

South Australia

Disability Inclusion (Restrictive Practices—NDIS) Regulations 2021

under the *Disability Inclusion Act 2018*

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Legislative history

1—Short title

These regulations may be cited as the *Disability Inclusion (Restrictive Practices—NDIS) Regulations 2021*.

2—Commencement

These regulations come into operation on the day on which Part 6A of the *Disability Inclusion Act 2018* (as enacted by the *Disability Inclusion (Restrictive Practices—NDIS) Amendment Act 2021*) comes into operation.

3—Interpretation

In these regulations—

Act means the *Disability Inclusion Act 2018*.

4—Level 1 restrictive practices

- (1) For the purposes of the definition of *level 1 restrictive practice* in section 23B(1) of the Act, the following restrictive practices are declared to be level 1 restrictive practices:
 - (a) environmental restraints (other than environment restraints that are level 2 restrictive practices);

- (b) mechanical restraints (other than mechanical restraints that are level 2 restrictive practices);
 - (c) chemical restraints (other than chemical restraints that are level 2 chemical practices).
- (2) A prohibited restrictive practice will be taken not to be a level 1 restrictive practice.
- (3) For the purposes of subregulation (1), preventing access by a prescribed person to an area they are not permitted to enter will be taken not to be an environmental restraint.

Example—

Such areas might include staff rooms, staff storage areas and record keeping areas.

- (4) For the purposes of subregulation (1), it is not relevant whether a restrictive practice is used in respect of a particular prescribed person or prescribed persons generally.

5—Level 2 restrictive practices

- (1) For the purposes of the definition of *level 2 restrictive practice* in section 23B(1) of the Act, the following restrictive practices and combinations of restrictive practices are declared to be level 2 restrictive practices:
- (a) seclusion (being seclusion of a kind declared under regulation 7 not to constitute detention of a person);
 - (b) environmental restraint consisting of—
 - (i) the use of electronic monitoring devices worn by a person (however described); or
 - (ii) the locking of external gates and external doors of residential premises (other than where such an act or omission constitutes the detention of a prescribed person); or
 - (iii) the continuous accompanying of a prescribed person by another person; or
 - (iv) the limitation of access to, or use of, a mobility device (including by failing to charge batteries, the application of brakes or otherwise rendering the device inoperative); or
 - (v) the limitation of access to means of communication;
 - (c) mechanical restraint that requires the use of force to apply;
 - (d) physical restraint;
 - (e) chemical restraint consisting of—
 - (i) the administration of a drug by means of an invasive procedure; or
 - (ii) the use of 2 or more psychotropic drugs (whether administered by or on behalf of the same registered NDIS provider or otherwise); or
 - (iii) the use of more than 5 different drugs (whether administered by or on behalf of the same registered NDIS provider or otherwise); or
 - (iv) hormonal manipulation;

- (f) the use of more than 5 level 1 restrictive practices in respect of a particular prescribed person (whether by the same registered NDIS provider or otherwise).
- (2) A prohibited restrictive practice will be taken not to be a level 2 restrictive practice.
- (3) For the purposes of subregulation (1), preventing access by a prescribed person to an area they are not permitted to enter will be taken not to be an environmental restraint.

Example—

Such areas might include staff rooms, staff storage areas and record keeping areas.

- (4) Except where the contrary intention appears, for the purposes of subregulation (1), it is not relevant whether a restrictive practice is used in respect of a particular prescribed person or prescribed persons generally.

6—Risk of harm

For the purposes of section 23B(2) of the Act, the following behaviour is prescribed:

- (a) causing damage to property, or an express or implied threat that damage will be caused to property (whether the property belongs to the person or any other person);
- (b) causing human biological material to come into contact with a person or object (whether by directly applying the material to the person or object or otherwise).

7—Meaning of detention

- (1) For the purposes of section 23C(1)(d) of the Act, the imposition of a condition requiring a prescribed person to obtain the approval of a specified person before they can leave premises is declared to be included in the ambit of that paragraph.
- (2) For the purposes of section 23C(1) of the Act, the following acts and omissions are declared not to constitute the detention of a person:
 - (a) the locking of external gates and external doors of residential premises where NDIS supports and services are provided on a 24 hour basis to a prescribed person in circumstances where the prescribed person does not have such supports as may be reasonably necessary to enable the prescribed person to safely leave the premises at their discretion;

Note—

Such an act or omission may, however, amount to an environmental restraint.

- (b) the temporary confinement (not exceeding 2 hours) of a prescribed person in a particular area where the confinement—
 - (i) occurs in an emergency situation; and
 - (ii) is reasonably necessary to prevent serious harm being caused to the prescribed person or to another person; and
 - (iii) is for the purpose of de-escalation or self regulation.

Note—

Such an act or omission may, however, amount to seclusion.

8—Prohibited restrictive practices

- (1) For the purposes of section 23D(1) of the Act, use of the following kinds of restrictive practices is prohibited:
 - (a) prone restraint;
 - (b) supine restraint;
 - (c) any form of restraint intended to restrict or affect a person's respiratory or digestive function;
 - (d) forcing the head of a person forward onto the person's chest (other than that occurring incidentally in the course of using level 1 or 2 restrictive practices);
 - (e) any form of restrictive practice that involves or includes the deliberate infliction of pain or discomfort (including the hyperextension of joints, or the application of pressure to the chest, of a person) to secure compliance;
 - (f) any other kind of restrictive practice declared by the restrictive practices guidelines to be a prohibited restrictive practice.
- (2) In this regulation—

prone restraint means the restraint of a person by forcing the person into a face down position;

supine restraint means the restraint of a person by forcing the person into a face up position.

9—Restrictive practices guidelines

- (1) For the purposes of section 23H(3)(b) of the Act, the following consultation is required:
 - (a) consultation with people who have lived experience of the use of restrictive practices;
 - (b) consultation with the following persons and bodies:
 - (i) NDIS Quality and Safeguards Commission;
 - (ii) Disabled People's Organisation Australia;
 - (iii) National Disability Services;
 - (iv) Disability Australia Consortium;
 - (v) Children and Young People with Disability Australia;
 - (vi) Carers SA;
 - (vii) South Australian Council on Intellectual Disability;
 - (viii) Our Voice SA.
- (2) For the purposes of section 23H(3)(c) of the Act, the Minister must take reasonable steps to ensure that Aboriginal and Torres Strait Islander people, and people from cultural and linguistically diverse backgrounds, are able to make submissions and take part in any consultation undertaken for the purposes of preparing, varying or substituting the restrictive practices guidelines.

10—Senior Authorising Officer

For the purposes of section 23I(1) of the Act, the following qualifications and experience are prescribed:

- (a) tertiary qualifications relevant to the functions of the Senior Authorising Officer under the Act (such as allied health, nursing, education, law, or a disability-specific or behaviour-specific discipline);
- (b) experience and knowledge in leading human services system reforms and initiatives.

11—Authorised Program Officers

For the purposes of section 23L(1) of the Act, the following qualifications and experience are prescribed:

- (a) tertiary qualifications relevant to the functions of an Authorised Program Officer under the Act (such as allied health, nursing, education, or a disability-specific or behaviour-specific discipline);
- (b) extensive experience and knowledge in the planning, development, implementation, evaluation and monitoring of behaviour interventions and supports.

12—Authorisation of use of level 1 restrictive practices by Authorised Program Officer

- (1) For the purposes of section 23N(8) of the Act, the following requirements must be complied with:
 - (a) a written notice under that subsection must contain the following information:
 - (i) the name of the prescribed person; and
 - (ii) the name of the prescribed NDIS provider; and
 - (iii) the time and date on which the restrictive practices, or the period during which, the restrictive practices were used; and
 - (iv) information setting out the nature of the restrictive practices used; and
 - (v) information setting out the reason the restrictive practices were used; and
 - (vi) information explaining the operation of Part 6A Division 6 of the Act,and may contain such other information as the prescribed NDIS provider considers appropriate;
 - (b) a written notice under that subsection must be given as soon as is reasonably practicable after using the relevant restrictive practice;
 - (c) in the case where a restrictive practice is used in relation to a person over a period not exceeding 3 months, a written notice under that subsection may cover the entire period;

- (d) in the case where more than 1 restrictive practice is used in relation to a person, the written notices required under that subsection may be combined into 1 notice;
 - (e) the prescribed NDIS provider must, as far as is reasonably practicable, ensure that a written notice under that subsection is given to a prescribed person in a form that is accessible to the prescribed person.
- (2) Pursuant to section 23N(10) of the Act, an Authorised Program Officer who authorises the use of level 1 restrictive practices in relation to a prescribed person must, on or before 30 June and 31 December in each year, cause a written notice to be given to the Senior Authorising Officer setting out—
- (a) the name of the Authorised Program Officer and the relevant prescribed NDIS provider; and
 - (b) the number and nature of restrictive practices that were authorised during the preceding 6 months; and
 - (c) such other information as may be required by the Senior Authorising Officer.

13—Authorisation of use of level 1 or 2 restrictive practices by Senior Authorising Officer

- (1) For the purposes of section 23O(8) of the Act, the following requirements must be complied with:
- (a) a written notice under that subsection must contain the following information:
 - (i) the name of the prescribed person; and
 - (ii) the name of the prescribed NDIS provider; and
 - (iii) the time and date on which the restrictive practices, or the period during which, the restrictive practices were used; and
 - (iv) information setting out the nature of the restrictive practices used; and
 - (v) information setting out the reason the restrictive practices were used; and
 - (vi) information explaining the operation of Part 6A Division 6 of the Act,and may contain such other information as the prescribed NDIS provider considers appropriate;
 - (b) a written notice under that subsection must be given as soon as is reasonably practicable after using the relevant restrictive practice;
 - (c) in the case where a restrictive practice is used in relation to a person over a period not exceeding 3 months, a written notice under that subsection may cover the entire period;
 - (d) in the case where more than 1 restrictive practice is used in relation to a person, the written notices required under that subsection may be combined into 1 notice;

- (e) the prescribed NDIS provider must, as far as is reasonably practicable, ensure that a written notice under that subsection is given to a prescribed person in a form that is accessible to the prescribed person.
- (2) Pursuant to section 23O(10) of the Act, the Senior Authorising Officer may refuse to grant an application under that section for any reason the Senior Authorising Officer thinks fit.
- (3) Pursuant to section 23O(10) of the Act, where the Senior Authorising Officer has refused an application to authorise a prescribed NDIS provider to use level 1 or 2 restrictive practices in relation to a prescribed person, the prescribed NDIS provider is not entitled to make a further application to use the same restrictive practices in relation to the same prescribed person within 6 months after the initial application except—
 - (a) where the circumstances of the prescribed person have changed in a material way since the initial application; or
 - (b) with the permission of the Senior Authorising Officer.

14—Review of decisions by South Australian Civil and Administrative Tribunal

- (1) For the purposes of section 23Z(2)(b) of the Act, the following persons and classes of person are prescribed:
 - (a) family members of the person to whom the decision relates;
 - (b) a guardian of the person to whom the decision relates;
 - (c) a nominated advocate of the person to whom the decision relates;
 - (d) a prescribed NDIS provider who delivers, or is to deliver, NDIS supports to the person to whom the decision relates.
- (2) For the purposes of subregulation (1)(c), a reference to a *nominated advocate* of a person to whom a decision relates will be taken to be a reference to a person (however described and whether or not the person is a legal practitioner) expressly nominated by the person to act as an applicant on behalf of the person for a review under section 23Z of the Act, and to assist the person in relation to such a review.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

| Year | No | Reference | Commencement |
|------|-----|-------------------------------|----------------|
| 2021 | 124 | <i>Gazette 2.9.2021 p3430</i> | 30.5.2022: r 2 |