

# RESTRICTIVE PRACTICES APPEAL PROCEDURE - FOR REVIEWABLE DECISIONS

Department of Human Services (DHS)

Please note this procedure is mandatory and staff are required to adhere to the content.

## Summary

This procedure outlines the appeal process for reviewable decisions under the South Australian Restrictive Practices Authorisation scheme.

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## Table of Contents

<b>1.</b>	<b>Title</b> .....	<b>3</b>
<b>2.</b>	<b>Purpose</b> .....	<b>3</b>
<b>3.</b>	<b>Scope</b> .....	<b>3</b>
<b>4.</b>	<b>Diversity and Inclusion</b> .....	<b>3</b>
<b>5.</b>	<b>Closing the Gap</b> .....	<b>3</b>
<b>6.</b>	<b>Definitions</b> .....	<b>4</b>
<b>7.</b>	<b>Procedure Detail</b> .....	<b>4</b>
<b>8.</b>	<b>Roles and Responsibilities</b> .....	<b>9</b>
<b>9.</b>	<b>Monitoring, evaluation and review</b> .....	<b>10</b>
<b>10.</b>	<b>Reference Documents</b> .....	<b>10</b>
	10.1 Directive documents .....	10
<b>11.</b>	<b>Approval</b> .....	<b>10</b>

## 1. Title

Restrictive Practices Appeal Procedure - for reviewable decisions.

## 2. Purpose

This procedure outlines the appeal process for reviewable decisions under the South Australian Restrictive Practices Authorisation scheme.

## 3. Scope

This procedure is written for Restrictive Practices Unit (RPU) staff when responding to appeals of reviewable decisions. It helps people with disability, their family and National Disability Insurance Scheme (NDIS) service providers to know what to expect when an appeal is made.

According to the Disability Inclusion Act 2018, reviewable decisions are:

- s.23L - decision by the Senior Authorising Officer (SAO) about the authorisation of a nominated person to be an Authorised Program Officer (APO), including any conditions or limitations on that authorisation, and the revocation of that authorisation.
- s.23N - decision of an APO about the authorisation of Level 1 restrictive practice.
- s.23O - decision of the SAO about the authorisation of a Level 1 or Level 2 restrictive practice.
- s.23P - decision of the SAO about the revocation of authorisation to use restrictive practice.
- s.23Y - decision of the SAO in the review of a decision made by the APO or NDIS service provider.

Complaints about the RPU follow the RPU complaints resolution procedure.

## 4. Diversity and Inclusion

DHS strives to celebrate and improve the lives of people of all ages, cultures, disabilities, ethnicities, faiths, gender identities, sex characteristics and sexual orientations. We are committed to making our services and workplaces safe and inclusive for all people and ensuring the full diversity of the communities we serve are represented in the strategies we lead.

## 5. Closing the Gap

Closing the Gap must be considered in everything that we do at DHS. The National Agreement on Closing the Gap, under Priority Reform Three, commits all governments to

being accountable and culturally safe and responsive to the needs of Aboriginal people, including through the services they fund.

The RPU considers that the effective use of restrictive practices must be situated within a broader understanding of the experiences of Aboriginal and Torres Strait Islander people. An approach grounded in cultural safety and competence recognises the broader needs for an Aboriginal person with disability to be connected to culture, country, and land.

## 6. Definitions

Table 3 – Definitions

Term	Meaning
SAO	Senior Authorising Officer
RPU	Restrictive Practices Unit
APO	Authorised Program Officer
NDIS	National Disability Insurance Scheme
SACAT	South Australian Civil and Administration Tribunal

## 7 Procedure Detail

### 7.1 Reviewable decisions made by the authorised program officer

The appeal process for Level 1 restrictive practice authorisation decisions made by the Authorised Program Officer (APO) is led by the Senior Authorising Officer (SAO).

The appeal may relate to a:

- procedural error: the correct process was not followed
- factual error: the correct information was not considered
- belief that the decision is unfair or unreasonable in the circumstances.

#### 7.1.1 Application

Any person who is aggrieved by a Level 1 restrictive practice authorisation decision is entitled to appeal against the decision, including:

- the person who is the subject of the decision
- a family member of the person with disability
- a person with disability who is impacted by an authorisation decision made about another person.

The request to appeal against a reviewable decision is made verbally or in writing by the aggrieved person or their nominated advocate to the RPU.

The request must be made within 30 days from the original authorisation decision. The SAO may extend this time limit for appropriate reasons. For example, the aggrieved person needing additional time and support to understand the original decision and/or submit the appeal.

In providing additional time to support the communication and additional requirements of the aggrieved person, the SAO may:

- arrange a home visit or attend an alternative venue as nominated by the aggrieved person
- arrange a communication partner, interpreter or cultural support
- hold several meetings over time to obtain the details of the appeal.

### **7.1.2 Receipt of application**

RPU staff will gather basic details about the appeal and complete the appeal log.

The SAO accepts the application if it meets the criteria for an appeal as set out in section 23Y of the *Disability Inclusion Act 2018* (the Act).

The aggrieved person and their advocate are advised verbally and in writing of the acceptance outcome.

When accepted the SAO confirms the:

- specific decision which is being appealed against
- appeal process and timelines
- outcomes sought.

When declined the SAO will:

- provide a rationale for declining the appeal application
- provide information on avenues for alternative dispute resolution.

### **7.1.3 Notice to original decision maker and those affected**

The SAO will advise the original decision maker (APO), and those affected by the decision under review:

- of an appeal being undertaken
- specific decision which is being appealed
- invitation to participate in the appeal process.

Those affected by the decision under review include:

- person subject to the restrictive practice
- National Disability Insurance Scheme (NDIS) implementing provider
- legal guardian or person holding other legal status under an Act.

The original decision maker and those affected are advised verbally and in writing.

### **7.1.4 Preparation for participation**

The SAO may facilitate understanding of the appeal process and help prepare people to participate to the degree they feel comfortable and able by:

- providing easy read information
- providing information sheets.

The SAO will promote and facilitate an environment:

- that supports and enhances positive and respectful relationships
- in which people feel comfortable to participate and engage in discussions and shared problem solving.

This approach increases the likelihood of the outcome being accepted and supports stakeholders' ongoing relationship with each other.

## **7.2 Review of decision**

For fair and accountable decision-making, the SAO must ensure:

- the aggrieved person and those affected are provided a reasonable opportunity to hear and understand the issues being appealed
- the aggrieved person and those affected are provided a reasonable opportunity to communicate their views and contribute to the appeal
- the original decision maker (APO) has the opportunity to submit documentation which informed their decision and provide a verbal submission
- there is no perceived or actual conflict of interest for the SAO. The SAO must bring an impartial mind to the appeal process, making decisions based on the merits of the case before them.

### **7.2.1 Review activities**

In undertaking review activities, the SAO will ensure a process of inquiry, where questions are asked to understand the different perspectives and experiences, providing rigour in decision making. The process is not legalistic or adversarial.

Review activities are to occur quickly, while ensuring people have opportunities to participate and provide information to ensure sound outcomes are reached.

The SAO will:

- gather, request and consider relevant documentation
- obtain views of parties:
  - the aggrieved person
  - the person with disability
  - the original decision maker
  - the NDIS implementing provider
  - those holding a legal obligation to the person subject to the restrictive practice

- individuals with other relevant expertise (for example, cultural advisor, behaviour support practitioner, medical practitioner)
- analyse information for its completeness, reliability, relevance and impartiality
- form a provisional conclusion.

The SAO will seek any information they deem necessary to make a sound and fair decision. This includes seeking information and considering information that may not have been available at the time of the original decision. Sections 23Q and 23R of the Act provides the SAO powers to obtain information. Section 23W of the Act allows for information to be provided to the SAO which is relevant to the functions of the SAO under the Act.

### **7.3 Consultation**

The SAO must consult with the person with disability to determine their needs, wishes and preferences to the maximum extent possible. The SAO will consider their specific needs (culture, language, communication, age, disability, religion, gender, sexuality or other matters).

Consultation occurs on a continuum; directly wherever possible and indirectly where the person may have needs that affect their ability to directly provide their views. Indirect consultation includes reasonable attempts by the SAO to obtain information about the person’s experience and knowledge of the issue under appeal. This information may be sought from people providing supports and services, and/or have knowledge and experiences of the person.

#### **7.3.1 Keeping people informed**

RPU staff will keep the APO and aggrieved person updated on the progress of the appeal.

### **7.4 Form a provisional outcome**

The SAO can:

- confirm the original decision
- vary the original decision
- reverse the original decision.

The provisional outcome and rationale will be discussed with the:

- aggrieved person
- original decision maker
- affected people.

The aggrieved person, original decision maker and affected others are provided with an opportunity to discuss the outcome and rationale. They may also provide additional information and clarify existing information which is incorporated into the final assessment.

The provisional and final outcome must be based on relevant information gathered during the review process which supports the conclusion reached.

## **7.5 Finalise or escalate**

The aggrieved person, original decision maker (APO) and affected others are informed verbally and in writing of the outcome, which includes:

- process undertaken
- information considered
- final outcome
- rationale for the outcome
- information on further appeal and complaint pathways.

The SAO will complete a written report.

## **7.6 Reviewable decisions made by the senior authorising officer**

Decisions made by the SAO may be reviewed via two pathways:

- appeal made to the South Australian Civil and Administration Tribunal (SACAT)
- administrative review conducted by the SAO.

An administrative review is an internal dispute resolution process where the SAO reconsiders their original reviewable decision. An administrative review is not established in the Act or Regulations. An aggrieved person may choose an administrative review instead of an appeal to SACAT or before appealing to SACAT.

Reviewable decisions made by the SAO include the:

- authorisation of a nominated person to be an APO, including any conditions, limitations or revocation of that authorisation
- authorisation of a Level 1 and Level 2 restrictive practice
- revocation of authorisation to use a restrictive practice
- decision of the SAO in the review of a decision made by the APO or NDIS implementing provider.

Persons who may appeal against a reviewable decision made by the SAO include:

- the person who the decision relates to
- family members
- legal guardian
- a NDIS provider who delivers, or is to deliver, NDIS supports to the person who the decision relates
- nominated advocate of the person who the decision relates.

A nominated advocate is a person who has been nominated by the participant to act as an applicant on behalf of the participant and assist the participant in relation to the review.

## 7.7 SACAT review pathway

Requests for reviews are made directly to SACAT. The request must be made within 30 days from the original authorisation decision. SACAT may extend this time for appropriate reasons, as determined by SACAT.

The SAO will brief the Chief Executive of the Department of Human Services when a matter has or is likely to progress to SACAT.

### 7.7.1 Administrative review pathway

An administrative review provides an avenue where reviewable decisions made by the SAO can be re-considered outside of a tribunal setting. An administrative review is limited, because the process doesn't involve an independent review by an external person. The administrative review is undertaken by a person in the RPU exercising the delegation of the SAO, but was not the original decision maker.

An administrative review should occur within a timeframe that does not preclude the aggrieved person from making an application to SACAT. The SAO will discuss this with the person who has made the application for an administrative review.

### 7.7.2 Process

An administrative review follows the process undertaken for appeals against Level 1 authorisation decisions made by APOs.

## 8 Roles and Responsibilities

Table 4 – Roles and Responsibilities

Role	Authority/Accountability
Chief Executive	<ul style="list-style-type: none"><li>• Holds overall accountability for departmental statutory functions.</li><li>• Is briefed by the Senior Authorising Officer where an appeal has, or is likely to, progress to SACAT.</li></ul>
Senior Authorising Officer	<ul style="list-style-type: none"><li>• Approves and is accountable for this procedure.</li><li>• Leads and determines appeals of reviewable decisions.</li><li>• Ensures appeal processes are fair, impartial and compliant with legislation.</li><li>• Forms provisional and final outcomes and provides written reasons.</li><li>• Informs parties of outcomes and further review pathways.</li></ul>
Executive Director, Ageing, Disability Policy and Safeguarding	<ul style="list-style-type: none"><li>• Provides executive oversight of the Restrictive Practices Unit.</li><li>• Ensures appeal processes align with legislative, policy and safeguarding requirements.</li></ul>

Restrictive Practices Unit Staff	<ul style="list-style-type: none"> <li>• Receive and record appeals and maintain appeal records.</li> <li>• Support the appeal process through coordination, communication and record keeping.</li> <li>• Keep applicants and affected parties informed of appeal progress.</li> </ul>
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## 9 Monitoring, evaluation and review

This procedure will be reviewed every three years, or earlier if required, by the Senior Authorising Officer.

## 10 Reference Documents

### 10.1 Directive documents

- [Disability Inclusion Act 2018](#)
- [Disability Inclusion \(Restrictive Practices – NDIS\) Regulations 2021 \(SA\)](#)
- [SACAT Act 2013 \(SA\)](#)

## 11 Approval

<b>Content Author:</b> Allison Cook Principal Project Officer Restrictive Practices Unit	<b>Director</b> Trinh Mai Senior Authorising Officer Restrictive Practices Unit 13/05/26	<b>Executive Director</b> Joe Young Ageing, Disability Policy and Safeguarding 13/5/26
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