

Senior Practitioner (Positive Behaviour Support Panel) Guideline 2019 (No 2)

Disallowable instrument – DI2019-274

made under the

Senior Practitioner Act 2018, Section 21

EXPLANATORY STATEMENT

Introduction

The *Senior Practitioner Act 2018* ('the Act') provides a formal framework for the reduction and elimination of restrictive practices by service providers in the ACT.

A 'restrictive practice' is defined under Section 7(1) of the Act to mean a practice that is used to restrict the rights or freedom of movement of a person for the primary purpose of protecting the person or others from harm. It includes:

- chemical restraint;
- environmental restraint;
- mechanical restraint;
- physical restraint;
- seclusion; or
- verbal directions, or gestural conduct, of a coercive nature.

The Act enshrines the principle that providers should only use restrictive practices in very limited circumstances – as a last resort, for the shortest period possible in the circumstances, and in the least restrictive way to prevent harm to the person or others.

The Act also provides an operational structure for the Senior Practitioner which reaffirms and strengthens the rights and responsibilities of vulnerable people, recognising that this requires support from across the government sector and within the community.

To whom does the Act apply?

The Act is specifically aimed at regulating the use of restrictive practices by providers.

It applies to all persons or other entities who provide any of the following services to another person:

- education (including education and care);
- disability;
- care and protection of children; or
- a service prescribed by regulation.

The legislation protects the rights of all individuals in the above settings, not just those with a disability.

The influence and leadership of the Senior Practitioner will also drive cultural change across all sectors where restrictive practices may be an issue.

Purpose of this Guideline

The Senior Practitioner is required to issue Guidelines about certain matters to assist providers to understand their responsibilities in relation to restrictive practices.

Section 21(1) of the Act requires the Senior Practitioner to make guidelines about Positive Behaviour Support (PBS) Panels.

PBS Panels are tasked with approving, or not approving, PBS Plans containing a restrictive practice (Section 14). PBS Panels must be registered by the Senior Practitioner (Section 22).

This Guideline is intended to assist all parties to understand the role and requirements for PBS Panels to be registered, including the experience, qualifications and membership needed.

This Guideline also outlines the approval process for the interim Central Panel, which has been established by the Senior Practitioner to approve PBS Plans during early implementation of the Act. Over time, a mechanism will be established and communicated to providers for persons to apply for registration of a PBS Panel.

A separate *Positive Behaviour Support Plan Guideline* has been issued to assist providers to develop PBS Plans, consistent with the objects and requirements of the Act.

What's new in this version of the Guideline?

This Guideline has been updated to reflect a number of amendments to the Act, which came into effect on 15 June 2019.

The legislative changes ensure alignment with the National Disability Insurance Scheme (NDIS) National Quality and Safeguarding Framework and support a culture of openness of reporting and disclosure to the Senior Practitioner. The amendments include:

- changing the definition of 'chemical restraint' to align with the NDIS Quality and Safeguarding Framework;
- addressing the use of a restrictive practice outside of a registered positive behaviour support plan where use of the restrictive practice is reasonably believed to be necessary to avoid imminent harm;
- amending applicable penalties to make allowance for the use of a restrictive practice outside of a registered positive behaviour support plan in the circumstances detailed above;
- extending the timeframe for the commencement of offences from 1 July 2019 to 1 July 2020; and
- adding the NDIS National Quality and Safeguards Commission as an entity to which the Senior Practitioner may provide information.

Service provider responsibilities under the Act

To ensure restrictive practices are used in accordance with a registered PBS Plan for the person

Under Section 10 of the Act, a provider must not use a restrictive practice on a person other than in accordance with a PBS Plan that has been approved by a registered PBS Panel (see Section 14) and registered by the Senior Practitioner (see Section 15).

A restrictive practice can only be used outside of a registered PBS Plan in certain emergency situations, when the provider or relevant person for the provider believes on reasonable grounds that is necessary to avoid imminent harm to the person or others (Section 10(b)).

To have a plan approved by a registered Positive Behaviour Support (PBS) Panel

This Guideline clarifies the role of PBS Panels, the process for having Plans approved, and information on how to register a Panel.

A separate *Positive Behaviour Support Plan Guideline* has been issued to provide detailed guidance for service providers about how to write a PBS Plan that meets legislative requirements.

To report all uses of a restrictive practice to the Senior Practitioner

Under the Act, service providers must report all uses of a restrictive practice to the Senior Practitioner, whether there is a PBS Plan in place for the person or not. The functions and powers of the Senior Practitioner will be supported by the collection and reporting of key data on the use of restrictive practices over time.

The role of the Panel

The primary function of a PBS Panel, provided at Section 14 of the Act, is to assess whether:

- a PBS Plan is consistent with the Positive Behaviour Support Plan Guideline (issued under Section 12 of the Act); and
- any restrictive practice included in the plan is necessary to prevent harm to the person or others and is the least restrictive approach reasonably available.

This Guideline further elaborates on the responsibilities of all registered PBS Panels in guiding the development and delivery of services that are respectful of human rights and align with the intent and purpose of the Act.

How to have a PBS Plan approved by a Panel

This Guideline provides information for all parties about the steps required to have a PBS Plan approved by a PBS Panel. It also describes the responsibilities of service providers in the ongoing monitoring and review of an approved PBS Plan.

It is understood that, as the PBS Panel approval process moves beyond the interim central Panel established by the Senior Practitioner, providers may seek to develop their own panel processes, within the legislative framework, to suit their own service/sector contexts.

How to establish a Panel

This Guideline clarifies requirements in relation to the composition, experience and qualifications of PBS Panels.

It states that registered PBS Panels must include a minimum of two people, preferably comprising a senior manager, and an experienced clinician with experience in PBS.

In addition, prospective PBS Panels are strongly advised to ensure they are inclusive of members with disability, advocates, parents, and cultural elders.

It is important to note that PBS Panel members must avoid any potential conflicts of interest in the conduct of their role. For example, no member can bring an application for their own PBS Panel's consideration.

Panel members are also required to sign a deed of confidentiality prior to participating in the process.

Panel processes

In deciding to approve a PBS Plan that contains a restrictive practice, a PBS Panel must ensure that it meets the requirements of the *Positive Behaviour Support Plan Guideline*.