



Defining prohibited practices under the *Senior Practitioner Act 2018*

REPORT ON WHAT WE HEARD

In 2022, we consulted with the community about proposed changes to the *Senior Practitioner Act 2018*. The Senior Practitioner Act 2018 (the Act) regulates the use of a restrictive practice that limits the rights or freedom of movement of a person who is receiving services from an education, disability support or care and protection service provider.

The Act provides a framework for the reduction and elimination of the use of a restrictive practice. 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.

During the consultation on the Act, the community told us that it wanted the government to develop a way to make sure that some practices are not allowed under the Act. Because of this, we want to make a list of practices which cannot be used. If those practices are used, it might be an offence and there will be penalties.

One way to do this is to develop a regulation under the Act. A regulation is a form of subordinate legislation under which the use of prohibited practices could be classed as an offence and penalties made to apply. A list of prohibited practices would make clear that these practices are not to be used under the Act and that the Act will provide no protection for the use of prohibited practices. Making the use of prohibited practice(s) an offence with attached penalties would communicate that some practices are too dangerous to use in any circumstance. If penalties are part of the regulation created, a provider or person who uses a prohibited practice could be fined. This is one approach the consultation explored. Another approach would be to create a new section within the Act.

It is envisaged that defining prohibited practices will increase consistency with other jurisdictions and the NDIS Quality and Safeguarding Framework. For example, the NDIS Quality and Safeguard Commission's 'Practices proposed to be prohibited' document contains definitions of prohibited practices which could be used as a basis when considering what might be included on our list.

THE CONVERSATION

A Your Say Campaign was undertaken from 8 December 2022 to 25 February 2023. The survey link was emailed to about 560 stakeholders including disability service providers, education and child protection providers, advocacy organisations and relevant unions. People who may be the subject of restrictive practices and their carers were targeted through the Senior Practitioner newsletter and the Involved newsletter sent out by the Office for Disability. The survey was also promoted through the Senior Practitioner website, the ACT Schools Bulletin, the Community Partners Bulletin and the Community Services Directorate internal daily news email.



A discussion guide as well as a draft list of prohibited practices was provided with the following questions:

1. What do you think will be the impact of the proposal?
 - to persons subject to restrictive practices,
 - to your practice, and/or
 - to your organisation?
2. Besides verbal or gestural conduct of a coercive nature, what else do you think should be included on a list of prohibited practices?
3. Should penalties apply in relation to the use of a prohibited practice?
4. Should penalties in relation to the use of a prohibited practice apply to the provider and/or the individual using them?
5. Is there an alternative solution to a regulation to resolve the problem? What would it be?
6. Would you be interested in attending an online information session about the proposal?

A one-hour online information session was held on 16 February 2023, to ask the same questions of the group online.

The initial email to stakeholders was followed by three reminder emails, the last during the final week of the consultation period. We received 9 submissions and 18 survey responses. There were over 578 downloads of the information.

WHO WE ENGAGED

We wanted to engage widely, with people from relevant ACT government directorates, disability service providers, education and care and protection providers and people who may be subject to a restrictive practice, families and carers, advocacy groups and other oversight bodies such as the national Senior Practitioner for the NDIS Commission.

Some key stakeholders were:

- Community partners and education providers across the ACT involved in the care of individuals, not just those with a disability
- Service providers, community organisations, and individuals with disabilities, their carers and family members
- ACT Government Directorates
- ACT Human Rights Commission
- Inclusion Australia
- The Australian Education Union
- National Disability Services
- The Association of Independent Schools
- ACT Disability Reference Group
- Public Trustee and Guardian
- Public Advocate
- Solicitor-General for the ACT
- Manager, Mental Health Policy Unit (Health)
- The Public Advocate and Children and Young People's Commissioner
- The Public Trustee and Guardian
- Executive Director, Association of Independent Schools of the ACT
- Chief Executive, Catholic Education, ACT



Key insights from the community

The impact of the proposal on persons, practice, and organisations

1. Respondents consistently felt the impact would be positive for persons subject to restrictive practices. Protection from abuse, improvement in human rights, safety, and quality of life were a consistent theme.
2. For providers and practitioners there was general support, with a strong desire for clear and definitive guidance materials.
3. There was some concern about the potential for increased compliance, reporting and administrative impacts on organisations.

Practices to be included on the list

4. Respondents had strong views about the practices to be included on the list. Overwhelmingly the list provided was supported, however, numerous additions were suggested.
5. Some responses suggested additional clarity about verbal or gestural coerciveness, particularly when working with children.
6. Several responses noted that alignment with NDIS 'Practices proposed to be prohibited' list is preferred for consistency across legislation.

Offences and penalties

7. There was broad, and frequently strong, support for penalties in relation to the use of prohibited practices.
8. Several responses indicated a preference for a tiered approach or one able to take a case-by-case response.
9. Although respondents consistently believed that both providers and employees should be subject to penalties there was a strong theme regarding accountability in relation to training/guidance. The need for employees and volunteers to have received adequately training in order to face penalties was raised consistently.

Alternative solutions

10. A recurring theme was that legislation works most effectively when used in conjunction with education and guidance. Enforcement mechanisms such as offences and penalties should be part of a broader compliance model which encourages a preventive culture and ensures accountability.
11. It was noted that any regulation or change to the Act needs to be considered in terms of the intersection with existing legislation.
12. Other comments reiterated the need for workers and organisations to receive education and guidance.

WHAT'S NEXT?

Because of the support for a list of prohibited practices we will start the process of making a regulation. We will update the list based on the feedback received. We will add several items, clarify others and ensure consistency with the NDIS list of 'Practices proposed to be prohibited'.

Due to the strong desire for guidance and education in the community we will provide supporting materials, including diagrams of the physical restraints and facilitate information sessions when the regulation is in place. We will update existing guidelines to make reference to the Prohibited Practices guideline.



Key Timings

Stakeholder consultation - 8 December 2022 to 25 February 2023

Release Listening Report – Mid 2023

Regulation enacted – Mid 2023

Guidance materials available – Mid 2023

Senior Practitioner led information sessions – Mid 2023

THANK YOU FOR YOUR FEEDBACK

362

We reached 362 people via YourSay

1

We delivered 1 online presentation
to 75 people

10

We spoke to 10 individuals

560

We sent emails to over 560 organisations
and individual stakeholders

18

We received 18 survey responses

9

We received 9 items of written feedback
from individuals, advocacy organisations
and peak groups