- **Should the proposed legislative framework cover the out of home care setting?**
  Yes

- **Should the proposed legislative framework cover any other setting?**
  No. It is appropriate to cover Health, Justice and Education

- **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?**

  Confusion on decision making and authorisation processes.

  Determining capacity to make decisions is critical and how to support the person with disability or aged care to make decisions of if deemed incapable or in contingent situations who is able to decide for their best interests is key.

  Risk to increased ambulance access/hospitalisations for service providers in cases where there is limited clarity on process or access to decision makers.

Section 4.3: Principles governing use of restrictive practices

Proposals

Proposal 1: Legislation should provide that the use of 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).

Proposal 2: The legislation should require government agencies in the health, education and justice settings to provide an annual report to the Senior Practitioner on their, and their contractors', compliance with the principles.

- **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

- **Are there any other principles that should be considered?**

  No, however when and how this occurs need to be clearly outlined.

Section 4.4: Prohibited restrictive practices

- **Should a legislative framework prohibit any practices? If so, which practices and in which settings?**
  Any restrictive practice that was done not in the best intent and interest e.g. illegal use of substances or restraint that is out of keeping with the safety outcome intended e.g. use of restraint that is too severe or too prolonged outside of safety measures

Section 4.5: Defining restrictive practices

Proposals

Proposal 3: The NDIS definitions of restrictive practices should be adopted for the NSW legislative framework for restrictive practices.

Proposal 4: The Senior Practitioner should have the power to issue guidelines that clarify how the definitions apply in different situations.

- **Do you agree that the framework should use the NDIS definitions of restrictive practices?**
  Yes

- **Do you agree that the Senior Practitioner should have the power to issue guidelines that clarify how the definitions apply in different situations?**
  Yes, to an extent but the Practitioner is required to have access to detailed information and contexts and consult with experts, multidisciplinary teams and people with lived experience before issuing guidelines on how definitions apply in different situations.

  This should be consistent across settings of the same grouping for fair and equitable care of the consumer.

Section 5.2: Restrictive practices must be part of behaviour support plans

- **What role should the Senior Practitioner play in regulating behaviour support plans (BSP)?**
  Situational factors need to be considered including emergency orders
  Regulation of BSP by senior practitioner is also dependent on the availability of said Senior Practitioner. Continuity of care and oversight is required.

- **Should there be any specific provisions relating to consultation in the development of a BSP, in addition to the requirements in the NDIS Rules?**

  Behaviour plans need to be practical and easy to understand and apply across various settings.
  An untrained staff member should be able to read the behaviour plan and know what to do without specific training or expertise.
  Do not make authorisation process too onerous as this will be disempowering and a barrier.
  Ensure enough resources are available to make timely authorisations.

- **Is there anything else the proposed framework should do to improve the quality of behaviour support plans (BSP)?**
  Behaviour plans need to be practical and easy to understand and apply across various settings.
  An untrained staff member should be able to read the behaviour plan and know what to do without specific training or expertise.

Ensure enough resources are available to make timely authorisations.

Section 5.3 Authorisation models

Proposal

Proposal 5: A Senior Practitioner model should be structured to use APOs as part of the authorisation process.

An APO should:

- have operational knowledge of how the BSP and proposed restrictive practice would be implemented,
- be required to meet prescribed professional standards set by the Senior Practitioner, and be approved by the Senior Practitioner, and
- be approved by the Senior Practitioner.

- **Should Authorised Program Officers (APOs) be empowered to authorise particular categories of restrictive practices without separate Senior Practitioner authorisation (a partially delegated model)? (If so, what categories of restrictive practices should be able to be authorised by APOs? Should these be prescribed by legislation, or through class or kind orders?)**
  Yes as long as it will result in easy to understand and implementable plans – this will clear potential bottle necks in authorisation if it only falls on the senior practitioner

- **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

- **What would be the benefits and risks of the above two models for Authorised Program Officers (APOs)?**
  Ways to mitigate discrepancies of opinion should be sought and that the APO needs to work with staff and family members who know the person well

- **Are there alternative approaches to authorisation that would be preferable to these models?**
  Authorisation by local senior staff.
  For example in the hospital and if there is a Developmental Psychiatry team, they should have authority to amend or override a BSP if there is a change of circumstance or crisis situation necessitating a change of strategy.

  In emergency situations provisions need to be in place for the most senior clinician to be able to make decisions (with carers and family) based on the best interest of the consumer.

- **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? (If so, what safeguards should there be in relation to this?)**

  APO should have strong knowledge of consumer so this may impact how many providers an APO should be employed by.

  NDIS Quality and Safeguards to have a reporting framework and escalation plan for poor outcomes to be reported and investigated for continuous improvement of practice

Section: 5.4 Duration of authorisation

Proposals

Proposal 6: The Senior Practitioner and APO should have a discretion to determine the duration of an authorisation, up to 12 months.

Proposal 7: There should be an emergency use process for restrictive practices before a BSP has been prepared and authorisation given, which should replace the interim authorisation process.

Proposal 8: The Senior Practitioner should have the power to cancel an authorisation of restrictive practices where:

- the Senior Practitioner has determined there is no longer a need for the restrictive practice,
- the Senior Practitioner requests evidence to demonstrate the restrictive practice is still needed and the provider fails to provide sufficient evidence,
- the authorisation was obtained by materially incorrect or misleading information or by mistake,
- the relevant provider has contravened a condition of the authorisation, or
- the relevant service provider has contravened a provision of the legislation.

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

  Yes

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

  If the plan is outdated or there are concerns about a criminal act

Section: 5.5 Independent review rights

Proposal

Proposal 9: An affected person, the NDIS provider and any other person who has a genuine concern for the welfare of the person may seek review of an authorisation decision. The review rights would be:

- first to the Senior Practitioner for internal review

- then to the NSW Civil and Administrative Tribunal

- **Should authorisation decisions be open to internal review?**
  Yes

- **Should authorisation decisions be reviewable at NCAT?**

  Yes

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

  No

- **Should the service provider have a right to seek review of a decision not to authorise a restrictive practice?**

  Yes

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

  Yes

Section: 5.6 Complaints handling and investigations

Proposal

Proposal 10: The Senior Practitioner should have powers to investigate the misuse of restrictive practices, on receipt of a complaint and on its own motion.

Proposal 11: The Senior Practitioner should have the following powers to respond to the misuse of a restrictive practice:

- direct the provider to do / cease doing something in relation to behaviour support or the use of the restrictive practice
- cancel an authorisation
- refer the matter to the NDIS Commission, police or another relevant entity

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

  In some circumstances this may be possible however an independent body/provider governance process as the Senior Practitioner may themselves have authorised a poorly developed plan (situations of conflict of interest)

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

Yes but the investigation of the misuse of restrictive practice needs to go to an expert panel for proper process and fair adjudication

- **How should interaction with the NDIS complaints framework be managed?**
  With expediency, justice and timeliness

- **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?**

  All relevant parties involved with the care of the person – the incident management policies within health have transparency, no blame systems approach – a similar method be undertaken so errors do no replicate and addressed effectively. Often shared after the investigation is completed and a fair assessment undertaken.

Section 5.7: Reporting

- **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? If not, what additional information should providers be required to report to the Senior Practitioner?**

  They are sufficient

- **How can reporting burden to the Senior Practitioner and the NDIS Commission be minimised?**
  Use of electronic systems to help improve efficiencies of reporting

Section 5.8: Education and guidance functions

Proposal 12: The Senior Practitioner should have the following functions:

- developing and providing information, education and advice on restrictive practices to people with disability, their families and supporters, and the broader community
- developing guidelines and standards, and providing expert advice, on restrictive practices and behaviour support planning.

- **Do you agree the Senior Practitioner should have the proposed education and guidance functions?**
  Yes

Section 5.9: Liability

5.9.1 Sanctions

- **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?**

  Unsure

- **How should the interaction between sanctions provided for under NDIS legislation and the proposed framework be managed?**

  Senior Practitioner isn't the appropriate role to apply sanctions there should be oversight from a governing body however their recommendations and clinical guidance should be considered in the process

5.9.2 Immunity from liability

- **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

Final Question:

- **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?**
  Too much authority given to senior practitioner without examining what training experience and clinical skills the practitioner will have.
  Ensure adequate resourcing.
  Distributive Power needed: Senior Practitioner to consult and work with the teams and families most familiar with the consumer and the most senior clinician who knows the person.

Further thoughts:

There is the potential for significant impact on hospitalisation and care of hospital inpatients and those attending for procedures.

Support for disability providers, Senior Practitioners and APO's is required to minimise impact to other services including health, education and justice settings to ensure that there is no unnecessary burden across systems and the consumer is being cared for in the appropriate setting without unnecessary movement or intervention.

Access to care for NDIS consumers in community may impact need of BSP as criteria and services change within NDIS.