

Senior Practitioner (Disability Support Providers) Implementation Guideline 2022 (No 1)

Disallowable instrument DI2022–12

made under the Senior Practitioner Act 2018, Section 27 (Senior Practitioner may make guidelines)

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.

The ACT was the first State or Territory in Australia to adopt a legislative charter of human rights in the Human Rights Act 2004 and is now one of three Australian jurisdictions with legislation that imposes binding human rights obligations on public

authorities. Any limits on human rights will only be justified where there is a lawful basis for the limitation, and it is the least restrictive way of achieving a legitimate purpose, such as protecting the safety and rights of others.

While the Senior Practitioner Act establishes a legislative scheme for regulating the use of restrictive practices, it coexists with existing obligations or legislative schemes established under other Acts.

To whom does the Act apply?

The Senior Practitioner helps to guide decisions and provide education to foster positive alternatives to restrictive practices, which preserve a person's rights and freedoms. The Senior Practitioner has independent oversight of the use of restrictive practice in education and care, disability, care and protection of children in out of home care, and any service determined to be covered under the Act.

Purpose of this Guideline

The Act is the authorising law that allows for the limited use of restrictive practices. The aim of the Act is to reduce and eliminate the use of restrictive practices while keeping people safe and upholding human rights.

The Senior Practitioner has issued this Guideline under Section 27 of the Act to help providers and people understand the Act and how it affects them. Guidelines made under the Act, including this one, are disallowable instruments. They have the same legal force as the Act and must be taken into account when making decisions.

The Senior Practitioner Implementation Guideline for Disability Providers is based on current research and engagement with a broad range of community sector and government stakeholders. This includes members of the Senior Practitioner Resource Working Group, the Senior Practitioner Consumer Reference Group and the Restrictive Practices Oversight Steering Group. The Guideline will underpin future conversations about implementing the Act.

All service providers remain responsible for developing their own policies, procedures and protocols to meet their obligations under the Act. Organisational policies and procedures should reflect the types of services provided, as well as the assessed needs and abilities of the person receiving the service.

The legislative framework aligns with international human rights obligations articulated in the United Nations Convention on the Rights of the Child (1990), the United Nations Convention on the Rights of Persons with Disabilities (2006), and the Australian NDIS providers' obligations under the National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector.

This guideline complements the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 and the Quality and Safeguarding Framework. However, it is important to note that the Act protects the rights of all individuals in the above settings, not just those who have a disability. The Senior

Practitioner acknowledges the previous effort made within these sectors to safeguard the rights of people who may be subject to restrictive practices.

This Guideline seeks to consolidate this effort with the goal of all providers working collaboratively with all people to maximise the opportunity for positive outcomes and reduce or eliminate the need for use of restrictive practice in support of people with disability.

This Guideline is presented in similar sequencing as the Act but provides the information in an easier to understand format. A glossary of terms is included and providers have access to a one page document outlining expectations of providers.

The Disallowable Instrument will be notified by Organisational Governance.

The Positive Behaviour Support Plan Guideline and the Positive Behaviour Support Panel Guideline are related Senior Practitioner Guides.