Seclusion 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, not facilitated, or implied that voluntary exit is not permitted.[1]

As a regulated restrictive practice, the implementation of seclusion in NSW requires Restrictive Practice Authorisation (RPA) by a Restrictive Practices Authorisation Panel. This guide covers the necessary considerations by an RPA Panel when determining if authorisation is to be given for the use of seclusion in the context of the rights of people with disability and managing risks due to behaviours of concern.

The submission

The RPA Panel must have appropriate documents which contain essential information to be able to make a reasonable decision to approve or decline authorisation. The submission must be completed using the NSW RPA System and the required supporting documents uploaded and released to the RPA Panel members. It is recommended that the RPA Panel is given a minimum of 2 business days prior to the scheduled meeting of the RPA Panel, to review the submission. It is important that all panel members have adequate time to read the information provided.

For the use of seclusion this information is:

- the provision of the required documents in *Section 4* of the online RPA Submission Form which include:
  - the comprehensive Behaviour Support Plan (BSP) or Interim BSP for Interim Authorisation which:
    - describes the use of the seclusion
    - includes functionally equivalent and/or related skills that will address the purpose of the behaviour and therefore reduce the need for seclusion
  - the functional assessment of the behaviour on which the BSP is based (required for planned submissions)
  - the format that will be used to record the use of seclusion, where the practice is not yet implemented
  - data regarding the frequency/duration of its use where seclusion is already in place.
- *Section 5* describing the behaviour/s that may require the use of seclusion
- *Section 6* describing the proposed seclusion.

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[1] NSW Restrictive Practices Authorisation Policy 2019

If the above information has not been provided to RPA Panel members, there is insufficient information on which to base a reasonable decision to authorise.

The RPA Panel should not consider the submission until it contains all the required information.

Consideration of a submission for Seclusion

Based on the information provided in *Sections 4, 5 and 6* of the RPA Submission Form, the RPA Panel should determine if it is satisfied with the quality of the response and how the NDIS provider is protecting the rights of the person.

Section 4.4 of the *NSW Restrictive Practices Authorisation Procedural Guide* provides a collection of questions that should be considered by the RPA Panel, in addition to such questions as:

- Has the proposed practice been appropriately categorised as seclusion[2]?
- Is the use of seclusion a reasonable and proportionate response to the risk presented by the behaviour of concern?
- Will the use of seclusion only be in an emergency situation?
- What training might workers need to ensure safe implementation of this practice?
- Does the seclusion strategy include clear instructions about the schedule and method of observation while the person is secluded?
  - What will be watched for, how will this be recorded and who will review this information?
- Does proposed use of seclusion not restrict the person's access to:
  - Bedding and clothing appropriate to conditions?
  - Access to toilet/bathroom facilities?
  - Access to environmental /climate comfort?
  - Food and water?
- What measures are in place to ensure seclusion can be safely implemented?
- What is the history of the practice, has it been in place long term?
- Does the frequency of use (non-use) suggest it should be removed?
- Have efforts been made to reduce, fade, and remove the use of the practice?

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[2] RPA Seclusion Guidance

The following should also be considered:

- What will be the impact of seclusion on the person in the context of their personal history, including their potential history of trauma and abuse, and medical history?
- What site safety procedures may be affected by the use of seclusion (e.g. evacuation during fire) and how will this be addressed?
- How will the person get to the area in which they will be secluded?
    - Does this include a physical restraint practice? If so, physical restraint is a separate practice and will require inclusion in the BSP and submission in order to seek authorisation for physical restraint.
- How will the person be supported once the seclusion has ended?
- Will a review meeting occur after each occasion of seclusion?

Seclusion is prohibited for any person under the age of 18 years.

The use of seclusion can be a traumatic experience for the person and is prohibited if used as punishment, for reasons of convenience or in response to resource limitations.

Seclusion should be limited to less than 15 minutes[3].

Outcome decision

The RPA Panel (or Senior Manager considering Interim Authorisation) can decide not to authorise the use of the seclusion if there is insufficient information to make a well-considered decision to authorise. The decision, as always, should be unanimous and without coercion.

Other possible outcome decisions include

- authorisation for short duration of time, **or**
- authorisation with conditions, **or**
- authorisation without conditions.

A senior manager considering Interim Authorisation can choose from these options, however the duration of authorisation cannot be longer than 5 months.

When deciding on the duration of authorisation it is important to consider the expiry date of the BSP which contains the practice/s. Authorisation should not extend beyond the validity of the BSP.

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[3] NSW RPA Procedural Guide 2019 *Section 4.3.1*

The decision to authorise the use of seclusion should include a schedule to review of the implementation of the practice by the RPA Panel (refer to *Review of implementation).*

The decision to authorise the use seclusion means:

- the **senior manager** accepts responsibility on behalf of the organisation for oversight of the implementation, monitoring, training staff and the provision of a safe environment for NDIS participants and staff where seclusion is in use
- the **behaviour support practitioner** has considered seclusion in the context of evidence based practice, least degree of restriction, the effectiveness of seclusion to manage the risk and has considered options for fading the practice (in the context of the identified function of the behaviour and functionally equivalent replacement behaviours)
- the **independent** is comfortable that the decision to seclude the person is impartial, transparent and is without conflict of interest for the implementing provider.

Conditions of authorisation

All decisions to authorise are dependent upon obtaining appropriate consent for the use of the practice (refer to *Consent and reporting*). It is therefore not appropriate to specify this as a condition. Authorisation is not valid until consent has been obtained.

Similarly, it is not appropriate to make the provision of a mandatory document a condition of authorisation when missing from the submission, for example a **current** behaviour support plan which includes seclusion must be included with the submission.

A condition of authorisation would be applied where information the RPA Panel considers important to include but is not yet covered by the submission, for example, a fire evacuation protocol which includes consideration of the use of seclusion.

It is recommended that where authorisation includes conditions, the RPA Panel schedules a review of the implementation to monitor the actioning, and or progress, of those conditions.

In the event that a submission does not contain the minimum information required, such as a current behaviour support plan which includes seclusion, granting authorisation with conditions is not appropriate. Instead, authorisation should be declined and the practice not considered by the RPA Panel until the minimum documentation is provided.

Recommendations

The RPA Panel (or Senior Manager considering Interim Authorisation) can make recommendations on additional steps or considerations they believe the service/s should undertake in providing the person with support.

These recommendations can be informed by (but not limited to) the RPA Panel's satisfaction with:

- the quality of the information provided to evidence the need for seclusion
- the rigour of efforts towards the reduction of the need for seclusion
- how well the person is supported to understand the use of seclusion
- how well the person is being respected and their rights upheld
- additional elements to be 'observed' while seclusion is in use.

Review of implementation

Seclusion should be reviewed by the RPA Panel at least every 3 months. An RPA Panel may choose to review this more frequently.

These reviews should consider:

- the frequency of use of seclusion
- the duration of each use
- the observations made of the person while secluded
- whether the use of seclusion is being conducted as authorised
- the person's response to seclusion
- attempts to implement less restrictive strategies
- actions relating to conditions of authorisation
- progress relating to RPA Panel recommendations.

Next steps

Record the decision in the Outcome Summary, even if the decision was to decline authorisation. This should include a clear explanation of why the RPA Panel came to the recorded decision. The detail provided with this explanation should make it clear to anyone not in attendance why the RPA panel was comfortable to make the recorded decision.

Authorisation is not valid until the Outcome Summary is finalised which occurs when:

- evidence of consent for the implementation of the practice from the appropriate consent provider is obtained
- panel members have endorsed the Outcome Summary.

When the Outcome Summary is finalised, provide a copy to the behaviour support practitioner for uploading to the NDIS Quality and Safeguards Commission Portal.

Consent and reporting

Where an RPA Panel has decided to authorise seclusion and the necessary consent[45] is not obtained, it remains an unauthorised use of a restrictive practice and must be reported to the NDIS Quality and Safeguards Commission. When consent has been obtained and the Outcome Summary has been completed, the practice is considered to be authorised.

The implementing service provider reports the use of seclusion to the NDIS Quality and Safeguards Commission.

This RPA Panel Guide is to be read in conjunction with:

- NSW RPA Policy (pdf)
  https://www.facs.nsw.gov.au/download?file=592755

- NSW RPA Procedural Guide (pdf)
  https://www.facs.nsw.gov.au/download?file=593319

- RPA Seclusion Guidance Sheet (pdf):
  https://www.facs.nsw.gov.au/download?file=636952

- Interim Authorisation (video):
  https://www.youtube.com/watch?v=vHWTD1jQ-RE

- What's a Review of Authorisation? (video):
  https://www.youtube.com/watch?v=GCDgkE17J2A

- Best Practice Example – The Outcome Summary Form (pdf):
  https://www.facs.nsw.gov.au/download?file=674178

The Central Restrictive Practices Team can be contacted at:
RestrictivePracticesAuthorisation@facs.nsw.gov.au

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[4] NSW RPA Policy 2019, *Sections 1.1, 4.1 and 4.4*
[5] NSW RPA Procedural Guidelines 2019, *Section 3*