



# **National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018**

made under the

*National Disability Insurance Scheme Act 2013*

## **Compilation No. 1**

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## About this compilation

### This compilation

This is a compilation of the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* that shows the text of the law as amended and in force on 1 December 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Preamble

- (1) The National Disability Insurance Scheme (NDIS) represents a fundamental change to how supports for persons with disability are funded and delivered across Australia. The NDIS has potential to produce major benefits for persons with disability, their families and the broader community.
- (2) The NDIS Quality and Safeguards Commission is responsible for a range of functions under the National Quality and Safeguarding Framework aimed at protecting and preventing harm to persons with disability in the NDIS market. The Commission will build the capability of NDIS participants and providers to uphold the rights of persons with disability and realise the benefits of the NDIS. The rules are intended to support participants to be informed purchasers and consumers of NDIS supports and services and to live free from abuse, neglect, violence and exploitation.
- (3) The Commissioner of the NDIS Quality and Safeguards Commission will provide leadership in relation to behaviour support, and in the reduction and elimination of the use of regulated restrictive practices by NDIS providers.

## Part 1—Preliminary

### 1 Name

This instrument is the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*.

### 3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

### 4 Application

This instrument applies in a host jurisdiction that is a participating jurisdiction, subject to the transitional arrangements in Part 4 of this instrument.

**Note:** Obligations in this instrument do not affect any obligation a person has under a law of a State or Territory to the extent that such a law is capable of operating concurrently with the obligations created under the *National Disability Insurance Scheme Act 2013* (NDIS Act), see section 207 of the NDIS Act.

### 5 Definitions

**Note:** A number of expressions used in this instrument are defined in section 9 of the Act, including the following:

- (a) Commission;
- (b) Commissioner;
- (c) NDIS provider;
- (d) NDIS Practice Standards;
- (e) participant;
- (f) registered NDIS provider;
- (g) reportable incident.

In this instrument:

**Act** means the *National Disability Insurance Scheme Act 2013*.

**behaviour support plan** means:

- (a) a comprehensive behaviour support plan; or
- (b) an interim behaviour support plan.

**NDIS behaviour support practitioner** means a person the Commissioner considers is suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop behaviour support plans that may contain the use of restrictive practices.

**functional behavioural assessment** means the process for determining and understanding the function or purpose behind a person's behaviour, and may involve the collection of data, observations, and information to develop an

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understanding of the relationship of events and circumstances that trigger and maintain the behaviour.

***regulated restrictive practice***: see section 6.

***specialist behaviour support provider*** means a registered NDIS provider whose registration includes the provision of specialist behaviour support services.

***transitioned RAC provider*** has the same meaning as in the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

## 6 Rules apply only to specified kinds of restrictive practices

A restrictive practice is a ***regulated restrictive practice*** if it is or involves any of the following:

- (a) seclusion, which is 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;
- (b) chemical restraint, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;
- (c) mechanical restraint, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- (d) physical restraint, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.
- (e) environmental restraint, which restrict a person's free access to all parts of their environment, including items or activities.

Note: For the definition of ***restrictive practice***, see section 9 of the Act. Only regulated restrictive practices are covered by this instrument.

## Part 2—Conditions of registration and regulated restrictive practices

### 7A Simplified outline of this part

This part sets out the conditions of registration that apply to all registered NDIS providers who use restrictive practices in the course of delivering NDIS supports.

These conditions include requiring the use of restrictive practices to:

- not occur where the relevant State and Territory prohibits such use;
- be undertaken in accordance with State and Territory authorisation processes and a behaviour support plan;
- be recorded by the provider and reported to the Commissioner so that the Commissioner can effectively monitor the use of regulated restrictive practices in the NDIS.

## Division 1—Introduction

### 7 Purpose of this Part

- (1) This Part is made for the purpose of section 73H of the Act.
- (2) It sets out conditions relating to the use of regulated restrictive practices that apply to all registered NDIS providers.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 3: Part 4 of this instrument contains special rules that apply instead of, or as well as, some of the rules in this Part in certain circumstances.

Note 4: In some cases, using a regulated restrictive practice in the circumstances covered by this Part is a reportable incident (see subsection 73ZK(4) of the Act and section 16 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*).



**Division 2—Conditions of registration****8 Use of a restrictive practice in a State or Territory prohibited**

- (1) This section applies if:
  - (a) a State or Territory prohibits the use of a restrictive practice; and
  - (b) a registered NDIS provider provides supports or services to a person with disability in the State or Territory.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider must not use the restrictive practice in relation to the person with disability.

**9 Use of a regulated restrictive practice in a State or Territory with an authorisation process**

- (1) This section applies if:
  - (a) a State or Territory has an authorisation process (however described) in relation to the use of a regulated restrictive practice; and
  - (b) a registered NDIS provider provides supports or services to a person with disability in the State or Territory.

Note: An authorisation process may, for example, be a process under relevant State or Territory legislation or policy or involve obtaining informed consent from a person and/or their guardian, approval from a guardianship board or administrative tribunal or approval from an authorised State or Territory officer.

- (2) The registration of the registered NDIS provider is subject to the following conditions:
  - (a) the use (other than a single emergency use) of the regulated restrictive practice in relation to the person with disability must be authorised in accordance with the authorisation process;
  - (b) the provider must lodge with the Commissioner evidence that the use is so authorised as soon as reasonably practicable after the use of the practice in relation to the person.

**10 Use of a regulated restrictive practice in accordance with a behaviour support plan**

- (1) This section applies if:
  - (a) a registered NDIS provider provides supports or services to a person with disability in accordance with a behaviour support plan; and
  - (b) the behaviour support plan includes the use of a regulated restrictive practice.
- (2) The registration of the registered NDIS provider is subject to the following conditions:

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- (a) the regulated restrictive practice must be used only in accordance with the behaviour support plan;
  - (b) the provider must notify a specialist behaviour support provider if there has been a change in circumstances that requires the behaviour support plan to be reviewed.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

### **11 Use of a regulated restrictive practice in accordance with State or Territory authorisation but not a behaviour support plan**

- (1) This section applies if:
- (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the ***first use***); and
  - (b) an authorisation (however described) is required by the State or Territory in which the use occurs; and
  - (c) the use of the restrictive practice is authorised in accordance with the authorisation process; and
  - (d) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (e) the use (the ***ongoing use***) of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider must:
- (a) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice; and
  - (b) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

### **12 Use of a regulated restrictive practice other than in accordance with behaviour support plan or State or Territory authorisation**

- (1) This section applies if:
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- (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the ***first use***); and
  - (b) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (c) an authorisation (however described) is required by the State or Territory in which the use occurs; and
  - (d) the use of the restrictive practice is not authorised in accordance with the authorisation process; and
  - (e) the use (the ***ongoing use***) of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.
- (2) The registration of the registered NDIS provider is subject to the condition that the provider must:
- (a) obtain authorisation (however described) for the ongoing use of the regulated restrictive practice from the relevant State or Territory as soon as reasonably practicable; and
  - (b) lodge evidence of that authorisation with the Commissioner as soon as reasonably practicable after it is received; and
  - (c) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice; and
  - (d) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

### **13 Use of a regulated restrictive practice when not covered by a behaviour support plan and State or Territory authorisation not required**

- (1) This section applies if:
- (a) a registered NDIS provider uses a regulated restrictive practice in relation to a person with disability (the ***first use***); and
  - (b) the use is not in accordance with a behaviour support plan for the person with disability; and
  - (c) an authorisation (however described) is not required by the State or Territory in which the use occurs; and
  - (d) the use of the regulated restrictive practice in relation to the person with disability will, or is likely to, continue.

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- (2) The registration of the registered NDIS provider is subject to the condition that the provider will:
- (a) take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 1 month after the first use of the regulated restrictive practice;
  - (b) take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability by a specialist behaviour support provider that covers the use of the practice within 6 months after the first use of the regulated restrictive practice.
- (3) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with subsection (2) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

## 14 Reporting requirements

- (1) The registration of a registered NDIS provider is subject to the following conditions:
- (a) subject to paragraph (b)—the provider must give monthly reports to the Commissioner regarding the use of regulated restrictive practices by the provider;
  - (b) if a registered NDIS provider obtains a short term approval from a State or Territory for the use of a regulated restrictive practice—the provider must report to the Commissioner on the use of the regulated restrictive practice every 2 weeks while the approval is in force.

Note: If the use of the regulated restrictive practice is also a reportable incident, it must also be reported in accordance with Part 3 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

- (2) A report under this section must:
- (a) be in the form approved by the Commissioner; and
  - (b) include any information, and be accompanied by any documents, required by the Commissioner.
- (3) The Commissioner must approve a form for the purposes of this section.

## 15 Record keeping

- (1) The registration of a registered NDIS provider is subject to the condition that the registered NDIS provider must keep written information relating to the use by the provider of regulated restrictive practices in relation to persons with disability.
- (2) Without limiting subsection (1), the following information must be kept:
- (a) a description of the use of the regulated restrictive practice, including:

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- (i) the impact on to the person with disability or another person;
  - (ii) any injury to the person with disability or another person;
  - (iii) whether the use of the restrictive practice was a reportable incident;  
and
  - (iv) why the regulated restrictive practice was used;
  - (b) a description of the behaviour of the person with disability that lead to the use of the regulated restrictive practice;
  - (c) the time, date and place at which the use of the regulated restrictive practice started and ended;
  - (d) the names and contact details of the persons involved in the use of the regulated restrictive practice;
  - (e) the names and contact details of any witnesses to the use of the regulated restrictive practice;
  - (f) the actions taken in response to the use of the regulated restrictive practice;
  - (g) what other less restrictive options were considered or used before using the regulated restrictive practice;
  - (h) the actions taken leading up to the use of the regulated restrictive practice, including any strategies used to prevent the need for the use of the practice.
- (3) A record made for the purpose of this section must be kept for seven years from the day the record is made.

## **Part 3—Conditions of registration relating to the provision of specialist behaviour support services**

### **16A Simplified outline of this part**

This part sets out the conditions of registration that apply to specialist behaviour support providers, including that specialist behaviour support services are to be provided, and plans are to be developed by NDIS behaviour support practitioners.

This part also sets out minimum requirements for behaviour support plans and imposes obligations on providers to review and prepare plans, and then lodge behaviour support plans that contain a regulated restrictive practice with the Commissioner, to enable monitoring of the use of such practices in the NDIS.

### **Division 1—Introduction**

#### **16 Purpose of this Part**

- (1) This Part is made for the purposes of section 73H of the Act.
- (2) It sets out the conditions that apply to specialist behaviour support providers.

Note 1: A registered NDIS provider may be liable to a civil penalty if the provider breaches a condition to which the provider's registration is subject (see section 73J of the Act).

Note 2: The conditions in this Part are in addition to those set out in the Act (see subsection 73F(2) of the Act), those imposed by the Commissioner under subsection 73G(1) of the Act and those imposed under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 3: Part 4 of this instrument contains special rules that apply instead of, or as well as, some of the rules in this Part in certain circumstances.

## **Division 2—Conditions of registration**

### **17 Requirement to use an NDIS behaviour support practitioner**

The registration of a specialist behaviour support provider is subject to the condition that the specialist behaviour support services are provided by an NDIS behaviour support practitioner.

### **18 Who can develop behaviour support plans containing a regulated restrictive practice**

The registration of a specialist behaviour support provider is subject to the condition that a behaviour support plan for a person with disability that contains a regulated restrictive practice must be developed by:

- (a) an NDIS behaviour support practitioner engaged by the provider; or
- (b) if the provider is an NDIS behaviour support practitioner—that person.

### **19 Period within which behaviour support plan containing a regulated restrictive practice must be developed**

- (1) Subsection (2) applies if:
  - (a) a regulated restrictive practice is used in relation to a person with disability; and
  - (b) as a result of that use, the specialist behaviour support provider is engaged to develop a behaviour support plan for the person with disability.
- (2) The registration of the specialist behaviour support provider is subject to the condition that the provider must develop:
  - (a) an interim behaviour support plan that includes provision for the use of the regulated restrictive practice within 1 month after being engaged to develop the plan; and
  - (b) a comprehensive behaviour support plan that includes provision for the use of the regulated restrictive practice within 6 months after being engaged to develop the plan.

### **20 How behaviour support plans containing a regulated restrictive practice must be developed**

- (1) The registration of a specialist behaviour support provider is subject to the conditions in this section in relation to behaviour support plans developed by the provider.
- (2) A behaviour support plan for a person with disability that contains a regulated restrictive practice must be developed in accordance with any authorisation process (however described) in the State or Territory in which the regulated restrictive practice is, or is proposed to be, used.

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- (3) In developing and reviewing a behaviour support plan for a person with disability, the specialist behaviour support provider must take all reasonable steps to:
  - (a) reduce and eliminate the need for the use of regulated restrictive practices in relation to the person with disability; and
  - (b) take into account any previous behaviour support assessments and other assessments; and
  - (c) make changes within the environment of the person with disability that may reduce or remove the need for the use of regulated restrictive practices; and
  - (d) consult with the person with disability; and
  - (e) consult with the person with disability's family, carers, guardian or other relevant person; and
  - (f) consult with the registered NDIS provider who may use the regulated restrictive practice and other relevant specialists.
- (4) When consulting in accordance with paragraph (3)(d) or (e), the specialist behaviour support provider must provide details of the intention to include a regulated restrictive practice in the behaviour support plan, in an appropriately accessible format, to:
  - (a) the person with disability subject to the plan; and
  - (b) the person with disability's family, carers, guardian or other relevant person.
- (5) In developing a comprehensive behaviour support plan for a person with disability, the specialist behaviour support provider must undertake a behaviour support assessment, including a functional behavioural assessment of, the person with disability.

### **21 Contents of behaviour support plan containing a regulated restrictive practice**

- (1) This section applies if a specialist behaviour support provider develops or reviews a behaviour support plan for a person with disability that contains the use of a regulated restrictive practice.
- (2) The registration of the specialist behaviour support provider is subject to the condition that the plan must include strategies that are evidence-based, person-centred and proactive and that address the person with disability's needs and the functions of the behaviour.
- (3) The registration of the specialist behaviour support provider is also subject to the condition that the regulated restrictive practice must:
  - (a) be clearly identified in the behaviour support plan; and
  - (b) 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; and



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- (c) 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; and
  - (d) be the least restrictive response possible in the circumstances to ensure the safety of the person or others; and
  - (e) reduce the risk of harm to the person with disability or others; and
  - (f) be in proportion to the potential negative consequence or risk of harm; and
  - (g) be used for the shortest possible time to ensure the safety of the person with disability or others.
- (4) The registration of the specialist behaviour support provider is also subject to the condition that the person with disability to whom the behaviour support plan applies must be given opportunities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for regulated restrictive practices in the future.

## **22 Review of comprehensive behaviour support plans containing a regulated restrictive practice**

The registration of a specialist behaviour support provider is subject to the condition that a comprehensive behaviour support plan developed by the provider that contains a regulated restrictive practice must be reviewed by an 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; or
- (b) in any event—at least every 12 months while the plan is in force.

## **23 Form of behaviour support plan containing a regulated restrictive practice**

- (1) The registration of a specialist behaviour support provider is subject to the condition that any behaviour support plan prepared by or on behalf of the provider that contains a regulated restrictive practice must:
- (a) be in the form approved by the Commissioner; and
  - (b) include any information, and be accompanied by any documents, required by the Commissioner.
- (2) The Commissioner must approve a form for the purposes of this section.

## **24 Behaviour support plan containing a regulated restrictive practice must be lodged with the Commissioner**

- (1) The registration of a specialist behaviour support provider is subject to the condition that a behaviour support plan for a person with disability that contains a regulated restrictive practice, including a reviewed plan, must be lodged with the Commissioner as soon as practicable after it is developed.

**Note:** See section 19 for the period within which behaviour support plans must be developed and section 22 for when plans must be reviewed.

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- (2) To avoid doubt, a behaviour support plan that contains a regulated restrictive practice must be lodged with the Commissioner, regardless of whether State or Territory authorisation (however described) is required to be obtained, or has been obtained, for the use of the practice in the relevant State or Territory.
- (3) A behaviour support plan that is required to be lodged under this section must be lodged in the manner required by the Commissioner.

## **Part 4—Special arrangements**

### **Division 1—Preliminary**

#### **25A Simplified outline of this Part**

This part sets out the special arrangements for a registered NDIS provider.

This part takes priority over certain specified provisions of these rules for providers as set out in this part. These arrangements are necessary for the orderly transition of providers into the jurisdiction of the NDIS Quality and Safeguards Commission, by having regard to existing use of restrictive practices and existing plans addressing the use of restrictive practices.

#### **25 Purpose of this Part**

This Part is made for the purpose of section 73H of the Act.

## Division 2—Special arrangements for transitioned providers

### 26 Use of regulated restrictive practice with a behaviour support plan and in accordance with an authorisation process

- (1) This section applies to a person or entity if:
- (a) at a particular time (the **transition time**):
    - (i) the person or entity is a registered NDIS provider for a participant; and
    - (ii) the supports are provided under a behaviour support plan (the **existing plan**) that contains a regulated restrictive practice; and
    - (iii) the behaviour support plan controls the use of the regulated restrictive practice and contains alternative behaviour support strategies; and
    - (iv) the host jurisdiction in which the supports are provided has an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
    - (v) the use of the regulated restrictive practice is authorised in accordance with the authorisation process; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of **host jurisdiction** and **participating jurisdiction**, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The person or entity is not required to comply with sections 9 to 15 of this instrument in relation to the person with disability and the use of the regulated restrictive practice during the period:
- (a) starting at the start of the transition time; and
  - (b) ending at the earliest of the following:
    - (i) if the provider does not comply with subsection (3) within the period required by paragraph (4)(b)—the end of that period;
    - (ii) if the existing plan is reviewed for any reason, including as directed by the Commissioner—the day the review of the plan is completed;
    - (iii) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);
    - (iv) the end of 12 months after the transition time.
- (3) The person or entity must notify the Commissioner of the existence of the behaviour support plan, including the regulated restrictive practices that it contains and the expiry date of the plan.

- (4) A notification under subsection (3):
  - (a) must be given in the form approved by the Commissioner; and
  - (b) must be given within 3 months after the start of the transition time, or such longer period as the Commissioner allows.
- (5) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
  - (a) the provider must comply with subsection (3);
  - (b) if requested by the Commissioner—the person or entity must provide a copy of the behaviour support plan to the Commissioner within the period requested by the Commissioner.

## **27 Use of regulated restrictive practice in accordance with an authorisation process but not a behaviour support plan**

- (1) This section applies to a person or entity if:
  - (a) at a particular time (the *transition time*):
    - (i) the person or entity is a registered NDIS provider (other than a transitioned RAC provider) for a participant; and
    - (ii) the provision of supports involves the use of a regulated restrictive practice; and
    - (iii) the use is not in accordance with a behaviour support plan for the person with disability; and
    - (iv) the host jurisdiction in which the supports are provided has an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
    - (v) the use of the regulated restrictive practice is authorised in accordance with the authorisation process; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of *host jurisdiction* and *participating jurisdiction*, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The person or entity is not required to comply with sections 9 to 15 of this instrument in relation to the person with disability and the use of the regulated restrictive practice during the period:
  - (a) starting at the start of the transition time; and
  - (b) ending at the earliest of the following:
    - (i) if the provider does not comply with subsection (3) within the period required by that subsection—the end of that period;
    - (ii) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the day specified in the notice (which must be at least 14 days after the notice is given);

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- (iii) the end of 12 months after the transition time.
- (3) The person or entity must facilitate the development of a behaviour support plan for the person with disability that contains the use of the regulated restrictive practice and that meets the requirements of Division 2 of Part 3:
  - (a) within 6 months after the start of the transition time; or
  - (b) such longer period as directed by the Commissioner.
- (4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
  - (a) the person or entity must comply with subsection (3);
  - (b) if requested by the Commissioner—the person or entity must provide a copy of the behaviour support plan developed in accordance with subsection (3) to the Commissioner within the period requested by the Commissioner.

**28 Use of regulated restrictive practice where no authorisation process or behaviour support plan**

- (1) This section applies to a person or entity if:
  - (a) at a particular time (the transition time):
    - (i) the person or entity is a registered NDIS provider (other than a transitioned RAC provider) for a participant; and
    - (ii) the provision of supports involves the use of a regulated restrictive practice; and
    - (iii) the use is not in accordance with a behaviour support plan for the person with disability; and
    - (iv) the host jurisdiction in which the supports are provided does not have an authorisation process (however described) in relation to the use of the regulated restrictive practice; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of host jurisdiction and participating jurisdiction, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018.

- (2) The person or entity is not required to comply with sections 9 to 15 in relation to the use of the regulated restrictive practice.
- (3) The person or entity must notify the Commissioner of the regulated restrictive practice used by the person or entity:
  - (a) in the form approved by the Commissioner; and
  - (b) within 1 month after the start of the transition time, or such longer period as the Commissioner allows.

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- (4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
- (a) the person or entity must comply with subsection (3);
  - (b) within 3 months after the transition time—the person or entity must take all reasonable steps to facilitate the development of an interim behaviour support plan for the person with disability that meets the requirements of Division 2 of Part 3;
  - (c) within 6 months after the transition time—the person or entity must take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the person with disability that meets the requirements of Division 2 of Part 3.
- (5) The registration of the registered NDIS provider is also subject to the condition that the provider agrees to demonstrate compliance with paragraph (4)(b) or (c) if required to do so by the Commissioner.

Note 3: Part 7.4 of the Criminal Code provides offences in relation to false or misleading statements, information and documents.

## 29 Specialist behaviour support service providers

- (1) This section applies to a person or entity if:
- (a) at a particular time (the **transition time**), the person or entity is approved to deliver specialist behaviour support services to a person with disability in a host jurisdiction; and
  - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note 1: For the meaning of **host jurisdiction** and **participating jurisdiction**, see sections 10 and 10A of the Act.

Note 2: Any provider approved as a registered provider of supports in a participating jurisdiction will automatically transition to be a NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The registration of the person or entity as a specialist behaviour support provider is subject to the condition that the person or entity must notify the Commissioner of the names and details of the behaviour support practitioners that, at the transition time, the person or entity employs or otherwise engages to undertake behaviour assessments (including functional behavioural assessments) and to develop behaviour support plans.
- (3) A notification under subsection (2) must be given:
- (a) in the form approved by the Commissioner; and
  - (b) within 1 month after the start of the transition time, or such longer period as the Commissioner allows.

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## **Division 3—Special arrangements for transitioned residential aged care providers**

### **30 Use of regulated restrictive practice where either no authorisation or behaviour support plan**

- (1) This section applies to a person or entity if, on 1 December 2020:
- (a) the person or entity is a transitioned RAC provider; and
  - (b) the person or entity is providing supports or services to a participant; and
  - (c) the provision of supports or services involves the use of a regulated restrictive practice; and
  - (d) either:
    - (i) the use of the regulated restrictive practice is not in accordance with a behaviour support plan for the participant; or
    - (ii) the person or entity does not have an authorisation (however described) in relation to the use of the regulated restrictive practice (whether or not there is an authorisation process for such practices in the State or Territory in which the supports or services are provided).

Note: A transitioned RAC provider is deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The person or entity is not required to comply with sections 9 to 15 in relation to the participant and the use of the regulated restrictive practice during the period:
- (a) starting on 1 December 2020; and
  - (b) ending at the earliest of the following:
    - (i) 1 December 2021;
    - (ii) if, on 1 December 2020, the person or entity does not have a behaviour support plan for the participant—the day an interim behaviour support plan, or a comprehensive behaviour support plan, for the participant is lodged with the Commissioner;
    - (iii) if the person or entity does not comply with subsection (3) by the day required by that subsection—the end of that day;
    - (iv) if the Commissioner gives a written notice to the person or entity that this subsection no longer applies to the person or entity—the day specified in the notice (which must be at least 14 days after the notice is given).
- (3) The person or entity must:
- (a) notify the Commissioner of the regulated restrictive practice used by the person or entity in the form approved by the Commissioner; and
  - (b) do so by:
    - (i) 1 January 2021; or
    - (ii) if the Commissioner allows a later day—such later day.



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Note: If the use of the regulated restrictive practice is also a reportable incident, it must also be reported in accordance with Part 3 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

- (4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:
- (a) the person or entity must comply with subsection (3);
  - (b) if:
    - (i) there is an authorisation process in the State or Territory in which the supports or services are provided for the use of the regulated restrictive practice in relation to the participant; and
    - (ii) on 1 December 2020, the person or entity is not authorised in accordance with that authorisation process;by 1 March 2021, the person or entity must take all reasonable steps to obtain such authorisation;
  - (c) if, on 1 December 2020, the person or entity does not have a behaviour support plan for the participant:
    - (i) by 1 March 2021, the person or entity must take all reasonable steps to facilitate the development of an interim behaviour support plan for the participant that meets the requirements of Division 2 of Part 3; and
    - (ii) by 1 June 2021, the person must take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the participant that meets the requirements of Division 2 of Part 3.
- (5) The registration of the person or entity as a registered NDIS provider is also subject to the condition that the person or entity agrees to demonstrate compliance with paragraphs (4)(b) and (c) if required to do so by the Commissioner.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018	18 May 2018 (F2018L00632)	1 July 2018 (s 2)	
National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020	30 Nov 2020 (F2020L01512)	Sch 1 (items 14–26): 1 Dec 2020 (s 2(1) item 1)	—

## Endnote 4—Amendment history

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2 .....	rep LA s 48D
s 5 .....	am F2020L01512
<b>Part 4</b>	
<b>Division 1</b>	
Division 1 heading .....	ad F2020L01512
s 25A .....	am F2020L01512
<b>Division 2</b>	
Division 2 heading .....	ad F2020L01512
s 26 .....	am F2020L01512
s 27 .....	am F2020L01512
s 28 .....	am F2020L01512
s 29 .....	am F2020L01512
<b>Division 3</b>	
Division 3 .....	ad F2020L01512
s 30 .....	ad F2020L01512