

VMIAC's response to the use of unauthorised restrictive practices in the NDIS

Our Position

VMIAC's position on restrictive practice for people seeking help or receiving mental health services extends to people with a disability receiving support from the NDIS. VMIAC views the use of restrictive practices as a breach of the right to liberty, bodily integrity, and freedom from torture, cruel, inhuman, or degrading treatment.¹

By 'restrictive practices' we apply the definition provided by People with Disability Australia, as 'any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability', including seclusion, chemical, mechanical, physical, environmental, and psychosocial restraint.²

You can read our position on restrictive practices in mental health services [here](#).³ We believe the use of restrictive practices in disability services should be eliminated and there is no therapeutic benefit in the use of restraint, nor any place for it in mental health and/or disability services.

VMIAC is concerned with the high levels of restrictive practices being reported in the disability sector.⁴ The NDIS Quality and Safeguards Commission's report on unauthorised use of restrictive practices in the NDIS identifies instances of unauthorised restrictive practices were reported more than 1 million times in the 12 months to 30 June 2021.⁵ It is a legislative requirement that registered NDIS providers report the unauthorised use of restrictive practices to the NDIS Quality and Safeguards Commission.⁶

These include restrictive practices that are not included or 'authorised' in the participant's Behaviour Support Plan.⁷ These reports come from registered NDIS providers in relation to NDIS participants and do not include health, education or forensic settings where there are no registered NDIS providers.⁸ This figure is very concerning, especially due to all of these reports being in relation to 7,862 NDIS participants.⁹ 72% of participants subjected to unauthorised restrictive practices were subjected to 100 or less individual instances of such practices, 27% were subjected to only one instance, and less than 5% were subjected to 500 or more instances.¹⁰

¹ VMIAC, *Policy Position Paper #3: Seclusion and Restraint* (Position Statement, 2020) < <https://www.vmiac.org.au/wp-content/uploads/Position-Statement-3-Seclusion-and-Restraint-FINAL-1.pdf> >

² People with a Disability Australia, 'Jargon Buster' *Our Royal Commission* (Web page) < <https://ourroyalcommission.com.au/jargon-buster/restrictive-practices/> >

³ VMIAC, *Policy Position Paper #3: Seclusion and Restraint* (Position Statement, 2020) < <https://www.vmiac.org.au/wp-content/uploads/Position-Statement-3-Seclusion-and-Restraint-FINAL-1.pdf> >

⁴ Sarah Richards and Laura Lavelle, 'The number of reports of unauthorised restrictive practices to the NDIS is up five-fold in three years, to 1.4 million', *ABC News* (Online, 19 May 2023) < <https://www.abc.net.au/news/2023-05-19/qld-ndis-rise-in-instances-of-unauthorised-restrictive-practices/102356712> >

⁵ NDIS Quality and Safeguards Commission, *Unauthorised uses of restrictive practices in the National Disability Insurance Scheme* (Report, 2023), 5.

⁶ *National Disability Insurance Scheme Act 2013* (Cth) s 73Z

⁷ *Ibid*, above n 5, 4.

⁸ *Ibid*, 2.

⁹ *Ibid*, 5.

¹⁰ *Ibid*, 9.

RECOMMENDATIONS

Recommendation 1: The Victorian Government, in partnership with the Federal Government, take immediate steps to codesign a strategy and a deadline to eliminate the use of all restrictive practices in disability services. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability provides a genuine opportunity to make the necessary changes to eliminate the use of restrictive practices in all disability support services.¹¹ The process underway as part of Victorian Mental Health reforms could be used as a framework to assist in designing this strategy. This Strategy would need to be developed in conjunction with the Federal Government to ensure that NDIS participants are included.

Recommendation 2: The Victorian Government, in partnership with the Federal Government, take immediate action to stop the unauthorised use of restrictive practices in disability services, and reduce the authorised use of restrictive practices by setting target KPIs for disability services that are reduced over time until their practice is eliminated. The new Disability Services Act provides an opportunity for legislative changes to protect people with disability from restrictive practices. Some recommendations from VMIAC as to the new Disability Services Act can be found [on our website](#).¹²

Recommendation 3: The Federal Government require that the NDIS Commission report publicly on which NDIS providers have the highest use of restrictive practices, including both authorised and unauthorised use. This would enable people with disability, their families and carers to make informed choices about providers based on how safe they are.

Recommendation 4: The *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* must be amended so that treatment plans can only include restrictive practices where all possible alternatives have been attempted previously and failed.¹³ Treatment plans that authorise the use of restrictive practices must evidence that alternatives have been legitimately tried and failed. The use of alternatives is a key driver in reducing restrictive practices. Requiring providers to consider alternatives prior to resorting to restrictive practices will build sector knowledge and skill which should lead to an overall reduction in the use of restrictive practices.

Recommendation 5: The Federal Government act now to issue an unequivocal apology to people with a disability who have experienced the unauthorised use of restrictive practices. Additionally, the Government must provide assurances to people living with disabilities that these practices will be stopped. To restore faith in the NDIS and disability sector, the government must hold systems accountable and address harms that have been experienced in real and meaningful ways.

¹¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *About the Royal Commission* (Web page) < <https://disability.royalcommission.gov.au/about-royal-commission> >

¹² VMIAC, *Response to "A New Act to Replace the Disability Services Act 1986" Consultation Paper* (Report, 2023) <https://www.vmiac.org.au/wp-content/uploads/SUBMISSION_VMIAC-Response-to-Disability-Services-Act-Consultation-Paper.pdf>

¹³ *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Cth).