

**2022**

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

**Update on the Implementation of the Senior Practitioner Act**

**Presented by  
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## The Interim Update on the Implementation of the Senior Practitioner Act 2018

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The *Senior Practitioner Act 2018* ('the Act') came into effect from 1 September 2018. The Act provides a formal framework for the reduction and elimination of restrictive practices by service providers in the ACT. It also provides the powers and functions of the Senior Practitioner.

The Act regulates the use of restrictive practices by persons or other entities who provide any of the following services to another person: education; disability, and care and protection of children.

The intent of the Act is not to enable the use of restrictive practices, but rather to provide a formal framework for the reduction and elimination of restrictive practices in the ACT. The Act enshrines the principle that providers should only use restrictive practices in very limited circumstances, namely, as a last resort, in the least restrictive way and for the shortest period possible in the circumstances.

The Act regulates the use of specific restrictive practices by entities providing education (including education and care), care and protection of children, or disability services. As at 30 June 2021, there were 615 entities defined as 'providers' under the Act in the ACT. The legislation protects the rights of all individuals in these settings, not just those with a disability.

### **Legislative functions of the Senior Practitioner**

Section 26 of the Act defines the functions of the Senior Practitioner as follows:

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

## Activities of the OSP from 1 September 2018 – 2 December 2021

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The Office of the Senior Practitioner (OSP) has focused on offering a range of activities to inform and educate the disability, education and care and protection sectors. Activities include information sessions, presentations, seminars, site visits, regular meetings, and feedback on the quality of behaviour support plans as well as responding to complaints regarding behaviour support plans or panel processes.

The challenges of the pandemic in 2020 and 2021 had an impact on our ability to conduct the same level of these activities done in previous years. Meetings moved to online versions for periods required by public health orders.

The details of these activities include:

- 12 Seminars – day long professional development activities for providers with each day a different topic, welcoming different researchers and practitioners from across the country.
- Site visits – to each of the provider groups (educational settings, disability services and child protection residential services). The OSP has a rolling engagement strategy with a schedule of routine visits, and in addition, the OSP conducts site visits as part of the investigation of a complaint or based on information or concerns provided by third parties.
- Development of two guidelines on positive behaviour support plans and positive behaviour support panels.
- Providing the secretariat function of 88 panels to consider and authorise 220 behaviour support plans. Of this total, 13 behaviour support plans were not approved.
- The provision of 80 information sessions focused on increasing awareness of the Senior Practitioner (SP) Act.
- Producing a monthly newsletter for all providers with updates and links to the latest research as a way to provide increased support to the sector.
- The OSP continued to host the Communities of Practice, monthly meetings with panel chairs as well as advice to providers supporting people to abide by the ACT health orders. A fact sheet was developed for this purpose at [Public Health Order Compliance and Restrictive Practices Fact Sheet - Community Services](#)
- The launch of the ACT Restrictive Interventions Database System (ACTRIDS) in June 2021 and the onboarding of providers.
- Collaborating with the Office for Disability, the OSP acted to advertise for and select the successful providers to engage with the thin market project after concerns of the availability of suitable qualified behaviour support practitioners.
- Development of the e-learning module for restrictive practices.
- Development of fact sheets and easy read versions regarding restrictive practices and how to reduce their use.

## • Independent Review

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To further inform the implementation of the Act, the OSP engaged Adam Beaumont, from With Purpose Solutions, in September 2021 to undertake an independent, high-level review of the regulatory tools and powers available to the Senior Practitioner under the Act in the context of contemporary regulatory practice, and how key regulatory tools and powers are being embedded into operational regulatory practice.

This independent review of the Act was conducted through four different perspectives:

- Powers of Authorisation – including licensing and approvals
- Monitoring Powers – that support inspectorial practice and an assessment of compliance
- Investigation Powers – that support investigative practice and investigating of offences
- Enforcement Tools – that enable remedy and prevention of non-compliance and application of sanctions or punishment

## Findings of Independent Review

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The authors of the report noted the regulatory maturity of the OSP as emerging, with a strong and necessary focus on communicating with new duty holders, some of which have not previously been subject to such regulation, as to what their obligations are and what systems and practices they need to have in place to avoid, minimise or seek approval for restrictive practices. As an emerging regulator, the OSP is in the early stage of development where the importance of regulatory practice and the regulatory discipline is understood but regulatory capability is still developing. Emerging regulators such as the OSP have further work to do to better express regulatory practice structures where systems and processes may exist in relation to the subject matter being regulated. Systems and processes have not yet been reconciled with the powers, tools, and approaches available to the regulator, but work is underway to achieve this.

The Act provides significant powers that are yet to be fully tested and utilised. This is because, and not surprisingly as an emerging regulator, that OSP's existing approach has been focused on being educative and supportive. To date, the OSP has largely engaged with duty holders reactively based on complaints or identified concerns who are willing, and to some extent, able to comply. In such a setting, duty holders are more likely to voluntarily comply (albeit to their timelines) when contacted by the regulator and agree or consent to site visits or enquiries.

## Recommendations

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The independent review adopted a facilitative and collaborative approach both in the desktop review, sharing of preliminary results, targeted discussions, and finalisation of the report. The report recommended that the OSP consider the following recommendations as soon as practicable.

- Delegations: That OSP give consideration to which functions and any associated powers under the Act are delegated and what if any minimum training or skill requirements are necessary to give confidence to use of those functions and powers.
- Duty holders: That OSP map out the duty holder cohorts / groups, and using appropriate risk-based criteria, broadly prioritise them having regard to existing non-compliance or previous interactions with the regulator.

- Co-Regulators: That OSP map out co-regulators who have similar or overlapping jurisdiction when investigating, resolving, or responding to a complaint or allegation in relation to restrictive practices

The recommendations above have been integrated into the OSP Work Plan for 2021-2022 and will be met from within existing resources. These recommendations will form part of the short, medium and long term goals for the OSP and will be implemented over the next 12-36 months. Staff development and training has also taken place in September 2021 and is ongoing to better equip and strengthen the OSP’s regulatory capabilities.

## Updated Data

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The Annual Report for 2018-2019 provided the numbers of reports by providers rather than the instances of restrictive practices. One report could include a number of instances of restrictive practice. These are below:

<b>Category of restrictive practice</b>	<b>Routine (e.g. every day)</b>	<b>PRN (as needed)</b>
Chemical Restraint	7	41
Environmental Restraint	0	10
Mechanical Restraint	0	2
Seclusion	0	201
Physical Restraint	0	300

As indicated in the table above, there are a small number of instances of restrictive practices, especially those within a behaviour support plan. As awareness increased through engagement sessions, site visits and general information sessions provided by the OSP, these numbers have steadily increased. Rather than an increase of the use of restrictive practices these numbers indicate a better level of compliance with the requirements of the Act and an increase in awareness of providers requirements to report.

The cumulative totals of instances of restrictive practices from 1 July 2019 - to 2 December 2021, by category are below:

<b>Category of restrictive practice</b>	<b>Emergency use</b>	<b>Routine (e.g. every day)</b>	<b>PRN (as needed)</b>	<b>Totals</b>
Chemical Restraint	10,780	40,103	2,278	53,161
Environmental Restraint	2,496	7,505	1,109	11,110
Mechanical Restraint	1,136	2,635	686	4,457
Seclusion	944	0	111	1,055
Physical Restraint	1,052	346	263	1,661

In November 2021, the OSP completed audits of all providers, to assess their ongoing legislative compliance against reporting requirements and to gather data where use of a restrictive practice was eliminated. To date, compliance notices have been sent to ten providers with further compliance notices to be sent out in 2022. The notices are focused on back reporting from 2020 to date, and it is envisaged these notices will generate an increase in reports for the previous year 2020-2021 as well as an increase in reports of restrictive practices as we complete the second half of the financial year.

## Summary

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Over the last three years the OSP has continued to work to increase providers' awareness of restrictive practices. This includes using them as a last resort and being the least restrictive alternative for the person. This has led to a much better understanding of the infringement of human rights that occurs when there is an overreliance on using restrictive practices. This work, in conjunction with the use of ongoing audits, means the OSP will be able to have increasingly accurate reporting of the use of restrictive practices within the ACT.

The OSP has responded to the concerns raised by the sector in relation to a thin market of suitably qualified behaviour support practitioners to work with NDIS participants. With funding provided by the Office of Disability in the Community Services Directorate and the Department of Social Services, the OSP was able to source a provider and practitioners to engage in training and skills development including ongoing coaching and monitoring to improve the skills of those practitioners. An outcome of this project is to include more training and development with NDIA planners and support coordinators, behaviour support providers and implementing providers on each of their roles within the aim of reducing and eliminating restrictive practices. The OSP is working closely on this training package with the NDIA and the NDIS Commission as well the authorising agency in NSW, the Department of Communities and Justice.

The OSP is one regulator within the human rights jurisdiction of the ACT. In order to reduce duplication and to increase collaboration the OSP works jointly with other regulators including the Office of the Public Advocate, the Human Rights Commissioner, the ACT Ombudsman's office, the Children's Commissioner as well as the NDIS Quality and Safeguards Commission. Through continued collaboration with other regulators and all providers, the OSP is continuing to encourage systemic change across the different sectors within the ACT and to ensure people subject to restrictive practices are able to have their human rights upheld.

It will not always be possible to eliminate the need for restrictive practices, but their use should be as a result of a considered, planned approach with the aim of being for the shortest time possible and the least restrictive alternative possible in the circumstance. This work is critical in upholding the human rights of those who are subject to restrictive practices.