

# **National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector**

## **(the ‘National Framework’)**

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### **Introduction: Reducing and Eliminating the Use of Restrictive Practices**

Reducing and eliminating the use of restrictive practices is consistent with the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD)<sup>1</sup> and its intent to protect the rights, freedoms and inherent dignity of people with disability. Australia has ratified and agreed to be bound by the terms of the CRPD under international law.

People with disability who are supported by disability service providers and engage in challenging behaviours that are perceived to be harmful to themselves or others are at risk of being subjected to restrictive practices.

The National Framework focuses on the reduction of the use of restrictive practices in disability services that involve restraint (including physical, mechanical or chemical) or seclusion. It aims to contribute to the promotion and full realisation of all human rights for people with disability, including liberty and security of the person and freedom from exploitation, violence and abuse, in accordance with Articles 14 and 16 of the CRPD. Restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person or others.

The National Framework establishes a national approach to addressing the use and reduction of restrictive practices by disability service providers across a range of disability service sector settings, including institutional and community based care. Whilst some jurisdictions have legislation or policy that regulate the use of restrictive practices, minimum requirements in relation to restrictive practices, including reviews and monitoring, are not explicitly identified in every State and Territory.

Restrictive practices used in disability services in Australia have been reviewed by the Commonwealth, States and Territories in relation to the National Disability Agreement, and recommendations have been made for the National Framework to guide jurisdictions’ individual arrangements. Some jurisdictions already have in place or are implementing advanced, comprehensive strategies that address the use of restrictive practices in disability services. These strategies are increasing the level of awareness and understanding of restrictive practices within the sector and are contributing to a reduction in the use of restrictive practices.

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<sup>1</sup> Australia has agreed to be bound the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as other major human rights instruments, including: Convention on the Rights of Persons with Disabilities; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; Convention on the Rights of the Child; and Convention on the Elimination of all forms of Discrimination against Women. Australia also supports the United Nations Declaration on the Rights of Indigenous Peoples (Source: Australian Human Rights Commission).

Consistent with the CRPD, people with disability accessing disability services should be active participants in decisions about their lives, support and care. Maximum respect for a person's autonomy and recognition of an individual's rights is paramount. There are many relevant stakeholders in the use, reduction and elimination of restrictive practices: the person with disability and his or her family, carers, guardians or advocates, staff at all levels in the disability service sector and relevant government agencies.

Disability services are sometimes challenged to provide safe and therapeutic services for clients who have complex high support needs, as well as providing the safest possible work environment for staff. It has been recognised internationally and domestically that restrictive practices can be significantly reduced and in many cases, eliminated. The National Framework outlines change processes which require leadership and commitment from officials and staff at all levels of organisations and provides the opportunity to demonstrate excellence in delivering safer, quality disability services throughout Australia that are based on evidence-based best practice.

The National Framework outlines high-level principles to guide work in this area and core strategies to reduce the use of restrictive practices in the disability service sector. The National Framework represents a commitment from the Commonwealth, States and Territories to the high-level guiding principles and implementation of the core strategies to reduce the use of restrictive practices in the disability service sector. It also outlines a commitment to collaborative development of a national reporting model (including where voluntary reporting occurs).

### **The National Framework and the National Disability Insurance Scheme (NDIS)**

The commencement of the National Disability Insurance Scheme (the NDIS) on 1 July 2013 significantly changes the way disability support is funded and accessed. As part of the NDIS, a quality assurance and safeguards system will be implemented and will include responsibilities for oversight of and reporting on the use of restrictive practices by services providing supports to participants. In the interim, NDIS host jurisdictions have agreed that existing State and Territory quality assurance and safeguards frameworks will be used, this will include that appropriate restrictive practice laws and policies applying in that jurisdiction, are observed<sup>2</sup>. The future development of an NDIS quality assurance and safeguards system will be assisted and informed by this National Framework.

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<sup>2</sup> The NDIS legislation and rules recognise that there will be circumstances where the National Disability Insurance Agency (the NDIA) should make a decision that a support must be provided by a qualified person or organisation that meets certain quality and practice standards. This will be the case where any restrictive practices are thought to be necessary to supporting the Participant. This means that in developing the participant statement of supports, NDIS planners will include appropriate supports for the development or implementation of a behaviour support plan in the NDIS Participant plan of supports.

The National Framework is an interim step that delivers leadership toward reduction of the use of restrictive practices, which will then be taken forward into the NDIS quality assurance and safeguards framework to be implemented in the longer term. In the interim, the National Disability Insurance Agency (NDIA) will take on funding responsibility for supports for some participants where those supports may involve some use of restrictive practices. By agreements between the Commonwealth and host jurisdictions, current State and Territory quality assurance arrangements, including safeguards in respect of restrictive practices by providers, will apply until such time as an NDIS quality and assurance framework has been agreed, regardless of whether the funding for the support is from the NDIS.

The NDIA will work with jurisdictions and the service provider in preparation for transition of these individuals to the NDIS. This will ensure supports in the person's plan will be aligned with this Framework.

Commonwealth, State and Territory parties who will continue to be responsible for quality assurance systems in the interim may also explore the possibility of amending their regulatory frameworks to accompany this initiative. Further consideration will also be given to options regarding a national or nationally-consistent regulatory framework.

## **High-level Definitions**

A nationally agreed set of high-level definitions will guide legislation and policy development, and will facilitate greater inter-jurisdictional collaboration. The following definitions will be used by jurisdictions for implementation, reporting and evaluating progress against the National Framework.

The definitions are intended as high-level definitions only, under which restrictive practices should be categorised. It is anticipated that definitions in the National Framework will guide and support the development of detailed operational guidelines and mechanisms as appropriate in jurisdictional settings.

### **People With Disability**

Within the National Framework, “people with disability” refers to persons in receipt of disability support services under the National Disability Agreement and the NDIS.

### **Individualised/behaviour support**

The National Framework articulates principles and strategies for maximising individualised behaviour support for people with disability, with the overall objective of reducing the occurrence and impact of challenging behaviour and the use of restrictive practices. This may include the provision of positive behaviour support and development of an individual/behaviour support plan.

Positive Behaviour Support is the term used to describe the integration of the contemporary ideology of disability service provision with the clinical framework of applied behaviour analysis. Positive Behaviour Supports are supported by evidence encompassing strategies and methods that aim to increase the person's quality of life and reduce challenging behaviour (Source Note: Carr et al, 2002; Singer & Wang, 2009).

An individual/behaviour support plan is a plan developed for a person with disability which specifies a range of strategies to be used in supporting the person's behaviour, including proactive strategies to build on the person's strengths and increase their life skills.

### **Restrictive practice**

A “restrictive practice” is defined as any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability, with the primary purpose of protecting the person or others from harm.

### **Seclusion**

“Seclusion” means the sole confinement of a person with disability in a room or physical space at any hour of the day or night where voluntary exit is prevented, implied, or not facilitated.

## **Chemical restraint**

A “chemical restraint” means the use of medication or chemical substance for the primary purpose of influencing a person’s behaviour or movement. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment, of a diagnosed mental disorder, a physical illness or physical condition.

## **Mechanical restraint**

A “mechanical restraint” means the use of a device<sup>3</sup> to prevent, restrict or subdue a person’s movement for the primary purpose of influencing a person’s behaviour but does not include the use of devices for therapeutic or non-behavioural purposes. For example, purposes may include the use of a device to assist a person with functional activities, as part of occupational therapy, or to allow for safe transportation.

## **Physical restraint**

A “physical restraint” means the sustained or prolonged<sup>4</sup> use or action of physical force to prevent, restrict or subdue movement of a person’s body, or part of their body, for the primary purpose of influencing a person’s behaviour. Physical restraint is distinct from the use of a hands-on technique in a reflexive<sup>5</sup> way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.

## **Additional restrictive practices**

This Framework aims to reduce the use of restrictive practices that comply with applicable jurisdictional regulatory, policy and work practice requirements.

Some jurisdictions may have arrangements that authorise the use of additional restrictive practices to those defined above, including those broadly termed as:

- psycho-social restraints, usually involving the use of ‘power-control’ strategies;
- environmental restraints, which restrict a person’s free access to all parts of their environment; and
- consequence driven practices, usually involving the withdrawal of activities or items.

## **Qualification**

Existing Commonwealth, State and Territory legislation sets out their own respective practices that are unlawful and constitute criminal offences and civil wrongs that may lead to legal action, including assault, abuse, neglect or wrongful imprisonment. The National Framework intends to work within existing legislative arrangements, to set out minimum requirements in relation to restrictive practices and guide jurisdictions’ individual arrangements.

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<sup>3</sup> A device may include any mechanical material, appliance or equipment.

<sup>4</sup> For example, a physical force or action lasting longer than approximately 30 seconds, that is not a reflexive manual restraint (McVilly, 2008).

<sup>5</sup> For example, momentary contact to guide or redirect a person, lasting for no more than approximately 30 seconds (McVilly, 2008).

## **High-level Guiding Principles**

The following high-level guiding principles should underpin planning, implementation and evaluation of the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

### **1. Human rights:**

- a. Full and equal enjoyment of all human rights and fundamental freedoms by people with disability without discrimination of any kind, as outlined in the United Nations Convention on Rights of Persons with Disabilities<sup>6</sup>. People with disability have equal rights to those of all members of society, including but not limited to the right to:
  - i. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons (Article 3);
  - ii. Equality before the law and to equal protection under the law, without discrimination (Article 5);
  - iii. Liberty and security of the person (Article 14);
  - iv. Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15);
  - v. Freedom from exploitation, violence and abuse (Article 16);
  - vi. Respect for his or her physical and mental integrity on an equal basis with others (Article 17);
  - vii. Personal mobility with the greatest possible independence (Article 20);
  - viii. Freedom of expression and opinion and access to information (Article 21);
  - ix. The highest attainable standard of health without discrimination on the basis of disability (Article 25);
  - x. Attain and maintain maximum independence, full physical, mental social and vocational ability, and full inclusion and participation in all aspects of life (Article 26); and
  - xi. An adequate standard of living for themselves and their families, and to social protection without discrimination on the basis of disability (Article 28).
- b. Recognising an individual's rights is paramount. Restrictive practices should occur only in very limited and specific circumstances, as a last resort and utilising the least restrictive practice and for the shortest period of time possible under the circumstances. Restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person or others.

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<sup>6</sup> Article 1, United Nations Convention on the Rights of Persons with Disabilities

**2. Person-centred focus:**

- a. People with disability (with the support of their guardians or advocates where required) are the natural authorities for their own lives and processes that recognise this authority in decision making, choice and control should guide the design and provision of services.
- b. Approaches, including behaviour support planning, will be individualised and involve personalised supports that are informed by evidence-based best practices.
- c. Disability service providers should seek to understand the nature and function of a person's behaviour and to respond appropriately to that behaviour, ensuring the use of restrictive practices in very limited and specific circumstances and only as a last resort.
- d. An emphasis on prevention including proactive skills building and environmental design to produce desirable behaviour change.
- e. Provision of decision support to assist people with disability and their guardians or advocates to identify needs and goals, plan their service requirements, access services, and maximise participation in decision making.
- f. Maximum respect for a person's autonomy, including:
  - i. Recognising the presumption of capacity for decision making;
  - ii. Seeking a person's consent and participation in decision making (with support if necessary) prior to making a substitute decision on their behalf; and
  - iii. Engaging the appropriate decision maker and seeking consent where appropriate, where a decision must be made on behalf of a person.
- g. People with disability and their guardians or advocates are informed restrictive practices may be used in the service(s) that they access, noting that restrictive practices are implemented on an individual basis.

**3. A national approach:**

- a. The principles of the National Framework should apply across Australia to ensure people have access to the same protections, in regard to restrictive practices, regardless of where they live.
- b. All jurisdictions and levels of government should ensure that disability services meet agreed standards focussing on protecting and promoting the human rights of people with disability.
- c. Disability service providers and their staff understand and comply with relevant Commonwealth, State and/or Territory legislative and policy frameworks around use and reduction of restrictive practices.
- d. An integrated response between all governments to practices, outcomes and reporting in order to build a representative picture of the use and reduction in restrictive practices, without changing core governance arrangements.

**4. Delivering quality outcomes and safe work places:**

- a. Policies, procedures and tools should protect the rights of people with disability, focussing on improving clients' quality of life, and reducing and monitoring the use of restrictive practices.
- b. Disability service providers should ensure that people with disability have protection against inhuman or degrading treatment and attention is provided to personal dignity, privacy and self-respect as well as individual needs.
- c. Staff have the right to work in a safe environment and disability service providers may have legal obligations with respect to the observance of work health and safety.
- d. Review mechanisms are developed, maintained and utilised for: client and staff de-briefing, review of restrictive practices used (incident reporting), assessment of appropriateness and alternatives, and for aggregated reporting on an organisational and service provider basis.

**5. Accountability through documentation, benchmarking and evaluation – working towards transparent and consistent reporting:**

- a. Formal assessment, planning, approval and review processes, that are based on valid and evidence-based risk assessments undertaken by appropriate professionals, should be required to authorise and monitor the use of restrictive practices.
- b. Transparent reporting mechanisms to:
  - i. Ensure accountability and that the person with disability and their guardian or advocate are involved as far as possible; and
  - ii. Detail independent monitoring, and access to independent processes for complaints, or review and appeal of decisions to use restrictive practices; and
  - iii. Allow for the analysis of trends to evaluate the effectiveness of the strategies and recognise where there may be an increased reliance on the use of restrictive practices.
- c. Measure success through a national picture (or stocktake) of the use and reduction of restrictive practices.

**6. Collaboration between service providers:**

- a. A commitment to developing and maintaining stronger relationships across the health, allied health, aged care and disability sectors, including between physicians, nurses, mental and other health professionals, and disability services staff to ensure a multidisciplinary approach to the monitoring, use and reduction of restrictive practices.
- b. Collaborative approaches across sectors for client assessment, planning and review should be encouraged by all service providers involved with implementing a person's individual/behaviour support plan. Collaboration should enable a solid basis for individualised, person-centred approaches aimed at reducing the use of restrictive practices.

- 7. Raising awareness, providing education and facilitating accessible information about restrictive practices:**
- a. A commitment to raising awareness of issues relating to the use of restrictive practices, including amongst people with disability and their guardians or advocates as key stakeholders in decision making, and in the implementation of behaviour support strategies and plans.
  - b. People with disability and their guardians or advocates should be made aware of the relevant rights within jurisdictions to complain or seek a review of the use of restrictive practices and to participate fully in formal complaint resolution or review processes.
  - c. A commitment to building capacity and reducing barriers amongst people with disability and their guardians or advocates to utilise complaint or review mechanisms about restrictive practices.
  - d. People with disability and their guardians or advocates are informed that restrictive practices may be used in the service(s) that they access, noting that restrictive practices are implemented on an individual basis.

## **Core Strategies for a National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector**

Jurisdictions agree that by 2018, all disability service providers for which they or the NDIA have funding responsibilities should implement the following set of key core strategies to reduce the use of restrictive practices in disability services.

A comprehensive review of the research literature found evidence for six core strategies for reducing the use of restrictive practise (*Source Note: Rimland, 2011*). The six core strategies are:

### **1. Person-centred focus**

Including the perspectives and experiences of people with disability and their families, carers, guardians and advocates during restrictive practice incident de-briefing, individualised behaviour support planning, staff education and training, and policy and practice development is a key element of restraint minimisation across sectors (*Source Note: Azeem et al., 2011*).

Key implementation areas are:

- a. Development and regular review of individual/behaviour support plans (including strategies for de-escalation and ensuring the safety of the person, staff and others) that are based on valid and evidence-based risk assessments, in conjunction with people with disability, and their guardians or advocates where appropriate, as active participants in decisions about their lives, support and care.
- b. Development and use of appropriate individualised behavioural and environmental risk assessment tools by disability service providers, which are in line with human rights and person-centred approaches.
- c. Development of individualised and evidence-based practices such as teaching the use of replacement skills (skills the person can use to replace the challenging behaviours), based on the principles of positive behaviour support.
- d. Availability of tools to assist people with disability and their guardians or advocates (where appropriate) to participate in decision making.

### **2. Leadership towards organisational change**

Leaders play an important role in facilitating processes, structures and resources for supporting change. While acknowledging that whole of organisation approaches are required, the senior management of disability services must create a goal of reducing restrictive practices and make it a high priority. Leaders must also support their staff through workforce development opportunities, the development of restraint and seclusion reduction tools, and implementation of rigorous evidence-based debriefing techniques to move away from the use of restrictive practices (*Source Note: Williams and Grossett, 2011*).

Key implementation areas are:

- a. Leaders at all levels, across government and the non-government sector, commit to implement reduction in the use of restrictive practices.
- b. Governments provide strategic direction to disability service providers.
- c. Disability service providers form relevant governance structures and groups to provide organisational support mechanisms aimed at reducing restrictive practices.
- d. Clear and transparent mechanisms for disability representatives and stakeholders to inform policy makers on practices and guidelines.

### **3. Use of data to inform practice**

Mechanisms to trigger periodic review of restraint authorisations, client assessments and individual/behaviour support plans are necessary to continuously assess the necessity of restrictive practices and possible alternative restrictive practices. Data is also important to determine what factors are effective in reducing or eliminating the use of restrictive practices. (*Source Note: Webber et al., 2012*).

Key implementation areas are:

- a. Collection of data at a service unit and/or organisational level to inform and improve future practice and to contribute to national data collection.
- b. Identification of baseline data to be collected, ability to set improvement and performance targets and to evidence how this will be used to reduce reliance on restrictive practices.
- c. Development and maintenance of an auditing tool to evaluate the use of restrictive practices, including the frequency with which they are used. The tool should have capacity to feed back into the support of people with disability, including into risk assessments and service review – preferably integrated with disability service provider staffing and management systems.
- d. Collection of, and measuring outcomes through, feedback from people with disability and staff about their experiences with restrictive practices within disability services.
- e. Make use of data on formal complaints or reviews about the use of restrictive practices in disability services, made through existing complaint or review mechanisms, such as an Ombudsman or Tribunal, or through new mechanisms that may become available through the NDIS, where appropriate.

### **4. Workforce development**

There is good evidence to show that disability support staff who understand positive behaviour support, functional behaviour assessment as well as a focus on skills for trauma informed care, risk assessment, de-escalation, and restrictive practice alternatives are able to provide good support and reduce their use of restrictive practices to people who have complex needs.

Key implementation areas are:

- a. Promote the use of interdisciplinary approaches toward assessment, intervention and individual/behaviour support plans.
- b. Competency assessment, individually tailored training and education for staff and managers, including on: restraint reduction, valid and evidence-based risk assessment, positive behaviour support and relevant Commonwealth, State and Territory legislative frameworks including human rights legislation in the *Disability Discrimination Act 1992 (Cth)* and equivalents and international human rights treaties.
- c. Disability service providers implement guidelines, processes and protocols for staff and managers, that are informed by evidence-based best practice.
- d. Debriefing and support – continuous improvement for staff at all levels.

## **5. Use within disability services of restraint and seclusion reduction tools**

Restrictive practices reduction tools need to be based on core assessment and prevention approaches, the results of which need to be integrated into each individual's support plan (*Source Note: Huckshorn, 2005*).

These approaches would include:

- Evidence-based assessment tools which screen for increased risk of violence, physical and emotional issues which counter-indicate restrictive practices.
- Emergency management plans.
- Changes to the therapeutic environment.
- Meaningful activities aimed at lifestyle improvement and increased engagement.

Key implementation areas are:

- a. Practice guides and reference material on reduction tools and processes for staff and managers.
- b. Integration with service provider staffing and management systems.

## **6. Debriefing and practice review**

Disability service providers should undertake regular review processes of their use of restrictive practices in order to identify areas for practice and systemic improvement.

Following the unanticipated or emergency use of a restrictive practice, an immediate "post event" debriefing should be completed on site led by the appropriate senior staff member on duty. The goal of this immediate debriefing is to ensure that everyone is safe, that satisfactory information is available to inform the later structured debriefing process and that the person subject to the restraint is safe and being appropriately monitored. Formal debriefing should occur within days after the event and include all involved, the treatment team and relevant administrative staff. (*Source Note: Huckshorn, 2005*).

People with disability and their guardians or advocates should be involved in debriefing and review processes to ensure their perspectives and experiences are understood.

Key implementation areas are:

- a. Practice guides and reference material for staff at all levels.

## **Measuring Performance/ Effectiveness**

Jurisdictional reporting on progress of the implementation of the National Framework will occur on a biennial basis. Monitoring of the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector will provide enhanced accountability, public transparency and a national picture and measurement of effectiveness aimed at improving practice. By 2018, all jurisdictions or the NDIA where it is the funder of a support that involves restrictive practices, are encouraged to implement a data monitoring system that integrates with existing service delivery management systems.

Work will initially focus on seeking agreement to achieve standardised data collection and reporting (including for voluntary reporting where commitments occur) in order to establish benchmarks and performance indicators that measure effectiveness in reducing restrictive practices over time. Milestones will be developed which take an incremental approach toward reaching data reporting capacity on the use of restrictive practices by disability services.

Future opportunities may arise through the evaluation of the National Framework, for expansion of these six core strategies to be integrated into other mainstream service sectors that support people with disability such as in health, education and criminal justice.

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