



**ACT**  
Government

# Senior Practitioner Act Review

Discussion Paper

# DISCUSSION PAPER: STATUTORY REVIEW OF THE *SENIOR PRACTITIONER ACT 2018*

**Please note:** This statutory review is specifically looking into whether the legislation is operating effectively, as intended and without any unforeseen barriers.

This review is **not** looking into all uses and experiences of restrictive practices in general.

## INTRODUCTION

The ACT Government is conducting a review of the *Senior Practitioner Act 2018* (SP Act). This paper explains why we are reviewing the SP Act and provides information about how the legislation operates. It is intended as a resource for service providers, community members, and other stakeholders who wish to share their views about how the SP Act is working.

A restrictive practice is any action, approach or intervention that has the effect of limiting a person's rights or freedom of movement.<sup>1</sup> The SP Act is ACT legislation that provides a formal framework for the reduction and elimination of restrictive practices. The legislation also establishes the ACT Senior Practitioner role, including its powers and functions.

The SP Act regulates the use of restrictive practices by service providers. This means people or entities who provide services in:

- education (including education and care)
- disability, and
- the care and protection of children.

The intent of the legislation is not to enable the use of restrictive practices, but rather to provide a structured approach for supporting providers in reducing and eliminating their use.

Restrictive practices tend to be used with vulnerable people who may not be able to clearly express how these practices affect them, such as people with disability and children. This review will consider whether the SP Act is effectively protecting the rights of people who receive services related to education (and education and care), disability, and the care and protection of children.

## WHY ARE WE REVIEWING THIS LEGISLATION?

Section 54 of the SP Act requires the Minister to review its operation and present a report of the review to the ACT Legislative Assembly as soon as practicable after the end of its 5<sup>th</sup> year of operation, i.e., from 1 September 2023. This review of the SP Act is a statutory review, which means it is required by the legislation itself.

The ACT Government is engaging with service providers and individuals in the ACT community to seek their input about how the SP Act is working. We are interested in any issues around the legislation's operation that may affect its primary purpose – to regulate the use of restrictive practices in line with principles for service providers.

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Restrictive Practices Issues Paper*, May 2020, p 1.

## OVERVIEW OF THE *SENIOR PRACTITIONER ACT 2018*

The SP Act commenced on 1 September 2018. The legislation has 2 key functions, providing:

1. a formal framework to **reduce and eliminate the use of restrictive practices** by service providers, and
2. an operational structure for the **ACT Senior Practitioner role**.

### **Reduce and eliminate the use of restrictive practices by providers**

The overarching aim of the SP Act is to reduce and eliminate the use of restrictive practices by service providers. ‘Providers’ are defined under the SP Act as persons or entities who provide any of the following services to another person:

- education, and education and care (this includes pre-schools and childcare with any education component)
- disability
- the care and protection of children, or
- a service prescribed by regulation.

The SP Act establishes the foundational principle that providers should only use restrictive practices in very limited circumstances, as a last resort, in the least restrictive way, and for the shortest period possible in the circumstances. The legislation also provides principles to be considered by providers in delivering services to people with behaviour that causes harm to themselves or others.

The SP Act regulates the use of restrictive practices in relation to a person, in a way that:

- is consistent with the person’s human rights
- safeguards the person and others from harm
- maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for the use of restrictive practices, and
- ensures transparency and accountability in the use of restrictive practices.

### **ACT Senior Practitioner role**

A key purpose of the SP Act is to create the ACT Senior Practitioner role, which operates from the Office of the Senior Practitioner (OSP), within the ACT Government’s Community Services Directorate. The SP Act defines the Senior Practitioner’s functions and empowers them to:

- monitor, authorise and disallow the use of restrictive practices
- produce and disseminate policies, standards and guidelines to promote best practice, lead sector capacity building and improve awareness to minimise their use, and
- capture and record the use of restrictive practices that are deemed to be necessary.

The Senior Practitioner aims to help vulnerable people in the ACT to achieve a better quality of life, free from unnecessary and unreasonable interventions that limit their human rights. By providing guidance to service providers and the broader community, the Senior Practitioner helps providers, clients and carers to understand what is – and isn’t – captured by the definition of restrictive practice in the SP Act.

The SP Act seeks to protect all people who are vulnerable and potentially subject to restrictive practices. This means the Senior Practitioner’s powers apply to services for people with disability (of any age), children and young people in schools and education and care settings, and children and young people living in out-of-home care.

It is important to note the SP Act regulates the use of restrictive practices by service providers only. The legislation does not apply to close family members or informal carers for the person.

The Senior Practitioner's remit does not extend to people in some settings where there is an existing oversight arrangement specific to the setting. The legislation makes certain exemptions for people receiving care under certain mental health legislation,<sup>2</sup> and those in custodial or prison detention (including Bimberi Youth Justice Centre).

## WHAT IS A RESTRICTIVE PRACTICE?

There are several types of restrictive practices, which can affect people in different ways. The definition below is from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability RC)<sup>3</sup>:

*Restrictive practices are legally authorised and/or socially and professionally sanctioned violence that targets people with disability on a discriminatory basis and are at odds with the human rights of people with disability. Restrictive practices include, but are not limited to, chemical, mechanical, physical and environmental restraint and seclusion, guardianship, forced sterilisation, menstrual suppression and anti-libidinal medication, financial management, involuntary mental health treatment, and other non-consensual or coercive interventions said to be undertaken for protective, behavioural or medical reasons.*

This definition provides a comprehensive description of the mechanisms that may constitute a restrictive practice, in the context of people with disability. However, it should be noted that the SP Act applies to other vulnerable people in the ACT, in addition to people with disability.

The SP Act defines 'restrictive practice' as a practice used to restrict a person's rights or freedom of movement, usually for the primary purpose of protecting the person or others from harm, including:

- **chemical restraint** – the use of a medication or chemical substance for the primary purpose of influencing a person's behaviour (but not a substance prescribed by a medical practitioner for the treatment of a mental or physical illness or condition)
- **environmental restraint** – any action or system that limits a person's ability to freely access their surroundings or a particular thing, or to engage in an activity
- **mechanical restraint** – the use of a device to prevent, restrict or subdue the movement of all or part of a person's body (but does not include the use of the device to ensure their safety when travelling, or for therapeutic purposes)
- **physical restraint** – the use of physical force to stop, limit or subdue the movement of a person's body or a part of their body (but does not include a reflex action of reasonable physical force and duration intended to guide or direct a person in the interests of their safety, where there is an imminent risk of harm), and
- **seclusion** – the sole confinement of a person, at any time of day or night, in a space from which free exit is prevented, either implicitly or explicitly, or is not facilitated.

The definition of 'restrictive practice' does not include:

- reasonable action taken to monitor and protect a child from harm (e.g., holding their hand while crossing the road, or having a fence around a primary school), or
- a practice prescribed by regulation not to be a restrictive practice.

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<sup>2</sup> Persons excluded from the ACT Senior Practitioner's remit include those receiving care under the *Mental Health Act 2015* (to the extent that Act applies) and the *Mental Health (Secure Facilities) Act 2016*.

<sup>3</sup> More information on the Disability RC is provided in Appendix 1, on page 7, below.

## WHY IS IT IMPORTANT TO REDUCE AND ELIMINATE THE USE OF RESTRICTIVE PRACTICES?

We know the use of restrictive practices can have distressing effects on vulnerable people. This was made clear in a July 2023 report from the Disability RC (see Appendix 1 on page 7, below). The report considered accounts of lived experience, and suggested that people with disability may have distressing experiences of restrictive practices, such as:

- trauma, pain, harm and violation
- abandonment and neglect
- fear
- disempowering, humiliating and dehumanising
- cruel and punishing treatment, and
- lifelong trauma and life-altering effects.

Collectively, these experiences suggest the use of restrictive practices may fail to respect the inherent dignity of people with disability. While the report from the Disability RC specifically considers the way people with disability experience restrictive practices, it may also support a better understanding of the possible effects on other vulnerable people.

### Safeguarding human rights

The ACT Government is committed to improving the lives of people who experience vulnerability and may be subject to restrictive practices. This includes upholding their human rights.

The *Human Rights Act 2004* (HR Act) guides the ACT's approach to safeguarding human rights. It makes clear that rights can only be limited if the limitations are reasonable and clearly justifiable in a free and democratic society. The SP Act seeks to protect several human rights established under the HR Act:

- freedom of movement (section 13)
- protection from torture, inhuman or degrading treatment (section 10), and
- protection of the family and children (section 11).

Generally, the use of a restrictive practice will only be justifiable as a potential limit on human rights in situations where there is an imminent risk to safety and the action taken is the least restrictive approach possible.

## WHAT WE WANT TO KNOW, AND HOW TO SHARE YOUR FEEDBACK

This review is looking into whether the SP Act is operating effectively, as intended and without any unforeseen barriers. We especially want to hear from people who have **experienced restrictive practices** (or their family members), or relevant **service providers** working in disability, education and education and care, or the care and protection of children. If you have lived experience of interacting with the SP Act, we want to hear from you about how well the SP Act is operating in the community.

We expect to receive submissions on a broad range of issues relating to the operation of the SP Act. However, you may wish to consider the following questions:

- Has the SP Act had a **positive impact** in its first 5 years?
  - for example, has the SP Act helped to reduce the use of restrictive practices?

- for example, has the Senior Practitioner helped to monitor and regulate the use of restrictive practices?
- Are the Senior Practitioner's functions and powers **appropriate and operating effectively** for reducing and eliminating the use of restrictive practices?
- Have you observed greater **guidance and awareness** of restrictive practices and best practice – in the sector and/or broader community?
- Has the SP Act presented any **barriers** to its aim of reducing restrictive practices?
  - for example, how have the definitions of 'restrictive practice' or 'provider' supported or limited the effectiveness of the SP Act in operation?
- Have you experienced any legal **barriers** in understanding and/or complying with the SP Act's requirements?
- As a service provider, how well do the **functions** of the Senior Practitioner enable you to carry out your role/business?
- Does the SP Act provide an effective **reporting structure** for the Senior Practitioner?
- Do you have any **other comments** about the operation of the SP Act, including any suggestions for improvement?

### How do I share my feedback?

You can provide feedback in several ways:

- upload your written submission to the [YourSay website](#) and/or respond to the survey questions on the YourSay page for this consultation
- mail a hard copy of your written submission to Human Services Policy, Community Services Directorate, GPO Box 158, Canberra ACT 2601
- email [seniorpractitioneractconsultation@act.gov.au](mailto:seniorpractitioneractconsultation@act.gov.au) to request a phone conversation, or for help with sharing feedback in the way that works best for you.

We will also engage with our community partner agencies who provide services or advocate for vulnerable people, as well as people who have lived experience of the use of restrictive practices. The ACT Government has engaged JFA Purple Orange to conduct this targeted consultation to inform the review, including by running workshops with stakeholders.

## APPENDIX 1 – OTHER WORK RELEVANT TO THIS REVIEW OF THE *SENIOR PRACTITIONER ACT 2018*

### **Disability Royal Commission findings on the effects of restrictive practices**

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability RC) was established in April 2019. It sought to respond to community concern over widespread reports of violence against, and the neglect, abuse and exploitation of, people with disability (both recent and historical).

On 23 July 2023, the Disability RC published a [research report](#) that considered restrictive practices, and how to reduce or eliminate their use. While this research provides some useful context at the national level, it defines restrictive practices more broadly than the SP Act. It should also be noted that the Disability RC research report discusses a wide range of contexts, some of which are outside the scope of the SP Act, such as health and justice settings.

The Disability RC research considered the systemic drivers for the use of restrictive practices against people with disability. Other areas of focus included determining which measures and strategies are most effective in reducing or eliminating the use of restrictive practices, and examining whether positive behaviour support is effective in reducing and eliminating their use.

### Report findings

The report's key findings are summarised below:

Finding 1 – restrictive practices are at odds with international human rights obligations

Finding 2 – restrictive practices strip people with disability of dignity

Finding 3 – restrictive practices occur within a system of violence, coercion and control

Finding 4 – positive behaviour support has a mixed and inconclusive evidence base.

### Report recommendations

The report demonstrates how restrictive practices occur within – and are driven by – an extending and encompassing 'ecological system' of violence, coercion and control. The report's recommendations include:

- prohibit restrictive practices
- change attitudes and norms
- acknowledge and address historical injustice
- deinstitutionalise and desegregate
- recognise the autonomy and leadership of people with disability
- utilise trauma-informed support approaches
- adequately resource independent living and inclusion, and
- provide redress for victim-survivors.

## 2021 interim update on the implementation of the Senior Practitioner Act 2018

In September 2021, the Office of the Senior Practitioner (OSP) engaged *With Purpose Solutions* to undertake an independent high-level review of the regulatory tools and powers available to the Senior Practitioner under the SP Act. The resulting report from the interim update on the implementation of the SP Act was presented to the Legislative Assembly in February 2022.

The interim update encompassed 4 discrete perspectives:

- **powers of authorisation**, including licensing and approvals
- **monitoring powers** that support inspectorial practice and an assessment of compliance
- **investigation powers** that support investigative practice and investigating of offences, and
- **enforcement tools** that enable remedy and prevention of non-compliance and application of sanctions or punishment.

### Interim update – findings

The consultant's report noted that, at the time of the review, the regulatory maturity of the OSP was still emerging. The OSP's clear and necessary focus was on communicating with individuals and entities who provide a relevant service (referred to in the report as 'duty holders'), some of whom may not have previously been subject to such regulation. This involved an educative and supportive approach to engaging with providers, to share information about their obligations and what systems they need to have in place to avoid, minimise or seek approval for the use of restrictive practices.

The report found that OSP staff have strong skills and experience in social services. It notes that the OSP, as an emerging regulator, has tended to focus on engaging with providers who were willing, and to some extent, able to comply. The report suggests there may come a point when a focus on providers who are unwilling or unable to comply will warrant a wider use of the SP Act, to prevent and minimise harm from restrictive practices.

### Review recommendations

The report from the 2021 review of the SP Act provided 3 recommendations:

- **Recommendation 1 – delegations:** That the OSP give consideration to which functions and any associated powers under the SP Act are delegated, and what – if any – minimum training or skill requirements are necessary to give confidence to the use of those functions and powers.
- **Recommendation 2 – duty holders:** That the OSP map out its duty holder cohorts/groups and, using appropriate risk-based criteria, broadly prioritise them having regard to existing non-compliance or previous interactions with the regulator.
- **Recommendation 3 – co-regulators:** That the OSP map out co-regulators who have similar or overlapping jurisdiction when investigating, resolving, or responding to a complaint or allegation in relation to restrictive practices.

These recommendations were integrated into the OSP Work Plan for 2021-22. They form part of the short-, medium- and long-term goals for the OSP, for implementation over the following 1 to 3 years.

## 2021-22 consultation on proposed amendments to the *Senior Practitioner Act 2018*

In December 2021, the ACT Government commenced community consultation on 2 proposed amendments to the SP Act. The proposed amendments sought to address several issues that had been identified since the 2018 commencement of the legislation.

### Issues and proposed legislative resolutions

**1. Remove section 7(1)(b)(vi) – verbal directions or gestural conduct of a coercive nature.**

This section had caused significant confusion. Despite its inclusion in the SP Act, coercion would not be approved as part of a positive behaviour support plan for a person. If used in relation to a child or young person, or an adult with disability, it would likely be referred to another oversight body (e.g., the ACT Ombudsman) for a more appropriate response.

**2. Insert a clause to strengthen the authority of regulations made under section 53 of the SP Act.**

While the SP Act allows for the making of regulations, this amendment would facilitate the application of regulations by the Senior Practitioner.

### Consultation outcomes

The consultation led to amendments to the SP Act and the establishments of a Regulation listing prohibited practices.

### Other feedback from the community

The consultation received some written submissions with additional feedback on a wide range of issues that were not relevant to the proposed amendments. This included comments about the way the SP Act is functioning, challenges in meeting the requirements of multiple regulatory bodies in the ACT, information sharing difficulties between government agencies, and other suggested changes to the SP Act. This broader feedback will be considered as part of the statutory review of the SP Act.

## APPENDIX 2 – RESOURCES AND FURTHER READING

Links to several resources about restrictive practices and the SP Act are provided below:

### **The Senior Practitioner Act 2018**

[Revised explanatory statement to the original SP Act \(ACT Legislation Register\)](#)

[Full legislation: \*Senior Practitioner Act 2018\* \(ACT Legislation Register\)](#)

### **Supporting Resources**

[Offences and penalties in the SP Act - Fact Sheet \(Community Services Directorate\)](#)

[Implementation guideline for disability support providers \(Community Services Directorate\)](#)

### **ACT Senior Practitioner**

[Office of the Senior Practitioner \(Community Services Directorate\)](#)

[ACT Senior Practitioner Fact Sheet \(Community Services Directorate\)](#)

[ACT Senior Practitioner Annual Report 2022-23 \(Community Services Directorate\)](#)

### **Disability Royal Commission**

[Media release - research on restrictive practices \(Disability Royal Commission\)](#)

[Research report - \*Restrictive practices: A pathway to elimination\* \(Disability Royal Commission\)](#)

[Royal Commission homepage \(Disability Royal Commission\)](#)