**Organisation**

DARE Disability

**Question 1: Should the proposed legislative framework cover the out of home care setting?**

There are nuances that apply for children about around type of RP and consent considerations that differ between children and adults. The framework/s should ensure that these nuances are appropriately incorporated.

**Question 3: What issues and challenges are raised by there being different frameworks for the authorisation of restrictive practices in the disability service provision setting and the aged care setting?**

People who receive NDIS services and who transition to aged care will be governed by two separate regulations. We believe Aged Care needs more regulation around restrictive practice, and bringing this in line will help expedite this process. However, we are unsure how a state based legislation will apply to a commonwealth program. Ideally, legislation for Aged Care and NDIS should either follow a template act, where all states apply the same legislation, or a commonwealth act or set of standards to ensure consistency across these national programs.

**Question 4: Do you support legislation requiring that restrictive practices on NDIS participants in the disability service provision, health, education and justice settings should be governed by the principles recommended by DRC Recommendation 6.35(b)?**

Yes we support that the principles outlined in the DRC cover the above services.

**Question 5: Are there any other principles that should be considered?**

While we are in agreement regarding the principles above, we believe judgement about the use of restrictive practice must remain flexible to individual needs and responsive when action must be taken quickly. Also where a restrictive practice is deemed unnecessary, that consideration to provide appropriate alternative support is funded. Principles to include safeguards around provision of restrictive practice in different settings.

**Question 6: Should a legislative framework prohibit any practices? If so, which practices and in which settings?**

Yes. We agree with the list in Appendix B of the consultation document "List of Restrictive Practice endorsed by the Disability Reform Council" as practices that should be prohibited.

**Question 7a: Do you agree that the framework should use the NDIS definitions of restrictive practices?**

Yes.

**Question 7b: Do you agree that the Senior Practitioner should have the power to issue guidelines that clarify how the definitions apply in different situations?**

Yes, however the Senior Practitioner should have KPIs around visiting services where restrictive practice occurs to witness and understand the complexities around restrictive practice on the ground.

Advice is vital to give guidance to providers in emergency situation, e.g. is a 'hold' restriction acceptable if the person in immediate and serious behaviour? (clarifying principle 3 of the DRC).

**Question 8: What role should the Senior Practitioner play in regulating behaviour support plans (BSP)?**

The Senior Practitioner could be a sounding board for providers to support decisions around restrictive practice.

Behaviour support practitioners require better training and accountability around producing BSPs that are accurate, easy to follow and in line with requirements.

Behaviour Practitioners should also produce BSPs in a timely manner with consideration given to consultation and implementation from providers.

Can we please make the case that improving BSPs does not mean lengthening these already unwieldy documents.

The length of these often dense documents is an impediment to support workers understanding and implementing them correctly. Rather than BSPs being aimed at an academic audience, it must be written with the consideration of support workers in mind.

The Senior Practitioner should have power to add more detail, particularly if they have qualifications to provide additional details,

The Senior Practitioner should follow the guidelines of the NDIS around behaviour support practitioner qualifications. However, we believe where practitioners are not competent or have shown to be consistently underperforming, there should be capability to suspend their registration with the NDIS.

**Question 9: Is there anything else the proposed framework should do to improve the quality of behaviour support plans (BSP)?**

Review process could be improved by regulating timeframes to ensure consistency across types of plans and restrictive practice. Proper and regular notice to be given to providers regarding any addendas or upcoming changes to policy or protocol. E.g. recent changes around guardianship for certain restrictive practice was not communicated and was discovered incidentally.

**Question 10a: Should Authorised Program Officers (APOs) be empowered to authorise particular categories of restrictive practices without separate Senior Practitioner authorisation (a partially delegated model)?**

* Chemical routine and PRN (this is also oversighted by suitably qualified medical practitioner)
* Interim restrictive practice which can be in place for six months until either it is no longer necessary or needs authorisation
* Environment and mechanical restraint that are considered 'low level' as determined through a decision matrix
* Restraints where people are self consenting

**Question 10b: Should Authorised Program Officers (APOs) be empowered to provide preliminary approval of restrictive practices, with final authorisation provided in all cases by the Senior Practitioner (a two step model)?**

Yes, this is our preferred model.

**Question 10c: What would be the benefits and risks of the above two models for Authorised Program Officers (APOs)?**

The second model provides greater oversight from the Senior Practitioner. We also think this model will reduce the current lengthy process. Need to ensure the administration around this model is not onerous.

However, the second model has risks if the Senior Practitioner is overly disconnected from service delivery or stretched and therefore unavailable.

The first model may put workforce pressure on providers, particularly if a certain qualification is required.

**Question 12: Should Authorised Program Officers (APOs) be required to be employed by a single provider? Or should APOs be permitted to be consultants to a number of providers?**

As long as there is a clear separation for conflict of interest then a number of providers is preferable. Any model must take into account any additional resources the provider needs to implement. Regional and rural areas need to take market viability into account.

**Question 13: Do you support the proposed duration of authorisation and emergency use proposals for restrictive practices?**

Yes.

**Question 14: Are there any additional grounds on which the Senior Practitioner should be able to cancel an authorisation?**

No.

**Question 15a: Should authorisation decisions be open to internal review?**

Yes. Where a review is sought, this should be done so in a timely manner, with consideration of 'staying' a decision while a review is undertaken where there is a potential risk or concern for the safety of the person and provider.

**Question 15b: Should authorisation decisions be reviewable at NCAT?**

Yes.

**Question 16a: Should rights to seek review be limited to the person or a person concerned for their welfare?**

No, providers who need to asses risk to staff and others, behaviour support practitioners, or other key support networks like support coordinators should have ability to review.

**Question 16b: Should the service provider have a right to seek review of a decision not to authorise a restrictive practice?**

Yes. Providers may have additional evidence or understanding of the restrictive practice they may wish to include in the review and additionally as an employer they must consider health and safety in line with WHS legislation.

**Question 17: Should a person have a right to request the service provider review the Behaviour Support Plan (BSP) at any time?**

Yes.

**Question 18: Should the Senior Practitioner have complaints handling and investigation functions either on receipt of a complaint, on its own motion, or both?**

Both*.*

**Question 19: Do you agree the Senior Practitioner should have the proposed powers to respond to misuse of a restrictive practice?**

Yes.

**Question 21: To which bodies should the Senior Practitioner have the power to share information and in what circumstances should the Senior Practitioner be permitted to share information?**

The NDIA Commission to report complaints or concerns around use or misuse of restrictive practice. Also provider registration is contingent on proper application of behaviour support. The Senior Practitioner should share information for purposes of accountability.

**Question 22a: Are the means by which the Senior Practitioner would have visibility of the use of restrictive practices by NDIS providers proposed in this Paper sufficient?**

Possibly risk assessment on the use of restrictive practice.

Reporting on reduction of and fading out restrictive practice.

**Question 22b: How can reporting burden to the Senior Practitioner and the NDIS Commission be minimised?**

Reduce double handling of information between the Senior Practitioner and the Commission. Collapse the DCJ and Commission portal into one platform.

**Question 23: Do you agree the Senior Practitioner should have the proposed education and guidance functions?**

Yes.

**Question 24a: Should the Senior Practitioner have the power to impose sanctions for the misuse of restrictive practices, or are existing sanctions for misuse of restrictive practices sufficient?**

Yes. Ensure there is not a double up with sanctions from the Commission. i.e. if a provider is fined for delay in reporting from the Commission, this should not also attract additional penalties or sanctions.

**Question 24b: How should the interaction between sanctions provided for under NDIS legislation and the proposed framework be managed?**

Centralise and simplify the system.

**Question 25: Should the proposed framework provide for a legislated immunity from liability from the use of restrictive practices where the use was in accordance with an authorisation and done in good faith?**

Yes.

**Question 26: Are there any other functions which the Senior Practitioner should have? Should providers in the disability service provision setting be subject to any other requirements?**

The Senior Practitioner should have oversight with any service which supports people with disability, whether they are registered with the NDIS or not, whether they are sole traders or not.