

FACT SHEET - OFFICE OF THE SENIOR PRACTITIONER

Seclusion

Background

The Convention on the Rights of Persons with Disability (CRPD)¹ states that 'liberty of movement...forms an indispensable condition for human dignity and the free development of a person'. Actions that deprive people with disability of their freedom of movement therefore need to be scrutinised, regulated and monitored.

From 1 July 2019 the NDIS Quality and Safeguards Commission (the Commission) will introduce new rules and requirements for service providers to follow in order for them to maintain their registration as NDIS providers. One important change is the need for service providers to report to the Commission on any use of a regulated restrictive practice. The Commission's definitions of regulated restrictive practices differ from the definitions of restrictive interventions set out in the *Tasmanian Disability Services Act 2011* (DSA).

This Fact Sheet has been developed to clarify how the Seclusion category of the Commission's regulated restrictive practices relates to the DSA's category of restrictive intervention called 'personal restriction'. It also provides guidance about what actions are and what aren't considered to be Seclusion.

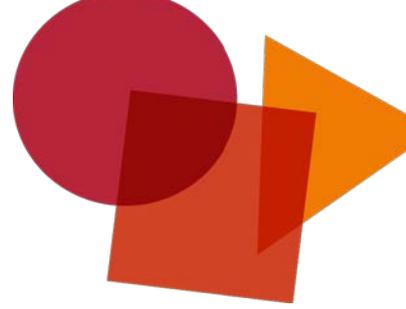
What is seclusion?

The *NDIS (Restrictive Practices and Behaviour Support) Rules 2018* (the Rules) defines Seclusion as – “the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted”.

Examples of Seclusion include:

- if a person cannot freely exit the room because the room is locked, they cannot operate the door, or the door is blocked
- if they cannot freely exit the room because a mobility aid or equipment has been removed, switched off or disabled
- if they **believe** they cannot freely exit the room or
- if they **believe** they are not allowed to exit the room without permission.

¹ Human Rights Committee, General Comment No.27: Freedom of movement (Art 12), 67th sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 Nov 1999)



The definition of personal restriction under the DSA means a restrictive intervention in relation to the person that consists wholly or partially of:

- personal contact with the person to enable the behavioural control of the person
- the taking of an action that restricts the liberty of movement of the person.

Seclusion is therefore a form of personal restriction as it is an action that restricts a person's freedom of movement. Authorization to use such an action must be sought from the Tasmanian Senior Practitioner.

Conditions

Whether it is called 'seclusion' or a 'personal restriction' it is important to note that both the DSA and the Rules include conditions for when an action can be used as a restrictive practice. These conditions include:

- that the practice is used in response to a risk of harm to the person with disability or others
- the practice is authorised by the Guardianship and Administration Board after assessment by the Senior Practitioner
- only used in proportion to the risk of harm and for the shortest possible time and
- part of a behaviour support plan and
- only used as a last resort.

Seclusion can only be used under the conditions stated above.

Is there a difference between 'sole confinement' and Seclusion?

If 'sole confinement', a 'time out', 'time away' or similar practices that do not meet the conditions listed above are used they will most likely be considered a form of abuse and not as regulated restrictive practices. Seclusion can only be used if it is to prevent harm, used in the least restrictive way possible, as a last resort and authorised. The following are examples of practices which may be abusive:

- **Time out:** these are actions to confine a person in their bedroom, a 'time out' room or any space where they are alone as a consequence of 'bad behaviour' (e.g. not following instruction). This action is not the same as inviting the person (if they are upset) to have some quiet time to, for example, practice some relaxation techniques to help them calm down.



- **Psychological abuse:** the DCS' *Preventing and Responding to Abuse in Services Procedure* defines psychological abuse as: 'Any conduct which could cause mental anguish, fear or isolation, feelings of shame, humiliation and powerlessness or loss of dignity'. In this context sole confinement with the intent of demeaning or using 'power over' a person with disability would constitute 'isolation' and be a violation of the person's human rights.
- **Assault:** The *Tasmanian Criminal Code (1994)* includes the act of depriving another of his or her liberty in the definition of Assault. Actions to confine someone on their own, without the motivation of preventing harm, risk prosecution under this provision of the *Tasmanian Criminal Code (1994)*.
- **Confinement in a vehicle:** The *Tasmanian Disability Services Act 2011* excludes restraints used in vehicles for safe transportation from the need for approval. However, if the restraint is used for the convenience of support staff once the journey has finished (e.g. leaving a person in the car whilst they attend to other tasks) – this practice would be a form of abuse.

If situations like those listed above are discovered service providers must follow their policies and procedures relating to the responding and reporting of abuse.

Why is Seclusion a problem?

Seclusion is a form of social isolation known to be associated with morbidity and mortality.

The harm caused by seclusion includes both psychological and physical harm.

Seclusion can be upsetting for the person who is secluded as well as support staff. Evidence shows secluding a person can lead to an increase in the person's behaviour of concern.

Seclusion may also reinforce some behaviours of concern because it satisfies the needs of the individuals (e.g. to be left alone or for quiet).

Physical restraint may also be required to initiate the seclusion (e.g. forcing a person to go to their room).

Who can consent to the use of Seclusion?

A parent's request for the use of sole confinement does not stop the action from being seclusion. Family members may advise a service provider that they want the person with the disability to be secluded however the service provider will still need to seek authorisation from the Tasmanian Senior Practitioner and report to the Commission. (see below).

Situations where an individual has asked to be secluded, would however not be considered seclusion if the individual has the decision-making ability to make an informed choice.



Where an adult with disability has a guardian appointed by the Guardianship and Administration Board (GAB), the guardian can consent to the use of seclusion if it is used under the conditions listed above. However, the service provider will still need to report use of this practice to the Commission.

When to report the use of Seclusion:

Seclusion is a regulated restrictive practice and its use by registered NDIS providers must be reported to the Commission after 1 July 2019.

The Commission (after 1 July 2019) also requires registered NDIS providers to organise for the development of a behaviour support plan for anyone who is subject to the use of a regulated restrictive practice.

In addition, the use of seclusion should be reported to the Tasmanian Senior Practitioner to obtain authorisation for its use under provisions of the DSA (Use of a Personal Restriction).

From 1 July 2019 any concerned relevant person can make a complaint about the use of a restrictive practice to the Commission.

Practice Guidance

If seclusion is to be used the following should be considered:

- Is seclusion the least restrictive practice available to reduce risk of injury to the person or others?
- Have other de-escalation strategies been tried first?
- Have the needs of the person been considered?
- Does the person have access to:
 - a means of communicating their needs?
 - bedding and clothing which is appropriate in the circumstances?
 - adequate heating or cooling as is appropriate in the circumstances?
 - food and drink at the appropriate times?
 - adequate toilet arrangements? and
 - any other requirements included in a behaviour support plan?
- How often and who will check on the safety and wellbeing of the individual during the period of seclusion?



- What conditions must be satisfied before the seclusion period will end? (E.g. when risk to the individual or others has ended.)
- What happens if the behaviours of concern do not reduce or cease?
- How often and for how long has the person been excluded in total in the past 24 hours?
- Is the Seclusion consistent with the individual's Behaviour Support Plan? Does the Behaviour Support Plan address the items in this list?

Use of Seclusion in an Emergency

In some circumstances use of seclusion may be necessary in an emergency (e.g. without a Behaviour Support Plan) where there is an immediate risk that the person with disability will cause serious physical harm and the seclusion is necessary to prevent that risk. Seclusion is not recommended where there is risk of self-harm or where suicide attempts have been known.

From 1 July 2019 use of seclusion in an emergency is a Reportable Incident and must be reported to the Commission.

Under the DSA the unauthorised use of a restrictive intervention (e.g. using seclusion in an emergency) also needs to be reported to the Tasmanian Senior Practitioner.

Documentation

There should be clear and comprehensive documentation of the reasons for each instance where seclusion has been used (e.g. behaviour analysis forms and incident reports). This will assist in developing understanding of the reasons for behaviours of concern and informing future behaviour support planning.

Further Reading

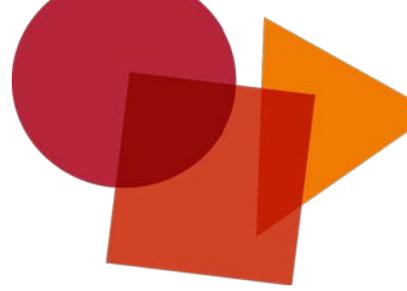
NDIS Quality and Safeguards Commission website:

<https://www.ndiscommission.gov.au/>

The Australian Psychological Society, 2011, Evidence-based guidelines to reduce the need for restrictive practices in the disability sector:

<https://www.psychology.org.au/getmedia/c986ad95-d312-4b2c-89da-3157b215f118/Restrictive-Practices-Guidelines-for-Psychologists.pdf>

The National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector (the National Framework) outlines high-level principles and core strategies to reduce the use of restrictive practices in the disability services sector:



<https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>

Convention on the Rights of Persons with Disabilities (CRPR):

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Livingstone, Angela (2018). *Seclusion across Mental Health and Disability*. Melbourne: St. Vincent's Hospital. Retrieved from:

<https://www.svhm.org.au/ArticleDocuments/>

National Seclusion and Restraint Project - Project output:

<https://socialequity.unimelb.edu.au/projects/national-seclusion-and-restraint-project>

How do I contact the Tasmanian Senior Practitioner?

The Senior Practitioner is available to discuss any issues or concerns relating to the use or potential use of a personal restriction on the contact details listed below.

Applications for approval to use an environmental restriction can only be written by a disability service provider or a funded private person and can be sent to the email address listed below.

Telephone: (03) 6166 3567 Mobile: 0428 197 474

Email: seniorpractitionerdisability@communities.tas.gov.au

Web: www.communities.tas.gov.au/disability/office-of-the-senior-practitioner

Further information about Restrictive Interventions can be found on the Riset Tas link below.



Access practice resources and restrictive intervention information via Riset-TAS online: [Riset-Tas Link](#)

Please note: The information contained in this document is provided as an initial guide only. It is not intended to be and is not a substitute for legal advice. Service providers should seek their own independent legal advice with reference to the implementation of the legislation.