the conditions of a participant's lawful order and know when/ how to report to state/territory corrective services when breaches occur. However, the key role of NDIS providers is to know how to best support the participant based on their needs, and assist them to understand their conditions.
- The role of NDIS providers is not to enforce a lawful order, noting that supporting a NDIS participant with their obligations does not equate to being responsible for compliance under a lawful order.
- If a NDIS participant breaches a lawful order, NDIS providers should be aware of any state or territory laws that impose obligations on them in relation to reporting any breaches (for example mandatory reporting for some professions).
- How a breach of an order is identified and treated varies across Australia and is primarily a matter for the government of that state or territory.

Consent and sharing information

- The following guidance aims to assist NDIS providers and NDIS behaviour support practitioners in how to consider lawful orders in the delivery of NDIS services and supports. NDIS providers and behaviour support practitioners need to consider issues relating to confidentiality and supporting people with disability subject to lawful orders.
- Information relating to a lawful order should be treated with the same degree of confidentiality and care as other sensitive information, for example sensitive health information. This includes obtaining informed consent to share any information related to a lawful order. Obtaining informed consent is critical to ensuring information relating to the lawful order is treated sensitively.

What is informed consent?

- Informed consent is a person's decision to agree to share information about themselves or receive a support, service, intervention, or procedure. The person must have the capacity to make a voluntary decision about whether or not to agree to the action, treatment, or service (Adult Advocacy Centers, 2020); Australian Commission on Safety and Quality in Health Care, 2020).
- To be valid, the consent of a person must be:
 - freely given and without duress,
 - given by someone who is legally capable (competent) of consenting,
 - specific and cover what information will be shared,
 - informed (Bird, 2011).
- For more information on consent please see [Consent to the handling of personal information - Home \(oaic.gov.au\)](#) and the [Capacity Toolkit \(nsw.gov.au\)](#).

Who can provide informed consent?

- NDIS providers should be mindful that lawful orders are subject to restrictions on who can provide informed consent to disclose information regarding lawful orders. There may also be restrictions on what information can be shared depending on the type of order and the issuing state or territory court or authority.
- Determining who has authority to provide informed consent will depend on the particular situation. This may be the participant, legal guardian and/ or a state or territory government body (for example police, corrective services).

The participant

- The person who is the subject of the order must be given formal notice by the courts of the conditions with which they must comply. In the first instance, informed consent should always be sought from the participant to share any information relating to their lawful order. The provider should provide all the necessary information to the participant to make a decision in a way that facilitates their understanding (for example, using visual supports, easy read documents).
- Using supported decision-making frameworks may also be useful. If the person is assessed to not have the capacity to provide informed consent, then this may be sought from a legal guardian or another state or territory body who has authority to share this information (i.e. police, corrective services).

The legal guardian

- When the NDIS participant has a legally appointed guardian, then that person may be able to provide consent on behalf of the participant to share sensitive information. These powers/ functions will be prescribed in the guardianship orders. As guardianship laws differ across jurisdictions, it is important to be clear on what decision-making role any guardian may or may not have (for more information see [Carer Gateway – Guardianship](#)).
- The legal guardian can impose limitations on what information can and cannot be shared with other providers, including what information can be in the behaviour support plan. Even if the legal guardian is not the consenting body, they may be included in decision-making through other means, such as through supported decision-making processes. This will depend on the type of guardianship functions they hold.

State or territory government body

- Where information about a lawful order is held by a state or territory government body, there may be provisions in their legislation to disclose that information under particular circumstances.
- NDIS providers should confirm what, if any information about a lawful order they are allowed to disclose and to whom. For example, Corrective Services have disclosed to a NDIS Behaviour Support Practitioner that a participant they are supporting is subject to an Extended Supervision Order. Prior to sharing this information with any third parties or including information about this in a behaviour support plan, the practitioner should ask Corrective Services what information they are authorised to share and with whom. This consent should be documented in writing.

Considerations when seeking consent

- As part of the steps in seeking information consent, NDIS providers should consider and discuss the following with the person or authorised body they are seeking consent from:
 - Discuss what information you are considering sharing
 - Explain possible alternatives to sharing information.
 - Provide information about the potential risks and benefits of sharing the information.
 - Discuss the conditions or limitations the person consenting may want to place on the information sharing.
 - Discuss who would have the rights to access that information and why?
- Consider what steps need to be taken to prevent information being shared with third parties without informed consent. This should include measures on how sensitive information will be stored, for example, keeping a secure filing cabinet, electronic information kept in secure databases accessible only to those who the information can be shared with.

Considerations for NDIS providers supporting people with disability in contact with the justice system

The following are evidence-based practice considerations that promote a human rights approach and together reduce the risk of re-offending to minimise interactions with the justice system and focus on the reduction and elimination of regulated restrictive practices.

Transition from custody to the community and accessing appropriate supports

Leaving the care and control of the justice system can be difficult for anyone. For people with disability, the challenges associated with the transition from custody to the community can be significant. The establishment of supports and services can be complex, particularly in circumstances where the person's support needs have changed or where the person's support needs had not been identified prior to their engagement with the justice system.

People with disability face several challenges and prejudices when released from custody to community placements, including difficulties accessing mainstream services, placement breakdowns or inappropriate placements and increased risk of recidivism (Abbott & McConkey, 2006). For people with disability transitioning back into the community, who are also required to comply with lawful orders, they can also experience increased difficulty in understanding and adhering to any conditions and require appropriate supports to meet their needs (Hayes, 2012). A holistic approach needs to be adopted to support people with disability during this time of transition and this means several critical factors need to be considered and include the following.

Individualised Support Plans

- People with disability who are leaving custody and are eligible for the National Disability Insurance Scheme (NDIS), should be supported to apply and obtain funding through a NDIS plan that meets their specific circumstances.

- It is critical that a considered NDIS plan addresses the challenges and planning for transition. Supports will be required to help the NDIS participant find suitable accommodation, appropriate community services, and NDIS providers to meet their unique and complex needs.
- This includes finding suitably trained and qualified NDIS providers, as variability in the quality of services may result in negative and traumatic experiences for some NDIS participants, and contribute to failure in the transition.
- The NDIS Commission has regulatory oversight of NDIS workers and providers to ensure supports and services are delivered in a safe and competent manner.

Health, Mental Health, and Rehabilitation Services

- Post release, people with disability are likely to experience difficulty accessing health services, communicating their health needs to medical staff, and disclosing their disability (Cooper & Speck, 2009).
- Furthermore, the intersection of disability and mental health needs is profound for people with disability in contact with the justice system.
- It is essential that there is increased collaboration with health and mental health services to provide the appropriate care and therapeutic support necessary for rehabilitation and recovery for NDIS participants, and this should continue after transition to the community.

Transition Programs

- It is crucial that robust transition programs are developed to assist people with disability as they move from custodial settings back to the community. This ensures continuity of care, allowing them to reintegrate successfully and with dignity into the community, and most importantly safely reduce the level of restrictions that a participant may be subjected to.
- NDIS providers involved in this transition need to put in place supports that uphold participant rights and mitigate risks to prevent re-offending. It is a fine balance between safeguarding the participant and the community in many situations. However, this balance is necessary to avoid excessive use of restrictions that result in high levels of seclusion or containment of the participant in the community.
- At this point of transition, it is important that experienced specialist behaviour support services should be engaged to ensure person-centred and evidence-based behaviour support strategies are implemented to support environmental changes and skill building for the participant, and reduce use of restrictive practices.
- Under the *NDIS Act 2013* and the associated Rules, the NDIS Commission regulates specialist behaviour support providers. They must be registered and meet the NDIS Practice Standards. Under the conditions of registration, specialist behaviour support providers must engage a NDIS behaviour support practitioner (who has been considered suitable against the [Positive Behaviour Support Capability Framework](#)) to conduct behaviour assessments and develop behaviour support plans (BSPs) that may contain restrictive practices. If the BSP contains regulated restrictive practices, then it must be lodged with the NDIS Commission.

Person centred supports

- NDIS providers supporting NDIS participants should foster an organisational culture of person-centred support. Person-centred supports uphold the rights of the person, considers their unique needs, dignity, and equitable access to justice in accordance with international human rights standards.
- Person centred supports can assist the person to build a prosocial identity by developing their strengths and capacities, and a positive self-concept (NDIS Quality and Safeguards Commission, 2025; Ward & Gannon, 2006).
- NDIS providers should encourage the person to find meaningful social roles within their community, fostering strong positive connections and relationships (Wolfensberger & Race, 2003).
- NDIS providers should provide culturally inclusive, safe, and responsive services that actively engage with and respect the person's culture. For Aboriginal and Torres Strait Islander people this includes nurturing and supporting strong linkages to the community and drawing on their support, guidance, and expertise (Anstiss, 2003).
- Trauma informed practice should be central to the NDIS provider's service culture and a part of ongoing professional development for all staff (Kezelman & Stavropoulos, 2012).
- NDIS providers should have skilled staff that can provide the appropriate support, assess risk, intervene early to meet the needs of participants, and implement BSP strategies that reduce the risk of reoffending. This is in line with the NDIS Practice Standards and the supplementary module 2A for implementing behaviour support plans.
- NDIS providers should maintain consistent support for staff who deliver supports and services to people with complex needs in contact with the justice system. This includes conducting regular team meetings for debriefing, and offering staff supervision for reflective practice, and training to enhance their understanding of the legal system, lawful orders, risk management, disability, and human rights.
- The NDIS Commission has a range of person-centred resources on the NQSC Website: [Quality practice | NDIS Quality and Safeguards Commission](#).

Collaboration with stakeholders

- Coordination and collaboration between the Justice System, the NDIS (including NDIA Justice Liaison Officers, and Support Coordinators), and other stakeholders supporting the person with disability is important. A lack of coordination can result in people with disability remaining in custody for longer than necessary and/ or recidivism (Australian Human Rights Commission, 2020). NDIS providers and stakeholders should meet regularly to discuss progress towards agreed goals.
- NDIS providers should approach collaboration with stakeholders by recognising the complex and different roles among the NDIS, the Justice System, and mainstream services in supporting people with disability involved in the justice system.

- Prioritise cross-systems collaboration with health services. This should include a comprehensive health assessment which is reviewed annually, and linking in with community mental health and other services as relevant e.g. allied health, justice, substance misuse services.
- Sharing information and skills between both disability and justice services is helpful to account for the wide range of biopsychosocial factors that lead to reoffending (Pycroft & Bartollas, 2014).
- Advocacy support services can be important to support cross sector collaboration and assist with necessary access to services to improve the persons wellbeing and opportunities for community reintegration.

Supporting understanding of lawful orders and legal processes

- A person with disability may need additional support to understand and comply with the requirements in a lawful order. It is important that the requirements are explained to the person in a way that is accessible so they can understand them. For example, a speech pathologist may be able to assist the participant to understand concepts in their lawful order using visual supports or Augmentative and Alternative Communication (AAC) and Easy Read resources.
- Studies have shown positive outcomes with developing Plain English versions relating to community corrections orders (Parsons & Sherwood, 2016; Mason & Morris, 2000). These should be used in addition to formal orders, not in place of them.
- Supported decision making can also support a person to express themselves and understand the conditions they are subjected to in a lawful order. Through supported decision making the person can have a trusted supporter who can assist them in understanding the details of their lawful order and the impact of their decisions and actions. Resources on Supported Decision Making can be found here: [The La Trobe Support for Decision Making Practice Framework Learning Resource](#) and [Deciding with Support](#).
- Provide necessary support throughout any court proceedings to ensure the person's understanding. This may include, encouraging and assisting attendance, helping to find the right court room, explaining what is happening in court and explaining the outcome (Committee on Intellectual Disability and the Criminal Justice System, 2000).
- Some states may provide communication partners or intermediaries for court proceedings. Intermediaries can also facilitate communication between people with disability and the justice system. By providing specialised assistance and adapting communication methods, intermediaries help ensure that people with disability can effectively express themselves and understand legal proceedings, promoting a fair and inclusive justice process.
- Disability advocacy organisation or legal services may also be able to provide support to ensure the person's rights and interests are protected.

Developing tailored and responsive behaviour support plans

The functional behaviour assessment

- Research shows that it is challenging to separate and attribute causation to the multiple factors that span contact with the justice system (Churchill, et al., 2017). Therefore, a comprehensive understanding of the person's support needs is important.
- The functional behaviour assessment should be informed by other sources of information and assessment, for example forensic risk assessments, adaptive behaviour assessment, cognitive assessment, psychiatric assessment, psychosocial assessment, and communication assessment.
- It should provide a holistic understanding of the person's disability and comorbidities.
- The functional behaviour assessment should focus on the underlying reasons for the behaviours of concern that bring the participant in contact with the justice system, including consideration of risk and protective factors, adaptive functioning³, mental health and disability.
- Consider the
 - Risk/Need/Responsivity Model (RNR)⁴ (Andrews & Bonta, 2007),
 - The Good Lives Model (GLM)⁵, and
 - A trauma-Informed framework when developing the behaviour support plan.
- The NDIS Commission has policy guidance on conducting behaviour assessments (including functional behaviour assessment) that may be useful for providers: [Behaviour support resources](#) | [NDIS Quality and Safeguards Commission](#).

Behaviour support planning

- The person with disability should be involved and must be consulted about their behaviour support plan as required under section 20 of the [NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018](#).
- Tools to support this process may include supported decision-making tools, involving family, carers, and friends with consent, using communication tools and interpreters to ensure the participant's voice is heard.

³ Adaptive functioning refers to coping with everyday environmental demands and includes daily living skills that people perform to care for themselves and to interact with others (Mitchell, 2018).

⁴ A description of the RNR model can be found here: [The Risk-Need-Responsivity Model \(justiceinspectorates.gov.uk\)](#).

⁵ A description of the GLM can be found here: [What is the Good Lives Model](#)

- It is important that the NDIS behaviour support practitioner, the NDIS provider, and others (such as family) who may be implementing the behaviour support plan, work with the person with disability, and with each other, to develop and understand the behaviour support strategies for the person with disability.
- Spending time in a custodial setting can lead to loss of independence (Chow & Priebe, 2013). Therefore, an adaptive assessment when the person is in the community may be required to provide appropriate supports. An occupational therapist assessment may also be required to assess the participant's functional and daily living skills.
- Interventions should take a holistic approach, informed by the functional analysis and tailored to the person's disability needs taking into account specific risk factors. Suitable risk assessment and transition planning should also be undertaken.
- Supports should be trauma informed, recognising the high prevalence of trauma experienced by people with disability who are in contact with the justice system. Inclusion of RRP^s such as seclusion or physical restraint may be triggering and re-traumatising for a person who has been experiencing containment in custody or been assaulted.
- Create a balanced approach to managing risk that also considers the person's needs and their goals. For example, support step by step transitions with a focus on skill building, person centred planning and active support. Overemphasis on managing risk can overlook a person's psychosocial needs (mental, emotional, and social needs) and inadvertently increase risk in response to restrictive practices and poor quality of life.
- The NDIS Commission has policy guidance and practice guides on developing quality behaviour support plans, plus templates and tools that may be useful for providers: [Behaviour support resources | NDIS Quality and Safeguards Commission](#).

Format of the behaviour support plan

- If the conditions of the lawful order are to be integrated into the behaviour support plan, consider how to present the information in a way that best supports effective implementation and understanding.
- Consider how the behaviour support plan can help support staff to understand what elements and support strategies of the plan are included because they relate to an obligation the NDIS participant must comply with.
- Consider separating the functional behaviour assessment from the behaviour support plan. While it is important for functional assessments to be comprehensive, for NDIS participants with an offending history, this can mean the inclusion of highly sensitive information. Separating the functional behaviour assessment from the behaviour support plan is a practical way to control who has access to the more sensitive information.
- Alternatively consider writing a separate document with the details of the lawful order that can only be shared with those who have permission to access the information.

Reviewing the behaviour support plan

- Lawful orders can change, expire, or be revoked. While it is not the NDIS provider's responsibility to enforce or ensure compliance with a lawful order, it is important that NDIS providers are working with current information.
- NDIS providers should work collaboratively with the person and state/ territory corrective services to remain aware of any changes. When changes occur, it is also important to review and update the behaviour support plan.
- Sometimes a behaviour support plan is developed prior to a person's release from custody (to inform training and transition) and therefore lawful orders are unknown at the time of their development. The behaviour support plan will need to be reviewed as soon as possible to incorporate the support strategies for the person once they have transitioned to the community and include use of any restrictive practices.
 - Section 10 of the *[NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018](#)* states that implementing providers "must notify a specialist behaviour support provider if there has been a change in circumstances that requires the behaviour support plan to be reviewed".
 - Section 22 of the *[NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018](#)* states that "a comprehensive behaviour support plan developed by the [specialist behaviour support] provider that contains a regulated restrictive practice must be reviewed by a NDIS behaviour support practitioner: (a) if there is a change in circumstances which requires the plan to be amended—as soon as practicable after the change occurs".
- Additional resources such as the *[Interim Behaviour Support Plan Checklist](#)* and *[Comprehensive Behaviour Support Plan Checklist](#)* aim to enhance plan quality and ensure compliance with legislative requirements.

Summary

- There is a high level of complexity associated with supporting NDIS participants who have lawful orders, high risk behaviours of concern, and involvement with the justice system.
- It is important that NDIS providers collaborate with the relevant agencies, mainstream services, and other professionals to support participants in the community.
- NDIS providers should ensure they work within their knowledge, skills, and experience when supporting participants in contact with the justice system.
- The NDIS Commission has a range of resources and tools on the NDIS Commission website that can help NDIS providers understand their obligations under the NDIS Practice Standards and associated Rules.

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Appendix 1: The rights of people with disability in the justice system.

United Nations Convention on the Rights of Persons with Disability (CRPD)

- The CRPD (UN, 2006) speaks directly to the rights of people with disabilities in the justice system including (but not limited to):
 - States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
 - States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
 - In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
 - Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention (CRPD, Article 5).
- Article 13 - Access to justice:
 - State Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations (CRPD, Article 13).
- Article 16 - Freedom from exploitation, violence, and abuse:
 - The right to freedom from exploitation, violence, and abuse (CRPD, Article 16).
- Article 17 - Protecting the integrity of the person:
 - Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others (CRPD, Article 17).

International Covenant on Civil and Political Rights

The *International Covenant on Civil and Political Rights* (ICCPR, UN, 1966) also speaks to the rights of people with disabilities in the justice system including (but not limited to):

- The rights pertinent to people with disability engaged with the justice system.
In combination, these articles ensure that people with disability are treated fairly and without discrimination by courts, legal practitioners, and law enforcement, (ICCPR Articles 9, 10, 14, 15 and 26).
- The right to equality before the law for people with disability.
Equality before the law includes both uninhibited access to the law and equal protection by the law (ICCPR, Article 26).
- The right to liberty and security of person.
This right protects people with disability from arbitrary arrest and detention and compels the prompt trial and resolution of criminal proceedings (ICCPR, article 9).

Appendix 2: Requirements when using a regulated restrictive practice

The following legislative instruments outline the reporting requirements and the conditions under which regulated restrictive practices can be used:

[National Disability Insurance Scheme \(Provider Registration and Practice Standards\) Rules 2018](#)

[National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2018](#)

[National Disability Insurance Scheme \(Incident Management and Reportable Incidents\) Rules 2018](#)

Some of these conditions include that the use of a regulated restrictive practice must:

- be clearly identified in the behaviour support plan
- if the state or territory in which the regulated restrictive practice is to be used has an authorisation process (however described) in relation to that practice, be authorised in accordance with that process
- be used only as a last resort in response to risk of harm to the person with disability or others, and after the provider has explored and applied evidence-based, person-centred, and proactive strategies
- be the least restrictive response possible in the circumstances to ensure the safety of the person or others
- reduce the risk of harm to the person with disability or others
- be in proportion to the potential negative consequence or risk of harm
- be used for the shortest possible time to ensure the safety of the person with disability or others.

State and territory authorisation requirements

Some states and territories consider lawful orders in their authorising process. Please refer to the [Restrictive Practices Authorisation Frameworks for Australian States and Territories 2025 Edition](#) for further details.