**Name**

John Carter

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

No.

**Question 2: Should the proposed legislative framework cover any other setting?**

No.

**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?**

The Disability Royal Commission recommended that all Australian jurisdictions immediately prohibit certain restrictive practices and establish sector-specific targets to reduce and eliminate restrictive practices over time.

I am calling on the NSW Labor Government to support the Disability Royal Commission’s recommendations in full.

I'm calling on the Government to implement laws that will meaningfully regulate, reduce and eliminate the use of restrictive practices – for all people with disability across all settings, and in accordance with existing expert evidence.

An inclusive society is one in which the human rights of all disabled people are upheld, including their right to dignity, autonomy, safety and respect.

Any framework for regulating restrictive practices must be underpinned by these principles, with clear, specific targets to drive the reduction and elimination of restrictive practices over time.

**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.

**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.

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

The Senior Practitioner should have the power to prescribe additional and/or more detailed information for inclusion in the behaviour support plans (BSP)?

The Senior Practitioner should have the power to require that a behaviour support practitioner have certain qualifications and the Senior Practitioner’s approval before they can prepare a BSP which will be used to authorise the use of a restrictive practice?

Consultation in the development of a BSP, needs to include the subject of the plan and an independent person at all times?

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

Ensure that the dignity of the subject of the BSP is of primary concern in the development of the BSP.

Ensure that violence has no part in the BSP.

**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)?**

No.

**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)?**

No.

**Question 11: Are there alternative approaches to authorisation that would be preferable to these models?**

A clear range of alternative approaches should be established in the BSP, and any action outside those approaches should require the authorisation of the Senior Practitioner.

**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?**

The employment of APOs by a single provider would ensure that there is less conflict of interest in the application of BSPs, than there would be between the requirements of different providers who could interpret the BSPs differently.

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

The period of authorisation should match the NDIS standard of a maximum 12 months ensuring continuity in the care of the person.

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

I believe that the range of situations are sufficient.

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

Yes.

**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?**

Yes.

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

No.

**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?**

Yes.

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

Yes.

**Question 20: How should interaction with the NDIS complaints framework be managed?**

By a two-way referral process.

**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?**

To other Government bodies that have an influence on the care of a person, and maintain appropriately strong privacy requirements.

**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?**

No. Regular audits of providers of care are needed to ensure compliance with the provisions of the BSP.

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

By the establishment of processes, within the offices of both bodies, to ensure effective oversight and privacy and appropriate and timely referral of concerns.

**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.

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

Following investigation of the misuse of a restrictive practice, the Senior Practitioner could refer the provider to the NDIS Commission to enforce these provisions and could assist the NDIS Commission by providing it with information gained from its investigation, and similarly the NDIS Commission should refer providers to the Senior Practitioner.

**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, but carefully hedged by a careful examination of the legitimacy of the situations involving authorisation and claims of actions taken in good faith.