

Australian Capital Territory

Senior Practitioner Regulation 2023

Subordinate law SL2023–41

made under the

Senior Practitioner Act 2018, Section 53 (Regulation making power)

EXPLANATORY STATEMENT

The *Senior Practitioner Act 2018* (the Act) provides a framework for the reduction and elimination of the use of restrictive practices. Restricting a person’s freedom of movement can only be used as a last resort to protect that person or others from harm, in the least restrictive way and for the shortest time possible.

The *Senior Practitioner Regulation 2023* (the Regulation) defines a prohibited restrictive practice and provides a list of physical restraints and punitive practices which are prohibited. This list will bring the ACT in line with other jurisdictions as well as the NDIS Quality and Safeguards Commission.

An amendment to remove subsection 7(1)(b)(vi) of the Senior Practitioner Act 2018 which defines a restrictive practice as including “verbal directions, or gestural conduct of a coercive nature” was passed by the Legislative Assembly on 22 November 2022.

To ensure that the removal of subsection 7(1)(b)(vi) does not convey the implication that the practice is no longer considered a restrictive practice, so can be used, it is included under the Regulation.

The Regulation identifies those practices that are not to be used, which is supported by the offence under section 46 of the Act of using a restrictive practice other than in accordance with the Act.

Human rights implications

During the development of this Instrument, due regard was given to its effect in relation to compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The regulation engages the following rights under the *Human Rights Act 2004*:

- Section 10 (1)(b): No-one may be treated or punished in a cruel, inhuman or degrading way.
- Section 11 (2): Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind
- Section 18 (2): No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

The Senior Practitioner Act 2018 Section 6(e)(i) establishes that the objects of the Act are to regulate the use of restrictive practices by a provider in relation to a person in a way that is consistent with a person's human rights.

Through the establishment of this regulation human rights are upheld as it ensures that those practices that are not consistent with a person's human rights are established and are punishable through the *Senior Practitioner Act 2018*.

Clause Notes

Clause 1 — Name of Regulation

This clause provides that the name of the regulation is the Senior Practitioner Regulation 2023.

Clause 2 — Commencement

This clause provides that the Regulation commences the day after its notification day.