

Senior practitioner act 2018: guidelines for practice

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Senior Practitioner Act 2018:

Guidelines for Practice

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**Authorising law name Senior Practitioner Act 2018**

**Guidelines for practice 2018**

made under the

**Authorising law, authorising provision (provision heading)**

**1 Name of instrument**

This instrument is the Senior Practitioner Act 2018: Guidelines for Practice

**2 Commencement**

This instrument commences on

**3 Clause heading**

**# Clause heading**

**# Revocation**

This instrument revokes [*full citation of instrument to be revoked*] [Instrument number].

Mandy Donley

Senior Practitioner

December 2018

Contents

[Glossary 5](#_Toc527463115)

[ForEword](#_Toc527463116)

[1. What are the key principles and definitions underlying the Senior Practitioner Act? 9](#_Toc527463117)

[2. What is positive behaviour support? 14](#_Toc527463118)

[3. How will Positive behaviour support plan panels be established? 20](#_Toc527463119)

[4. What is the role of the Senior practitioner? 21](#_Toc527463120)

[5. How can complaints be made? 22](#_Toc527463121)

[6. with whom will information be shared? 28](#_Toc527463122)

[7. who can apply for a reviewable decision? 28](#_Toc527463123)

[8. What will be an offence under the Act? 29](#_Toc527463124)

 [31](#_Toc527463125)

# Glossary

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| **Term/ Abbreviation** | **EXPLANATION/ DEFINITION** |
| ACT | Australian Capital Territory. |
| BOC | Behaviour(s) of Concern: Behaviour of such intensity, frequency or duration that impacts the person’s quality of life and/or their or others’ physical safety. (Can be known as challenging behaviour). |
| Critical Incident | An unexpected event which results in (or could result in) actual harm to the person/ others or property damage. Emergency situations require an immediate response to reduce or eliminate the risk. |
| Duty of care |  |
| FBA | Functional Behavioural Assessment |
| Least restrictive alternative | A practice that is not more restrictive or intrusive than necessary to prevent the person from inflicting harm on themselves or others; and is applied no longer than necessary to prevent harm or danger. |
| NDIS | National Disability Insurance Scheme  |
| PBS | Positive Behaviour Support |
| PBSP | Positive Behaviour Support Plan describes the strategies to be used in supporting the person’s behaviour, including strategies to build on the person’s strengths and increase their life skills; and reduce the intensity, frequency and duration of the behaviour of concern. |
| PBSPP | Positive Behaviour Support Plan Panel assess, review, amend, approve and register PBSPs that meet the PBSP guidelines, under the oversight of the Senior Practitioner. |
| Person | The recipient of a positive behaviour support service is referred to within this document as the ‘person’ this includes a child or young person). |
| PRN | A term used generally in the administration of medication, but alos includes any emergency restraint, which is an abbreviation of the Latin term “Pro re nata” meaning “as required”.  |
| Prohibited Practice | A practice (which may not be used) that denies basic human rights as it is unlawful and unethical in nature.  |
| Restrictive Practice  | 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. |
| Senior Practitioner | A person, appointed by the Director-General, whose primary function is to promote the reduction and elimination of the use of restrictive practices by providers to the greatest extent possible. |

**LIST OF TABLES**

Table Description

Table 1.1 Restrictive practice definitions

Table 1.2 Provider definitions

Table 2.1 Questions to assist identifying the need for a restrictive practice

Table 2.2 Guidelines for plans

Table 6.1 The complaint making process

Table 6.2 The investigation process

Table 6.3 Actions after investigations

Table 6.4 Complaint options

# foreward

The *Senior Practitioner Act 2018: Guidelines for Practice* (‘the Guidelines’) provides a foundation for providers working with all children and vulnerable people in three settings:

1. education,
2. care and protection of children and
3. people receiving disability services across the Australian Capital Territory (ACT).

These Guidelines are a disallowable instrument and are therefore subordinate legislation that to Act. This document aims to reflect the practice directions arising from the Act to reduce and eliminate the use of restrictive practices*.* However, operational implementation of the Act is the responsibility of each service provider and should take into account the types of service provided and the assessed needs and abilities of each person for whom the services are provided.

The Senior Practitioner’s primary function is to promote the reduction and elimination of the use of restrictive practices by providers to the greatest extent possible. Under the Act,[[1]](#footnote-1)‘Restrictive Practice’ means 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. The main lever to drive cultural change across the ACT will be through the implementation of Positive Behaviour Support (PBS) approach and practices across the three sectors/ providers. The Guidelines are based on the key tenets of the PBS approach, which are described at Section 2.

The Senior Practitioner will play an essential role to support this whole of government and community approach to reduce and eliminate the use of restrictive practices through:

* Upholding the protection of the rights of people who may be subject to restrictive practices;
* Supporting providers to comply through the development of PBSP approval panels;
* Maintaining a register of approved PBS plans that contain restrictive practices, and developing a data base to provide oversight of routine and one-off incidents of restrictive practice (Hyperlink to RIDS);
* Supporting all providers to ensure all their policies and procedures reflect this current legislation
* Educating individuals, agencies and providers on PBS through guidelines, professional learning and research; and
* Responding to complaints and conducting investigations (in conjunction with existing oversight bodies).

Effective practice requires the development of strong relationships among each of these sectors, working in partnership with the person receiving a service (including children) wherever possible – where the person’s best interests are at the centre. The *Guidelines are* based on current research, evidence from other jurisdictions, broad stakeholder and community consultation and emerging data from each setting. They are intended to drive a significant systemic culture change across the whole of government and Canberra community.

The Senior Practitioner also recognises the different levels of knowledge and maturity in regards to the use of restrictive practices across the three sectors. Staff and service providers working within these settings have a diverse range of backgrounds, methodologies to support the reduction of restrictive behaviours, and differing levels of training and knowledge in PBS. Each sector also has operated within differing, parallel regulatory environments.

Whilst acknowledging these differences among each provider, the Senior Practitioner will continue to reframe discussions about restrictive practices across the jurisdiction through creating a common language that dispels myths and preconceptions and developing a shared understanding that:

* Restrictive practices must be openly discussed to enable cultural change;
* Providers will supported to balance their duty of care with the rights of vulnerable people who may be subject to restrictive practices
* Restrictive practices can be minimised or eliminated through the use of evidence-based approaches, least restrictive practice; and
* Everyone is responsible for changing cultures, attitudes and practices around restrictive practices.

**WHO HAS BEEN CONSULTED IN THE DEVELOPMENT OF THESE GUIDELINES?**

These Guidelines were developed with a broad community and stakeholder consultation that raised specific key issues arising from the Act that are addressed throughout the document including the need for the Office of the Senior practitioner to support providers to increase their:

* staff understanding of the key definitions
* compliance with a range of interconnected legislative obligations
* management of potential perceived versus actual risk in service provision
* capacity building, across all three sectors, particularly around positive behaviour support, and functional behavioural analysis (to be addressed in the guidance document How to write a Positive Behaviour Support Plan).
* knowledge and skills in implementing a multitude of person centred least restrictive practice options fulfilling duty of care obligations (that is, taking action, where reasonably required, to prevent or reduce foreseeable harm from occurring to a person)
* knowledge of the ongoing role of the NDIS National Quality and Safeguards processes

**WHO IS THE AUDIENCE FOR THESE GUIDELINES?**

These Guidelines are for all persons or entities providing education, disability, and/or care and protection services, to whom the Act applies.[[2]](#footnote-2)

These Guidelines reflect the National Insurance Disability Scheme (NDIS) Quality and Safeguards Framework, due to come into effect in the ACT on July 1, 2019 (see Section Two for more information). (add hyperlink)

However, it is important to note that the Act protects the rights of all individuals in the above settings, not just those with a disability.

The Senior Practitioner acknowledges the previous work and the pre-existing linkages within these sectors that have operated to safeguard the rights of people who may be subject to restrictive practices.

Therefore, the audience for these Guidelines, although varied and working across a variety of contexts, will all be striving for the same goals, to –

1. Uphold all people’s human rights;
2. Safeguard all people from harm;
3. Maximise positive outcomes for all vulnerable people and reduce or eliminate the need for restrictive practice; and
4. Ensure transparency and accountability around the use of restrictive practices.

The Guidelines are designed to be user friendly and clear, following a Question and Answer format.

Section One: What are the key principles and definitions underlying the Senior Practitioner Act?

Section Two: What is Positive Behaviour Support?

Section Three: How will the Positive Behaviour Support Plan Panels work?

Section Four: What is the role of the Senior Practitioner?

Section Five: How can complaints be made?

Section Six: With whom will information be shared?

Section Seven: Who can apply for a reviewable decision?

Section Eight: What will be an offence under the Act?

# What are the key principles and definitions underlying the Senior Practitioner Act?

The Act provides a legislative framework for the reduction and elimination of restrictive practices in education, disability, and care and protection of children settings.

The Act reflects the requirements and expectations around the [Human Rights Act 2004](file:///C%3A%5CUsers%5Cmargaret%20skillman%5CDownloads%5C2004-5.pdf) (‘the ACT Human Rights Act’) The ACT Human Rights Act says that rights can only be limited where the limitations are reasonable and demonstrably justifiable in a free and democratic society. Use of restrictive practices limits human rights, including the right to equality; right to liberty and security of the person; right to freedom of movement, and; in some cases, the right to protection from cruel, inhumane or degrading treatment.

The following principles explicitly relate to human rights, service provision and restrictive practices, although there are implicit overlaps among the sections.

**Principles for providers**

The principles related to a person’s basic rights that underpin the Act and apply within any context are:

* a person must be assumed to have decision-making capacity unless it is established that they do not;
* a person must not be treated as being unable to make a decision unless all practicable steps to help them do so have been taken; and
* a person must not be treated as being unable to make a decision only because they make an unwise decision.

The Act sets out principles to be taken into account by providers in providing services to people with behaviours of concern. Services must be provided in a way that:

* utilise positive behaviour support planning informed by evidence-based best practice;
* implement strategies, to produce behavioural change, focussed on skills development and environmental design;
* promote the person’s development and physical, mental, social and vocational ability;
* provide opportunities for participation and inclusion in the community; and
* respond to the person’s needs and goals; and
* work closely with the person and their family, their carers, any guardian or advocate for the person and any other relevant person, in the development of strategies for the person’s care and support;
* maximise the opportunity for current positive outcomes;
* aim to reduce or eliminate the need for restrictive practice;
* recognise that a restrictive practice should only be used as a last resort when necessary to address an immediate risk to safety and safeguards the person and others from harm;
* recognise that a restrictive practice should only be used in very limited circumstances, as a last resort and in the least restrictive way and for the shortest period possible in the circumstances; and
* ensure that a restrictive practice is only used in a way that is consistent with a positive behaviour support plan for the person.

These principles should be evidenced in both the tacit and explicit discourse, practices and artefacts (such as positive behaviour support plans) of the service. Both service providers and service users are to be made aware of these key principles.

**TYPES OF RESTRICTIVE PRACTICES DEFINED UNDER THE ACT**

These Guidelines provide a range of definitions based on the Act and the NDIS National Quality and Safeguarding Framework, and examples of a range of restricted practices pertaining to both children and adults as covered under the Act. These examples are not exhaustive as this is simply not possible, however Table 2.1 (page xxx) does provide key questions for providers when they are considering the use of a restrictive practice.

The following table, Table 1.1, outlines the definitions of the various restrictive practices are outlined in the Act.

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| **Table 1.1 RESTRICTIVE PRACTICES DEFINITIONS** |
| **Term** | **Definition** | **Exclusion/ Exception** |
| Restrictive Practice |  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; and includes the following:* chemical restraint;
* environmental restraint;
* mechanical restraint;
* physical restraint;
* seclusion; or
* verbal directions, or gestural conduct, of a coercive nature;
 | A restrictive practice is NOT1. reasonable action taken to monitor and protect a child or vulnerable person from harm, e.g. holding a child’s hand while crossing the road.
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| **Table 1.2 (cont.) RESTRICTIVE PRACTICE DEFINITIONS** |
| **Term** | **Definition** | **Exclusions/ Exceptions** |
| EnvironmentalRestraint | Any action or system that limits a person’s ability to freely access the person’s surroundings or a particular thing or engage in an activity. | Environmental restraint is NOT:the use of reasonable safety precautions such as a fence around a primary school playground |
| Restrictive Practice example: A vulnerable person’s access to their drinking cups is restricted by a child lock on the cupboard in their own home. There is no medical reason for this. |
| **Term** | **Definition** | **Exclusions/ Exceptions** |
| Mechanical Restraint | The use of a device to prevent, restrict or subdue the movement of all or part of a person’s body.  | Mechanical restraint is NOT:1. the use of the device to ensure the person’s safety when travelling; or
2. the use of a device for therapeutic purposes.
 |
| Restrictive Practice example: Rebecca is a 20-year-old woman with a severe intellectual disability. Rebecca has a history of sucking on her hands. This has led to significant injury to her hands. In order to prevent her from sucking on her hands, Rebecca wears arm splints on her hands while she is awake. |

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| Term | Definition | Exclusions/ Exceptions |
| Physical Restraint  | The use or action of physical force to stop, limit or subdue the movement of a person’s body or part of the person’s body. | Physical restraint is NOT:a reflex action of reasonable physical force and duration intended to guide or direct a person in the interests of the person’s safety where there is an imminent risk of harm. |
| Restrictive Practice example: David is a young man with autism and an intellectual disability who lives in supported accommodation. David has a set plan of things to do each day. Sometimes when these plans change David can get upset and begins to hit his ear with his fist. When support staff see David hitting himself they hold his arms down to stop him from hurting himself. When David relaxes and feels comfortable again the support staff let go of David’s arms. |
| Further Clarification: Physical restraint or seclusion must not be used except in situations where the person’s behaviour poses an imminent threat of physical harm or danger to self or others; where such action (i.e. to physically restrain or seclude) would be considered reasonable in all the circumstances; and where there is no less restrictive means of responding in the circumstances. |

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| **Term** | **Definition** | **Exclusions/ Exceptions** |
| Chemical Restraint | The use of medication or chemical substance for the primary purpose of influencing a person’s behaviour.  | Chemical restraint is NOT1. the use of a chemical substance that is prescribed by a medical or nurse practitioner for the treatment, or to enable the treatment of a mental or physical illness or condition, or
2. the use of a chemical substance used in accordance with the prescription
 |
| Restrictive Practice example: Josh, a 10 year old student, with Autism Spectrum Disorder, is prescribed daily Olanzapine to reduce his aggressive behaviours towards school staff and peers. No other positive behaviour strategies are utilised.Stacey is a 55-year-old woman who lives in shared accommodation with two other women. Support workers visit Stacey and her housemates to take them out to do their shopping or visit doctors. Sometimes, when her housemates are running late, Stacey gets angry and hits them. If the women are running late, and the support workers see Stacey getting angry, they give Stacey her medicine. This medicine has been prescribed by Stacey’s doctor to calm her down and stop her from hurting others. |

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| **Term** | **Definition** | **Exclusions/ Exceptions** |
| Seclusion | The sole confinement of a person, at any time of the day or night, in a room or other space from which free exit is prevented, either implicitly or explicitly, or not facilitated. | Seclusion is NOT:social isolation where a child or vulnerable person is in a space away from others. |
| Restrictive Practice example: Kathy receives 24-hour accommodation support. She lives with three other women. When she and her flatmates are leaving for work in the morning she can become upset and hurt other people. When this happens, Kathy’s support worker locks Kathy in her bedroom until she calms down. This action is a restrictive practice as Kathy is being secluded. |
| **Term** | **Definition** | **Exclusions/ Exceptions** |
| Verbal directions, or gestural conduct, of a coercive nature;  | The use of verbal or non-verbal communication that degrades, humiliates or forces a person into a position of powerlessness. | Coercion is NOT:1. Stating expectations or rules
2. Giving a person directions or instructions to assist them to self-regulate
 |
| Restrictive Practice example: A person is told to move away from others by a staff member who yells, swears in an abusive manner. |

**WHO IS A ‘PROVIDER’ UNDER THE ACT?**

The following table, Table 1.3, outlines the definitions of providers, as outlined in the Act.

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| **Table 1.2 PROVIDER DEFINITIONS**  |
| **Term** | **Definition** | **Exclusions** |
| Provider | A person or other entity who provides any of the following services to another person:* education;
* disability;
* care and protection of children;
* a service prescribed by regulation
 | A provider is NOT:1. a close family member of the other person; or
2. an informal carer for the other person; or
3. an exempt entity.

(see further definitions) |
| Close family member | A person who is:* the domestic partner of the person; or
* a parent or step-parent of the person; or
* a sibling or step-sibling of the person; or
* a child or stepchild of the person, or another child for whom the person has parental responsibility.
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| **Table 1.3 (cont.) PROVIDER DEFINITIONS** |
| Informal carer | A person who provides personal care, support or assistance to the other person. | An informal carer does NOT provide the care, support or assistance:1. under a contract of service or a contract for the provision of services; or
2. in the course of doing voluntary work for a charitable, welfare or community organisation; or
3. as part of the requirements of a course of education or training.
 |
| Exempt entity | A person exercising a function under:* the [*Corrections Management Act 2007*](http://www.legislation.act.gov.au/a/2007-15); or
* the [*Children and Young People Act 2008*](http://www.legislation.act.gov.au/a/2008-19), chapters 4 to 9 (the criminal matters chapters); or
* the [*Mental Health Act 2015*](http://www.legislation.act.gov.au/a/2015-38); or
* the [*Mental Health (Secure Facilities) Act 2016*](http://www.legislation.act.gov.au/a/2016-31); or
* a police officer acting under lawful authority; or
* a person or other entity prescribed by regulation.
 |  |

# What is positive behaviour support?

This section outlines the definitions pertinent to the Act that relate to positive behaviour support and behaviours of concern.

**POSITIVE BEHAVIOUR SUPPORT**

Positive behaviour support (PBS) is an evidence-based approach to reducing behaviours of concern (sometimes called challenging behaviours). PBS is:

* **Person-centred:** ensuring the person’s (or child’s) life goals are at the centre of the process
* **Partnerships:** collaborating with the person and all key stakeholders shapes the process of change
* **Planned**: creating a clear document to ensure shared understandings and accountability
* **Positive:** focusing on preventative, rather than reactive, strategies
* **Proactive:** placing the responsibility for changing behaviour on both the person and their supporters
* **Purposeful:** using a functional assessment approach to identify the reason for the behaviour
* **Process driven:** cycling iteratively through a process of identifying, assessing, planning, implementing, monitoring and evaluating data (add references).

**Positive behaviour support has two main aims:**

1. To increase quality of life, and
2. To decrease behaviours of concern.

The main feature of PBS is the use of a *functional behavioural assessment (FBA).* A FBA is the process for determining and understanding the function or purpose behind a person’s behaviour, and may involve the collection of data, observations, and information to develop an understanding of the relationship of events and circumstances that trigger and maintain the behaviour of concern.

**BEHAVIOURS OF CONCERN**

It is extremely rare that the behaviour of any person can be explained by a single reason. A combination of issues may be involved including:

* developmental (the type and impact of their disability);
* biological (including health, sensory or physical issues);
* psychological (mental health, trauma, thinking and problem solving abilities); and
* social issues (communication difficulties, lack of meaningful opportunities, unmet needs).

The majority of behaviours of concern serve a purpose or function and may be occurring in order to have a need met. The need may be to avoid, get or express something. It may be occurring because the person does not know other ways to get their needs met. Often the behaviour has worked for the person in the past, or previous attempts to have their needs met have been ignored (McVilly, 2002).

**POSITIVE BEHAVIOUR SUPPORT PLANS**

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 strategies to:

* meet that person’s unmet needs (often one reason for the behaviour of concern)
* build on the person’s strengths and increase their life skills, thus improving their quality of life; and
* reduce the intensity, frequency and duration of behaviour that causes harm to the person or others.

The plan must also specify the conditions under which restrictive practices (if required) may be used. Providers please refer to 'Positive behaviour support plan toolkit’ (add hyperlink).

Add in wraparound information here

Psychologists

* Speech pathologists
* Occupational therapists
* General Practitioners (GPs)
* Mental Health Services
* Board-Certified Behaviour Analysts (BCBA). Find a BCBA

**NDIS PROVIDERS**

The new arrangements for behaviour support under the Quality and safeguards Framework focus on person-centred interventions to address the underlying causes of behaviours of concern, or challenging behaviours, while safeguarding the dignity and quality of life of people with disability who require specialist behaviour support.

These arrangements will include undertaking a functional behavioural assessment, then developing an NDIS positive behaviour support plan containing evidence-based, proactive strategies that meet the needs of the participant. From 1 July 2019 all NDIS providers in ACT will need to use NDIS templates for Positive behaviour support plans (PBSP)-this option is available to be used now and submitted to ACT Senior Practitioner for approval. For more information, see <https://www.ndiscommission.gov.au/providers/behaviour-support>

**RESTRICTIVE PRACTICES**

As outlined in Section One,a restrictive practice is any practice used to restrict the rights or freedom of movement of a person for the primary purpose of protecting the person or others from harm.

However, these safety practices have the potential to be misused by:

* being used in a crisis as an immediate fix rather than as the last resort;
* becoming used even when the behaviour of concern no longer occurs;
* being prior to the use of positive behaviour support strategies; or
* becoming a permanent ‘unquestioned’ practice.

The following table, Table 2.1 may assist practitioners to identify the need for a restrictive practice.

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| **Table 2.1 QUESTIONS TO ASSIST IDENTIFYING THE NEED FOR A RESTRICTIVE PRACTICE** |
| **Questions** | **Comments/ alternatives** |
| Is the practice in immediate response to a behaviour of concern? | A restrictive practice may only be used in immediate response to a behaviour of concern. |
| Is the practice because the person’s life is threatened? | A restrictive practice may be used to protect a person who is engaging in a behaviour of concern from harm. |
| Is the practice occurring because there is imminent harm to others? | A restrictive practice may be used with a person who is engaging in a behaviour of concern to protect others from harm. |
| Is the practice occurring ‘because this is what we always do’? | If the behaviour of concern has not occurred then the restrictive practice does not need to be used. |
| Is the practice age appropriate? | Generally if this practice is used with others of the same age it is not a restrictive practice. |
| Is the practice the least restrictive option? | The restrictive practice must be used only if other positive strategies have been used, or there is imminent risk of harm to the person or others. |
| Is the practice potentially traumatising to the person subject to the restrictive practice? | If the practice will cause further harm, it should be avoided if possible, and an alternative should be sought. |
| Is the practice minimising the person’s dignity? | If the practice will cause further harm, it should be avoided if possible, and an alternative should be sought. |
| Is the practice potentially unsafe for the person or the staff? | If the practice could cause further harm, it should be avoided if possible. |
| Is the practice occurring primarily for the convenience of staff? | It is not appropriate for a restrictive practice to occur to increase the convenience of staff. |
| Is the practice coercive? | It is unacceptable for a restrictive practice to be coercive. |

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| **Table 2.1 (cont.) QUESTIONS TO ASSIST IDENTIFYING THE NEED FOR A RESTRICTIVE PRACTICE** |
| Is the practice encouraging self-regulation? | If the practice does nothing or little to change the person’s behaviour into the future, a positive alternative should be sought if possible. |
| What is the intent behind the practice? | This is a key question and should be used after all incidents of a restrictive practice during a debriefing session. This will uncover the potential motivations for using the practice and may suggest possible alternatives for the future. |

**GUIDELINES ABOUT POSITIVE BEHAVIOUR SUPPORT PLANS**

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 strategies to:

* meet that person’s unmet needs (often one reason for the behaviour of concern)
* build on the person’s strengths and increase their life skills, thus improving their quality of life; and
* reduce the intensity, frequency and duration of behaviour that causes harm to the person or others.
* The plan must also specify the conditions under which restrictive practices (if required) may be used. Providers please refer to 'Positive behaviour support plan toolkit’ (add hyperlink).

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| **TABLE 2.2 GUIDELINES FOR PLANS** |
| **Step** | **Who?** | **Guidelines** |
| 1Developing the plan | Provider(including individual and team) | A provider must:* consult as appropriate with the person, their family, carers, any guardian or advocate for the person and any other relevant person; and
* use the assistance of a person with professional expertise or appropriate experience in relation to positive behaviour support.
 |
| 2Writing the plan | Provider(including individual and team) | A positive behaviour support plan must include:1) a description the behaviour of the person that is causing harm to the person or others, including: * the intensity, frequency and duration of the behaviour; and
* the consequences of the behaviour; and
* the early warning signs and triggers for the behaviour, if known.
1. the positive strategies that must be attempted before using a restrictive practice
2. for each restrictive practice proposed to be used:
* the circumstances in which the restrictive practice is to be used; and
* the procedure for using the restrictive practice, including observations and monitoring that must happen while the restrictive practice is being used; and
* any other measure that must happen while the restrictive practice is being used that is necessary to ensure the person’s proper care and treatment and that the person is safeguarded from abuse, neglect and exploitation; and
* the intervals at which use of the restrictive practice must be reviewed by the provider.
1. Given to the person who is the subject of the plan (in an appropriate format)
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| **TABLE 2.2 GUIDELINES FOR PLANS (cont.)** |
| **Step** | **Who?** | **Guidelines** |
| 3Preparing the plan for the panel | Provider | A provider must apply to the panel for approval of a plan.The application must be in writing and include:* the name and business address of the provider; and
* a copy of the plan
* supporting documentation may also be attached to the plan, such as reports from therapists, doctors or psychologists.
 |
| 4Panel approval of the plan | Panel | A panel must assess the plan and decide whether or not to approve the plan. The panel may approve the plan only if satisfied:* the plan is consistent with these guidelines; 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.

The panel must give written reasons for its decision to the provider. |
| 5Regist-ration of the plan | Senior practitioner | Following the panel’s approval of the plan, it will be forwarded to the senior practitioner for registration. On application, the senior practitioner must either:* register the positive behaviour support plan; or
* refuse to register the plan.

The senior practitioner may register the plan only if satisfied:* the plan is consistent with the guidelines made; 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.
 |
| 6Sharing the plan | Seniorpractitioner | On registration of a positive behaviour support plan, the senior practitioner must give a copy of the approved plan to:* the person who is the subject of the plan; and
* if the person has a guardian, the person’s guardian; and
* if the person is a child, each person with parental responsibility for the child; and the public advocate.
 |
| 7Review and amendment of plans | The provider(including individual and team) | The provider must keep the plan under review and take steps to have it amended whenever necessary to reflect a change in circumstances such as if a plan includes a restrictive practice and it becomes no longer necessary to use the restrictive practice.The provider must review the plan at any time on written request of the person who is the subject of the plan.If the person has difficulty putting the request in writing, the provider must give the person reasonable assistance to do so. |
| 8Expiry of plans | The provider(including individual and team) | A registered positive behaviour support plan expires 12 months after the day the plan is registered.The provider must then review the plan and reapply to the panel (step 1). |

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| **TABLE 2.2 GUIDELINES FOR PLANS (cont.)** |
| **Step** | Who? | **Guidelines** |
| 9Maintaining a register of plans | Senior practitioner | The senior practitioner must keep a register of positive behaviour support plans. The register must include the following details for each plan:* the name of the provider that applied for registration of the plan;
* particulars of the panel that approved the plan;
* particulars of the plan;
* the date the plan was registered;
* the date the plan expires;
* anything else prescribed by regulation.

The register may:* include any other information the senior practitioner considers relevant; and
* be kept in any form, including electronically, that the senior practitioner decides.

The senior practitioner may:* correct a mistake, error or omission in the register; and
* change a detail included in the register to keep the register up‑to-date.
 |
| 10Provider to monitor and record use of restrictive practices | The provider | The provider must—* monitor and make a record of any use of restrictive practices under the plan; and
* notify the senior practitioner about the use of restrictive practices in accordance with these guidelines.
 |

# How will Positive behaviour support plan panels be established?

These guidelines on the establishment of the Positive behaviour Support Plan Panels must be read in conjunction with the Positive Behaviour Support Panel Guidelines (add hyperlink)

**REGISTRATION OF POSITIVE BEHAVIOUR SUPPORT PANELS**

A person may apply to the senior practitioner for registration of a positive behaviour support panel. The application must be in writing and include:

* the name and business address of the applicant; and
* particulars of each member of the proposed panel, including the member’s name, contact details, experience and qualifications; and any other matter prescribed by regulation.

The senior practitioner may, in writing, require the applicant to give the senior practitioner additional information the senior practitioner reasonably needs to decide the application. If the applicant does not comply with the requirement within 28 days after the day the request is made, the senior practitioner may refuse to consider the application further and the application will lapse.

On application, the senior practitioner must either register the panel or refuse to register the panel.

**REGISTER OF POSITIVE BEHAVIOUR SUPPORT PANELS**

The senior practitioner must keep a register of positive behaviour support panels registered.The register must include the following details for each panel:

* the name of the person who applied for registration of the panel;
* a nominated contact person for the panel, including their contact details;
* particulars of the panel;
* the date the panel was registered.

The register may include any other information the senior practitioner considers relevant; and be kept in any form, including electronically, that the senior practitioner decides. The senior practitioner may correct a mistake, error or omission in the register; and change a detail included in the register to keep the register up to-date.

# What is the role of the Senior practitioner?

Under the Act, the Senior Practitioner has the following functions to:

**PROMOTE UNDERSTANDING OF THE ACT:**

* promote the reduction and elimination of the use of restrictive practices by providers to the greatest extent possible;
* oversee the use of restrictive practices in accordance with this Act;
* develop guidelines and standards on the use of restrictive practices; and
* undertake any other function as directed, in writing, by the Director-General, Community Services Directorate (CSD), or any other function given to the Senior Practitioner under the Act or another territory law.

**PROTECTIVE/ DIRECTIVE:**

* ensure, to the greatest extent possible, that the rights of people who may be subject to restrictive practices are protected; and
* ensure providers comply with any applicable guidelines and standards on the use of restrictive practices.

**EDUCATIVE:**

* disseminate information, provide education, and give advice about restrictive practices and the rights of people who may be subject to them;
* provide advice to people who may be subject to restrictive practices;
* give directions to providers about the use of restrictive practices under positive behaviour support plans;
* develop links and access to professionals, professional bodies and academic institutions for the purpose of promoting knowledge and training in restrictive practices; and
* carry out research into the reduction, elimination and use of restrictive practices and provide information on best practice options to providers.

# How can complaints be made?

The Act describes how complaints can be made to the Senior Practitioner and how they will be resolved. The Senior Practitioner welcomes and values complaints and recognises that a strong commitment to responding to and resolving complaints allows individuals to receive improved services, and stakeholders and providers to contribute to the improvement of the services they deliver. A complaint may be made by the person who is the subject of a positive behaviour support plan or anyone else.

**TYPES OF COMPLAINTS**

A complaint is an expression of dissatisfaction in relation to a restrictive practice enacted by a staff member of a service provider covered under the Senior Practitioner Act. This might be formal such as a written/emailed complaint, or informal such as a discussion with the Senior Practitioner expressing dissatisfaction with suggestions to improve a service. Complaints may also be anonymous, see Table 6.1.

A review may be undertaken depending on the issues raised within the complaint. The Senior Practitioner may undertake an internal process and escalate the complaint to a more senior officer including the Executive Director, alternately they may request the Regulation Oversight and Quality Service to undertake a review.

Concomitantly, some complaints may require a review: a review of a person's plan, a review of an internal decision made by the service provider, or a review of a decision already made by the Senior Practitioner. Some reviews may also be the basis for a complaint. The Senior Practitioner may offer advice about whether a complaint or review is the most appropriate.

The types of complaints to be referred to the Senior Practitioner should focus on the use of restrictive practice within education, disability or care and protection of children services. This includes anything done by a provider in relation to a positive behaviour support plan that permits the use of a restrictive practice, including its development or implementation or the use of a restrictive practice by a provider. Examples may include:

* lack of transparency around the use of restrictive practices e.g. poor communication; inadequate or incorrect advice or information, access to information or lack of debriefing;
* unreasonable use of restrictive practices e.g. when there was no risk of harm or there was a less restrictive option available;
* lack of consultation in the development of the Positive Behaviour Support (PBS) plan;
* lack of plan review processes; and
* lack of reporting restrictive practice use.

In some cases, the Senior Practitioner will refer complaints outside the scope of the Act to other oversight mechanisms, or work in collaboration with other agencies to seek to resolve the complaint.

**MAKING A COMPLAINT TO THE SENIOR PRACTITIONER**

**The person making the complaint (the complainant) may be the person who has been subject to the restrictive practice or another person, such an advocate, family member, guardians, lawyer or a service provider.**

|  |
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| **TABLE 6.1 THE COMPLAINT MAKING PROCESS** |
| **Step** | **The complainant** | **The Senior Practitioner** |
| **1****Process of making the complaint** | Makes a complaint in writing and including their name and address **OR**  | **may not include the complainant’s name and address if there are reasonable grounds that justify action without the complainant’s name and address.** |
| **makes a complaint** orally  | * is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint
* must make a written record of the complaint as soon as practicable after receiving the complaint.
 |
| **Examples when a complaint may be made orally:*** **waiting until the complaint is put in writing would make action in response to the complaint impossible or impractical.**
* people with particular communication needs may make a complaint orally.
 |
| **2****Initial discussion** | Tells their story including the outcome they would like. | * treats complainants with respect.
* tries to limit the number of times the complainant has to repeat the complaint
* asks permission to share specific information with certain other entities
* Add timeliness expectations.
 |
| **3****Decision making process** | **Engages with the senior practitioner with** respect and responds to requests | * decides if the complaint is best handled by another oversight agency if satisfied that it would be more appropriate for the other entity to deal with the complaint.
* uses powers in the legislation to ask for information from a range of stakeholders in relation to the complaint further information about the complaint; or
* uses powers in the legislation to ask the complainant for a written statement verifying all or part of the complaint (ensuring the complainant a reasonable period of time to satisfy the request
 |
| **4****Withdrawing a complaint**  | A complainant may withdraw the complaint at any time by providing written notice to the senior practitioner. | * must give the complainant reasonable assistance to complete the written notice
* may still take action on the complaint
 |

**INVESTIGATIONS**

If the complaint is not withdrawn, the senior practitioner will investigate each complaint received, following the process outlined in Table 6.2 below. However, the senior practitioner need not investigate a complaint if satisfied that the complaint is frivolous, vexatious or was not made honestly; or lacks substance; or cannot be made under this Act; or would be better dealt with by another entity; or is otherwise not appropriate for the senior practitioner to investigate.

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| **TABLE 6.2 THE INVESTIGATION PROCESS** |
| **Step** | **The Senior Practitioner** | **Works with** |
| **1****Prior to commencing the investigation** | informs in writing the complainant that the complaint is to be investigated | the complainant |
| informs in writing the provider that is the subject of the complaint: * that the senior practitioner has received a complaint about the provider; and
* the details of the complaint; and
* that the senior practitioner is going to investigate the complaint; and
* that the provider may make an oral or written submission to the senior practitioner about the complaint.
 | **the service provider** |
| **Example when this information may not include particular detail of the complaint:**1. **may have an adverse effect on the person who is the subject to the restrictive practice or is the subject of the PBS plan.**
 |
| **2** **Decision to investigate without a complaint** | may investigate* anything done by a provider in relation to a positive behaviour support plan, including its development or implementation; or
* the use of a restrictive practice by a provider.
 | **The service provider** |
| **3****Power to enter premises** | may enter the place, other than a part of the place used for residential purposes unless that part is also the place restrictive practices are being used; and carry out an investigation into the restrictive practices used by the provider, which may include the following:* inspecting the place or a thing at the place;
* seeing or interviewing a person who is or may be subject to restrictive practices at the place;
* seeing or interviewing any person believed to be involved in the development, administration or implementation of restrictive practices at the place;
* inspecting, copying or removing documents relating to restrictive practices or a person subject to restrictive practices;
* using any equipment reasonably required to effectively investigate restrictive practices used by the provider.
 | **The service provider** |

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| **TABLE 6.2 (CONT) THE INVESTIGATION PROCESS** |
| **Step** | **The Senior Practitioner** | **Works with** |
| **4****Interview a person** | May interview a person who is or may be subject to restrictive practices, the senior practitioner must—* tell the person that the public advocate, or someone else chosen by the person, (a *support person*) may be present to provide support or assistance to the person during the interview; and
* if the person decides to have a support person present—assist the person to contact the support person.
* may interview a person without a support person if—
* after the senior practitioner has taken all practicable steps to help the person decide about having a support person present, the person is unable or unwilling to choose a support person; or
* in the circumstances it is not practicable for a support person to attend the interview within a reasonable time.
 | a person who is or may be subject to restrictive practices |
| **5****Requesting or retaining information or documents** | may, by written notice given to the person, require the person to provide the information or produce the document or other item.may take possession of, make copies of, or take extracts from, the document or may take possession of the other item.must return the document or item when finished. | **The service provider** must give the senior practitioner any reasonable assistance  |
| **Example relating to legal privilege:****Any document or other item obtained, or answer provided, directly or indirectly, because of the answering of the question or the producing of the document or other thing, is not admissible in evidence against the person in a criminal or civil proceeding, other than a proceeding for an offence in relation to the falsity of the information, document, other thing or answer.(See** [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 171). |

**ACTIONS AFTER INVESTIGATION**

There are a range of actions that the Senior Practitioner may take after an investigation, as described in Table 6.3 below.

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| **TABLE 6.3 ACTIONS AFTER INVESTIGATION** |
| **Action** | **The Senior Practitioner** | **Works with** |
| 1No action to be taken | may decide no action needs to be taken in relation to the provider, and* tell the complainant, in writing, that no further action on the complaint will be taken; and
* may take further action on a complaint or investigating another complaint in relation to the same matter at a later date.
 | The complainant |

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| **TABLE 6.3 (CONT.) ACTIONS AFTER INVESTIGATION** |
| **Action** | **The Senior Practitioner** | **Works with** |
| 2Directions to provider | may be satisfied on reasonable grounds that action needs to be taken in relation to the provider in relation to positive behaviour support plan or the use of a restrictive practice or another regulatory matter and provider directions to the provider.A direction—* may include any reasonable condition; and
* may be contrary to a registered positive behaviour support plan; and
* must be in writing and state the period for compliance with the direction; and if there is a registered positive behaviour support plan—that the senior practitioner may cancel the registration of the plan if the provider does not comply within the stated period.
* must offer to give the provider advice to assist in the development of strategies to support the behaviour of the person who is the subject of the plan.
 | The service providermust comply with this direction.If a new plan is required, the provider must give a copy of the new plan to:* the person who is the subject of the plan
* the person’s guardian/ parents/ carers
* the public advocate
 |
| 3Intention to cancel registration of the PBS plan | May cancel the registration of the service provider if the provider fails to comply with the direction in relation to a PBS plan.Must provide the notice of cancellation in writing and state that the intention to cancel the registration of the plan because of the provider’s failure to comply with the direction | The service provider may give a written submission to the senior practitioner showing cause why the registration of the plan should not be cancelled. |
| 4Cancellation of registration of PBS plan | must give a written notice (a ***cancellation notice***) to the provider cancelling the registration starting on the date stated in the notice.must also take reasonable steps to tell any person whose interests are affected under the positive behaviour support plan about the cancellation.must give the cancellation notice to the provider before the date of cancellation stated in the notice. |  |

**COMPLAINT OPTIONS**

Individuals or agencies have a range of alternatives from which to select when making a complaint, as listed in Table 6.4.

|  |
| --- |
| **TABLE 6.4 COMPLAINT OPTIONS** |
| **Type of Complaint** | **Responsibility** | **Contact Point** |
| About a decision to use restrictive practices | ACT Senior Practitioner | quality@act.gov.au02 6207 5474 |
| Human Services Registrar | quality@act.gov.au02 6207 5474 |
| Human Rights Commission (HRC) | human.rights@act.gov.au orGPO Box 158 Canberra ACT 260 |
| About a disability service provider or support, or about how the provider has managed a complaint | Human Services Registrar | quality@act.gov.au02 6207 5474 |
| Human Rights Commission | human.rights@act.gov.au orGPO Box 158 Canberra ACT 260 |
| About an early childhood provider or support |  |  |
| About how the ACT Government has handled a complaint about a provider | Human Rights Commission |  human.rights@act.gov.au orGPO Box 158 Canberra ACT 260 |
| ACT Ombudsman | 1300 362 072[Online Complaint Form](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=act-complaint-form)GPO Box 442, Canberra ACT 2601 |
| About a service or support provided by an unregistered provider, including consumer complaints covered by the Australian Consumer Law | Human Services Registrar & HRC | quality@act.gov.au02 6207 5474 |
| ACT Ombudsman | 1300 362 072[Online Complaint Form](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=act-complaint-form)GPO Box 442, Canberra ACT 2601 |
| About an NDIA decision or staff member | NDIA  | feedback@ndis.gov.au  |
| About an NDIA provided service or support (e.g. planning, local area coordination etc.) | NDIA | feedback@ndis.gov.au  |
| About how the NDIA has managed a complaint | NDIACommonwealth Ombudsman | feedback@ndis.gov.au via online complaint form at <http://www.ombudsman.gov.au/making-a-complaint>  |

# with whom will information be shared?

Protected information obtained by the senior practitioner in conducting an investigation may be shared with a range of agencies. Protected information means information about a person that is given to, or obtained by, the senior practitioner or any other person who has exercised a function under this Act, because of the exercise of a function under this Act by the senior practitioner or other person (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 126 and s 132).

**THE SENIOR PRACTITIONER MAY GIVE INFORMATION TO PARTICULAR ENTITIES**

The senior practitioner may give protected information to any of the following if satisfied on reasonable grounds that the information is necessary for the exercise of the senior practitioner’s or entity’s functions:

* the director-general responsible for the [*Education Act 2004*](http://www.legislation.act.gov.au/a/2004-17);
* the director-general responsible for the [*Education and Care Services National Law (ACT)*](http://www.legislation.act.gov.au/a/2011-42/default.asp);
* the director-general responsible for the [*Health Act 1993*](http://www.legislation.act.gov.au/a/1993-13);
* the director-general responsible for the [*Children and Young People Act 2008*](http://www.legislation.act.gov.au/a/2008-19), other than chapter 20 of that Act;
* the chief executive officer of the ACT Teacher Quality Institute;
* the commissioner for fair trading;
* a member of the human rights commission;
* an official visitor;
* the ombudsman;
* an entity the senior practitioner has referred a complaint
* the chief police officer if the senior practitioner is satisfied on reasonable grounds that the information is necessary for an investigation into the commission of an offence against a territory law.
* any other entity prescribed by regulation.

# who can apply for a reviewable decision?

A reviewable decision made by the senior practitioner as outlined in the Act is to:

* register positive behaviour support plan;
* refuse to register positive behaviour support plan;
* refuse to register positive behaviour support panel;
* give direction; or
* cancel registration of positive behaviour support plan.

The following people may apply to ACT Civil and Administrative Tribunal (see [*ACT Civil and Administrative Tribunal Act 2008*](http://www.legislation.act.gov.au/a/2008-35), s 67A) requesting a review of a reviewable decision:

* person the subject of a PBS plan;
* applicant for registration of a plan;
* applicant for registration of a panel;
* provider given direction;
* provider responsible for a cancelled plan.

# What will be an offence under the Act?

There is a range of offences that exist under the Senior Practitioner Act. They may be committed by a ***relevant person***, for a provider, means an employee, agent, contractor or other person acting under the direction or on behalf of the provider.

|  |
| --- |
| **Table 8.1 Offences under the Act** |
| **Offence** | **Provider Action** | **Maximum Penalty** |
| Using restrictive practice other than under positive behaviour support plan | the provider or relevant person uses a restrictive practice on another person; and the use of the restrictive practice, or the way in which the restrictive practice is used, is not permitted under a registered positive behaviour support plan for the other person (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 59). | 50 penalty units, imprisonment for 6 months or both. |
| It is a defense to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the restrictive practice was necessary to prevent serious and imminent injury or illness to any person.This section does not apply to a relevant person for a provider if the person was acting reasonably under the instruction or direction of the provider or otherwise in accordance with the provider’s policy. |
| **Offence** | **Provider Action** | **Maximum Penalty** |
| Failing to comply with direction | A provider commits an offence if the senior practitioner gives the provider a direction and the provider fails to comply with the direction.  | 50 penalty units. |
| Criminal liability of partner | A partner, servant or agent engages in conduct that is an offence against the Act (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 59). |  |
| It is a defense to a prosecution for an offence against this Act if a liable partner proves that the partner did not know about the conduct that constituted the offence; and either the partner took reasonable precautions and exercised appropriate diligence to ensure the partnership did not engage in the conduct; or the partner was not in a position to influence the partnership in relation to the conduct. |
| **Offence** | **Provider Action** | **Maximum Penalty** |
| Criminal liability of executive officer(a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation’s management) | An executive officer of a corporation is taken to commit an offence if the corporation commits an offence against this Act and * the officer was reckless about whether the relevant offence would be committed; and
* the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
* The officer failed to take reasonable steps to prevent the commission of the relevant offence (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 58).
 | The maximum penalty that may be imposed for the commission of the offence by an individual. |
| It is defense to a prosecution if the executive officer took reasonable steps to prevent the commission of the offence and that the corporation’s employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the offence relates. |

Attachment A:

**DEFINITIONS PERTINENT TO THE ACT- PROHIBITED PRACTICES**

Prohibited practices, as described in the examples below, Table 1.1, must not occur.

|  |
| --- |
| **TABLE 1.1 PROHIBITED PRACTICE EXAMPLES** |
| **Practice** | **Example** |
| Aversion | Any practices that would be experienced as noxious or unpleasant. Examples include an unwanted hot or cold bath, unwanted chili powder on food, unwanted squirting of liquid on a person’s face. |
| Over-correction | The use of disproportionate effort in restoring a disrupted situation to its original state. Example includes making a person clean a whole dining room floor as a consequence of tipping a drink on the floor. |
| Punishment | Corporal punishment or other forms of punishment including deprivation of food, immobilization or frightening a person. |
| Specific physical restraints | Supine or prone holds |

Attachment B:

Related Documents Legislation

* Universal Declaration of Human Rights.
* United Nations Convention on the Rights of Persons with Disabilities, with particular reference to:

**Article 4 1(b)**

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

**Article 4 1(c)**

To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programs.

**Article 4 1(d)**

To refrain from engaging in any act that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention.

**Article 4 1(e)**

To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.

**Article 14**

Liberty and Security of the person.

**Article 15**

Freedom from torture or cruel, inhuman and degrading treatment or punishment.

* Convention on the Rights of the Child 1990.
* Disability Discrimination Act 1992.
* National Standards for Disability Services 2013.
* National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Services Sector 2014.
* Disability Services Act 1993.
* Children and Community Services Act 2004

Attachment C:

Frequently Asked Questions

FAQs. This may be better to be sector specific?

**Q:** Does every student in a school need a positive behaviour support plan to provide legal protection to teachers in the event a restrictive practice is necessary, for example breaking up a fight?

**A:** No,thisis not necessary, however all uses of RP need to be reported to demonstrate if there is a pattern of restrictive practice being used with the same student. For many reports it will be a once off and a plan is not required, if there is a not a pattern of behaviours of concern. In some instances an RP might be used, however as there will be a variable that is going to be tweaked in the near future, this will negate the need for a registered plan.

**Q:** Does a plan need to be reviewed regularly?

**A:** A plan can be in place for up to a year, however regular monthly reviews are essential when restrictive practices are in place.

**Q:** Are typical practices in schools considered RP and therefore need a positive behaviour support plan? Eg.

* Sensory courtyard
* Confiscation/ cancellation of privileges
* Confiscation of mobile phone
* Having to sit with a teacher during assembly
* Suspension

**A:** Ms Donley responded these examples are *not* RP, however the sensory courtyard would depend on the situation and whether the person isolated and not free to leave.

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Community Services Directorate

Senior Practitioner Act 2018: Guidelines for Practice

Date 2018

1. Section 7 [↑](#footnote-ref-1)
2. Section 8(1)(a) [↑](#footnote-ref-2)