Restrictive Practice Consultation: Practice Guide

Self-determination is a human right. People with disability have the right to make decisions about their lives and to have their views respected and valued. Consulting with people with disability about the decisions that affect them demonstrates respect and collaboration and contributes to better decisions.

This guide identifies the factors that may impact a person's ability to make or express their views about behaviour support and restrictive practices. It sets out the strategies that can be used to maximise opportunities for people with disability to be consulted effectively.

Who is required to consult with people with disability?

The NDIS (Restrictive Practices and Behaviour Support) Rules 2018 requires behaviour support practitioners to consult with people with disability, their family, carers, guardians and others to develop a behaviour support plan.

When applying for authorisation of a restrictive practice, NDIS providers must provide evidence that the behaviour support plan was developed in consultation with the participant. If this is not evident in the behaviour support plan, NDIS providers must undertake this consultation. The Disability Inclusion Act 2018 requires NDIS participants to be consulted about their behaviour support plan as part of the authorisation requirements.

Circumstances when people with disability may need additional support to be consulted

People with disability are able to be consulted and express their views about their behaviour support and restrictive practices. Some people with disability may need additional support to understand the issues and express their views and preferences.

For example, people with disability who:

- use specific communication devices or methods, including non-verbal forms of communication
- are from culturally and linguistically diverse (CALD) communities
- are Aboriginal and Torres Strait Island people
- are children or young people
- have cognitive impairments that make it harder for them to understand some concepts, or whose capacity to understand may change depending on the types of decisions or how they are feeling.

Some people need support because a particular decision is complex.

Decision-making can be more difficult when a person is unwell or in pain.

These factors mean that the person with disability may need additional support to make decisions and express their views. It does not mean the person cannot make decisions, even important ones.

Supported decision making

Supported decision making is an approach that recognises people's right to self-determination and provides support to a person who has difficulty making decisions or expressing their views.

Supported decision making considers:

- How does the person communicate?
- How do we know if the person is having difficulty with a decision?
- What types of support can be provided?
- Who can provide this support?

Strategies to facilitate effective consultation

Communication occurs along a continuum. Some people with a disability can clearly state their preferences and decisions. Other people may use sign language, body movements, or technology to communicate.

Take time getting to know what a person likes and dislikes, and how they express themselves in different situations.

It may be that the person has not yet had access to a communication tool that can better assist them to communicate clearly with others.

For people who are non-verbal, learn to recognise how they use their technology, or subtle body movements (such as eye blinks, or hand movements) to communicate.

Direct consultation

Direct consultations about restrictive practices may include a conversation about:

- why the restrictive practice might need to be used
- how it will be used and for how long
- how they feel when each restrictive practice is used
- alternative strategies that could support them

NDIS providers can use accessible language, sign language, gesture, visual guides, social stories, communication devices, interpreters and communication partners.

Supported decision making may increase the likelihood that a person with disability can be directly consulted about their views.

Indirect Consultation

When it is not possible to directly consult with a person with disability due to their communication needs or cognitive capacity, consider indirect ways a person with disability can communicate their views about their plan and/or their restrictive practices.

Read their body language. Do they smile? Pull away? Turn their back? Make vocalisations that you recognise as angry/sad/anxious/happy?

Present the information in an accessible way. Use pictures, photos, objects and videos to provide visual prompts to help understanding.

Talk directly to those who support the person with disability. Support workers spend a lot of time with people with disability and often have a good relationship with them. They may understand how the person feels or is likely to respond.

Talk to the family/kin/key person who may have observed these strategies being used. They may have had a conversation with the person with disability or observed their responses.

Be aware of the potential for conflict of interest, or unconscious bias, to ensure the person with disability isn't pressured into an option that suits the family, or worker. Be aware of values, attitudes and language to ensure the person with disability is not inadvertently influenced to make a choice that is not their own. Remember family/kin views about a restrictive practice may be different to the views of the person with disability.

What if they do not want the restrictive practice?

Consultation is different to consent; there are circumstances when another person can lawfully consent on behalf of a person with disability. This doesn't replace the importance however that all people with disability have the right to be directly consulted.

It is OK for a person with disability to express that they do not like a restrictive practice. It is important that they feel safe and supported to do so. Knowing what a person with disability wants can help you both plan achievable steps to get to their chosen goal.

Consultation forms one part of the overall authorisation decision; the views of the person with disability are considered alongside many other factors, such as their safety and the safety of others.

Consultation is a continuing process, not just a one-off action.

For further information

Website: www.rpdi.sa.gov.au
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References

- People with Disability and Supported Decision-Making, A Guide for NDIS providers in NSW, National Disability Service, 2019
- RMIT University, It's My Choice! The Principles of Choice, 2013
- Making a Complaint – RPU process/decision – easy read
- Appealing a decision – RPU decision – easy read