

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Disability, Children and Youth)

Senior Practitioner Bill 2018

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Senior Practitioner Bill 2018

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Senior Practitioner Act 2018*.

4 **2 Commencement**

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

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

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

9 **3 Dictionary**

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

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

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

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

21 **4 Notes**

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

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

1 **5 Offences against Act—application of Criminal Code etc**

2 Other legislation applies in relation to offences against this Act.

3 *Note 1 Criminal Code*

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

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

10 *Note 2 Penalty units*

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

1 **Part 2** **Objects, important concepts and**
2 **principles**

3 **6** **Objects of Act**

4 The objects of this Act are to—

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

1 **7 Meaning of *restrictive practice***

2 (1) In this Act:

3 *restrictive practice*—

4 (a) means a practice that is used to restrict the rights or freedom of
5 movement of a person for the primary purpose of protecting
6 the person or others from harm; and

7 (b) includes the following:

8 (i) chemical restraint;

9 (ii) environmental restraint;

10 (iii) mechanical restraint;

11 (iv) physical restraint;

12 (v) seclusion;

13 (vi) verbal directions, or gestural conduct, of a coercive
14 nature; but

15 (c) does not include—

16 (i) reasonable action taken to monitor and protect a child
17 from harm; or

18 **Examples**

19 1 holding a child's hand while crossing a road

20 2 fencing around a primary school

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

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

- 1 (2) In this section:
- 2 ***chemical restraint***—
- 3 (a) means the use of a chemical substance that restricts or subdues
- 4 a person’s movement; but
- 5 (b) does not include the use of a chemical substance that is—
- 6 (i) prescribed by a medical practitioner or nurse practitioner
- 7 for the treatment, or to enable the treatment, of a mental
- 8 or physical illness or condition in a person; and
- 9 (ii) used in accordance with the prescription.
- 10 ***environmental restraint*** means any action or system that limits a
- 11 person’s ability to freely—
- 12 (a) access the person’s surroundings or a particular thing; or
- 13 (b) engage in an activity.
- 14 ***mechanical restraint***—
- 15 (a) means the use of a device to prevent, restrict or subdue the
- 16 movement of all or part of a person’s body; but
- 17 (b) does not include the use of the device—
- 18 (i) to ensure the person’s safety when travelling; or
- 19 (ii) for therapeutic purposes.
- 20 ***physical restraint***—
- 21 (a) means the use or action of physical force to stop, limit or
- 22 subdue the movement of a person’s body or part of the
- 23 person’s body; but
- 24 (b) does not include a reflex action of reasonable physical force
- 25 and duration intended to guide or direct a person in the
- 26 interests of the person’s safety where there is an imminent risk
- 27 of harm.

1 **seclusion** means the sole confinement of a person, at any time of the
2 day or night, in a room or other space from which free exit is
3 prevented, either implicitly or explicitly, or not facilitated.

4 **Examples**

5 1 A person in disability group accommodation is sent by the provider for ‘time
6 out’ in a quiet space and told they are not allowed to leave the space until the
7 provider tells them.

8 2 A young person living in residential care is told by the provider that they
9 must not leave their bedroom at night after 9pm.

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

13 **8 Meaning of *provider***

14 (1) In this Act:

15 ***provider***—

16 (a) means a person or other entity who provides any of the
17 following services to another person:

18 (i) education;

19 (ii) disability;

20 (iii) care and protection of children;

21 (iv) a service prescribed by regulation; but

22 (b) does not include—

23 (i) a close family member of the other person; or

24 (ii) an informal carer for the other person; or

25 (iii) an exempt entity.

- 1 (2) In this section:
- 2 ***close family member***, of a person, means—
- 3 (a) the domestic partner of the person; or
- 4 (b) a parent or step-parent of the person; or
- 5 (c) a sibling or step-sibling of the person; or
- 6 (d) a child or stepchild of the person, or another child for whom
- 7 the person has parental responsibility.
- 8 ***exempt entity*** means—
- 9 (a) a person exercising a function under—
- 10 (i) the *Corrections Management Act 2007*; or
- 11 (ii) the *Children and Young People Act 2008*, chapters 4 to 9
- 12 (the criminal matters chapters); or
- 13 (iii) the *Mental Health Act 2015*; or
- 14 (iv) the *Mental Health (Secure Facilities) Act 2016*; or
- 15 (b) a police officer acting under lawful authority; or
- 16 (c) a person or other entity prescribed by regulation.
- 17 ***informal carer***, of a person, means an individual who—
- 18 (a) provides personal care, support or assistance to the other
- 19 person; but
- 20 (b) does not provide the care, support or assistance—
- 21 (i) under a contract of service or a contract for the provision
- 22 of services; or
- 23 (ii) in the course of doing voluntary work for a charitable,
- 24 welfare or community organisation; or
- 25 (iii) as part of the requirements of a course of education or
- 26 training.

- 1 **9 Principles for providers**
- 2 (1) This section sets out principles to be taken into account by providers
- 3 in providing services to people with behaviour that causes harm to
- 4 themselves or others.
- 5 (2) The service must be provided in a way that—
- 6 (a) promotes the person’s—
- 7 (i) development and physical, mental, social and vocational
- 8 ability; and
- 9 (ii) opportunities for participation and inclusion in the
- 10 community; and
- 11 (b) responds to the person’s needs and goals; and
- 12 (c) ensures that, in the development of strategies for the person’s
- 13 care and support, the provider works closely with the person
- 14 and their family, their carers, any guardian or advocate for the
- 15 person and any other relevant person; and
- 16 (d) recognises that—
- 17 (i) a person must be assumed to have decision-making
- 18 capacity unless it is established that they do not; and
- 19 (ii) a person must not be treated as being unable to make a
- 20 decision unless all practicable steps to help them do so
- 21 have been taken; and
- 22 (iii) a person must not be treated as being unable to make a
- 23 decision only because they make an unwise decision; and
- 24 (e) involves—
- 25 (i) positive behaviour support planning informed by
- 26 evidence-based best practice; and

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

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

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

5 **10** **Restrictive practice must be under positive behaviour**
6 **support plan**

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

9 **Division 3.2** **Positive behaviour support plans**

10 **11** **Meaning of *positive behaviour support plan***

11 A *positive behaviour support plan* is a plan for a person that
12 describes the strategies to be used in supporting the person's
13 behaviour, including strategies to—

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

18 **12** **Guidelines about positive behaviour support plans**

19 (1) The senior practitioner must make guidelines about positive
20 behaviour support plans, including—

- 21 (a) the content of plans; and
22 (b) the preparation of plans; and
23 (c) the assessment and approval of plans; and
24 (d) the review and amendment of plans; and

- 1 (e) notifying the senior practitioner about the use of restrictive
2 practices under plans.
- 3 (2) Guidelines for subsection (1) (a) must require a positive behaviour
4 support plan for a person to include—
- 5 (a) in relation to behaviour of the person that is causing harm to
6 the person or others, a description of—
- 7 (i) the intensity, frequency and duration of the behaviour;
8 and
- 9 (ii) the consequences of the behaviour; and
- 10 (iii) the early warning signs and triggers for the behaviour, if
11 known; and
- 12 (b) the positive strategies that must be attempted before using a
13 restrictive practice; and
- 14 (c) for each restrictive practice proposed to be used—
- 15 (i) the circumstances in which the restrictive practice is to be
16 used; and
- 17 (ii) the procedure for using the restrictive practice, including
18 observations and monitoring that must happen while the
19 restrictive practice is being used; and
- 20 (iii) any other measure that must happen while the restrictive
21 practice is being used that is necessary to ensure the
22 person's proper care and treatment and that the person is
23 safeguarded from abuse, neglect and exploitation; and
- 24 (iv) the intervals at which use of the restrictive practice must
25 be reviewed by the provider.

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

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

17 **13 Preparation of positive behaviour support plan**

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

20 **14 Approval of positive behaviour support plan**

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

1 (b) any restrictive practice included in the plan is necessary to
2 prevent harm to the person or others and is the least restrictive
3 approach reasonably available.

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

5 **15 Registration of positive behaviour support plan**

6 (1) A provider may apply to the senior practitioner for registration of a
7 positive behaviour support plan approved under section 14.

8 (2) The application must be in writing and include—

9 (a) the name and business address of the provider; and

10 (b) a copy of the plan; and

11 (c) the written reasons of the positive behaviour support panel for
12 approval of the plan; and

13 (d) any other matter prescribed by regulation.

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

17 (3) The senior practitioner may, in writing, require the provider to give
18 the senior practitioner additional information the senior practitioner
19 reasonably needs to decide the application.

20 (4) If the provider does not comply with the requirement within 28 days
21 after the day the request is made, the senior practitioner may refuse
22 to consider the application further and the application will lapse.

23 (5) On application, the senior practitioner must either—

24 (a) register the positive behaviour support plan; or

25 (b) refuse to register the plan.

- 1 (6) The senior practitioner may register the plan only if satisfied—
2 (a) the plan is consistent with the guidelines made under
3 section 12; and
4 (b) any restrictive practice included in the plan is necessary to
5 prevent harm to the person or others and is the least restrictive
6 approach reasonably available.

7 **16 Copy of positive behaviour support plan to be given to**
8 **person etc**

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

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

16 **17 Review and amendment of positive behaviour support**
17 **plan**

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

21 **Example**

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

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

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

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

3 **18 Positive behaviour support plan expires after 12 months**

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

6 **19 Register of positive behaviour support plans**

7 (1) The senior practitioner must keep a register of positive behaviour
8 support plans registered under section 15.

9 (2) The register must include the following details for each plan:

- 10 (a) the name of the provider that applied for registration of the
11 plan;
12 (b) particulars of the panel that approved the plan;
13 (c) particulars of the plan;
14 (d) the date the plan was registered;
15 (e) the date the plan expires;
16 (f) anything else prescribed by regulation.

17 (3) The register may—

- 18 (a) include any other information the senior practitioner considers
19 relevant; and
20 (b) be kept in any form, including electronically, that the senior
21 practitioner decides.

22 (4) The senior practitioner may—

- 23 (a) correct a mistake, error or omission in the register; and
24 (b) change a detail included in the register to keep the register
25 up-to-date.

1 **20** **Provider to monitor and record use of restrictive**
2 **practices**

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

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

10 **Division 3.3** **Positive behaviour support panels**

11 **21** **Guidelines about positive behaviour support panels**

12 (1) The senior practitioner must make guidelines about the composition
13 of positive behaviour support panels, including the experience,
14 qualifications and membership needed.

15 (2) A guideline is a disallowable instrument.

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

18 **22** **Registration of positive behaviour support panels**

19 (1) A person may apply to the senior practitioner for registration of a
20 positive behaviour support panel.

21 (2) The application must be in writing and include—

22 (a) the name and business address of the applicant; and

23 (b) particulars of each member of the proposed panel, including
24 the member's—

25 (i) name; and

26 (ii) contact details; and

- 1 (iii) experience and qualifications; and
2 (c) any other matter prescribed by regulation.

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

- 6 (3) The senior practitioner may, in writing, require the applicant to give
7 the senior practitioner additional information the senior practitioner
8 reasonably needs to decide the application.
9 (4) If the applicant does not comply with the requirement within
10 28 days after the day the request is made, the senior practitioner may
11 refuse to consider the application further and the application will
12 lapse.
13 (5) On application, the senior practitioner must either—
14 (a) register the panel; or
15 (b) refuse to register the panel.

16 **23 Register of positive behaviour support panels**

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

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

1 **Part 4 Senior practitioner**

2 **24 Appointment of senior practitioner**

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

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

- 7 (2) The director-general may appoint a person as the senior practitioner
8 only if satisfied that the person has the qualifications, clinical
9 experience and personal qualities necessary to exercise the senior
10 practitioner's functions.

- 11 (3) An appointment is a notifiable instrument.

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

13 **25 Delegation by senior practitioner**

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

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

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

21 **26 Functions of senior practitioner**

22 The senior practitioner has the following functions:

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

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

27 *Note* A provision of a law that gives an entity (including a person) a function

28 also gives the entity powers necessary and convenient to exercise the

29 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

1 **27 Senior practitioner may make guidelines**

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

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

- 8 (2) In developing guidelines under this section, the senior practitioner
9 must consult as appropriate with relevant stakeholders and
10 community members.

- 11 (3) A guideline may apply, adopt or incorporate an instrument, as in
12 force from time to time.

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

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

- 18 (4) A guideline is a disallowable instrument.

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

1 **Part 5** **Complaints and investigations**

2 **Division 5.1** **Complaints**

3 **28** **Making a complaint**

- 4 (1) A person may complain to the senior practitioner about—
- 5 (a) anything done by a provider in relation to a positive behaviour
6 support plan that permits the use of a restrictive practice,
7 including its development or implementation; or
- 8 (b) the use of a restrictive practice by a provider.

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

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

24 **Example—exceptional circumstances**

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

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

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

11 **29 Withdrawing a complaint**

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

19 **30 Request for further information or verification**

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

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

3 **Division 5.2 Investigations**

4 **31 Investigation of complaint**

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

15 **Examples**

- 16 1 The matters raised by the complaint have been or are being dealt with
17 by a court of tribunal, or are being or have already been dealt with by
18 the senior practitioner.
- 19 2 It would be more appropriate for the matters raised by the complaint to
20 be dealt with by another entity.

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

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

- 1 (4) Before investigating a complaint, the senior practitioner must—
2 (a) tell the complainant in writing that the complaint is to be
3 investigated; and
4 (b) tell the provider the subject of the complaint in writing—
5 (i) that the senior practitioner has received a complaint about
6 the provider; and
7 (ii) the details of the complaint; and
8 (iii) that the senior practitioner is going to investigate the
9 complaint; and
10 (iv) that the provider may make an oral or written submission
11 to the senior practitioner about the complaint.
- 12 (5) However, if the senior practitioner considers that disclosure of a
13 particular detail of the complaint (including the complainant's name
14 or address) may have an adverse effect on the complainant, the
15 senior practitioner—
16 (a) must not disclose the detail; and
17 (b) may instead include a general statement about the detail.

18 **32 Investigation without complaint**

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

1 **33** **Power to enter premises to conduct investigation**

2 (1) This section applies if the senior practitioner believes on reasonable
3 grounds that a restrictive practice is being used by a provider at a
4 particular place or the senior practitioner receives a complaint about
5 a restrictive practice used at a particular place.

6 (2) The senior practitioner may—

7 (a) enter the place, other than a part of the place used for
8 residential purposes unless that part is also the place restrictive
9 practices are being used; and

10 (b) carry out an investigation into the restrictive practices used by
11 the provider, which may include the following:

12 (i) inspecting the place or a thing at the place;

13 (ii) seeing or interviewing a person who is or may be subject
14 to restrictive practices at the place;

15 (iii) seeing or interviewing any person believed to be involved
16 in the development, administration or implementation of
17 restrictive practices at the place;

18 (iv) inspecting, copying or removing documents relating to
19 restrictive practices or a person subject to restrictive
20 practices;

21 (v) using any equipment reasonably required to effectively
22 investigate restrictive practices used by the provider.

23 **Examples—equipment reasonably required**

- 24 • a camera
25 • a recording device

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

- 1 (3) If the senior practitioner wants to interview a person who is or may
2 be subject to restrictive practices, the senior practitioner must—
- 3 (a) tell the person that the public advocate, or someone else chosen
4 by the person, (a *support person*) may be present to provide
5 support or assistance to the person during the interview; and
- 6 (b) if the person decides to have a support person present—assist
7 the person to contact the support person.
- 8 (4) The senior practitioner may interview a person without a support
9 person if—
- 10 (a) after the senior practitioner has taken all practicable steps to
11 help the person decide about having a support person present,
12 the person is unable or unwilling to choose a support person; or
- 13 (b) in the circumstances it is not practicable for a support person to
14 attend the interview within a reasonable time.

15 **34 Power to ask for information, documents and other**
16 **things when conducting investigation**

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

1 **35** **Power to ask for assistance**

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

9 **36** **Senior practitioner may keep document or other thing etc**

- 10 (1) If a document or something else is obtained under this division, the
11 senior practitioner—
- 12 (a) may take possession of, make copies of, or take extracts from,
13 the document or may take possession of the other thing; and
- 14 (b) may keep the document or other thing for a period (the
15 *retention period*) that is necessary for the consideration to
16 which the document or thing relates; and
- 17 (c) must, during the retention period, allow anyone who would
18 ordinarily be entitled to inspect the document or other thing if
19 it were not in the possession of the senior practitioner, to copy
20 or take extracts or inspect the document or other thing.
- 21 (2) The senior practitioner must return a document or something else
22 obtained under this division if the senior practitioner is no longer
23 entitled, or no longer needs, to keep the document or thing to carry
24 out the senior practitioner's functions.

- 1 **37 Privileges against self-incrimination and exposure to civil**
2 **penalty**
- 3 (1) This section applies if a person is required by a notice under
4 section 34 to produce a document or other thing or provide an
5 answer to a question.
- 6 (2) The person cannot rely on the common law privileges against
7 self-incrimination and exposure to the imposition of a civil penalty
8 to refuse to produce the document or other thing or answer the
9 question.
- 10 *Note* The [Legislation Act](#), s 171 deals with client legal privilege.
- 11 (3) However, any document or other thing obtained, or answer
12 provided, directly or indirectly, because of the answering of the
13 question or the producing of the document or other thing, is not
14 admissible in evidence against the person in a criminal or civil
15 proceeding, other than a proceeding for an offence in relation to the
16 falsity of the information, document, other thing or answer.

17 **Division 5.3 Actions after investigation**

- 18 **38 No action to be taken**
- 19 (1) If, after investigating a complaint, the senior practitioner is not
20 satisfied that any action needs to be taken in relation to the provider,
21 the senior practitioner must—
- 22 (a) tell the complainant, in writing, that the senior practitioner will
23 take no further action on the complaint; and
- 24 (b) take no further action on the complaint.
- 25 (2) Subsection (1) (b) does not prevent the senior practitioner from
26 taking further action on a complaint or investigating another
27 complaint in relation to the same matter at a later date.

1 **39 Directions to provider**

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

5 **Examples**

6 1 The provider is using a restrictive practice on a person other than in
7 accordance with a registered positive behaviour support plan.

8 2 The use of a restrictive practice is not the least restrictive approach
9 reasonably available or is otherwise inappropriate.

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

13 (2) The senior practitioner may give the provider a direction in relation
14 to any of the following:

15 (a) a positive behaviour support plan, including amending the plan
16 or preparing a new plan;

17 (b) the use of a restrictive practice, including changing or stopping
18 the use of a restrictive practice;

19 (c) a matter prescribed by regulation.

20 (3) A direction—

21 (a) may include any reasonable condition the senior practitioner
22 considers appropriate; and

23 (b) may be contrary to a registered positive behaviour support
24 plan; and

25 (c) must be in writing and state—

26 (i) the period for compliance with the direction; and

27 (ii) if there is a registered positive behaviour support plan—
28 that the senior practitioner may cancel the registration of
29 the plan if the provider does not comply with the direction
30 within the stated period.

- 1 (4) If a provider receives a direction under this section, the provider
2 must comply with the direction.
- 3 (5) If the direction requires a new or amended positive behaviour
4 support plan, the provider must give a copy of the plan as registered
5 to—
- 6 (a) the person who is the subject of the plan; and
7 (b) if the person has a guardian—the person’s guardian; and
8 (c) if the person is a child—
- 9 (i) each person with parental responsibility for the child; and
10 (ii) the public advocate.
- 11 (6) On giving a direction to a provider in relation to a positive
12 behaviour support plan, the senior practitioner must offer to give the
13 provider advice to assist in the development of strategies to support
14 the behaviour of the person who is the subject of the plan.

15 **40 Senior practitioner may cancel registration**

- 16 (1) This section applies if—
- 17 (a) the senior practitioner gives a direction to a provider under
18 section 39 in relation to a positive behaviour support plan; and
19 (b) the provider fails to comply with the direction.
- 20 (2) The senior practitioner must give the provider notice of the senior
21 practitioners’ intention to cancel the plan.
- 22 (3) The notice must be in writing and state that—
- 23 (a) the senior practitioner intends to cancel the registration of the
24 plan because of the provider’s failure to comply with the
25 direction; and

- 1 (b) the provider may give a written submission to the senior
2 practitioner showing cause why the registration should not be
3 cancelled; and
- 4 (c) a submission may be given to the senior practitioner within a
5 period stated in the notice.
- 6 (4) If the provider makes a submission in accordance with the notice,
7 the senior practitioner—
- 8 (a) must consider the submission; and
- 9 (b) may consider any other relevant matter; and
- 10 (c) must decide to either—
- 11 (i) cancel the registration of the positive behaviour support
12 plan; or
- 13 (ii) not to cancel the registration.
- 14 (5) If the provider does not make a submission in accordance with the
15 notice, the senior practitioner must cancel the registration.
- 16 (6) If the senior practitioner decides not to cancel the registration, the
17 senior practitioner must tell the provider about the decision.

18 **41 Cancellation notice**

- 19 (1) This section applies if the senior practitioner decides to cancel the
20 registration of a positive behaviour support plan under section 40.
- 21 (2) The senior practitioner must give a written notice (a ***cancellation***
22 ***notice***) to the provider cancelling the registration starting on the date
23 stated in the notice.

Part 5 Complaints and investigations
Division 5.3 Actions after investigation

Section 41

- 1 (3) If the senior practitioner gives a cancellation notice to the provider,
2 the senior practitioner must also take reasonable steps to tell any
3 person whose interests are affected under the positive behaviour
4 support plan about the cancellation.
- 5 (4) The cancellation notice must be given to the provider before the date
6 of cancellation stated in the notice.

- 1 (3) In this section:
- 2 ***protected information*** means information about a person that is
- 3 given to, or obtained by, the senior practitioner or any other person
- 4 who has exercised a function under this Act, because of the exercise
- 5 of a function under this Act by the senior practitioner or other
- 6 person.
- 7 **Example**
- 8 information obtained by the senior practitioner in conducting an investigation
- 9 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 10 does not limit, the meaning of the provision in which it appears (see
- 11 [Legislation Act](#), s 126 and s 132).

1 **Part 7** **Notification and review of**
2 **decisions**

3 **43** **Meaning of *reviewable decision*—pt 7**

4 In this part:

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

8 **44** **Reviewable decision notices**

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

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

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

17 **45** **Applications for review**

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

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

1 **Part 8** **Offences**

2 **46** **Using restrictive practice other than under positive**
3 **behaviour support plan**

4 (1) A provider, or a relevant person for a provider, commits an offence
5 if—

6 (a) the provider or relevant person uses a restrictive practice on
7 another person; and

8 (b) the use of the restrictive practice, or the way in which the
9 restrictive practice is used, is not permitted under a registered
10 positive behaviour support plan for the other person.

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

13 (2) It is a defence to a prosecution for an offence against this section if
14 the defendant proves that the defendant believed on reasonable
15 grounds that the restrictive practice was necessary to prevent serious
16 and imminent injury or illness to any person.

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

19 (3) This section does not apply to a relevant person for a provider if the
20 person was acting reasonably under the instruction or direction of
21 the provider or otherwise in accordance with the provider's policy.

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

24 (4) In this section:

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

1 **47 Failing to comply with direction**

- 2 (1) A provider commits an offence if—
- 3 (a) the senior practitioner gives the provider a direction under
- 4 section 39; and
- 5 (b) the provider fails to comply with the direction.

6 Maximum penalty: 50 penalty units.

- 7 (2) An offence against this section is a strict liability offence.

8 **48 Criminal liability of partner**

- 9 (1) This section applies if a partnership through a partner, servant or
- 10 agent—

- 11 (a) engages in conduct; and
- 12 (b) the conduct is an offence against this Act.

- 13 (2) Each partner (a *liable partner*) in the partnership is taken to commit
- 14 the offence.

- 15 (3) It is a defence to a prosecution for an offence against this Act if a
- 16 liable partner proves that—

- 17 (a) the partner did not know about the conduct that constituted the
- 18 offence; and

- 19 (b) either—
- 20 (i) the partner took reasonable precautions and exercised
- 21 appropriate diligence to ensure the partnership did not
- 22 engage in the conduct; or
- 23 (ii) the partner was not in a position to influence the
- 24 partnership in relation to the conduct.

25 *Note* The defendant has a legal burden in relation to the matters mentioned in

26 s (3) (see [Criminal Code](#), s 59).

- 1 **49 Criminal liability of executive officer**
- 2 (1) An executive officer of a corporation is taken to commit an offence
- 3 if—
- 4 (a) the corporation commits an offence against this Act (a *relevant*
- 5 *offence*); and
- 6 (b) the officer was reckless about whether the relevant offence
- 7 would be committed; and
- 8 (c) the officer was in a position to influence the conduct of the
- 9 corporation in relation to the commission of the relevant
- 10 offence; and
- 11 (d) the officer failed to take reasonable steps to prevent the
- 12 commission of the relevant offence.
- 13 Maximum penalty: The maximum penalty that may be imposed for
- 14 the commission of the offence by an individual.
- 15 (2) Subsection (1) does not apply if the corporation would have a
- 16 defence to a prosecution for the relevant offence.
- 17 *Note* The defendant has an evidential burden in relation to the matters
- 18 mentioned in s (2) (see [Criminal Code](#), s 58).
- 19 (3) In deciding whether the executive officer took (or failed to take)
- 20 reasonable steps to prevent the commission of the offence, a court
- 21 must consider any action the officer took directed towards ensuring
- 22 the following (to the extent that the action is relevant to the act or
- 23 omission):
- 24 (a) that the corporation arranges regular professional assessments
- 25 of the corporation’s compliance with the provision to which
- 26 the offence relates;
- 27 (b) that the corporation implements any appropriate
- 28 recommendation arising from such an assessment;

- 1 (c) that the corporation's employees, agents and contractors have a
2 reasonable knowledge and understanding of the requirement to
3 comply with the provision to which the offence relates;
- 4 (d) any action the officer took when the officer became aware that
5 the offence was, or might be, about to be committed.
- 6 (4) Subsection (3) does not limit the matters the court may consider.
- 7 (5) This section applies whether or not the corporation is prosecuted for,
8 or convicted of, the relevant offence.
- 9 (6) In this section:
- 10 *executive officer*, of a corporation, means a person, however
11 described and whether or not the person is a director of the
12 corporation, who is concerned with, or takes part in, the
13 corporation's management.

1 **Part 9** **Miscellaneous**

2 **50** **Annual report by senior practitioner**

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

11 **51** **Protection of officials from liability**

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

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

1 **52 Protection of others from liability**

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

13 **53 Regulation-making power**

14 The Executive may make regulations for this Act.

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

17 **54 Review of Act**

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

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

- 24 (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	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

- 1 • reviewable decision
2 • territory law.
- 3 ***complainant***—see section 28 (2).
- 4 ***harm*** to a person, means—
- 5 (a) physical harm to the person; or
6 (b) a serious risk of physical harm to the person; or
7 (c) damage to property involving a serious risk of physical harm to
8 the person.
- 9 ***panel*** means a positive behaviour support panel.
- 10 ***person with parental responsibility***, for a child, means a parent or
11 someone else with parental responsibility for the child under the
12 [Children and Young People Act 2008](#), division 1.3.2.
- 13 ***positive behaviour support panel*** means a panel registered under
14 section 21.
- 15 ***positive behaviour support plan***—see section 11.
- 16 ***provider***—see section 8.
- 17 ***registered***, in relation to a positive behaviour support plan, means
18 registered under section 15.
- 19 ***restrictive practice***—see section 7.
- 20 ***reviewable decision***, for part 7 (Notification and review of
21 decisions)—see section 43.
- 22 ***senior practitioner*** means the Senior Practitioner appointed under
23 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 2018.

3 Republications of amended laws

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