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# Search provisions: creating a local procedure

This guide supports registered National Disability Insurance Scheme (NDIS) implementing providers to develop a local procedure about using the search provisions in Part 6A of the *Disability Inclusion Act* *2018*, as amended by the *Disability Inclusion (Restrictive Practices – NDIS) Amendment Act 2021.*

## Introduction

The powers to enter premises, search and remove items are aimed at preventing physical harm and property damage that may arise when a NDIS participant engages in behaviours of concern that relate to an authorised restrictive practice.

The search provisions are a significant power which has the effect of limiting the freedoms that people with disability are entitled to. When used lawfully and in accordance with the Restrictive Practice Guidelines, the provisions support physical safety in a respectful way.

The search provisions are not a stand-alone power. Registered NDIS implementing providers can only use these provisions in relation to the use of level 1 or 2 restrictive practices that have been authorised through the South Australian restrictive practices scheme.

## Legislation

The search provisions are set out in section 23N (5) and (6); and section 23O (6) and (7) of the *Disability Inclusion (Restrictive Practices – NDIS) Amendment Act 2021*. The powers are the same across the two sections and apply to level 1 and 2 restrictive practices. They state:

*… A prescribed NDIS provider may, in relation to the use of … restrictive practices in relation to a prescribed person, do 1 or more of the following:*

*(a) enter and remain in a place where the prescribed NDIS provider reasonably suspects the prescribed person may be found;*

*(b) search the prescribed person’s clothing or possessions and take possession of anything in the prescribed person’s possession that the prescribed person may use to cause harm to themselves or others, or to damage property;*

*(c) retain anything so taken from the possession of the prescribed person for as long as is necessary for reasons of safety (and then return the thing to the prescribed person or otherwise deal with the thing according to law).*

*A search … must be carried out expeditiously and in a manner that avoids, as far as reasonably practicable, causing the prescribed person any humiliation or offence.*

The legislation does not require registered NDIS implementing providers to seek authorisation for the use of the search provisions from an Authorised Program Officer or the Senior Authorising Officer.

## Appropriate use and limitations

#### Suspicion on reasonable grounds

Registered NDIS implementing providers must have a suspicion on reasonable grounds that the person may use an object to cause harm to themselves or others, or to damage property, and that the search and retention of the item is required for safety.

Registered NDIS implementing providers cannot use the search provisions to:

* undertake routine searches to identify concerning behaviours
* remove an item that a person is not permitted to have (for example, rationed money, cigarettes or junk food) but that does not cause harm to themselves or others
* to enforce conditions of tenancy or ‘house rules’.

#### Suspected illegal behaviour

The search provisions cannot be used to search for suspected contraband such as illicit drugs or stolen items. When illegal behaviour is suspected, registered NDIS implementing providers should contact the South Australia Police.

If removed items are suspected to be illegal or obtained in an illegal way, the South Australia Police should be contacted, and their advice sought.

#### Intimate searches

Registered NDIS implementing providers undertaking searches must only search the participant’s clothing.

The provisions do not allow for a search:

* involving parts of a person’s body (for example, mouth)
* resulting in the exposure of intimate parts of the body (for example, searching within a person’s underwear).

NDIS participants cannot be asked to remove clothing or coverings of areas that may be intimate. This includes items of clothing which have cultural or religious significance (for example, head coverings).

Legislation states that a search must be carried out in a manner that avoids, as far as reasonably practicable, causing the person any humiliation or offence. This may mean:

* asking the person to remove their outer clothing, or empty their pockets
* checking if the person would prefer that a particular staff member assists with the search, or a staff member of a particular gender
* the search occurs away from other residents.

#### Entering property

The use of ‘enter and remain in a place’ provisions should be confined to premises where the person resides, and disability supports are provided on a 24-hour and 7-day basis.

The ‘enter and remain in a place’ provision should not be used where the person is on public or commercial premises (for example, shops), or at the homes of third parties (for example, family members).

To ensure duty of care obligations are met, and there is no reasonable alternative to ensure safety of the participant or others, staff may need to implement a physical restraint and/or contact the South Australia Police.

#### Duty of care

Registered NDIS implementing providers and their staff have a duty of care towards individuals they provide care for. This duty is to take reasonable steps to prevent foreseeable harm. The obligation exists in all situations, settings and for all NDIS participants who are receipt of a service.

In emergency situations where a NDIS participant may need lifesaving intervention (for example, choking in their bedroom), staff must take reasonable steps to prevent foreseeable harm, even if the requirements of the search provisions are not met.

All use of restrictive practices used while exercising a duty of care must be reported to the National Disability Insurance Scheme Quality and Safeguards Commission; the reporting timeframes differ depending on whether the restrictive practices are authorised or unauthorised.

## Examples of use

#### Example – correct use

Louise has a behaviour support plan with level 1 restrictive practices that restrict her access to scissors. In the last year there has been repeated incidents where Louise has used scissors to cut herself and threaten others.

Louise obtained scissors and had locked herself with the scissors in her bedroom at her group home. Two support workers asked Louise to enter her room, which Louise refused. Due to Louise’s past behaviour and the worker’s reasonable suspicion that Louise was hiding scissors that she is likely to use to harm herself, staff entered the bedroom. Staff discussed with Louise that they needed to find the scissors and requested Louise help them to search her room, including her backpack.

After a search of the room, in discussion with Louise, staff ask Louise to empty her pockets as the scissors may be in her clothing. Louise refused but agreed when she was given the option of having a female staff member, who she had a positive relationship with, do the search. The staff member discussed with Louise the reasons why they need to find the scissors and described the steps they would take to search her clothing. The scissors were found in the pocket of Louise’s jeans. The scissors were returned to their safe place with the help of Louise; Louise was debriefed and the incident documented.

#### Example – incorrect use

Support staff heard a rumour that Bob has a small amount of cannabis in his room. Bob lives in a shared house where disability support is provided on a limited basis. The house rules state that residents are not permitted to use drugs on site. Bob had never been known to use cannabis or other illicit substances and has no restrictive practices authorised. The staff decided to use the search provisions which they had heard about.

Against Bob’s wishes, a single staff member entered Bob’s room and directed him to hand over the cannabis. Bob was advised that if he didn’t do what he was told the police would be called and the police would imprison him as illicit drugs were illegal. Bob was also told that searches can happen any time as he was breaking ‘house rules’. Bob placed the small plastic bag of cannabis in his mouth. The staff member placed his fingers inside Bob’s mouth and removed the bag of cannabis.

# Instructions to develop a local search procedure

This template may be used by registered NDIS implementing providers to develop a local procedure for undertaking searches which relate to the use of level 1 and 2 authorised restrictive practices.

The procedure should be:

* developed in conjunction with those who may be impacted
* consistent (in content and format) with existing local corporate documents (policies, procedures, practices guides)
* consistent with the requirements of the *Disability Inclusion Act 2018* as amended by the *Disability Inclusion (Restrictive Practices – NDIS) Amendment Act 2021,* and the Restrictive Practices Guidelines.

## Title

###### Insert the full title of the procedure.

Suggested content:

* Title: Restrictive practices search procedure.
* This procedure is mandatory. All staff are required to adhere to the content.

## Summary

###### Insert a summary of the procedure.

Suggested content:

* This procedure supports *[your organisation’s name]* staff when using the search provisions to:
* enter and remain in premises where a person with disability may be found
* search their clothing and possessions for items that the person with disability may use to harm themselves or others, or to damage property
* take possession and retain items for as long as is necessary for safety reasons.

## Purpose

###### Insert a statement which incorporates:

###### why has this procedure been developed

###### what is the desired outcome of this procedure.

Suggested content:

* The purpose of this procedure is to ensure:
  + people with disability are treated with dignity and respect, and their safety is maintained
  + *[your organisation’s name]* staff act lawfully and in accordance with organisational requirements
  + staff are safe when supporting those individuals who are experiencing a behaviour of concern.

## Scope

###### Insert a statement which outlines who the procedure applies to, and the circumstances in which the provisions can be authorised and implemented.

Suggested content:

* This procedure applies to all staff providing NDIS supports to NDIS participants who have restrictive practices authorised under Part 6A of the *Disability Inclusion Act 2018*.

## Procedure

###### Describe step-by-step what actions need to occur to ensure the purpose of the procedure is met.

Develop a flow chart so users understand:

* what the steps are
* who needs to be involved
* where decision making points are.

Consider dividing the process into sequential steps, grouping steps into broader stages of the process. Suggested content:

Circumstances and settings

Describe:

* settings when they can be used
* circumstances they can be used
* who they can be used with
* the limitations
* the circumstances and setting when they must not be used.

Authorisation

Describe:

* who authorises use (for example, specific person, specific role)
* the considerations prior to authorising use
* how will authorisation occur. Options include:
  + as incidents occur
  + planned strategy documented in behaviour support plan
  + both
* when pre-authorisation is not required (for example, emergency situations).

Conducting a search

Describe:

* who is to be involved when implementing the search (for example, number and role of staff)
* when authorisation has been obtained what steps are to be taken. Content may include:
  + seek preferences
  + provide verbal request to hand over the unsafe items, if safe to do so
  + described what is going to happen
  + ask to remove outer layers of clothing
  + staff member to pat pockets and remove outer clothing, if safe to do so
  + if an item is found, explain what will be done with the item (safe storage and when it will be returned, as appropriate).

Following a search

Describe:

* how the NDIS participant will be debriefed following a search
* reporting and documentation requirements.

## Roles and responsibilities/authority

###### Outline who is responsible and for what, in the process.

Services may wish to list any training requirements or certifications to enact this procedure (mandatory/recommended).

|  |  |
| --- | --- |
| Role | Responsibility |
| Chief Executive | Ensure that the procedure is consistent with legal requirement  Ensures procedure is available to all staff. |
| Executive Manager | Ensure staff are aware of and comply with the procedure  Provide liaison between organisation and DHS Restrictive Practices Authorisation Team to clarify any issues. |
| Disability support workers | Ensure compliance with procedure. |

## Monitoring, evaluation, and review

###### Outline how this procedure will be monitored, evaluated and reviewed including, who, when and how.

## Definitions

###### List any acronyms, abbreviations used or other specific organisational terms within the procedure.

|  |  |
| --- | --- |
| Term | Meaning |
| Regulated restrictive practice | Restrictive practices that are regulated by the Restrictive Practices Authorisation Scheme under Part 6A of the *Disability Inclusion Act 2018* and *NDIS (Restrictive Practices and Behaviour Support) Rules 2018.* There are minor differences between these regulated restrictive practices and those that are regulated by the NDIS Commission. |
| Restrictive practice | Any practice or intervention that has the effect of restricting the right of freedom of movement of a person with disability, with the primary purpose of protecting the person or others from harm. Some restrictive practices are not regulated by the Restrictive Practices Authorisation Scheme or the NDIS Commission. It is now recognised that restrictive practices can have profoundly negative effects on a person’s quality of life and can represent serious human rights infringements. |
| Restrictive Practices Authorisation Scheme | The scheme that manages the authorisation of regulated restrictive practices in South Australia under Part 6A of the *Disability Inclusion Act 2018*. |
| Restrictive Practice Guidelines | A supporting document to Part 6A of the Disability Inclusion Act 2018 and Disability Inclusion (Restrictive Practices – NDIS) Regulations 2021. The 3 documents must be read together. The Guidelines provide direction to Authorised Program Officers and NDIS implementing providers on using the Restrictive Practices Authorisation Scheme and regulated restrictive practices. |

## Reference documents

###### List documents that relate to or influence this procedure according to the 3 categories.

Suggested content:

* Directive documents: overarching organisational policies and legislation.
  + *Disability Inclusion (Restrictive Practices – NDIS) Amendment Act 2021*
* Supporting documents: procedures, guidelines and frameworks.
  + Restrictive Practices Guidelines
* Related document and resources: any other supporting material that supports compliance with this procedure.

## Approval

###### Record author and approver details.

###### Record implementation date.

## Revision record

###### Once procedure has been approved, for each change (minor/major) list each version and brief description.

Suggested content:

* Once approved, record document as 1.0
* Subsequent major revisions, record version numbers as 2.0, 3.0 etc. Minor revisions are recorded as 1.1, 1.2 etc.