**Organisation**

Association for Behaviour Analysis Australia

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

ABA Australia acknowledges the NSW government’s ongoing consultation on a legislative framework for restrictive practices in disability services and the consideration of extending this framework to out-of-home care (OOHC). We recognise the potential benefits of such an extension, including greater consistency across care settings, enhanced safeguards for children and young people, improved data collection, and a reduced risk of misuse. A unified framework could ensure restrictive practices are used only as a last resort and under strict authorisation procedures, aligning with best practices in care and protection.

However, we also acknowledge the challenges this extension may present. The complexity and resource implications of applying the framework to OOHC should not be underestimated, particularly given the distinct needs and contexts of children and young people compared to adults with disabilities. Overregulation may inadvertently restrict care flexibility, and implementation challenges could arise due to the diverse range of OOHC providers. As a national body, we advocate for a thorough cost-benefit analysis and extensive stakeholder consultation to ensure that any legislative changes balance effective oversight with practical implementation while prioritising the rights and well-being of those in care.

**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?**

ABA Australia recognises the challenges posed by differing frameworks for authorising restrictive practices across disability services and aged care. The lack of consistency in regulatory approaches creates confusion for providers, disparities in safeguards, and barriers to effective oversight. Variations in definitions of restrictive practices further complicate compliance, potentially leading to misinterpretations and inappropriate applications. Additionally, managing multiple frameworks places significant resource demands on providers, requiring extensive training, compliance monitoring, and data collection to ensure accountability and equity.

In the NSW context, the proposed Senior Practitioner model presents both opportunities and challenges. However, we do not believe the current recommendations have been adequately thought through. There has been insufficient stakeholder consultation, and the process so far is far from appropriate to serve as the foundation for a robust legislative framework that would govern multiple government agencies. The lack of comprehensive engagement with key stakeholders raises concerns about the feasibility and effectiveness of the proposed changes. Clarifying the role, scope, and enforcement powers of the Senior Practitioner is critical for ensuring effectiveness while maintaining a balance between oversight and provider autonomy. The proposed reforms, including a more structured emergency authorization process and potential sanctions for misuse, require careful design to prevent unintended consequences. Furthermore, education and guidance initiatives must be adequately resourced to support implementation.

As an association, we strongly urge more extensive consultation with all relevant stakeholders before proceeding further. Without a thorough and inclusive approach, the framework risks being ineffective, overly complex, or misaligned with the realities of service provision. A harmonised national approach is needed—one that promotes clarity, consistency, and strong safeguards across all care settings while ensuring practical feasibility for providers.

**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)?**

ABA Australia supports efforts to enhance transparency and accountability in the use of restrictive practices across health, education, and justice settings. Requiring annual reports to the Senior Practitioner would help promote consistent oversight, data-driven policy improvements, and stronger safeguards for vulnerable individuals. However, we are concerned that without proper enforcement and sector-specific considerations, this requirement may become a bureaucratic exercise rather than driving meaningful change. Government agencies and their contractors must be adequately resourced to ensure compliance without creating an excessive administrative burden. We urge the government to implement a practical, well-monitored reporting system that prioritises genuine improvements in practice rather than simply meeting reporting requirements.

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

No.

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

ABA Australia believes that overcorrection and response cost should be classified as restrictive practices rather than prohibited practices, as they are evidence-based behavioural strategies that, when applied ethically and with proper safeguards, can support positive behaviour change. These techniques have been widely used in behavioural intervention programs to help individuals learn appropriate behaviours while reducing harmful or disruptive actions. When implemented correctly, with informed consent, oversight, and individualised behaviour support plans, they can be effective, minimally intrusive alternatives to more severe interventions.

Prohibiting these practices outright could remove valuable tools for behaviour analysts and behaviour support practitioners, potentially forcing them to rely on more restrictive or less effective interventions. Overcorrection, which involves practicing correct behaviour multiple times to reinforce learning, and response cost, which removes a privilege or reinforcer as a consequence for inappropriate behaviour, can be implemented safely with clear guidelines and monitoring. Rather than banning these strategies, a regulated approach that ensures proper training, ethical considerations, and accountability would allow them to be used appropriately and in a way that respects the rights and dignity of individuals.

It is essential that any framework governing behaviour interventions distinguishes between harmful, punitive approaches and those that can be ethically applied within a positive behaviour support model. Overcorrection and response cost, when used with careful oversight and person-centered planning, align with best-practice behaviour analysis principles. We advocate for policies that prioritise individual well-being while allowing professionals the flexibility to use a full range of evidence-based strategies to promote positive behavioural outcomes in a safe and ethical manner.

The use of overcorrection or response cost could be a least restrictive of the restrictive practice options, as in both procedures the individual would still be working toward to reinforcer. In both cases the reinforcer delivery is delayed. Response cost doesn’t restrict their freedom, it just delays the reward that they are working towards.

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**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?**

From the perspective of the ABA Australia, the proposed legislative framework in NSW presents a double-edged sword. Adopting the NDIS definitions of restrictive practices and empowering the Senior Practitioner to issue clarifying guidelines offers significant advantages. Standardisation across sectors promotes consistency, reduces ambiguity for providers, and strengthens oversight, ultimately improving the safety and well-being of individuals. This unified approach simplifies training, facilitates data collection for informed policy development, and enhances accountability.

However, challenges remain. The inherent focus of the NDIS on disability services might lead to inflexibility when applied to other sectors like aged care or youth justice, potentially causing misalignment with existing regulations and creating an overly burdensome compliance process. While the Senior Practitioner's guideline-issuing power is beneficial for clarification, inconsistencies could arise from varying interpretations over time or conflicts with sector-specific best practices. Effective implementation and enforcement across diverse agencies and service providers require substantial resources and ongoing regulatory oversight, potentially leading to disputes and legal challenges if definitions are unclear or conflict with existing laws. A balanced approach, using NDIS definitions as a foundation but allowing for sector-specific adaptations, is crucial to maximise benefits while mitigating potential risks.

We suggest that a trial is run to see if the framework's effectiveness and potential challenges in a limited number of settings (e.g., some disabilities services and some OOHC providers). This would allow for adjustments before largescale implementation.

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

The Senior Practitioner should have a role in requiring certain qualification such as a Certified Behaviour Analyst.

ABA Australia Certified Behaviour Analyst (CBA) Certification provides a Strong Foundation for NDIS PBS Roles It is evident that there is substantial overlap with the NDIS PBS framework. This suggests that individuals holding an ABA Australia CBA certification are well-equipped to fulfill the roles and responsibilities outlined in the NDIS PBS capability framework.

Alignment of ABA Australia CBA Training with NDIS PBS Framework ABA Australia CBA certification program is structured to ensure that behaviour analysts receive rigorous training in the principles of behaviour analysis), functional behaviour assessment, intervention planning, and data-driven decision-making—all of which are fundamental to the NDIS PBS framework. Additionally, the extensive supervised experience required for certification (1,000 hours for CBAU, 1,500 hours for CBA) ensures that practitioners have practical, hands-on experience under the guidance of experienced professionals. This aligns with the NDIS PBS requirement for practitioners to demonstrate competency in real-world behaviour support settings.

Also, ethical practice is a core element of the ABA Australia certification process. ABA Australia enforces a Code of Ethical Practice that emphasises human rights, person-centred approaches, and evidence-based practice, mirroring the NDIS PBS framework’s commitment to ethical behaviour support. Moreover, the ABA Australia’s commitment to ongoing professional development ensures that Certified Behaviour Analysts remain up to date with current best practices, research advancements, and regulatory requirements. This aligns with the NDIS’s emphasis on continuous learning and its structured approach to professional development across four capability levels.

The Need for Recognising ABA Australia CBA Certification in NDIS PBS Qualifications Given the rigorous training, supervised experience, and ethical requirements associated with ABA Australia CBA certification, it serves as a valuable benchmark for behaviour support competency. The NDIS PBS framework currently lacks a mandatory minimum qualification requirement for behaviour support practitioners, which raises concerns about the quality and consistency of services provided. Recognising the ABA Australia CBA as a highly relevant qualification would help establish a standardised level of competency, ensuring that practitioners have the necessary skills and ethical grounding to provide effective, evidence-based support.

While the NDIS PBS self-assessment framework may require additional experience or sector-specific competencies, the ABA Australia CBA certification provides a robust starting point for professionals entering the NDIS behaviour support space. Its structured training, strong ethical foundation, and emphasis on data-driven decision-making align well with NDIS principles and should be formally recognised as a pathway to meeting NDIS PBS competency levels. Doing so would not only strengthen the quality of behaviour support services but also promote greater consistency, professional accountability, and alignment with international best practices in behaviour analysis.

**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)?**

ABA Australia is committed to protecting the rights and autonomy of people with disabilities, we have significant concerns about the NSW proposal for an Authorised Program Officer (APO) overseeing restrictive practices. The NDIS framework already requires providers to manage conflicts of interest transparently, ensuring participants have choice and control over their services. By contrast, the centralised APO model introduces unnecessary bureaucracy that could limit provider autonomy and, more importantly, restrict participant choice. The NDIS empowers individuals to make informed decisions, with clear accountability measures in place for providers. A centralised oversight model risks overriding these safeguards, creating a rigid, top-down approach that is inconsistent with the principles of person-centred support.

Beyond restricting autonomy, the proposed APO model introduces its own risks of conflicts of interest. A single officer or centralised authority could be subject to bias, personal relationships, or undue influence, raising serious concerns about transparency and fairness in decision-making. The NDIS has clear mechanisms for managing conflicts of interest at the provider level, whereas the NSW proposal lacks equivalent safeguards for ensuring impartiality in restrictive practice authorisations. Without strong accountability measures, this model creates more problems than it solves, potentially leading to delays, inconsistent decision-making, and an erosion of participant rights. Rather than adopting an overly centralised approach, we urge a strengthened consent-led system that aligns with the NDIS’s commitment to participant choice, transparency, and evidence-based decision-making.

**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)?**

See above answer.

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

See above answer.

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

The current model in NSW is working well and provides participants with a panel of people who know them well to advocate for their needs as well as independent reviewers who can provide unbiased decision making. There is minimal administrative burden put on companies in this model vs. APO where companies will have to hire, onboard and manage a new employee, which is not discussed in this consultation paper. Given that it seems the APO would need to follow the guidance of the senior practitioner this might put the APO as an employee in direct conflict with company policy and procedure. Again this was not discussed in the consultation paper.

**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?**

ABA Australia is not in support of the proposed Authorised Program Officer (APO) model for overseeing restrictive practices. We believe that this centralised approach could undermine participant autonomy, restrict provider flexibility, and create unnecessary bureaucratic complexities. The current NSW framework already provides robust safeguards and accountability measures, ensuring that providers manage conflicts of interest transparently while maintaining the rights and choices of participants. Introducing the APO model risks undermining these principles by centralising decision-making and potentially introducing conflicts of interest within the system itself. We strongly advocate for maintaining a decentralised, consent-based model that prioritises participant choice and personalised, evidence-based support.

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

Agree to the 12 month duration of RPs.

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

ABA Australia would like to express serious concerns regarding the proposal to grant the Senior Practitioner the authority to unilaterally cancel authorisations for restrictive practices. While the intention to ensure appropriate use of these practices is understood, the current proposal lacks the necessary clarity and safeguards to prevent unintended negative consequences.

The lack of defined criteria for determining when a restrictive practice is no longer needed introduces significant subjectivity and the potential for inconsistent application across the sector. This ambiguity creates uncertainty and risks unfair or arbitrary decisions, potentially disrupting care and undermining the trust between providers and the NSW DCJ. Furthermore, the burden of providing sufficient evidence to justify continued authorisation places an undue administrative burden on already stretched providers, potentially diverting resources from direct client care. The vagueness surrounding what constitutes a "contravention" further exacerbates this concern, creating a climate of fear and potentially stifling proactive decision-making by providers.

The potential for overregulation is a significant concern. The threat of authorisation cancellation based on minor errors or differing interpretations could lead to providers adopting overly cautious approaches, hindering their ability to deliver effective, person-centred support. This could ultimately compromise the quality of care for individuals who rely on restrictive practices as a necessary component of their ABA Australia support plans. We urge the NSW government to reconsider this proposal and work collaboratively with national associations and providers to develop a revised framework that balances the need for oversight with the principles of fairness, transparency, and the provision of high-quality, person-centred care. Clear, objective criteria for cancellation, robust appeals processes, and adequate support for providers are essential to ensure the effectiveness and equity of any regulatory framework governing restrictive practices.

**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?**

No.

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

Yes.

**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?**

We are concerned about the potential complications arising from the overlap between the NSW Senior Practitioner and the NDIS Commission in handling complaints regarding restrictive practices. The risk of duplication of effort and resources is significant, with both bodies potentially investigating the same complaint. This redundancy could lead to inefficiency and waste, consuming valuable time and resources that could be better allocated elsewhere.

Also, the confusion and delays faced by complainants when determining which body to approach may hinder timely resolution and increase frustration for those seeking redress.

Another major concern is the potential inconsistency in outcomes due to the different standards and procedures applied by each body. This could undermine public trust and lead to a perception of inequitable treatment. Additionally, providers may face an increased administrative burden as they are required to manage separate investigations, which could divert resources from direct client care and create additional stress. While the consultation paper acknowledges the need to manage this interaction, there are no clear protocols in place to ensure coordination and avoid these challenges. Without well-defined mechanisms, the current proposal risks exacerbating confusion and inefficiencies.

**Question 23: ensure coordination and avoid these challenges. Without well-defined mechanisms, the current proposal risks exacerbating confusion and inefficiencies.**

Yes.

**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.