**Organisation**

REDinc

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

REDinc agrees that the framework should be applied to disability service settings, with the proviso that there is no additional time/administrative/resource burden required from already stretched disability service providers (DSP’s). As the Final Report from the DRC suggests states and territories should consider extending a legislated Senior Practitioner framework into the OOHC setting after an initial period of implementation and evaluation in the disability service provision setting, REDinc agrees that the legislative framework proposed in this Paper should cover the OOHC setting.

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

REDinc agrees that the framework should be applied to disability service settings and can see benefit in a consistent approach across all service settings.

**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?**

REDinc agrees that the framework should be applied to disability service settings. Different frameworks create the risk of inconsistent processes and standards, and a ‘two tiered’ system where people are treated differently and subject to different clinical/legal standards.

**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)?**

REDinc agrees. However, any requirements/obligations expected of disability service providers (DSP’s) must consider the limited resources available to ensure compliance, and the circumstances of DSP’s in rural and remote locations. The obligations have the potential to inequitably impact small and medium sized providers with limited resources and may affect their ability to deliver supports to Participants who require the implementation of restrictive practices.

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

All Participants have the right to access the supports they need to achieve their goals, consistent with their individual NDIS plan. Any legislative framework and resultant obligations on DSP’s that negatively effects access to services (due to the administrative and resource burden) could potentially have a deleterious impact on Participants and families.

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

All restrictive practices should be subject to the new framework.

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

REDinc agrees.

**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?**

REDinc agrees.

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

REDinc sees benefit in the Senior Practitioner (SP) having the power to require a behaviour support practitioner to 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. This would ensure consistency and the maintenance of high standards of practice. However, the SP will need to ensure that there is a sufficient pool of BSP’s available, including in rural and remote locations. Additional specific provisions relating to consultation in the development of a BSP, in addition to the requirements in the NDIS Rules, runs the risk of extended approval and authorisation times.

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

Yes, the Senior Practitioner could have the power to prescribe additional and/or more detailed information for inclusion in the behaviour support plans (BSP). That information may relate to the setting events or issues that require the practice to be implemented, or more details on the fade out strategies. However, the SP office would

need to be very mindful of the risk of delayed plans impacting Participants, carers and disability support providers. As stated above, REDinc sees benefit in the Senior Practitioner (SP) having the power to require a behaviour support practitioner to 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. This would ensure consistency and the maintenance of high standards of practice. However, the SP will need to ensure that there is a sufficient pool of BSP’s available, including in rural and remote locations. Additional specific provisions relating to consultation in the development of a BSP, in addition to the requirements in the NDIS Rules, runs the risk of extended approval and authorisation times.

**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)?**

REDinc has significant concerns that the ‘Authorised Program Officer (APO)’ model requires the APO’s to be employed by, or consultants to, disability service providers (DSP’s). DSP’s have no resources for this. These costs cannot be recouped through individual NDIS plans.

**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)?**

As stated above, REDinc has significant concerns that the ‘Authorised Program Officer (APO)’ model requires the APO’s to be employed by, or consultants to, disability service providers (DSP’s). DSP’s have no resources for this. These costs cannot be recouped through individual NDIS plans. In addition, separate Senior Practitioner authorisation raises the risk of duplication and increased authorisation times. There cannot be any additional time/ administrative/ resource burden required from already stretched disability service providers (DSP’s).

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

Any model of authorisation must take into account the limited resources available to DSP’s, particularly small to medium sized organizations that are already struggling to remain viable. In particular, DSP’s in rural and remote locations may struggle to locate and access an APO, and certainly cannot afford to employ them. The current model of ‘authorisation panels’, whilst already resource demanding, does not require DSP’s to employ or contract an APO or BSP.

For the “partially “delegated model”, how much information will be required by the APO? For the “partially “delegated model”, how much time will be required for the additional approval from the SP Office for seclusion, physical and mechanical restraint?

A “two step model” may require or result in delays of authorisation and more resources from the DSP.

**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?**

Any model of authorisation must take into account the limited resources available to DSP’s, particularly small to medium sized organizations that are already struggling to remain viable. DSP’s are not in a position to employ or contract APO’s. The ability of DSP’s, particularly those in rural and remote locations, to support Participants who require RP’s may be placed in jeopardy.

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

Agreed. However, REDinc remains very concerned regarding the administrative/resource burden to be placed on DSP’s. How will DSP’s fund the resources required to support the collection and provision of “evidence” required by the Senior Practitioner?

**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, but what will be the expectations of DSP’s in this process, given the very limited resources available?

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

Agree that Participants must have external review rights, however what are the implications for DSP’s in terms of resources? DSP's have very limited capacity to engage and participate in reviews.

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

No. Disability Support Providers (DSP's) may also need to request a review.

**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?**

Only if there are documented issues so to avoid vexatious reviews.

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

Currently people can make a complaint to the NDIS Quality and Safeguards Commission and these can be investigated. Does this new proposal provide two avenues for the same complaints?

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

Currently people can make a complaint to the NDIS Quality and Safeguards Commission and these can be investigated. Does this new proposal provide two avenues for the same complaints? Could this lead to duplication of roles and increase the potential investigation and reporting requirements of the DSPs?

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

We would assume that there would be some separation of powers, clear pathways and not duplications.

**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?**

NDIS Quality & Safeguards Commission. All authorised bodies within State and National level.

**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?**

Sharing at the SP and NDIS Commission level would see less duplication of reporting.

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

Sharing at the SP and NDIS Commission level would see less duplication of reporting.

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

REDinc agrees.

**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?**

Existing sanctions for misuse of Restrictive Practices are sufficient. However, the proposed framework must 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?

**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?**

No. The administrative, training, reporting and support demands on providers are already great and difficult to manage with very limited resources.