

**2021**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**SENIOR PRACTITIONER AMENDMENT BILL 2021**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004*, s 37)**

**Presented by  
EMMA DAVIDSON MLA  
MINISTER FOR DISABILITY  
June 2021**



## SENIOR PRACTITIONER AMENDMENT BILL 2021

The *Senior Practitioner Amendment Bill 2021* (the Bill) is **not** a Significant Bill. It has been assessed as unlikely to have significant engagement of human rights and does not require detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

### OVERVIEW OF THE BILL

The *Senior Practitioner Act 2018* (the Act) commenced on 1 September 2018. The Act created the role of the Senior Practitioner, as well as providing a formal framework for the reduction and elimination of restrictive practices.

The amendments contained in the Bill are administrative and delay the review of the Act until after its fifth year of operation. Currently, a review of the Act must be presented by the Minister for Disability as soon as is practical after the Act's third year of operation. Without amendment, this would be due in September 2021.

In addition to delaying the review and report on the operation of the Act, the Bill necessarily delays the expiry of the corresponding sunset provision as follows:

- Section 54 (1) states that “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”. The Bill amends this timeframe to the 5th year of operation.
- Section 54 (2) states that “this section expires 4 years after the date it commences”. The Bill extends the expiry of Section 54 to the 6th year of operation.

### CONSULTATION ON THE PROPOSED APPROACH

The Restrictive Practices Oversight Steering Group (RPOSG) has been briefed on the amendments and provided input to the draft consultation plan and paper. Key government and non-government stakeholders are members of this group.

The Community Services Directorate sought comment from a range of government, non-government and community stakeholders, including the Education Union, Community and Public Sector Union and the Australian Services Union. No major concerns were identified.

No directorate provided comment on the Bill following exposure draft circulation.

## CONSISTENCY WITH HUMAN RIGHTS

The Bill amends the Senior Practitioner Act 2018, which contains provisions that both engage and promote or limit human rights in order to regulate and reduce the use of restrictive practices on vulnerable people. During the Bill's development, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

### **Rights engaged**

The Bill engages human rights insofar as an extension of the period of time before a review of the Act can occur will allow for any unidentified human rights impacts of the Act to continue.

### ***Rights Promoted***

The Bill engages and promotes human rights insofar as an extension of the period before a review of the Act can occur will allow for a later, but more robust review of the human rights impacts of the Act.

### ***Rights Limited***

Any limitations on human rights by the extension are demonstrably justified in accordance with section 28 of the HRA.

#### ***1. Nature of the right and the limitation (ss 28(2)(a) and (c))***

Given that the amendments in the Bill seek to extend the period before a review of the Act takes place, the extension may delay the identification of any human rights concerns or limitations arising from the operation of the existing legislation.

#### ***2. Legitimate purpose (s 28(2)(b))***

The legitimate purpose of the amendments in the Bill is to allow for a more robust review of the Act to take place, which will ultimately better protect the health and safety of persons under the Act.

#### ***3. Rational connection between the limitation and the purpose (s 28(2)(d))***

The ACT is the only jurisdiction in Australia to have combined child protection; disability (recently including aged care settings under the NDIS); education; and education and care, under the same legislation. There has been a significant level of change since the establishment of the Act, including the inclusion of criminal offences for failure to report, thin market pressures, which describes the risk inherent in insufficient workforce with the required capability to undertake positive behaviour support planning and the ongoing risk of lack of resources to implement effective positive behaviour supports, and the increase in scope for the disability sector to include aged care settings.

Many of the providers operating within the sectors covered by the Act are new to a regulatory approach to the authorisation, reduction and elimination of the use of restrictive practices. These factors, combined with manual data collection methods having only been in place for 12 to 18 months, and with unstable provider practices for submitting plans and reporting, create a lack of trend data and a complex context in which to gauge the effectiveness of the Act's implementation and the efficacy of the provisions in reducing and eliminating restrictive practices.

It is expected that, as providers further embed practices within their organisations, to see an increase or leveling out of the number of plans which include a restrictive practice and the individual instances of use of a restrictive practice before a reduction will be seen.

Accordingly, the amendments in the Bill will provide further time to allow changes to have stabilised and for use of the new Restrictive Intervention Data System (RIDS) platform to be embedded. This will, by extension, facilitate a robust review, supported by actual data from the ACT and which, as a result, will support the identification of any human rights concerns arising from the operation of the Act.

#### **4. *Proportionality (s 28(2)(e))***

The Bill allows additional time before a review of the Act can occur. This is necessary to permit changes introduced by the Act in 2018 across all affected sectors in the ACT to stabilise, for the Restrictive Intervention Data System (RIDS) to be embedded, and therefore to enable a more thorough review.

It is also reasonable and proportionate as the extension of the review timeframe is only for a further two years to cater for the overall implementation of the Act. The Act further contains a range of safeguards designed to address the human rights limitations, including the requirement for authorisation of the plan by a panel, in accordance with guidelines and clear principles, consideration and registration by the Senior Practitioner, limited timeframes for operation and review, reporting and monitoring requirements and clear complaint and independent review mechanisms. It is also an offence to fail to report the use of a restrictive practice.

Given the necessity for which the extension is required, it is considered that there are no less restrictive means available to achieve the legitimate purpose.

## Senior Practitioner Amendment Bill 2021

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Senior Practitioner Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### **Clause 1      Name of Act**

This is a technical clause that sets out the name of the Act as the *Senior Practitioner Amendment Act 2021*.

### **Clause 2      Commencement**

This clause states that the Act will commence on the day after its notification.

### **Clause 3      Legislation amended**

This clause provides that the Act amends the *Senior Practitioner Act 2018*.

### **Clause 4      Review of Act Section 54(1)**

This clause amends the timeframe for the review of the operation of the Act, and the presentation of a report to the Legislative Assembly, from “as soon as practicable after the end of its 3rd year of operation” to as soon “as practicable after the end of its 5th year of operation”.

### **Clause 5      Section 54(2)**

This clause changes the expiry date of Section 54 from 4 years after the date it commences to 6 years after the date it commences.