



Australian Capital Territory

Senior Practitioner Act 2018

A2018-27

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J2017-486

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Senior Practitioner Act 2018

A2018-27

An Act to provide for the appointment of a senior practitioner and the regulation of restrictive practices to minimise their use

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Senior Practitioner Act 2018*.

2 Commencement

- (1) This Act (other than part 8) commences on 1 September 2018.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Part 8 commences on 1 July 2019.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*positive behaviour support plan*—see section 11.' means that the term 'positive behaviour support plan' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects, important concepts and principles

6 Objects of Act

The objects of this Act are to—

- (a) provide a framework for reducing and eliminating the use of restrictive practices by providers; and
- (b) ensure that restrictive practices are used by providers only in very limited circumstances, as a last resort and in the least restrictive way and for the shortest period possible in the circumstances; and
- (c) state principles to be taken into account by providers in providing services to people with behaviour that causes harm to themselves or others; and
- (d) establish the role of senior practitioner; and
- (e) regulate the use of restrictive practices by a provider in relation to a person in a way that—
 - (i) is consistent with the person's human rights; and
 - (ii) safeguards the person and others from harm; and
 - (iii) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of restrictive practices; and
 - (iv) ensures transparency and accountability in the use of restrictive practices.

7 Meaning of *restrictive practice*

(1) In this Act:

restrictive practice—

- (a) 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; and
- (b) includes the following:
 - (i) chemical restraint;
 - (ii) environmental restraint;
 - (iii) mechanical restraint;
 - (iv) physical restraint;
 - (v) seclusion;
 - (vi) verbal directions, or gestural conduct, of a coercive nature; but
- (c) does not include—
 - (i) reasonable action taken to monitor and protect a child from harm; or

Examples

- 1 holding a child's hand while crossing a road
- 2 fencing around a primary school

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (ii) a practice prescribed by regulation not to be a restrictive practice.

(2) In this section:

chemical restraint—

- (a) means the use of a chemical substance that restricts or subdues a person's movement; but
- (b) does not include the use of a chemical substance that is—
 - (i) prescribed by a medical practitioner or nurse practitioner for the treatment, or to enable the treatment, of a mental or physical illness or condition in a person; and
 - (ii) used in accordance with the prescription.

environmental restraint means any action or system that limits a person's ability to freely—

- (a) access the person's surroundings or a particular thing; or
- (b) engage in an activity.

mechanical restraint—

- (a) means the use of a device to prevent, restrict or subdue the movement of all or part of a person's body; but
- (b) does not include the use of the device—
 - (i) to ensure the person's safety when travelling; or
 - (ii) for therapeutic purposes.

physical restraint—

- (a) means 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; but
- (b) does not include 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.

seclusion means 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.

Examples

- 1 A person in disability group accommodation is sent by the provider for ‘time out’ in a quiet space and told they are not allowed to leave the space until the provider tells them.
- 2 A young person living in residential care is told by the provider that they must not leave their bedroom at night after 9pm.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

8 **Meaning of *provider***

- (1) In this Act:

provider—

- (a) means a person or other entity who provides any of the following services to another person:
- (i) education;
 - (ii) disability;
 - (iii) care and protection of children;
 - (iv) a service prescribed by regulation; but
- (b) does not include—
- (i) a close family member of the other person; or
 - (ii) an informal carer for the other person; or
 - (iii) an exempt entity.

(2) In this section:

close family member, of a person, means—

- (a) the domestic partner of the person; or
- (b) a parent or step-parent of the person; or
- (c) a sibling or step-sibling of the person; or
- (d) a child or stepchild of the person, or another child for whom the person has parental responsibility.

exempt entity means—

- (a) a person exercising a function under—
 - (i) the *Corrections Management Act 2007*; or
 - (ii) the *Children and Young People Act 2008*, chapters 4 to 9 (the criminal matters chapters); or
 - (iii) the *Mental Health Act 2015*; or
 - (iv) the *Mental Health (Secure Facilities) Act 2016*; or
- (b) a police officer acting under lawful authority; or
- (c) a person or other entity prescribed by regulation.

informal carer, of a person, means an individual who—

- (a) provides personal care, support or assistance to the other person; but
- (b) does not provide the care, support or assistance—
 - (i) under a contract of service or a contract for the provision of services; or
 - (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or
 - (iii) as part of the requirements of a course of education or training.

9 Principles for providers

- (1) This section sets out principles to be taken into account by providers in providing services to people with behaviour that causes harm to themselves or others.
- (2) The service must be provided in a way that—
 - (a) promotes the person's—
 - (i) development and physical, mental, social and vocational ability; and
 - (ii) opportunities for participation and inclusion in the community; and
 - (b) responds to the person's needs and goals; and
 - (c) ensures that, in the development of strategies for the person's care and support, the provider works closely with the person and their family, their carers, any guardian or advocate for the person and any other relevant person; and
 - (d) recognises that—
 - (i) a person must be assumed to have decision-making capacity unless it is established that they do not; and
 - (ii) 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
 - (iii) a person must not be treated as being unable to make a decision only because they make an unwise decision; and
 - (e) involves—
 - (i) positive behaviour support planning informed by evidence-based best practice; and

- (ii) the implementation of strategies, to produce behavioural change, focussed on skills development and environmental design; and
- (f) ensures transparency and accountability in the use of restrictive practices; and
- (g) recognises that restrictive practices should only be used—
 - (i) as a last resort and when necessary to prevent harm to the person or others; and
 - (ii) if the use is the least restrictive way of ensuring the safety of the person or others; and
- (h) recognises that restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the person or others; and
- (i) aims to reduce or eliminate the need to use restrictive practices; and
- (j) ensures that any restrictive practices are only used in a way that is consistent with a positive behaviour support plan for the person.

Part 3 **Restrictive practices and positive behaviour support plans**

Division 3.1 **Limitation on use of restrictive practices**

10 **Restrictive practice must be under positive behaviour support plan**

A provider must not use a restrictive practice on a person other than in accordance with a registered positive behaviour support plan.

Division 3.2 **Positive behaviour support plans**

11 **Meaning of *positive behaviour support plan***

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—

- (a) build on the person's strengths and increase their life skills; and
- (b) reduce the intensity, frequency and duration of behaviour that causes harm to the person or others.

12 **Guidelines about positive behaviour support plans**

- (1) The senior practitioner must make guidelines about positive behaviour support plans, including—
 - (a) the content of plans; and
 - (b) the preparation of plans; and
 - (c) the assessment and approval of plans; and
 - (d) the review and amendment of plans; and

- (e) notifying the senior practitioner about the use of restrictive practices under plans.
- (2) Guidelines for subsection (1) (a) must require a positive behaviour support plan for a person to include—
- (a) in relation to behaviour of the person that is causing harm to the person or others, a description of—
 - (i) the intensity, frequency and duration of the behaviour; and
 - (ii) the consequences of the behaviour; and
 - (iii) the early warning signs and triggers for the behaviour, if known; and
 - (b) the positive strategies that must be attempted before using a restrictive practice; and
 - (c) for each restrictive practice proposed to be used—
 - (i) the circumstances in which the restrictive practice is to be used; and
 - (ii) the procedure for using the restrictive practice, including observations and monitoring that must happen while the restrictive practice is being used; and
 - (iii) 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
 - (iv) the intervals at which use of the restrictive practice must be reviewed by the provider.

- (3) Guidelines for subsection (1) (b) must require a provider, in preparing a positive behaviour support plan for a person, to—
 - (a) consult as appropriate with the person, their family, carers, any guardian or advocate for the person and any other relevant person; and
 - (b) use the assistance of a person with professional expertise or appropriate experience in relation to positive behaviour support.
- (4) Guidelines for subsection (1) (c) must require the assessment of a plan to be done by a panel that is independent of the provider.
- (5) In developing guidelines under this section, the senior practitioner must consult as appropriate with relevant stakeholders and community members.
- (6) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

13 Preparation of positive behaviour support plan

A provider may prepare a positive behaviour support plan for a person and give the plan to a panel for approval.

14 Approval of positive behaviour support plan

- (1) A panel that receives a positive behaviour support plan for approval under section 13 must assess the plan and decide whether or not to approve the plan.
- (2) The panel may approve the plan only if satisfied—
 - (a) the plan is consistent with the guidelines made under section 12; and

- (b) 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.
- (3) The panel must give written reasons for its decision to the provider.

15 Registration of positive behaviour support plan

- (1) A provider may apply to the senior practitioner for registration of a positive behaviour support plan approved under section 14.
- (2) The application must be in writing and include—
 - (a) the name and business address of the provider; and
 - (b) a copy of the plan; and
 - (c) the written reasons of the positive behaviour support panel for approval of the plan; and
 - (d) any other matter prescribed by regulation.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (3) The senior practitioner may, in writing, require the provider to give the senior practitioner additional information the senior practitioner reasonably needs to decide the application.
- (4) If the provider 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.
- (5) On application, the senior practitioner must either—
 - (a) register the positive behaviour support plan; or
 - (b) refuse to register the plan.

- (6) The senior practitioner may register the plan only if satisfied—
- (a) the plan is consistent with the guidelines made under section 12; and
 - (b) 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.

16 Copy of positive behaviour support plan to be given to person etc

On registration of a positive behaviour support plan, the provider in relation to the plan must give a copy of the plan to—

- (a) the person who is the subject of the plan; and
- (b) if the person has a guardian—the person’s guardian; and
- (c) if the person is a child—
 - (i) each person with parental responsibility for the child; and
 - (ii) the public advocate.

17 Review and amendment of positive behaviour support plan

- (1) The provider in relation to a registered positive behaviour support plan must keep the plan under review and take steps to have it amended whenever necessary to reflect a change in circumstances.

Example

If a plan includes a restrictive practice and it becomes no longer necessary to use the restrictive practice.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The provider must review the plan at any time on written request of the person who is the subject of the plan.

- (3) If the person has difficulty putting the request in writing, the provider must give the person reasonable assistance to do so.

18 Positive behaviour support plan expires after 12 months

A registered positive behaviour support plan expires 12 months after the day the plan is registered.

19 Register of positive behaviour support plans

- (1) The senior practitioner must keep a register of positive behaviour support plans registered under section 15.
- (2) The register must include the following details for each plan:
- (a) the name of the provider that applied for registration of the plan;
 - (b) particulars of the panel that approved the plan;
 - (c) particulars of the plan;
 - (d) the date the plan was registered;
 - (e) the date the plan expires;
 - (f) anything else prescribed by regulation.
- (3) The register may—
- (a) include any other information the senior practitioner considers relevant; and
 - (b) be kept in any form, including electronically, that the senior practitioner decides.
- (4) The senior practitioner may—
- (a) correct a mistake, error or omission in the register; and
 - (b) change a detail included in the register to keep the register up-to-date.

20 Provider to monitor and record use of restrictive practices

The provider in relation to a registered positive behaviour support plan must—

- (a) monitor and make a record of any use of restrictive practices under the plan; and
- (b) notify the senior practitioner about the use of restrictive practices in accordance with the guidelines made under section 12.

Division 3.3 Positive behaviour support panels

21 Guidelines about positive behaviour support panels

- (1) The senior practitioner must make guidelines about the composition of positive behaviour support panels, including the experience, qualifications and membership needed.
- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

22 Registration of positive behaviour support panels

- (1) A person may apply to the senior practitioner for registration of a positive behaviour support panel.
- (2) The application must be in writing and include—
 - (a) the name and business address of the applicant; and
 - (b) particulars of each member of the proposed panel, including the member's—
 - (i) name; and
 - (ii) contact details; and

(iii) experience and qualifications; and

(c) any other matter prescribed by regulation.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (3) 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.
- (4) 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.
- (5) On application, the senior practitioner must either—
 - (a) register the panel; or
 - (b) refuse to register the panel.

23 Register of positive behaviour support panels

- (1) The senior practitioner must keep a register of positive behaviour support panels registered under section 22.
- (2) The register must include the following details for each panel:
 - (a) the name of the person who applied for registration of the panel;
 - (b) a nominated contact person for the panel, including their contact details;
 - (c) particulars of the panel;
 - (d) the date the panel was registered.

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

Part 4 Senior practitioner

24 Appointment of senior practitioner

- (1) The director-general must appoint a public servant as the Senior Practitioner.

Note For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

- (2) The director-general may appoint a person as the senior practitioner only if satisfied that the person has the qualifications, clinical experience and personal qualities necessary to exercise the senior practitioner's functions.
- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

25 Delegation by senior practitioner

- (1) The senior practitioner may delegate the senior practitioner's functions under this Act to another public servant.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) The senior practitioner may delegate a function to a person only if the senior practitioner is satisfied that the person has the training, experience and personal qualities necessary to exercise the function.

26 Functions of senior practitioner

The senior practitioner has the following functions:

- (a) to promote the reduction and elimination of the use of restrictive practices by providers to the greatest extent possible;
- (b) to oversee the use of restrictive practices in accordance with this Act;

- (c) to ensure, to the greatest extent possible, that—
 - (i) the rights of people who may be subject to restrictive practices are protected; and
 - (ii) providers comply with any applicable guidelines and standards on the use of restrictive practices;
- (d) to develop guidelines and standards on the use of restrictive practices;
- (e) to disseminate information, and provide education about restrictive practices and the rights of people who may be subject to restrictive practices;
- (f) to give advice to providers about reducing and eliminating the use of restrictive practices;
- (g) to give advice to people who may be subject to restrictive practices;
- (h) to give directions to providers about the use of restrictive practices under positive behaviour support plans;
- (i) to develop links and access to professionals, professional bodies and academic institutions for the purpose of promoting knowledge and training in restrictive practices;
- (j) to carry out research into the reduction, elimination and use of restrictive practices and provide information on best practice options to providers;
- (k) to undertake any other function relating to a person or class of people as may be directed, in writing, by the director-general;
- (l) any other function given to the senior practitioner under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

27 Senior practitioner may make guidelines

- (1) The senior practitioner may make guidelines for this Act consistent with its objects, including guidelines in relation to the use of restrictive practices.

Note The senior practitioner is required to make guidelines about certain matters in relation to positive behaviour support plans (see s 12) and positive behaviour support panels (see s 21).

- (2) In developing guidelines under this section, the senior practitioner must consult as appropriate with relevant stakeholders and community members.
- (3) A guideline may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the [Legislation Act](#).

- (4) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Part 5 **Complaints and investigations**

Division 5.1 **Complaints**

28 **Making a complaint**

- (1) A person may complain to the senior practitioner about—
 - (a) 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
 - (b) the use of a restrictive practice by a provider.

Note Complaints may also be made to the human rights commission (www.hrc.act.gov.au) about a range of services, for example health services, disability services and services for children and young people.

- (2) A complaint may be made by the person who is the subject of a positive behaviour support plan or anyone else.
- (3) The complaint must be in writing and include the name and address of the person making the complaint (the *complainant*).
- (4) However, the complaint—
 - (a) may be made orally if the senior practitioner is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint; and
 - (b) need not include the complainant's name and address if the senior practitioner is satisfied on reasonable grounds that exceptional circumstances justify action without the complainant's name and address.

Example—exceptional circumstances

Waiting until the complaint is put in writing would make action in response to the complaint impossible or impractical.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) If the complaint is made orally, the senior practitioner must make a written record of the complaint as soon as practicable after receiving the complaint.
- (6) If a complaint does not include the complainant's name and address, the senior practitioner need not report to the complainant under—
 - (a) section 31 (Investigation of complaint); or
 - (b) section 38 (No action to be taken).
- (7) The senior practitioner may make arrangements for people with particular communication needs to ensure they have adequate opportunity to make a complaint.

29 Withdrawing a complaint

- (1) A complainant may withdraw the complaint at any time by written notice to the senior practitioner.
- (2) If the complainant has difficulty putting the notice in writing, the senior practitioner must give the complainant reasonable assistance to do so.
- (3) If the complainant withdraws the complaint, the senior practitioner need not, but may, take further action on the complaint.

30 Request for further information or verification

- (1) The senior practitioner may at any time request a complainant to give the senior practitioner—
 - (a) further information about the complaint; or
 - (b) a written statement verifying all or part of the complaint.
- (2) If the senior practitioner makes a request under this section, the senior practitioner must give the complainant a reasonable period of time to satisfy the request and may extend the period, whether before or after it ends.

- (3) If the complainant does not comply with the request, the senior practitioner need not, but may, take further action on the complaint.

Division 5.2 Investigations

31 Investigation of complaint

- (1) The senior practitioner must take reasonable steps to investigate each complaint made to the senior practitioner.
- (2) However, the senior practitioner need not investigate a complaint if satisfied that the complaint—
- (a) is frivolous, vexatious or was not made honestly; or
 - (b) lacks substance; or
 - (c) cannot be made under this Act; or
 - (d) would be better dealt with by another entity; or
 - (e) is otherwise not appropriate for the senior practitioner to investigate.

Examples

- 1 The matters raised by the complaint have been or are being dealt with by a court of tribunal, or are being or have already been dealt with by the senior practitioner.
- 2 It would be more appropriate for the matters raised by the complaint to be dealt with by another entity.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The senior practitioner may refer a complaint to another entity if satisfied that it would be more appropriate for the other entity to deal with the complaint.

- (4) Before investigating a complaint, the senior practitioner must—
- (a) tell the complainant in writing that the complaint is to be investigated; and
 - (b) tell the provider the subject of the complaint in writing—
 - (i) that the senior practitioner has received a complaint about the provider; and
 - (ii) the details of the complaint; and
 - (iii) that the senior practitioner is going to investigate the complaint; and
 - (iv) that the provider may make an oral or written submission to the senior practitioner about the complaint.
- (5) However, if the senior practitioner considers that disclosure of a particular detail of the complaint (including the relevant person's name or address) may have an adverse effect on the relevant person, the senior practitioner—
- (a) must not disclose the detail; and
 - (b) may instead include a general statement about the detail.
- (6) In this section:
- relevant person*** means—
- (a) a person who is the subject of a positive behaviour support plan about which a complaint is made; or
 - (b) a person who is subject to a restrictive practice about which a complaint is made; or
 - (c) if a complainant is not a person mentioned in paragraph (a) or (b)—the complainant.

32 Investigation without complaint

- (1) The senior practitioner may, on the senior practitioner's own initiative, investigate—
 - (a) anything done by a provider in relation to a positive behaviour support plan, including its development or implementation; or
 - (b) the use of a restrictive practice by a provider.
- (2) An investigation initiated by the senior practitioner must, as far as practicable, be conducted as if it were an investigation of a complaint.

33 Power to enter premises to conduct investigation

- (1) This section applies if the senior practitioner believes on reasonable grounds that a restrictive practice is being used by a provider at a particular place or the senior practitioner receives a complaint about a restrictive practice used at a particular place.
- (2) The senior practitioner may—
 - (a) 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
 - (b) carry out an investigation into the restrictive practices used by the provider, which may include the following:
 - (i) inspecting the place or a thing at the place;
 - (ii) seeing or interviewing a person who is or may be subject to restrictive practices at the place;
 - (iii) seeing or interviewing any person believed to be involved in the development, administration or implementation of restrictive practices at the place;

- (iv) inspecting, copying or removing documents relating to restrictive practices or a person subject to restrictive practices;
- (v) using any equipment reasonably required to effectively investigate restrictive practices used by the provider.

Examples—equipment reasonably required

- a camera
- a recording device

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) If the senior practitioner wants to interview a person who is or may be subject to restrictive practices, the senior practitioner must—
 - (a) 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
 - (b) if the person decides to have a support person present—assist the person to contact the support person.
- (4) The senior practitioner may interview a person without a support person if—
 - (a) 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
 - (b) in the circumstances it is not practicable for a support person to attend the interview within a reasonable time.

34 Power to ask for information, documents and other things when conducting investigation

- (1) This section applies if the senior practitioner believes on reasonable grounds that a person can provide information or produce a document or something else relevant to an investigation under this division.
- (2) The senior practitioner may, by written notice given to the person, require the person to provide the information or produce the document or other thing.
- (3) The notice must state how, and the time within which, the person must comply with the requirement.

35 Power to ask for assistance

- (1) The senior practitioner may ask a provider for assistance in the exercise of the senior practitioner's functions, including asking a provider to—
 - (a) produce a document or thing; or
 - (b) provide an answer to a question.
- (2) A provider must give the senior practitioner any reasonable assistance the senior practitioner asks for under subsection (1).

36 Senior practitioner may keep document or other thing etc

- (1) If a document or something else is obtained under this division, the senior practitioner—
 - (a) may take possession of, make copies of, or take extracts from, the document or may take possession of the other thing; and
 - (b) may keep the document or other thing for a period (the *retention period*) that is necessary for the consideration to which the document or thing relates; and

- (c) must, during the retention period, allow anyone who would ordinarily be entitled to inspect the document or other thing if it were not in the possession of the senior practitioner, to copy or take extracts or inspect the document or other thing.
- (2) The senior practitioner must return a document or something else obtained under this division if the senior practitioner is no longer entitled, or no longer needs, to keep the document or thing to carry out the senior practitioner's functions.

37 Privileges against self-incrimination and exposure to civil penalty

- (1) This section applies if a person is required by a notice under section 34 to produce a document or other thing or provide an answer to a question.
- (2) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

Note The [Legislation Act](#), s 171 deals with client legal privilege.

- (3) However, any document or other thing 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.

Division 5.3 Actions after investigation

38 No action to be taken

- (1) If, after investigating a complaint, the senior practitioner is not satisfied that any action needs to be taken in relation to the provider, the senior practitioner must—
 - (a) tell the complainant, in writing, that the senior practitioner will take no further action on the complaint; and
 - (b) take no further action on the complaint.
- (2) Subsection (1) (b) does not prevent the senior practitioner from taking further action on a complaint or investigating another complaint in relation to the same matter at a later date.

39 Directions to provider

- (1) This section applies if, after investigating a complaint, the senior practitioner is satisfied on reasonable grounds that action needs to be taken in relation to the provider.

Examples

- 1 The provider is using a restrictive practice on a person other than in accordance with a registered positive behaviour support plan.
- 2 The use of a restrictive practice is not the least restrictive approach reasonably available or is otherwise inappropriate.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The senior practitioner may give the provider a direction in relation to any of the following:
 - (a) a positive behaviour support plan, including amending the plan or preparing a new plan;
 - (b) the use of a restrictive practice, including changing or stopping the use of a restrictive practice;

- (c) a matter prescribed by regulation.
- (3) A direction—
- (a) may include any reasonable condition the senior practitioner considers appropriate; and
 - (b) may be contrary to a registered positive behaviour support plan; and
 - (c) must be in writing and state—
 - (i) the period for compliance with the direction; and
 - (ii) 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 with the direction within the stated period.
- (4) If a provider receives a direction under this section, the provider must comply with the direction.
- (5) If the direction requires a new or amended positive behaviour support plan, the provider must give a copy of the plan as registered to—
- (a) the person who is the subject of the plan; and
 - (b) if the person has a guardian—the person’s guardian; and
 - (c) if the person is a child—
 - (i) each person with parental responsibility for the child; and
 - (ii) the public advocate.
- (6) On giving a direction to a provider in relation to a positive behaviour support plan, the senior practitioner 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.

40 Senior practitioner may cancel registration

- (1) This section applies if—
 - (a) the senior practitioner gives a direction to a provider under section 39 in relation to a positive behaviour support plan; and
 - (b) the provider fails to comply with the direction.
- (2) The senior practitioner must give the provider notice of the senior practitioners' intention to cancel the plan.
- (3) The notice must be in writing and state that—
 - (a) the senior practitioner intends to cancel the registration of the plan because of the provider's failure to comply with the direction; and
 - (b) the provider may give a written submission to the senior practitioner showing cause why the registration should not be cancelled; and
 - (c) a submission may be given to the senior practitioner within a period stated in the notice.
- (4) If the provider makes a submission in accordance with the notice, the senior practitioner—
 - (a) must consider the submission; and
 - (b) may consider any other relevant matter; and
 - (c) must decide to either—
 - (i) cancel the registration of the positive behaviour support plan; or
 - (ii) not to cancel the registration.
- (5) If the provider does not make a submission in accordance with the notice, the senior practitioner must cancel the registration.

- (6) If the senior practitioner decides not to cancel the registration, the senior practitioner must tell the provider about the decision.

41 Cancellation notice

- (1) This section applies if the senior practitioner decides to cancel the registration of a positive behaviour support plan under section 40.
- (2) The senior practitioner must give a written notice (a ***cancellation notice***) to the provider cancelling the registration starting on the date stated in the notice.
- (3) If the senior practitioner gives a cancellation notice to the provider, the senior practitioner must also take reasonable steps to tell any person whose interests are affected under the positive behaviour support plan about the cancellation.
- (4) The cancellation notice must be given to the provider before the date of cancellation stated in the notice.

Part 6 Information sharing

42 Senior practitioner may give information to particular entities

- (1) 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:
 - (a) the director-general responsible for the *Education Act 2004*;
 - (b) the director-general responsible for the *Education and Care Services National Law (ACT)*;
 - (c) the director-general responsible for the *Health Act 1993*;
 - (d) the director-general responsible for the *Children and Young People Act 2008*, other than chapter 20 of that Act;
 - (e) the chief executive officer of the ACT Teacher Quality Institute;
 - (f) the commissioner for fair trading;
 - (g) a member of the human rights commission;
 - (h) an official visitor;
 - (i) the ombudsman;
 - (j) an entity the senior practitioner has referred a complaint to under section 31;
 - (k) any other entity prescribed by regulation.
- (2) The senior practitioner may give protected information to 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.

(3) In this section:

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.

Example

information obtained by the senior practitioner in conducting an investigation

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

Part 7 Notification and review of decisions

43 Meaning of *reviewable decision*—pt 7

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

44 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

45 Applications for review

The following people may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Part 8 Offences

46 Using restrictive practice other than under positive behaviour support plan

- (1) A provider, or a relevant person for a provider, commits an offence if—
- (a) the provider or relevant person uses a restrictive practice on another person; and
 - (b) 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.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It is a defence 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.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

- (3) 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.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) In this section:

relevant person, for a provider, means an employee, agent, contractor or other person acting under the direction or on behalf of the provider.

47 Failing to comply with direction

- (1) A provider commits an offence if—
 - (a) the senior practitioner gives the provider a direction under section 39; and
 - (b) the provider fails to comply with the direction.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

48 Criminal liability of partner

- (1) This section applies if a partnership through a partner, servant or agent—
 - (a) engages in conduct; and
 - (b) the conduct is an offence against this Act.
- (2) Each partner (a *liable partner*) in the partnership is taken to commit the offence.
- (3) It is a defence to a prosecution for an offence against this Act if a liable partner proves that—
 - (a) the partner did not know about the conduct that constituted the offence; and
 - (b) either—
 - (i) the partner took reasonable precautions and exercised appropriate diligence to ensure the partnership did not engage in the conduct; or
 - (ii) the partner was not in a position to influence the partnership in relation to the conduct.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

49 Criminal liability of executive officer

- (1) An executive officer of a corporation is taken to commit an offence if—
- (a) the corporation commits an offence against this Act (a *relevant offence*); and
 - (b) the officer was reckless about whether the relevant offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
 - (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

Maximum penalty: The maximum penalty that may be imposed for the commission of the offence by an individual.

- (2) Subsection (1) does not apply if the corporation would have a defence to a prosecution for the relevant offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
- (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the offence relates;
 - (b) that the corporation implements any appropriate recommendation arising from such an assessment;

- (c) 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;
 - (d) any action the officer took when the officer became aware that the offence was, or might be, about to be committed.
- (4) Subsection (3) does not limit the matters the court may consider.
 - (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
 - (6) In this section:
executive officer, of a corporation, means 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.

Part 9 Miscellaneous

50 Annual report by senior practitioner

- (1) The senior practitioner must, as soon as practicable after the end of a financial year, prepare a written report on the exercise of the senior practitioner's functions for the year.
- (2) The senior practitioner must give a copy of the report to the director-general.
- (3) The director-general must include the report in the director-general's annual report under the *Annual Reports (Government Agencies) Act 2004*, section 7.

51 Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:
official means—
 - (a) the senior practitioner; or
 - (b) any other person exercising a function under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

52 Protection of others from liability

- (1) Civil or criminal liability is not incurred only because of any of the following done honestly and without recklessness:
 - (a) the making of a complaint under this Act;
 - (b) the making of a statement, or the giving of a document or information, as required or permitted under a territory law, to the senior practitioner.
- (2) Also, giving any information honestly and without recklessness to the senior practitioner is not—
 - (a) a breach of confidence; or
 - (b) a breach of professional etiquette or ethics; or
 - (c) a breach of a rule of professional conduct.

53 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

54 Review of Act

- (1) The Minister must review the operation of this Act and present a report of the review to the Legislative Assembly as soon as practicable after the end of its 3rd year of operation.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).
- (2) This section expires 4 years after the day it commences.

Schedule 1 Reviewable decisions

(see pt 7)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	15	register positive behaviour support plan	person the subject of plan
2	15	refuse to register positive behaviour support plan	applicant for registration of plan
3	22	refuse to register positive behaviour support panel	applicant for registration of panel
4	39	give direction	provider given direction
5	40	cancel registration of positive behaviour support plan	<ul style="list-style-type: none">• person the subject of plan• provider responsible for cancelled plan

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- Act
- chief police officer
- child
- commissioner for fair trading
- corporation
- director-general (see s 163)
- disallowable instrument (see s 9)
- domestic partner (see s 169 (1))
- entity
- Executive
- exercise
- fail
- financial year
- human rights commission
- in relation to
- law
- Minister (see s 162)
- notifiable instrument (see s 10)
- official visitor
- ombudsman
- parent
- penalty unit (see s 133)
- person (see s 160)
- prescribed
- public servant
- regulation

- reviewable decision
- territory law.

complainant—see section 28 (2).

harm to a person, means—

- (a) physical harm to the person; or
- (b) a serious risk of physical harm to the person; or
- (c) damage to property involving a serious risk of physical harm to the person.

panel means a positive behaviour support panel.

person with parental responsibility, for a child, means a parent or someone else with parental responsibility for the child under the [Children and Young People Act 2008](#), division 1.3.2.

positive behaviour support panel means a panel registered under section 21.

positive behaviour support plan—see section 11.

provider—see section 8.

registered, in relation to a positive behaviour support plan, means registered under section 15.

restrictive practice—see section 7.

reviewable decision, for part 7 (Notification and review of decisions)—see section 43.

senior practitioner means the Senior Practitioner appointed under section 24.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 June 2018.

2 Notification

Notified under the [Legislation Act](#) on 15 August 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Senior Practitioner Bill 2018, which was passed by the Legislative Assembly on 2 August 2018.

Clerk of the Legislative Assembly

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