

DISCUSSION PAPER

Defining prohibited practices under the *Senior Practitioner Act 2018*

In 2022, we consulted with the community about proposed changes to the *Senior Practitioner Act 2018*. 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.

We want to hear what you think about this solution or if you have other ideas about how we stop these practices being used.

About the Senior Practitioner Act 2018 ('the Act')

The *Senior Practitioner Act 2018* (the Act) came into law on 1 September 2018. It provides a formal framework for the reduction and elimination of restrictive practices by service providers in the ACT.

A **restrictive practice** means a practice that is used to restrict the rights or freedom of movement of a person. Restrictive practices are primarily used to protect the person or other people from harm.

Section 10 of the Act provides more detail about the use of restrictive practices.

The Act regulates the use of restrictive practices by persons or other organisations (entities) who provide any of the following services to another person:

- education
- disability support
- care and protection of children
- other services prescribed by regulation.

The Act affirms and strengthens the rights of vulnerable people by providing greater protection from the unnecessary use of restrictive practices. It creates the role of the Senior Practitioner who helps to guide decisions and provide education to foster positive alternatives to restrictive practices, which preserve a person's rights and freedoms.

The Act also provides structure to the way the Senior Practitioner works, which recognises the need for support from across the government sector and within the community.

Under the Act a provider can only use a restrictive practice:

1. In line with a positive behaviour support plan. A registered panel approves positive behaviour support plans, and the Senior Practitioner registers them.
2. If the provider believes it is necessary to stop harm to the person or other people.

A **Positive Behaviour Support Plan** is a plan for a person that describes the strategies to be used in supporting the person's behaviour, including ways to build on the person's strengths and increase their life skills; and reduce the intensity, frequency and duration of behaviour that causes harm to the person or others.

Proposed changes to the Act

Section 7 of the Act defines what a restrictive practice is and includes a list of practices that may be used when necessary and in conjunction with a positive behaviour support plan. The proposed change to the Act will remove "verbal direction or gestural conduct of a coercive nature" from the list.

Verbal direction or gestural conduct of a coercive nature is threatening a person to get them to do what you want. It is also when someone degrades, humiliates, or forces a person into a powerless position.

Coercion will be removed because its inclusion in Section 7 caused a lot of confusion. Coercion would not be approved by a registered panel as part of an authorised positive behaviour support plan or considered as a reasonable part of an emergency response to stop harm to a person or other people. Taking it out of the list will make it clear that coercion is not a restrictive practice that could ever be part of a positive behaviour support plan.

What is being proposed and why?

Most of the organisations and people who provided feedback on the proposed changes to the Act agreed with removing "verbal direction or gestural conduct of a coercive nature" from the list of restrictive practices included in the legislation. However, many respondents were concerned that if coercion was taken out of the Act all together, people might think that it is OK to use. Several people suggested that coercion should be included on a list of practices that can't ever be used.

To address this gap, the Community Services Directorate (CSD), is seeking to develop a list of practices, including coercion, which will be prohibited under the Act.

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 clear list of prohibited practices would make clear that these practices are not to be used under this Act, 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 such a regulation is in place, a provider or person who uses a prohibited practice could be fined. This is the approach we are exploring. 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. A similar list can be found at the end of this discussion paper.

Who will be impacted by the proposal?

Providers under the Act are persons or other entities who provide any of the following services to another person:

- education
- disability support
- care and protection of children
- service prescribed by regulation.

Clear definitions will contribute to safeguarding people on whom restrictive practices are used. Defining and listing prohibited practices is intended to provide clarity for providers and plan authors.

Providers and/or their workers could be impacted if the use of prohibited practices is made an offence with applicable penalties.

Opportunities to be involved

We are seeking community feedback on the proposal to define and list restrictive practices and the possibility that use of these practices may attract penalties.

An online survey is available at <https://yoursayconversations.act.gov.au/defining-prohibited-practices>

Feedback can also be emailed to quality@act.gov.au.

Feedback will assist in the development of a list, which is expected to be presented to the ACT Legislative Assembly in mid-2023.

Below are some questions for consideration on some of the things we are interested in hearing about from you. You can respond to these questions in your feedback and/or include other comments.

Comments on this consultation paper are sought by Friday 24 February 2022.

All enquiries and feedback about the information contained in this consultation paper can be emailed to quality@act.gov.au

Questions for consideration

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?

Please refer to the relevant sections of the Act for more information, via the ACT Legislation Register <https://www.legislation.act.gov.au/a/2018-27/>.

For information about the functions and powers of the Senior Practitioner see the [Community Services Directorate website](https://www.communityservices.act.gov.au/quality-complaints-and-regulation/office-of-the-senior-practitioner), at <https://www.communityservices.act.gov.au/quality-complaints-and-regulation/office-of-the-senior-practitioner>.

Sample list of practices which could be prohibited.

(this list largely matches the NDIS Quality and Safeguard Commission's Practices proposed to be prohibited document)

TABLE 1: PROHIBITED PRACTICES	
Practice	Example
Certain physical restraints	<ul style="list-style-type: none"> • prone restraint (subduing a person by forcing them into a face-down position) • supine restraint (subduing a person by forcing them into a face-up position) • pin downs (subduing a person by holding down their limbs or any part of the body, such as their arms or legs) • basket holds (subduing a person by wrapping arm(s) around their upper and/or lower body) • takedown techniques (subduing a person by forcing them to free-fall to the floor or by forcing them to fall to the floor with support) • any physical restraint that has the purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning • any physical restraint that has the effect of pushing the person's head forward onto their chest • any physical restraint that has the purpose or effect of compelling a person's compliance through the infliction of pain, hyperextension of joints, or by applying pressure to the chest or joints.
Punitive approaches	<ul style="list-style-type: none"> • Aversive practices that would be experienced by the person as noxious or unpleasant (e.g., an unwanted hot or cold bath, unwanted chili powder on food, squirting liquid on a person's face) • Overcorrection, or the use of disproportionate effort in restoring a disrupted situation to its original state (e.g., making a person clean a whole dining room floor as a result of spilling a drink on the floor) • Denial of key needs (e.g., preventing access to toileting facilities, deprivation of food or fluids, deprivation of sleep) • Corporal punishment or other forms of punishment including immobilisation or deliberately frightening a person • Practices related to degradation or vilification • Limiting or denying access to culture in order to punish the person (e.g., withholding, for the purpose of obtaining compliance, access to culturally significant artworks, reading material or groups that are important to the person in maintaining or developing their cultural heritage) • Response cost punishment strategies as part of a specific individual positive behaviour support plan (e.g. a systematic program using punishment. Response cost strategies <u>are not</u> the temporary removal of items in immediate response to duty of care situations. Temporary removal of items in immediate response to duty of care situations would be defined as environmental restraint under the Senior Practitioner Act 2018 and are not prohibited) • Verbal or gestural conduct of a coercive nature