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THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

TENTH ASSEMBLY

Statutory Review of the *Senior Practitioner Act 2018* - Final Report

Presented by
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Minister for Disability
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Statutory review of the *Senior Practitioner Act 2018* (ACT)

Final Report

April 2024

Who We Are

JFA Purple Orange is an independent, social-profit organisation that undertakes systemic policy analysis and advocacy across a range of issues affecting people living with disability and their families.

Our work is characterised by co-design and co-production, and includes hosting a number of user-led initiatives.

Much of our work involves connecting people living with disability to good information and to each other. We also work extensively in multi-stakeholder consultation and collaboration, especially around policy and practice that helps ensure people living with disability are welcomed as valued members of the mainstream community.

Our work is informed by a model called *Citizenhood*.

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1.0 Background

In 2018, the ACT Legislative Assembly passed the *Senior Practitioner Act 2018* (the SP Act), which commenced on 1 September 2018. The SP Act established the ACT Senior Practitioner (SP) role, and its powers and functions, and provided a formal framework for the reduction and elimination of restrictive practices (RP) across sectors where restrictive practices may be identified as an issue – primarily for services provided in the areas of education (including education and care), disability, and the care and protection of children.

Section 54 of the SP Act requires the Minister for Disability to review the SP Act's operation and deliver a report to the ACT Legislative Assembly as soon as reasonably practicable after its fifth year of operation, which completed on 1 September 2023. JFA Purple Orange was engaged to consult with a range of ACT stakeholders regarding the progress of the SP Act.

2.0 Review Focus Areas

The terms of reference for the consultation covered the following:

- the objects and principles of the *Senior Practitioner Act 2018* (ACT) (SP Act)
- whether the intent of the SP Act to provide a framework for the reduction and elimination of restrictive practices in the ACT is being met
- whether the SP Act is operating effectively and supporting the Senior Practitioner's functions and powers
- whether the SP Act presents any legislative barriers to the exercise of the Senior Practitioner's functions and powers
- whether the SP Act provides an effective reporting structure for the Senior Practitioner
- whether the SP Act enables the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework
- the interaction of the role of the Senior Practitioner with other agencies and the interaction of the SP Act with other ACT legislation, and
- stakeholder perspectives on:

- the implementation guideline for disability support providers
- guidelines on positive behaviour support panels and positive behaviour support plans, and
- delegation of the Senior Practitioner's functions.

3.0 Findings

3.1 Should the objects and principles of the *Senior Practitioner Act 2018* (ACT) (SP Act) be amended?

- 3.1.1** *The consultation found there was divided opinion regarding whether the SP Act's scope is too narrow, too broad, or appropriately calibrated. (refer to section 7.1)*
- 3.1.2** *The consultation found there were strong views about whether the language used regarding disability in the SP Act is appropriately rights- and person-centred. (refer to section 7.2)*
- 3.1.3** *The consultation found there were strong views regarding whether the definition of restrictive practices could be further refined, particularly by clarifying the meanings of "reasonable protection from imminent harm" and "non-physical harm", and circumstances where restrictive practices can be applied in health settings. (refer to section 7.3)*

3.2 Is the intent of the SP Act of providing a framework for the reduction and elimination of restrictive practices in the ACT being met?

- 3.2.1** *The consultation found there was general agreement that the SP Act had assisted with building awareness regarding restrictive practices. (refer to section 6.1)*
- 3.2.2** *The consultation found there were strong views regarding whether the definition of chemical restraint needed to be further refined to ensure the intent is met, particularly regarding the definition of medical use. (refer to section 7.4)*
- 3.2.3** *The consultation found there were strong views regarding challenges faced by the Senior Practitioner and the Office of the Senior Practitioner in fulfilling the SP Act's intention regarding the education of service providers and other stakeholders. (refer to section 8.1)*
- 3.2.4** *The consultation found there were strong views regarding the impact of existing service provider and government resource allocation on the capacity to fulfill the SP Act's intentions. (refer to section 8.2)*
- 3.2.5** *The consultation found there were strong views regarding the capacity to collect data and quantify effectiveness of the SP Act in reducing and eliminating restrictive practices. (Refer to section 7.5)*

3.3 Is the SP Act operating effectively and supporting the Senior Practitioner's functions and powers or are there any legislative barriers to the exercise of the Senior Practitioner's functions and powers?

3.3.1 *The consultation found there were concerns regarding the Senior Practitioner and the Office of the Senior Practitioner's capacity to effectively exercise its broad mandate of powers and responsibilities. (refer to section 7.6)*

3.3.2 *The consultation found there were differing views regarding the appropriateness and effectiveness of the Senior Practitioner's powers under the SP Act to impose sanctions and obtain information. (refer section 7.7)*

3.4 Does the SP Act enable the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework?

3.4.1 *The consultation found there were strong views regarding whether there is a need for greater information sharing between the NDIA and associated Commonwealth agencies, such as the NDIS Quality and Safeguards Commission, the ACT Government and service providers. (refer section 8.3.2 and 8.3.3)*

3.4.2 *The consultation found there were significant views regarding the distinct NDIS Commission and SP Act approaches to regulation of unregistered disability service providers. (refer section 8.1.2)*

3.4.3 *The consultation found there were significant views regarding the interaction between NDIS Commission and SP Act definitions and interpretations of restrictive practices. (refer section 8.3.5)*

3.5 Does the SP Act allow the Senior Practitioner to effectively and efficiently interact with other agencies?

3.5.1 *The consultation found there was divided opinion regarding the effectiveness and efficiency of interactions between agencies. (refer to sections 6.2 and 7.8)*

3.5.2 *The consultation found that views were especially strong regarding the effectiveness of interactions between the Senior Practitioner and the Education Directorate.*

3.6 Does the SP Act interact well with other ACT legislation?

3.6.1 *The consultation found there were strong views regarding the challenges caused by overlapping, duplicative or inconsistent legislation, particularly within education and work health and safety fields. (refer to section 7.9)*

3.7 Does the SP Act provide an effective reporting structure?

- 3.7.1** *The consultation found there were strong views among service providers regarding the SP Act reporting workload for service providers. (refer to section 8.2.1)*
- 3.7.2** *The consultation found there were strong views regarding the requirement to report restrictive practices to both the NDIS Commission and Office of the Senior Practitioner. (refer to section 8.3.1)*
- 3.7.3** *The consultation found there were strong views regarding the extent of awareness amongst stakeholders regarding the purposes of reporting, and the extent to which reporting data is collected and shared. (refer to section 7.5)*
- 3.7.4** *The consultation found there were strong views regarding the impact of calendar day reporting requirement under the SP Act (refer to section 8.2.9)*

3.8 What were stakeholder perspectives on the Implementation Guideline?

- 3.8.1** *The consultation found there were not strong opinions expressed regarding the Implementation Guideline, aside from the need to ensure this is updated to align with the SP Act and to amend language used within the Guideline, as recommended above in finding 3.1.3. (refer section 8.4)*

3.9 What were stakeholder perspectives on Positive Behaviour Support Plans?

- 3.9.1** *The consultation found there were strong views about the extent of awareness amongst the community regarding Positive Behaviour Support Plans, their purpose and the processes for developing, registering and implementing these plans. (refer section 8.5)*
- 3.9.2** *The consultation found there were strong views regarding the potential for improvement of Positive Behaviour Support Plan quality and Panel processes. (refer section 8.5)*

3.10 What were stakeholder perspectives regarding the delegation of the Senior Practitioner's powers?

- 3.10.1** *The consultation found there were not strong views expressed regarding the delegation of powers, aside from some concerns regarding the potential for inconsistency of interpretation among delegates and views regarding existing resource allocation provided for performance of delegated functions. (refer sections 7.3.2 and 7.6)*

4.0 Consultation and Engagement Plan

The methodology for our Consultation and Engagement Plan included the use of co-design. A small group of stakeholders, comprising government and community agencies as well as people with lived experience, was assembled to assist JFA Purple Orange design a consultation process best placed to bring helpful and comprehensive input from stakeholders in the timeframe available, and with due regard for stakeholders' wellbeing. The Co-Design Working Group and the ACT Government advised JFA Purple Orange on community stakeholders who would be suitable to approach for the consultation. People could contribute by meeting or talking with personnel from JFA Purple Orange, or by visiting the Senior Practitioner Act YourSay webpage.

Contributors were asked to only contribute as much as they were comfortable with, and were assured the report would be written in a way that minimises any risk of a person being identifiable from a comment they made. For contributors with lived experience of restrictive practices and where there was a risk the conversation may inadvertently trigger remembered trauma, counselling support was made available should anyone have needed it.

4.1 Proposed Co-Design Working Group Composition

The Consultation and Engagement Plan suggested there be at least one co-design group member from each of the following stakeholders:

- ACT representative peak body / advocacy agency for people living with disability
- service provider with experience in supporting persons at risk of, or recipients of, restrictive practices
- person who has had restrictive practices applied to them
- family member of a person who has had restrictive practices applied to them, and
- ACT Government Community Services Directorate.

4.2 Methodology for Appointing Co-Design Working Group Members

From the above groupings, we recommended appointing persons with relevant experience and insight, and with capacity to contribute constructively and positively to the brief. We suggested the ACT Government advise JFA Purple Orange on which community stakeholders would be suitable to approach. JFA Purple Orange then approached those people to brief and enrol them to the group, and to set up arrangements for their preparation, attendance, and payment for members who were not participating in their professional capacity.

4.3 Schedule of Co-Design Working Group Meetings

We conducted 2 co-design meetings, as follows:

Meeting 1 31 January 2024

- to confirm or augment a list of target stakeholders and contacts
- to contribute to identifying the best settings or formats for consultation
- to shape the consultation questions, and contribute to developing the most accessible version of them to assist stakeholders' input to the consultation, and
- to identify key safeguarding considerations.

Meeting 2 20 March 2024

- to consider emerging themes from consultation
- to consider how best to resolve any process/reach issues during consultation, and
- to consider key areas of content for the Listening Report.

4.4 Questions Asked in Co-Design Meeting 1

- Who should be consulted with during the review from within the following groups:
 - education (including education and care) sector
 - disability sector
 - the care and protection of children sector
 - service providers
 - advocacy groups and other relevant bodies, and
 - anyone else?

- How and where should these consultations take place?
 - e.g. appropriate venues and local settings, session length.
- What is the best way to ask the following questions:
 - Should the objectives and principles of the SP Act be amended and if so, how? (see Appendix for objectives and principles)
 - Is the intent of the SP Act to provide a framework for the reduction and elimination of restrictive practices in the ACT being met?
 - Is the SP Act operating effectively and supporting the functions and powers of the Senior Practitioner?
 - Does the SP Act present any legislative barriers to the exercise of the Senior Practitioner's functions and powers?
 - Does the SP Act provide an effective reporting structure for the Senior Practitioner?
 - Does the SP Act enable the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework?
 - How well does the Senior Practitioner interact with other agencies?
 - How has the SP Act interacted with other ACT legislation?
 - What have your experiences been with the disability services providers' implementation guideline?
 - What have your experiences been with positive behaviour support panels and positive behaviour support plans?
 - What have your experiences been with the delegation of the Senior Practitioner's functions?
 - How effectively has the Office of the Senior Practitioner produced and disseminated policies, standards and guidelines to promote best practice, lead sector capacity-building and improve awareness to minimise their use and how can this be improved?
- Should the questions be asked differently depending on who is being consulted and if so, how?

- Given the sensitivity of the subject matter, what steps should be taken to ensure the wellbeing and safety of participants?

4.5 Co-Designed Questions to assist Stakeholder Consultations

Conversation starters for government

1. Should the objectives and principles of the SP Act be amended and if so, how?
According to your data, is the intent of the SP Act to provide a framework for the reduction and elimination of restrictive practices in the ACT being met?
2. Is the SP Act operating effectively and supporting the functions and powers of the Senior Practitioner?
3. Does the SP Act:
 - a. enable the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework?
 - b. allow the Senior Practitioner to effectively and efficiently interact with other agencies?
 - c. interact well with other ACT legislation?
4. What have your experiences been with the disability services providers' implementation guideline?
5. What have your experiences been with positive behaviour support panels and positive behaviour support plans?
6. How effectively has the Office of the Senior Practitioner produced policies, standards and guidelines to promote best practice?
7. How effectively has the Office of the Senior Practitioner produced policies, standards and guidelines to lead sector capacity-building to minimise the use of restrictive practices and how can this be improved?

Conversation starters for service providers/school principals/advocates

1. Should the objectives and principles of the SP Act be amended and if so, how?
2. Is the SP Act helping service providers to reduce and eliminate restrictive practices?

3. Is the SP Act effective and efficient for your organisation?
4. Does the SP Act:
 - a. enable the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework?
 - b. allow the Senior Practitioner to effectively and efficiently interact with other agencies?
 - c. interact well with other ACT legislation?
5. What have your experiences been with the disability services providers' implementation guideline?
6. What have your experiences been with positive behaviour support panels and positive behaviour support plans? If you provide services in other jurisdictions, how does the ACT scheme compare with other state/territory schemes?
7. How effectively has the Office of the Senior Practitioner produced policies, standards and guidelines to promote best practice?
8. How effectively has the Office of the Senior Practitioner produced policies, standards and guidelines to lead sector capacity-building to minimise the use of restrictive practices and how can this be improved?

Conversation starters for people with lived experience

1. Can you share how restrictive practices have been applied to you or your family member and where these were applied?
2. How did the use of a restrictive practice make you feel?
3. What are alternative approaches that can be used instead of a restrictive practice?
4. Do you have any other concerns that you would like to tell us about?

5.0 Who was consulted?

At the commencement of our engagement, the Community Services Directorate advised approximately 550 identified stakeholders about the consultation and invited them to express interest via JFA Purple Orange. Automatic replies to this email assisted in identifying stakeholders who were no longer in their roles and their subsequent replacements. New stakeholders identified through auto-reply messages were invited to participate in consultations.

During the first meeting of the Co-Design Working Group, relevant stakeholders were further identified and refined, and the composition and quantity of our consultation sessions was discussed. Stakeholders identified by the Co-Design Working Group were then contacted by JFA Purple Orange.

On 28 February 2024, the Senior Practitioner Act YourSay webpage went live. The YourSay page provided the option to respond to a survey or upload a written submission and included a document library with a discussion paper in 3 formats (full length, a plain English 1-page summary, and an Easy English version). JFA Purple Orange's sessions for people living with intellectual disability, people with lived experience of restrictive practices, and frontline workers, were advertised on the YourSay page. YourSay consultation closed on 10 April 2024.

Because of the heavier demands often made of First Nations community leaders and stakeholders in public consultation, this consultation methodology was supplemented by drawing on a recent ACT report¹ that included First Nations views on comparable matters.

We conducted a total of 17 consultation sessions with 56 contributors. Consultation sessions were held with:

- Executive Branch Manager, Regulation, Assurance and Quality;
- Office for Disability;
- Director of Guardianship, Public Trustee and Guardian;
- Public Advocate and Children and Young People Commissioner;
- Children, Youth and Families Division;

¹ 'Towards A 10-Year ACT Disability Strategy' Listening Report 2022.

- Education Directorate;
- senior service provider representatives;
- Catholic Education, Archdiocese of Canberra & Goulburn;
- school principals;
- the lived experience community;
- education unions;
- frontline workers;
- Senior Practitioner and staff; and
- peak advocacy organisations.

6.0 What people said about whether the Senior Practitioner Act is fulfilling its intention of reducing restrictive practices

From the range of conversations conducted, there was general consensus regarding the suitability of the aims and intentions of the legislation, but differing opinions regarding the extent to which these were being met. Several contributors believed the legislation had improved clarity regarding the definition of restrictive practices and this had helped reduce restrictive practices.

6.1 Growing awareness of the Senior Practitioner Act

Some contributors said awareness was beginning to build within the service provider sectors regarding restrictive practices and positive behaviour support plans, notwithstanding the challenges posed by staff movements across sectors. For example, while an ACT Government official highlighted the difficulties posed by staff moving between sectors with different regulatory regimes, such as from health or mental health service provision to service provision regulated under the SP Act, they stated that awareness has begun to “*trickle through*” in the last three years. An Education Directorate official said “*we can see data that indicates that it has impacted restrictive practices in our domain and consequently it has met its purpose.*” A service provider peak body said “*having a framework within which to operate, train staff and improve the delivery of support for participants with complex needs, is welcomed by the sector.*”

The same ACT Government official cited an internal audit, which showed that service providers make retrospective emergency reports following educational visits by the Office of the Senior Practitioner. In their view, this displayed a willingness to comply once awareness is raised. They expressed the view that there should not be punishment for such reporting. Another government official, meanwhile, identified education as an activity that the ACT has done better than some other jurisdictions. They added that consciousness is building regarding the role of positive behaviour support plans as “*pathways*” and that this would not have occurred without the legislation.

6.2 Good interactions between some agencies

Some contributors felt the regulatory agencies, such as the ACT Human Rights Commission, the Ombudsman and the Office of the Senior Practitioner interact well with each other, providing “*an umbrella of protection*”. They identified quarterly inter-agency meetings and clear information sharing as factors that facilitated good relationships.

Anecdotal evidence was cited by some contributors regarding reductions in restrictive practices following interventions by high-quality positive behaviour support practitioners. A government official said they had seen instances where the “*reductions in restrictive practices has been significant and incredible and that’s all because of an incredible PBS [positive behaviour support] practitioner [and] a provider that is well across RP.*” Other contributors stated that the quality of positive behaviour support plans was improving following the wider usage of the Behaviour Support Plan Quality Evaluation Tool (BSP-QEII). Some contributors also offered anecdotal positive experiences regarding positive behaviour support panels.

A government official identified there had been an improvement in plan quality more recently and since the introduction of the BSP-QEII assessment tool. They said “*there’s been education sessions that have been run. Each panel has a chairperson and there’s been training run with them regarding [the BSP-QEII], so we are seeing an improvement in the quality of plans. Out of that, we’ve had providers talked through by panel the steps that could be tried before using a RP. They’ve realised they don’t need restrictive practice.*”

6.3 Good relationships between Office of the Senior Practitioner and some service providers

A peak service provider representative said *“providers have reported having a positive relationship with the Office of the Senior Practitioner and its staff. The Office has taken a largely collaborative and educative approach to engaging with providers, which is welcome considering the relatively short period of time that the sector has been operating under this legislation, and the constantly changing policy environment.”*

7.0 What people said about possible improvements to the current legislation and its implementation

While the intent and objectives of the SP Act were supported, contributors identified numerous areas where they believed improvements could be made.

7.1 Scope of legislation

Some contributors felt the legislation was too broad, and that the diversity of needs of service providers did not align with a one-size-fits-all approach, particularly in education.

An independent education official, for example, said the legislation could be more tailored to the needs of the education sector. They suggested separate legislation for education or, if that is not possible, to allow the sector to drive the implementation of the SP Act in the education sector. They suggested enshrining within legislation an education-specific role within the Office of the Senior Practitioner. Greater division into separate *“channels”* for each sector should be evident in the SP Act, with separate implementation plans for each sector. Some education officials suggested that oversight by the Senior Practitioner of the education sector be removed to align the ACT with other jurisdictions. Other education officials, meanwhile, said there could have been more consultation with their sector prior to the passing of the legislation. They stated they had worked closely with schools on helping them understand restrictive practices, particularly environmental restraints.

On this theme, one ACT Government official said the legislation’s broad scope reduced the *“buy-in”* from all sectors, with multiple respondents particularly identifying education. As evidence of this, multiple contributors referred to the lack of positive behaviour support

plans in education. Some said the relationship had improved in recent years, while others said not enough was being done to improve compliance and co-operation. Instances of recent experiences of unreported restrictive practices being used in education settings were given by multiple respondents. The Education Directorate, meanwhile, stated *“in EDU, we absolutely report in the spirit of the Act, we report everything to ensure we work within the intent of the Act. When you get to individual definitions, you can see contradictions. For example, physical restraint: we have been on [the] receiving end of instructions to report RP (e.g., removing hands from child’s head to prevent harm to other children and staff themselves).”*

Alternatively, other government officials, as well as people with lived experience, thought the scope of the legislation was too narrow, and sectors such as aged care, mental health and general health should be included. An ACT Government official, for example, said they wished the legislation didn’t exclude mental health and general health facilities because they did not see the need for this exclusion. They also expressed frustration regarding difficulties in implementing the legislation in aged care settings. Another government official, meanwhile, said the ACT Human Rights Commission had asked them why the SP Act does not extend to the aged care sector.

Opposition to the existing scope of the legislation was not universal. A service provider peak body said the existing scope is a strength, as *“having a consistent approach across different sectors, especially with regards to children’s services, is beneficial and helps to drive broader community understanding of restrictive practices and their use.”*

7.2 Language of legislation

There was a strong view expressed by several contributors that the language used in the legislation should be amended. Suggestions for amendment were:

- emphasising capacity-building over compliance

Both service providers and disability advocacy peak organisation representatives said there needed to be a greater emphasis on capacity-building in the legislation, rather than compliance. Some service provider representative descriptions of the system included:

- “*us versus them situation*”;
- “*compliance misses the nuance*”;
- legislation needs to be more “*nuanced to reflect day-to-day realities*”; and
- there was more support in the first years following the introduction of the legislation, but the attitude has shifted towards compliance and on using positive behaviour support panels and plans.

Some service provider representatives said the objectives do not currently state that the Senior Practitioner must work with service providers, and this should be added to the SP Act.

- aligning with the ACT’s Disability Strategy, normalising inclusion

One disability peak organisation representative expressed the need for more nuance in the legislation because families are currently fearful of potential consequences. They also stated that the language needed to align with the ACT’s Disability Strategy. An ACT Government official said they thought that service providers are responding to an imposed regulatory framework, rather than a shift in understanding regarding what is best for the person receiving the service. They said “*we haven’t normalised inclusion yet. We still have awards for inclusion. It would be good if it was just the way [we] behaved.*”

- anchoring human rights and dignity in language.

A service provider representative said the language of the legislation is “*too deficit-based and should be more anchored in human rights.*” They said existing legislation is too reactive rather than proactive. School principal representatives, meanwhile, stated that the SP Act needs to “*remember the dignity of the student.*”

7.3 Refinement of definition of a restrictive practice

Multiple contributors expressed a strong view that ambiguity regarding the existing definition of restrictive practices in the legislation may be contributing to the following issues.

7.3.1 Anxiety among families and service providers, with this leading to the failure to act in appropriate circumstances

A disability peak organisation representative said that *“staff are terrified about using a restrictive practice, and of bystanders being assaulted, and the provider doing nothing about it because they are afraid of using restrictive practices.”* They argued the legislation needed to be updated to properly manage immediate safety issues without risking penalties for non-compliance. A carers peak body, while expressing the distress experienced by carers when restrictive practices are applied to those they care for, said carers faced challenges when trying to manage *“adverse impacts and challenging behaviours”* in the home environment according to positive behaviour support plans. They added: *“[w]ith limited guidance available on restrictive practices, they are frequently left to manage these behaviours at home without sufficient support or training.”* On this theme, a disability peak organisation said families *“want to know that they have the ability to manage safety in critical moments without being slapped on the wrist or having the kids taken away.”* Given the SP Act only regulates service providers, this perception could demonstrate the need for further education of families regarding the SP Act’s scope and application. Such training, according to a carers peak body, is *“essential”*. They recommend enhancing *“the function of the Senior Practitioner to either provide support, education, and guidance to carers and families about restrictive practices and managing challenging behaviours at home, or to endorse initiatives that do so.”*

During the 2021-22 consultation on proposed amendments to the SP Act, a service provider, when discussing their perception of the tension between maximising safety and the least restrictive and last resort object of the SP Act in section 6 b), suggested *“‘[l]ast resort’ could apply to the requirement when all other less restrictive options have been considered and assessed as inappropriate at that time, rather than all other options have been tried and exhausted.”* This service provider also proposed an *“exceptional circumstances pathway”* for *“individuals who require a form of support that challenges the limits of the NDIS (Restrictive Practices and Behaviour Support) Rules 2018”,* such as *“children and young people who are deeply traumatised, who cannot achieve calm in the presence of an adult.”*

7.3.2 Differing interpretations and applications by Office of the Senior Practitioner

Some service provider representatives stated that turnover in staff in the Office of the Senior Practitioner caused ambiguity, as interpretation of legislation varied depending on the staff. An Education Directorate official added, *“interpretation is open in different scenarios. It is way too open to interpretation. What is and isn’t an RP is very clear in the legislation, but very unclear in implementation.”*

7.3.3 Risk to service provider staff, such as teachers

A public school principal said *“the element of fear that the Act overlays onto school communities can be prohibitive. People are putting themselves at great risk to avoid being in breach of the [SP] Act”*. Another principal said they put themselves into a classroom where they perceive a danger to their staff, rather than place their staff into that situation. Education union representatives expressed a similar view that teachers feel that *“school systems are exposed to the worst kind of behaviour and [teachers] can’t do anything about it – this is the message that is on the ground”*, and there needed to be greater education regarding what teachers can and cannot do, especially given the nature of a school environment.

7.3.4 Further clarity regarding what constitutes reasonable protection from imminent harm, including whether this extends to non-physical harm

One ACT Government official said they had concerns that section 7 1) c) i) of the SP Act regarding reasonable action to monitor and protect a child from harm can be used *“as a carve out for people”* and that the definition of ‘reasonable’ was not clear. They acknowledged there would be resistance within the sector to amendment of this section and there would be difficulty with striking the right balance. Education union representatives said the definition of ‘harm’ should be clarified because there was uncertainty regarding whether it applied to non-physical harm, such as psychosocial harm. They recommended amending section 10 b) i) of the SP Act from *“protection from imminent harm”* to *“protection from risk of harm”*, as is legislated in Victoria. A YourSay contributor, meanwhile, expressed the need to provide further clarity regarding the definition of “imminent”. During the 2021-22 consultation on proposed amendments to the SP Act, a service provider provided further categories of harm they believed needed further clarity *“psychological*

harm, emotional harm, loss of function, isolation, and deterioration in quality of life.” This service provider also said that further specificity was possible regarding definitions of mechanical, physical and seclusion restraints.

7.3.5 When restrictive practices can be applied in health settings, such as during vaccinations

A disability peak organisation representative expressed the need to provide further clarity around what constitutes *“an intervention that’s therapeutic or bringing immediate safety, as opposed to something that is plainly restrictive.”* An ACT Government official expressed concern regarding the attitudes they’ve heard expressed by some health professionals regarding their use of restrictive practices, such as *“we need to keep [the patient] safe”*. The official said that undergraduate professionals are not adequately taught that *“the job is not to keep people safe, it’s to allow people to access the community and live [their] lives.”*

The parents of a person subject to restrictive practices gave an example of the reluctance to authorise the use of a physical restrictive practice by support workers to facilitate the COVID vaccination of their non-verbal child who lives with intellectual disability and autism. The parents stated that restraint is authorised and permitted during their children’s dental appointments, but they were advised by the Office of the Senior Practitioner that as the COVID vaccination was not mandatory, the use of a restrictive practice was not authorised. They said emergency authorisation was ultimately granted.

7.3.6 What constitutes a non-physical restrictive practice, particularly in the school setting

An Education Directorate representative said *“the one definition that causes the most issue is [the] definition of environmental restraint. The definition reflects what happens in [the] school environment. I don’t have the right to freely get a pen from another student, or to freely leave the school. We have big issues because of that interpretation of the definition. The students can’t just access lunch when they want because their day is very structured. The [SP] Act itself refers to, in many cases, persons with disability. We’ve got about 50,000 students in our system, and four settings specifically around students with disability.”* Senior independent education sector officials spoke about the ambiguity regarding non-physical restrictive practices, saying *“you’re not allowed to use coercion to restrict movements. What*

does coercion mean? Can I not say to a kid ‘you can’t leave this room for 10 minutes’ because it’s an RP? Possibly.”

A YourSay survey respondent provided examples of restrictive practices that providers and support workers do not, in their experience, perceive as meeting the definition of restrictive practices such as *“restricted access to pornography, finances, internet, mobile device, dating websites, eating at a public restaurant / cafe, removal of a particular item from their person and environment.”*

7.4 Need for greater clarity regarding chemical restraints

Concern was expressed strongly across almost all contributor groups regarding the effectiveness of the existing regulation of chemical restraints. Concerns included the following:

7.4.1 Concerns around different approaches to the reporting of chemical restraint

An ACT Government official raised concerns regarding the Education Directorate’s approach to the reporting of chemical restraints regarding their obligations under the SP Act. The Education Directorate, meanwhile, said that while students may take medication at home, they are not aware of any instances of chemical restraint being administered in an education setting.

7.4.2 The need for greater awareness in disability and aged care sectors about chemical restraint

An ACT Government official said there was a need for greater understanding within the disability and aged care workforces regarding the proper reporting of chemical restraints.

7.4.3 The long-term use of medication that subdues the person, without adequate opportunities for medical review

Advocates for people with lived experience of restrictive practices expressed concern that a significant portion of their membership are prescribed medication for the purpose of *“subduing”*, which they remain on for the long term because of inadequate medical reviewing. Examples were given of instances where positive behaviour support plans

specified the need for the review of medication, but this was not possible due to problems of availability of mental health services.

7.4.4 The administrative burden placed on families to report use of medication

Service provider representatives shared a range of views on chemical restraints, including a need to recognise that changes to medication can take time, and that regular restrictive practice authorisation renewal places an administrative burden on families. This suggests a lack of clarity in the community around the reach of the SP Act, given it only applies to service providers (not family members providing informal care).

7.4.5 The ambiguity regarding whether a medication is for a diagnosed condition or for behaviour modification

Concerns were expressed that it was not always clear whether a medication was prescribed for a specific condition, and is therefore a therapy, or whether its primary purpose was in some way to subdue the person. If the latter, this could still be regarded as therapeutic if it meant the person was better able to engage in the ordinary rhythms of mainstream community life. However, if the latter was because it made it easier for others to manage the person, without a direct benefit to the person's own life chances, then generally contributors felt this was more likely to be a restrictive practice. Accordingly, contributors felt there ought to be greater clarity.

7.4.6 The perceived need for training to General Practitioners regarding restrictive practices

Following on from the previous point, a disability peak advocacy organisation representative contemplated whether General Practitioners receive sufficient information regarding restrictive practice obligations under the SP Act.

7.4.7 The use of Medical Purpose Forms by some service providers to circumvent reporting requirements

One contributor said that some providers were using the Medical Purpose Form as a “work around” to take the use of medication out of the scope of the SP Act, negating the need for a positive behaviour support plan.

7.4.8 The inconsistency between the SP Act, the Mental Health Act 2015 (ACT) and NDIS legislation

An ACT Government official said there would be benefit in having greater consistency between the SP Act, the *Mental Health Act 2015* (ACT) and NDIS legislation regarding the definition of chemical restraint, as they believed there were ambiguities at the intersection between these pieces of legislation.

7.4.9 Use of Restrictive Intervention Data System (“RIDS”) to report reduction of chemical restraint

During the 2021-22 consultation, a service provider said that the RIDS *“does not allow us to regularly enter any reduction of medication as a result of appointments with medical practitioners. To accurately reflect this change for young people, we would need to create a new PBSP [positive behaviour support plan], that would need to be registered each time resulting in an additional administrative burden on our service.”*

7.5 Extent to which current legislative requirements support the collection and use of data to quantify the effectiveness of the legislation

There was broad acceptance across most contributors that there was a need for more clarity regarding the purposes served by reporting. Concern was also expressed regarding the perceived limited availability and usage of data obtained from reporting to quantify whether a reduction is occurring, and to *“close the feedback loop”* by using the data to further reduce and ultimately eliminate restrictive practices. A disability service provider said they have *“no idea what the OSP [Office of the Senior Practitioner] does with the extensive data they receive from us, if it supports them to work with government to change things for people, health, housing outcomes etc. I could imagine that it could enable them to go back to medical professionals and say ‘it seems like a lot of people are being prescribed this... let’s talk about why’. [At the moment] this is the service provider’s job. We have to educate the doctor on RPs. This could be informed by data, it could be happening in the background, but I don’t know. It feels like an information vacuum.”*

Some ACT Government officials identified challenges for using collected data to quantify whether a reduction in use of restrictive practices has occurred, included:

- the legislation’s scope is broad;

- the limits on resources devoted to Senior Practitioner educative and implementation functions;
- the challenges posed by spikes in retrospective reporting following Senior Practitioner awareness-raising activities; and
- a gap in the collection of data regarding why a cessation of reporting has occurred.

7.6 Breadth of mandate of the Office of the Senior Practitioner

Concern was expressed by various contributors regarding the Office's capacity to simultaneously perform multiple functions, which some argued may conflict with each other. Issues raised included the following.

7.6.1 A lack of focus in the legislation regarding which function should take priority

An ACT Government official said that the objects in the legislation didn't sufficiently clarify the Office's priorities. They said *"we're on every side of the coin: setting up the framework, registering the plans, needing to regulate the use of those. Being involved in every step, the objects don't make clear if there is a focus for us: if we are all 3 at once, it's very difficult for staff members to do each function all in the same day."* They also noted their responsibility to conduct research under section 26 of the SP Act.

7.6.2 The need to consider the sufficiency of resources to perform all mandated functions

Some contributors speculated whether the quantity of resources currently allocated to the Office of the Senior Practitioner are adequate for meeting their broad mandate. One YourSay contributor compared the Office of the Senior Practitioner's 6 staff members with the *"hundreds"* employed by the WorkSafe ACT who, they said, perform similar functions.

7.6.3 The capacity to maintain relationships while being both educator and enforcer

A contributor commented on the potential conflict between the Office of the Senior Practitioner's roles as educator and regulator/enforcer of service provider obligations under the SP Act. The former relied on the building of relationships, while the latter could adversely affect those relationships.

Service provider representatives spoke about the educator and regulator roles, saying that in the early stages of implementation, the focus appeared to be on building sector relationships and capacity, and the balance had now shifted to one that is more characterised by regulatory enforcement.

Some school principals said visits from the Office of the Senior Practitioner to schools had a focus on enforcement rather than capacity-building, with limited information or notice prior to the visit. This may suggest that some principals have not been made aware of the jointly designed Purposes of School Visits document.

Some school principals stated that more conversations and open collaboration between the Office of the Senior Practitioner and the education sector could help improve the relationship between them, with a better balance between compliance and sector capacity-building. Education union representatives said it was harder for the Office of the Senior Practitioner to perform public relations or education roles when they also have powers to issue consequences that might be deemed punitive. They suggested the removal of penalties, including those under section 46 of the SP Act, saying doing so would align the ACT with other Australian jurisdictions.

Reinforcing this point, a contributor in a separate consultation session said the Office's role in the authorisation of restrictive practices has led to them being perceived as "*authorisers*" or as a licensing body. The Office's function in registering plans, they said, conflicts with their key messaging on the need for the reduction and elimination of restrictive practices.

By contrast, a contributor said the ACT Human Rights Commission's Complaints Unit conciliation process was a "*non-punitive way of achieving outcomes*" for a person living with disability and "*doesn't fracture their relationship*" with the person.

7.7 Difficulty imposing sanctions

Various contributors expressed concerns regarding the capacity to enforce sanctions under the existing legislation. These concerns included the following:

7.7.1 The evidentiary and procedural challenges involved in the Director of Public Prosecutions accepting a brief or to ensure a conviction

A government official said they had identified a difficulty in imposing sanctions under the legislation, as this would require the Director of Public Prosecutions to accept a brief. They stated this would require a severe breach, which would likely simultaneously attract criminal sanctions. They stated that on-the-spot fines would be the only avenue for imposing sanctions.

Another government official stated that the consequences for ignoring the intent of the legislation were not clear enough to service providers. They cited examples of what they viewed was criminal conduct, such as “*people being deprived of food, locked up*”, but that criminal sanctions were not imposed for various reasons (such as perceived lack of legal capacity of a person involved).

7.7.2 The limitations imposed regarding the issuing of directions under sections 26 h) and 39 of the SP Act to instances where the Senior Practitioner has registered a plan or investigated

An ACT Government official said the circumstances where the Senior Practitioner can issue directions under section 26 h) and section 39 of the SP Act were too limited. They said “*it can only be done in limited circumstances at the point that a plan is being registered or if we have to investigate.*”

7.7.3 A lack of clarity regarding the length of investigation required under section 31 of the SP Act

Some ACT Government officials stated there could be further clarity regarding the requirements and procedural steps involved in an investigation by the Senior Practitioner, such as increased guidance regarding the required time frames for investigation.

7.7.4 The use of ‘may’ rather than ‘must’ in sections 13 and 22 of the SP Act regarding service provider positive behaviour support plan obligations

An ACT Government official said it was difficult to use compliance measures to require providers to take positive behaviour support plans to positive behaviour support panels because section 13 and sections 22 1), 3) and 4) of the SP Act use ‘may’ rather than ‘must’.

7.7.5 A lack of clarity regarding the Senior Practitioner's exercise of discretion under section 22 of the SP Act

An ACT Government official wanted further clarity regarding the relevant considerations for the Senior Practitioner when exercising their discretion under section 22 (3) of the SP Act to require a positive behaviour support panel applicant to provide additional information, and under section 22 (4) of the SP Act when deciding to refuse to consider an application any further.

7.8 Interaction with other systems

There were various views expressed regarding the challenges in the arrangements for the SP Act's interaction with the ACT health system. These included the following:

7.8.1 the need for consistent regulation of chemical restraints when a person moves across systems

An ACT Government official stated that the interaction between health, mental health, aged care and community services agencies needed to be improved regarding the use of chemical restraints. This view was also strongly expressed by people with lived experience of restrictive practices. A disability advocacy organisation said the SP Act needs to align with the ACT Health Strategy.

7.8.2 the need for expanding the Senior Practitioner's powers to access sensitive information from adult forensic health facilities

An ACT Government official stated that there needs to be greater clarity around a process for when sensitive information can be requested from adult forensic health agencies by the Office of the Senior Practitioner, in the same way sensitive information can be requested by Official Visitors under section 39 of the *Children and Young People Act 2008* (ACT).

Regarding this issue, during the 2021-22 consultation, a service provider said they:

...experienced situations where young people are released from Bimberi Youth Justice Centre with high levels of psychotropic medication. They often are released without a formal diagnosis, an accompanying Medication for Purpose form (MFP), or an ongoing prescription. Our staff have requested this information from Forensic Mental Health Service prior to a young person's release and have had the request refused, citing they are not required to provide a MFP form or to share information about the child/young person.

Due to mental health service's refusal to provide this vital information about vulnerable young people, young people are left with the sole responsibility of attending follow up appointments with a medical practitioner for ongoing management. Often young people refuse to attend their follow up appointments, or CYPS as their legal parent are unwilling to agree to [service provider] (the young person's primary carer) administering medication without accompanying medical advice. This results in the young people's mental health and wellbeing put at risk as they abruptly ceased medication.

7.9 Interaction between the SP Act and other legislation

Contributors identified various interactions between the existing SP Act and other ACT legislation that could be clarified. Multiple peak representative bodies recommended mapping of all legislative reporting pathways and clarifying intersections, and reviews designed to identify duplications of reporting processes. Other observations regarding the interaction with other pieces of legislation included the following:

7.9.1 *The relationship between restrictive practices, the Reportable Conduct Scheme, Codes of Conduct, and Disability Standards for Education in education settings*

An official from the independent education sector cited difficulties posed by the intersection between the SP Act, Reportable Conduct Scheme, *Safe and Supportive Schools Policy and Procedures* and their school Codes of Conduct. Education union representatives said that a single incident involving a student could involve the Office of the Senior Practitioner, the Ombudsman (regarding reportable conduct), Access Canberra (for working with children permits), the Teacher Quality Institute (for teacher registration), the Education Directorate (for employee misconduct), the Human Rights Commission, and the police. They said that intersecting regulations meant *"the fear is overwhelming. If you are the person on the ground, it is too difficult to be across all those things. You can't be because there are so many different things in place."* They recommended *"a consultative body of work is undertaken to conclusively outline the regulatory overlap."*

While multiple ACT Government officials felt the interface between restrictive practices and reportable conduct worked well, others suggested the interaction could be further refined. The Office of the Senior Practitioner has a Memorandum of Understanding (MOU) with the ACT Ombudsman's Office to guide the ACT Government's response where an action can be classified as both a restrictive practice and reportable conduct.

7.9.2 The implications of restrictive practices used in education contexts on rights granted to students by the Commonwealth’s Disability Discrimination Act 1992 and the ACT’s Education Act 2004

This was raised with particular concern regarding the right to learn in-person. In prior consultations with the ACT Government, First Nations communities identified cultural and physical safety and being safe from bullying in school as important considerations².

Independent education representatives said risk aversion of service providers caused by awareness of their obligations under the SP Act leads to conflicts with their obligations under the Commonwealth’s *Disability Discrimination Act 1992 (Cth)* as *“the disabled student does not get the same fair go as other students. [There’s] the point about learning most when we’re outside our comfort zone but being outside [their] comfort zone increases the risk for students with complex needs.”* They added *“to manage the situation where you have kids who needs to be safe, a teacher who needs to be safe, you need an incredibly skilled teaching practitioner and skilled team of people around them... The anxiety that’s created with the SP Act (and other regulations) is ‘let’s just let him play lego.’”*

A government official said *“some of the restrictions that education put into place don’t let kids access school which flies in [the] face of Education Act [2004]. They can decide the place where kids get education such as having to get educated at home, which I believe is a restrictive practice.”* They said the Education Directorate’s view was *“they should be responsible for education not the Senior Practitioner.”* They stated that in the Catholic and Independent education sector, there was more acceptance of the Senior Practitioner’s educative function. Disability peak advocacy organisation representatives shared concerns regarding access to inclusive education for students and questioned how much interaction there is between the Senior Practitioner and the Director-General of Education. Education Directorate representatives said there were difficulties balancing a student’s right to be educated in school with Work Health and Safety obligations.

² ACT Government, ‘Towards a 10-year ACT Disability Strategy Listening Report 2022’ Section 2 Experiences of Aboriginal and Torres Strait Islander people with disability, 30.

7.9.3 Ambiguity regarding division of responsibility to investigate between the Education Directorate, the Ombudsman and the Senior Practitioner

An ACT Government official stated there needed to be greater clarity regarding the division of responsibility to investigate between the Education Directorate, the Ombudsman and the Office of the Senior Practitioner. They stated that the scope of the Education Directorate and the Ombudsman's powers doesn't entirely cover restrictive practices. When these agencies are investigating, they said this *"makes it hard to decide whether to progress with a matter or sit and wait it out. If you do [wait it out], is that the best thing for that person?"*

7.9.4 Ambiguity regarding how to balance work health and safety obligations with the SP Act regulations

Service provider representatives and education sector representatives said that occupational health and safety obligations to protect workers from occupational violence conflicted with obligations under the SP Act. Education union representatives referred to obligations under section 28 b) of the *Work Health and Safety Act 2011* (ACT) which *"requires workers to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons"*. An ACT Government official, meanwhile, said service providers can sometimes institute blanket organisational policies designed to comply with work health and safety obligations, which result in the increased use of restrictive practices. They said *"locking of doors is an easy one to consider. The boundary between organisational policy to keep staff and property safe and restricting access. Bag searches in [the] residential environment: is that restrictive practice or something that everyone is subject to? They still need to apply RP on case to case [basis]. But [this] can lead to staff members assuming that [it is] not a RP because it's in organisational policy. We've asked organisations to submit impact statements regarding how they are minimising impacts"*.

7.9.5 Child protection system

During the 2021-22 consultation, a service provider said they *"experienced challenges with multiple regulatory bodies in the ACT and their respective Acts competing with each other such as the Privacy Act 1988. There is no overarching body available to navigate how these Acts should work together to support the children and young people who are at the centre of this need. Working in silos does not help to keep children and young people safe."* They

added they were concerned regarding the potential for their organisation to be financially penalised due to this regulatory ambiguity.

7.9.6 Carers Recognition Act 2021 (ACT)

A carer peak body recommended aligning the SP Act with the *Carers Recognition Act 2021* (ACT) by “*changing the definition of ‘informal carer’ in s 8(2) to refer to ‘carer’ as per s 6 of the Carers Recognition Act 2021.*” They said by doing so, existing ambiguity regarding the SP Act’s application to foster and kinship carers can be rectified. This ambiguity was also identified by a government official working in child protection. The official said that despite the existing training provided to foster and kinship carers, these carers were not always clear on whose responsibility it is to report a restrictive practice and the implications for them if they do report. They were unsure whether existing training for foster carers through the Australian Childhood Foundation covers restrictive practices and reporting. Another government official expressed surprise about “*how few [positive behaviour support plans] have been developed and queried whether all providers sufficiently understand their obligations.*”

8.0 Resource and implementation considerations in the achievement of the SP Act’s objectives

8.1 The Senior Practitioner’s educative function

Contributors highlighted challenges limiting the effectiveness of the Senior Practitioner’s educative function and areas where further education was necessary. Feedback included the following:

8.1.1 The rate of staff turnover in the sector

A disability peak advocacy organisation representative shared their concern regarding staff turnover in disability and related sectors and the ensuing loss of knowledge.

8.1.2 *Difficulty reaching non-NDIS registered disability service providers who “don’t know what they don’t know”*

A government official expressed their concern regarding the level of awareness that non-NDIS registered disability services have about their obligations under the SP Act. They cited examples where a significant physical restraint had been used by service providers, yet these providers were unaware of their need to report its use. They said the Senior Practitioner needed to be more proactive in reaching this cohort, because new providers “*don’t know what they don’t know*”. During the 2021-22 consultation, a service provider expressed concern regarding a “*worrying trend around the accountability of disability support worker staff who are working under their own ABN and who are implementing RRP’s [regulated restrictive practices] without authorisation or suitable registration. For one it is unlawful, and it is left up to the clinicians to educate families and staff. Secondly, clinicians are seemingly expected to encourage and at times facilitate the transition of these staff to registered providers; and third there is no clear consequence to staff who are working under their ABN and who are acting unlawfully by implementing RRP’s*”. Multiple government representatives suggested mandatory modules on restrictive practices or integration into relevant tertiary courses as a potential solution. The Office of the Senior Practitioner recognised difficulties in reaching non-registered providers and noted they don’t receive much help with identifying these providers.

8.1.3 *Need for greater understanding from aged care sector providers regarding obligations to residents living with disability*

A government official said that a lack of understanding of the SP Act’s obligations within the aged care sector had caused difficulty when people living with disability resided in aged care facilities. They said “*aged care providers have said ‘we don’t have anyone with NDIS funding’. They may not know where the funding comes from and have refused access to Senior Practitioner. One provider had 4 people who were subject to restrictive practices; they said the Senior Practitioner can’t come in. There were letters from [the] NDIS Quality and Safeguards Commission and [the] Senior Practitioner. They tried a joint visit. In breach of the Aged Care Act, they exited the 4 people. Reports were made to the Aged Care Commission. That was an extreme example, but others have taken some work to get aged care providers to understand their obligations.*”

8.1.4 Challenges in shifting attitudes of some families and guardians

A government official expressed the need for greater education of guardians, as legislative requirements can differ from long-established attitudes regarding effective parenting. They said they had concerns with *“the parents who come in who say ‘lock that’, ‘remove that’, ‘lock the food away because he likes to eat’. How are they meant to know that’s not okay?”* A disability peak advocacy organisation stated *“families are scared that their adult children will learn about their rights and then question their situation, act on their rights and start to push back.”* Another government official said that after receiving education regarding restrictive practices, this cohort may respond with *“the Senior Practitioner just doesn’t understand.”* They added *“people feel affronted by the suggestion that they could have or should have done something different. For people who have been parents and for 40 years got no help and were told to take care of it. Now they’re told there’s all these things and we have to do it their way.”* An ACT Government official stated there needs to be greater legislative clarity regarding the Senior Practitioner’s powers in instances where parents do not want to have a positive behaviour support plan.

8.1.5 The need for further education and resources tailored to the education sector

An independent education representative stated that the sector was struggling to reach an understanding of its obligations. School principal representatives said the Education Directorate was an essential conduit for expertise on restrictive practices from the Office of the Senior Practitioner and they mostly received *“second-hand information”*. Education union representatives stated that compliance with the SP Act can be ensured with education and training, and the legislation or guidelines could more explicitly define the role the Teacher Quality Institute has in educating the profession about the role of the Senior Practitioner and obligations under the SP Act.

8.1.6 The need for further awareness-raising and capacity-building on supported decision-making

Contributors noted the potential impact of a stronger focus on building awareness of supported decision-making methodologies, in assisting people at risk of restrictive practices to understand their rights and choices and to be a central part of arrangements to move away from restrictive practices.

8.1.7 *The need to raise greater awareness within Culturally and Linguistically Diverse and First Nations communities*

A government official said more work needed to be done to raise awareness for culturally and linguistically diverse communities and *“the way we talk about things with people with different cultural norms. It’s not just the consequences, it’s the reinforcement stuff. How are we showing that what people are doing has consequences [for the person subjected to restrictive practice]?”*

8.1.8 *Need for greater engagement with carer and lived experience communities*

Some lived experience and carer representatives said they were unsure of the function of the Senior Practitioner and did not recall any opportunities given to engage with the Office of the Senior Practitioner.

8.1.9 *Further education required in segregated settings, as “a restrictive practice for one becomes a restrictive practice for all”*

Various contributors suggested there was a need for greater integration of the SP Act’s obligations into course materials for workers who are likely to work in services/settings regulated by the SP Act.

8.2 Resource challenges

While there was broad recognition across contributors regarding the merits of reducing restrictive practices and the ideals contained within the legislation, there was also concern expressed regarding the adequacy of resources devoted to ensuring the proper implementation, including the following:

8.2.1 *Perceived unfunded administrative reporting burden imposed on disability service providers*

Disability service providers strongly expressed the view that reporting was time consuming, using phrases such as ‘onerous’ and ‘burdensome’, and required frequent reporting of the same restrictive practice, which they felt to be redundant. They also stated that requirements to report using Excel, rather than generating reports with their organisation’s software, increased this burden. A disability peak organisation submitted that service providers report in some instances employing multiple full-time staff to fulfill SP Act

obligations; the requirement to employ dedicated staff was also expressed directly by a service provider. It was suggested by one service provider that this time, which they said is unfunded, could be better spent assisting the person, while another stated the process could incentivise *“underreporting, or withdrawal from providing supports for those persons.”* A peak service provider body shared concern regarding the risk of withdrawal of service providers from the market and a *“market failure”*, citing the NDS’ State of the Disability Sector Report 2023. During the 2021-22 consultation on proposed amendments the SP Act, a service provider said, when referring to financial and administrative burden, they *“have been required to reallocate funds and resources away from children and young people to administer the requirements”* of the SP Act. A YourSay contributor said that monthly reporting following the registering of a Positive Behaviour Support plan is not required by the legislation, but is being enforced by the Senior Practitioner.

A carer peak body said that families were seeing a reduced availability of service providers, which they attributed to the impact of the legislation. As a consequence, they said, carers are *“being denied essential respite when service providers refuse to support their care recipients who are deemed ‘too challenging’ or complex.”* They add *“the administration requirements placed on providers supporting participants with PBSPs or complex behaviours has resulted in disability service providers engaging in discriminatory practices by prioritising participants without PBSP requirements or with lower care needs.”* They recommend providing additional resources to providers who accept participants with positive behaviour support plans. Some service providers gave examples of disability service providers they knew who were underreporting.

8.2.2 Delays in approval of new plans because of backlogs, leading to an increased need to report previously authorised restrictive practices

Service provider representatives strongly asserted that the existing reporting structure was leading to unnecessary reporting, as delays in approval of a renewed plan resulted in authorised restrictive practices becoming unauthorised. A peak disability service provider body recommended the risk-based creation of 2 classes of unauthorised restrictive practices:

- 1) restrictive practices authorised in most recent plan (deemed lower risk)

- 2) restrictive practices that have never been authorised, or have been authorised in previous plans but not the most recent (deemed higher risk).

They suggested that for category 1 unauthorised restrictive practices, *“providers would be required to report monthly while the new plan is being considered by the practitioner and moving through the panel authorisation process.”* For category 2 restrictive practices, existing 5-day reporting requirements would still apply.

8.2.3 Reluctance to use Restrictive Intervention Data System (RIDS) reporting system due to lack of capacity and the accessibility and usability of system

An Education Directorate official felt there were accessibility issues with the system, and that it felt *“clunky”, “time consuming”* and *“confusing”*. They described the system as not well adapted to the requirements for reporting under the SP Act. When referring to the RIDS, an independent education representative expressed extreme opposition to the use of system because placing further pressure on staff could have major consequences for workforce retention.

8.2.4 Limits on staffing in education making implementation of rules difficult

An independent education representative stated that the shortage of teachers was a barrier to implementation. They said *“we provide training of all sorts to support teachers, but we're often combining classes, getting senior leadership to step in as relief; the ability to know and support students goes out the window.”* Another independent education representative, meanwhile, stated they *“don't have any registered PBSPs [positive behaviour support plans]. All instances of restraint have been emergency responses. Everything we do is designed to avoid RPs and embed support into the normal practice of the school.”*

8.2.5 Need for further training for school support workers, relief teachers and administrative staff

Education union representatives said it was difficult to ensure adequate training for the lowest paid workers, such as Learning Support Assistant staff who are often culturally and linguistically diverse, and relief teachers, both of whom are not employed on a full-time basis and do not have the same training opportunities as permanent teaching staff. They cited ACT Government data from the Workplace Safety and Industrial Relations Office's

Education Pulse Report showing that Learning Support Assistants are disproportionately exposed to instances of occupational violence. They said all staff, from administrative workers and ground staff to teachers, need to be trained. Learning Support Assistants, they recommended, should be provided with 4 hours of paid training per year on obligations and capacities under the SP Act, particularly regarding the purposes and processes relating to Positive Behaviour Support Plans. Training about the SP Act is still being rolled out in some schools, they said.

8.2.6 Need for more support provided to families, particularly parents living with disability, who face the risk of having children taken away as a “drastic restrictive practice”

Disability peak advocacy organisation representatives expressed concern regarding the resources provided to families to support their child/ren. One representative said, in some instances, a lack of support for parents living with disability was leading to children being taken away. They said that child removal in these circumstances was a “*drastic restrictive practice*”. Restrictive practices, they said, were also some parents’ way of coping with a lack of support.

8.2.7 Need for more resources devoted to tailoring of Senior Practitioner guidelines, policies and procedures to each sector and for engagement with stakeholders

Representatives from the education sector said materials could be better tailored to the demands for their sector. In the absence of education specific materials, some education sector representatives said their sector is “*working it out on the run.*” Education union representatives said front office staff would not be aware of the existence of materials, questioned whether education sector workers would find the time to read them, and suggested mandatory training on materials.

An ACT Government official said that guidelines are “*essential. It’s a way of providing shared vocabulary. I don’t think this stuff needs to be as hard.*” Multiple government representatives stated there was initially a heavy emphasis on education, but the production of materials had since reduced in the last 18 months.

8.2.8 Challenges faced by services providers in navigating the conflicting demands of the SP Act and families/care givers

A service provider representative spoke about hearing from service providers that are “*stuck in the middle of having requirements to reduce and eliminate RP, [while] the participant or family are very reticent to change. [The provider] carries the administrative burden where they have no influence, while waiting on other groups to make a decision.*”

8.2.9 Challenges posed by calendar day reporting requirements where staff do not work on weekends

A disability service provider peak body expressed concern over the capacity of service providers to adhere to a 5-calendar-day reporting requirement, which they said requires staff to work over weekends or holidays when “*have no capacity to either backfill staff or pay overtime in order to meet this requirement.*” An Education Directorate official said “*we currently have a 5-day school week, and to report in line with the SP Act we have to report in closer timeframe than data allows us to do*”. Further discussion of reporting timelines is provided below in the discussion of the interaction between the SP Act and NDIS.

8.3 Interaction between the NDIS and the SP Act

There were strongly negative sentiments expressed by most contributors regarding the interaction between the NDIS and the SP Act. Concerns included the following:

8.3.1 The administrative burden caused by the need to report to both tiers of government

It was a strong view among service providers that the need to “*double report*” restrictive practices under the SP Act, as well as to the NDIS Quality and Safeguards Commission, caused “*unnecessary confusion*” and administrative burden. Contributors expressed a strong desire for alignment of the 2 schemes.

Government officials have recognised the difficulties caused by double reporting under the legislation, have engaged in discussions with the National Disability Insurance Agency (NDIA) regarding data sharing, and advised that subordinate legislation has been drafted but agreement with the Commonwealth has yet to be achieved. The NDIS Review was cited as a cause for the delay.

An ACT Government official said that a single point for reporting and regulation, with positive behaviour support plans that travel with the person, would be beneficial. They said that section 42 of the SP Act already allows for the sharing of information with the Commonwealth.

8.3.2 The Commonwealth Government's lack of information sharing with the ACT Government

One ACT Government official referred to the NDIS Quality and Safeguards Commission as “*the black hole of information.*” Reports regarding restrictive practices are made to the NDIS Quality and Safeguards Commission but information is not received from it. Another government official similarly expressed that “*when we report to the Quality and Safeguards Commission, we get little response*”. This feedback was noted but is out of scope of the current review.

8.3.3 Lack of response following reports made to the NDIS Quality and Safeguards Commission

An ACT Government official said it would be useful if the NDIS Quality and Safeguards Commission shared with them information regarding compliance notice issuance, to avoid duplication and unnecessary use of resources. This feedback was noted but is out of scope of the current review.

8.3.4 Inconsistent registration requirements for disability service providers

An ACT Government official said a disability service provider does not need to be registered under the SP Act to use restrictive practices, while the NDIS Quality and Safeguarding Framework does require registration, and managing non-registered providers on their system was more difficult because of this inconsistency.

8.3.5 Inconsistent interpretations regarding what constitutes a restrictive practice leading to reduced faith in ACT legislative requirements, such as “NDIA says we don't need to do [report] that”

An ACT Government official said that the NDIS Quality and Safeguards Commission and the Office of the Senior Practitioner did not always arrive at the same interpretation regarding what constitutes a restrictive practice, and that this was happening often enough to cause problems. For example, when the NDIS Commission determines that an action does not

constitute a restrictive practice, but the Office of the Senior Practitioner does deem it so, service providers will target the Office of the Senior Practitioner by saying the “[*NDIS Commission*] says we don’t need to do that”.

8.4 Implementation guideline for disability support providers

Contributors did not have broad awareness of the content of the Implementation Guideline. Disability peak advocacy organisation representatives said they did not receive or were not aware of the materials produced by the Office of the Senior Practitioner and questioned the availability of capacity-building material and whether the website was accessible. One representative described the website set-up as making the process of building a positive behaviour support plan appear “*really difficult and elongated*”. They also provided examples of links to Easy English material not working. They further added that the Office of the Senior Practitioner should make greater use of materials produced by disability peak organisations.

Those contributors who did express views said:

- language could be more human rights-focused and further emphasise the need to reduce and eliminate restrictive practices;
- legislative amendments regarding verbal and gestural restrictive practices need to be reflected in the Implementation Guideline;
- the Guideline contains terms that are inconsistent with the legislation: ‘behaviours of concern’ (instead of risk of harm) and ‘emergency reporting’ (not mentioned in the SP Act); and
- an additional Guideline tailored to the unique needs of the education sector would be useful.

8.5 Understanding of positive behaviour support plans

Contributors said that while awareness of positive behaviour support plans was building, there was still a need for improvements, including the following:

8.5.1 Greater understanding of long-term benefits of use

A government official spoke of difficulty in demonstrating the long-term benefits of positive behaviour support plans. They said *“outcomes of PBSP are long-term; not many people are sticking around for the long-term. The people who have been doing things for 20 years and what they were doing worked (allowed them to live life normally) and nothing bad happened; how do you show them the difference that it will make?”*

A disability peak advocacy organisation said there was a lack of understanding of positive behaviour support plans in the sector. Regarding positive behaviour support plans in the education sector, a government official said there’s *“not enough understanding that a good PBSP should include providing the tools of challenging behaviours in a planned and more constructive way that’s aimed at keeping everybody safe and work to reduce those behaviours. It has been a real challenge to get them to understand that it’s not an either or.”*

8.5.2 Greater recognition of how long it may take to support new behaviour

Regarding the long-term consequences of positive behaviour support plans, an ACT Government official said *“young people, particularly women, who’ve had intense trauma, we don’t change their interaction with the world quickly. If it took us a decade to get to this, then we’re not going to change that by applying a plan. That’s a long-term mindset. Human services’ response to behaviours that are not within a fairly narrow range of normal has not been good.”*

8.5.3 Greater understanding of interaction between plans, duty of care, dignity of risk and safeguards

Regarding duty of care, an ACT Government official said the phrase was used *“recklessly”* by providers. They said *“duty of care is just a tool to make sure [the person subject to restrictive practices] can’t do things.”*

8.5.4 Greater acknowledgment and resourcing for service providers to cope with support plan workload

Education union representatives stated there was a tendency towards overcompliance with positive behaviour support plans, which increased workload, and there was a struggle to find the time for this compliance. They further stated that more education is required to

increase teacher understanding of how positive behaviour support plans could lead to a reduction in restrictive practices.

8.6 Quality of positive behaviour support plans

While, as mentioned above, there was an acknowledgment of some improvement in the quality of positive behaviour support plans, contributors identified various factors hindering the quality of plans, including the following:

8.6.1 Shortage of suitably qualified behaviour support practitioners.

An ACT Government official said that a shortage of high-quality positive behaviour support practitioners means *“bad [practitioners] still get as much work as the good ones because there’s not enough. With training, there’s not much motivation to train to upskill. There’s still a lot of people interstate who do PBSP remotely. There’s a number of things that you can do from a distance but PBSP, not so much. With something that needs to be applied day to day and for there to be consistency; can’t be done online. [There were] not many PBSP practitioners that had any skill within justice settings. We had people from Queensland which was terrible. [We are] mainly now getting people from NSW.”*

Given the findings in Section 2 of ‘Towards a 10-year ACT Disability Strategy Listening Report 2022’³ this shortage is likely to be greater in First Nations communities due to a lack of culturally appropriate disability services.

8.6.2 The use of copy and paste recipes or formulas rather than appropriately designed plans

Some contributors wondered whether current mechanisms inadvertently created a *“tick and flick”* approach that might overshadow a more deeply considered and tailored plan.

8.6.3 The length and usability of existing templates

School principal representatives said they used an Education Directorate positive behaviour support plan template and noted the Senior Practitioner template that accompanied the legislation was *“very long”*.

³ Ibid.

8.6.4 *Inconsistencies between discussions at positive behaviour support panels and the plans produced*

Some service provider representatives criticised positive behaviour support plans, which did not reflect outcomes of panel discussions, and cited instances where plans were approved by panels but not approved by the Senior Practitioner, causing confusion.

8.6.5 *The perceived bureaucratic impost placed upon families and providers, particularly regarding need to ensure a plan meets criteria*

Parents of an adult child living with intellectual disability and autism who is subject to restrictive practices said, given their child's age, annual panel approval applications were unnecessarily time consuming and expensive. They suggested an Updated Comprehensive Positive Behaviour Support Plan be submitted annually and a formal panel approval arrangement be renewed every 3 years, in alignment with proposed NDIS Plan Reviews.

Some service provider representatives asserted it is important for people with lived experience of restrictive practices to attend the panels and the process was an *"impost"* on families and *"bureaucratic."* A carers peak body stated there should be greater recognition and consultation with carers as a source of information during the development and approval of positive behaviour support plans. They recommended section 12 3) a) of the SP Act be amended from *"consult as appropriate with the...carers"* to *"must consult"*. An ACT Government official also said greater clarity was required in the legislation around the role of families, particularly when a family is resistant to positive behaviour support plans.

There was agreement among service providers that the *"burden falls to the provider not the plan author if the plan falls short when going through approval."* Multiple service providers said the need for them to assess whether a plan met the criteria was *"burdensome"*, with one saying that the process of checking that plans met criteria and uploading plans could take 4 to 5 hours and the onus should be on the practitioner. A YourSay contributor said there is insufficient funding for the use of external providers to develop positive behaviour support plans, which can create a heavy cost burden to the provider.

When plans do not meet criteria, some service providers stated it was difficult for them to follow this up with the responsible practitioner. They would receive pressure from the

Senior Practitioner and the NDIS regarding the status of the plan, while awaiting responses from the practitioner. A disability service provider said that the responsibility for the coordination of a positive behaviour support plan should rest on the practitioner, rather than the provider. A YourSay contributor said positive behaviour support panels should place a stronger emphasis on how well the strategies have been implemented, and to what extent each party is contributing to the reduction or elimination of restrictive practices (rather than a focus on whether the plan meets the requirements of the SP Act).

8.6.6 The lack of proximity between support practitioners and the person

A disability service provider expressed concern regarding the implementing provider's different line of sight to the positive behaviour support practitioner, which can lead to a disconnect between the plan as written and the plan as implemented. Another provider said this was because the providers had stronger rapport with families, while practitioners may not have such well-established connections.

8.6.7 Delays in approvals of plans, posing risks to service provider staff

School principal representatives said that plan approval delays created "huge risk" because they need to create a safe environment while awaiting the outcome. This may be a perceived (rather than actual) risk, given the low number of plans registered with the Office of the Senior Practitioner for an education setting.

8.6.8 Inconsistency of timelines written on physical plans with those published on the online portal

Service provider representatives identified inconsistencies between the expiry date on physical plans and the expiry date entered into the NDIS online portal, PRODA (which is a Commonwealth system and is not administered by the ACT). They said these inconsistencies can lead to administrative and service delivery challenges when implementing the plans.

8.6.9 The inconsistent application or suitability of plans across multiple service providers, particularly within schools

Service providers stated the disconnect between the positive behaviour support practitioner and providers was exacerbated in circumstances where there were "3 or 4 implementing providers" and there are challenges when an individual has several plans, rather than a

single wraparound plan. In addition, they stated that inconsistency between the implementation of plans by disability providers and those applied within schools was their *“biggest issue. There is a big black fence between the rest of life and school. School applies their own behaviour plan and will quite happily ignore the plan that is in the rest of a person’s life. There are examples where a family has not been able to see the behaviour plan for their child that the school has delivered.”* They stated that education union pressure around the need to protect staff from occupational violence was driving this inconsistency.

8.6.10 Contributors offered suggestions such as the payment of panel members and the enforcement of strict timelines for each stage of the panel process

One service provider said the legislation should set fixed timelines for each stage of the positive behaviour support plan process, while another said these timelines should align with the NDIS Quality and Safeguards Commission’s timelines. A YourSay contributor said there needed to be greater separation between the Office of the Senior Practitioner and positive behaviour support panels to ensure independence of the panels.

9.0 Findings

9.1 Should the objects and principles of the *Senior Practitioner Act 2018* (ACT) (SP Act) be amended?

- 9.1.1 *The review found there was divided opinion regarding whether the SP Act’s scope is too narrow, too broad, or appropriately calibrated. (refer to section 7.1)*
- 9.1.2 *The review found there were strong views about whether the language used regarding disability in the SP Act is appropriately rights and person centered. (refer to section 7.2)*
- 9.1.3 *The review found there were strong views regarding whether the definition of restrictive practices could be further refined, particularly by clarifying the meanings of “reasonable protection from imminent harm” and “non-physical harm”, and circumstances where restrictive practices can be applied in health settings. (refer to section 7.3)*

9.2 Is the intent of the SP Act of providing a framework for the reduction and elimination of restrictive practices in the ACT is being met?

- 9.2.1 *The review found there was general agreement that the SP Act had assisted with building awareness regarding restrictive practices. (refer to section 6.1)*
- 9.2.2 *The review found there were strong views regarding whether the definition of chemical restraint needed to be further refined to ensure the intent is met, particularly regarding the definition of medical use. (refer to section 7.4)*
- 9.2.3 *The review found there were strong views regarding challenges faced by the Senior Practitioner and the Office of the Senior Practitioner in fulfilling the SP Act’s intention regarding the education of service providers and other stakeholders. (refer to section 8.1)*
- 9.2.4 *The review found there were strong views regarding the impact of existing service provider and government resource allocation on the capacity to fulfill the SP Act’s intentions. (refer to section 8.2)*
- 9.2.5 *The review found there were strong views regarding the capacity to collect data and quantify effectiveness of SP Act in reducing and elimination restrictive practices. (Refer to section 7.5)*

9.3 Is the SP Act operating effectively and supporting the Senior Practitioner’s functions and powers or are there any legislative barriers to the exercise of the Senior Practitioner’s functions and powers?

- 9.3.1 *The review found there were concerns regarding the Senior Practitioner and the Office of the Senior Practitioner’s capacity to effectively exercise its broad mandate of powers and responsibilities. (refer to section 7.6)*

9.3.2 *The review found there were differing views regarding the appropriateness and effectiveness of the Senior Practitioner’s powers under the SP Act to impose sanctions and obtain information. (refer section 7.7)*

9.4 Does the SP Act enable the ACT to meet its commitments under the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Sector and the NDIS Quality and Safeguarding Framework?

9.4.1 *The review found there were strong views regarding whether there is need for greater information sharing between the NDIA and associated Commonwealth agencies, such as the Quality and Safeguards Commission, the ACT Government and service providers. (refer section 8.3.2 and 8.3.3)*

9.4.2 *The review found there were significant views regarding the distinct NDIS Commission and SP Act approaches to regulation of unregistered disability service providers. (refer section 8.1.2)*

9.4.3 *The review found there were significant views regarding the interaction between NDIS Commission and SP Act definitions and interpretations of restrictive practices. (refer section 8.3.5)*

9.5 Does the SP Act allow the Senior Practitioner to effectively and efficiently interact with other agencies?

9.5.1 *The review found there was divided opinion regarding the effectiveness and efficiency of interactions between agencies. (refer to sections 6.2 and 7.8)*

9.5.2 *The review found that views were especially strong regarding the effectiveness of interactions between the Senior Practitioner and the Education Directorate.*

9.6 Does the SP Act interact well with other ACT legislation?

9.6.1 *The review found there were strong views regarding the challenges caused by overlapping, duplicative or inconsistent legislation, particularly within education and work health and safety fields. (refer to section 7.9)*

9.7 Does the SP Act Provide An Effective Reporting Structure?

9.7.1 *The review found there were strong views among service providers regarding SP Act reporting workload for service providers. (refer to section 8.2.1)*

9.7.2 *The review found there were strong views regarding the requirement to report restrictive practices to both the NDIS Commission and Office of the Senior Practitioner. (refer to section 8.3.1)*

9.7.3 *The review found there were strong views regarding the extent of awareness within stakeholders regarding the purposes of reporting, and the extent to which reporting data is collected and shared. (refer to section 7.5)*

9.7.4 *The review found there were strong views regarding impact of calendar day reporting requirement under SP Act (refer to section 8.2.9).*

9.8 What were stakeholder perspectives on Implementation Guideline?

9.8.1 *The review found there were not strong opinions expressed regarding the Implementation Guideline, aside from need to ensure this is updated to align with SP Act and to amend language used within Guideline, as recommended above in finding 3.1.3. (refer section 8.4)*

9.9 What were stakeholder perspectives on Positive Behaviour Support Plans?

9.9.1 *The review found there were strong views about the extent of awareness within the community regarding Positive Behaviour Support Plans, their purpose and the processes for developing, registering and implementing these plans. (refer section 8.5)*

9.9.2 *The review found there were strong views regarding the potential for improvement of Positive Behaviour Support Plan quality and Panel processes. (refer section 8.5)*

9.10 What were stakeholder perspectives regarding the delegation of the Senior Practitioner's powers?

9.10.1 *The review found there were not strong views expressed regarding the delegation of powers, aside from some concerns regarding the potential for inconsistency of interpretation among delegates and views regarding existing resource allocation provided for performance of delegated functions. (refer sections 7.3.2 and 7.6)*

10.0 Concluding remarks and next steps

The intent of this report has been to set out a range of views raised by different ACT stakeholder voices in relation to the implementation and impact of the *Senior Practitioner Act 2018* (SP Act) in its first 5 years of operation. The report, and consultation that informed it, is not intended to be a definitive account of all the possible considerations in relation to the impact of the SP Act. Rather, it is a thematic analysis of points made by ACT stakeholders who chose to contribute through the consultation.

That said, contributors have made a range of comments that can be regarded as relevant and helpful to the review of the SP legislation. The authors of this report trust that this report, alongside the Listening Report submitted prior, is helpful in assisting the ACT Government in its deliberations in relation to the review of the SP Act.

End of report