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Submission

Carers ACT appreciates the opportunity to respond to the ACT Government's invitation to comment on *A public discussion paper prepared for the ACT Government, to assist public consultation: An overview of restrictive practices, and the key issues for consideration in relation to the establishment of an Office of the Senior Practitioner.*

As the main provider of carer support services in the ACT our response considers how the focus of the restrictive practice discussion papers relates to family carers as they undertake their caring role. It also reflects that many carers use replacement care services to support their family member(s) with disability and thus supports the ACT Government's commitment to addressing restrictive practices.

About Carers ACT

Carers ACT is the ACT peak body representing the diversity of Canberrans who provide unpaid care and support to family members and friends with a:

- disability
- chronic condition
- mental illness or disorder
- drug or alcohol problem
- terminal illness
- or who are frail aged.

Carers ACT also provides advocacy support to ACT's Foster and Kinship carers.

There are around 48,500 unpaid, family and friend carers in the ACT, who are an integral part of our aged, health and disability systems.

Introduction

JFA Purple Orange have prepared the restrictive practice discussion paper for the ACT Government to assist public consultation on the establishment of an Office of the Senior Practitioner¹ and how it might operate in the ACT. The discussion paper identifies that restrictive practices occur across a broader range of vulnerable groups and how these might be reduced in relation to older people, people with mental illness, and children and young people (p4). Although, its key focus is on disability legislation, frameworks and practices.

¹ To read the discussion paper and for more information about the consultation see <http://www.actosp.org.au/>

In 2014 Commonwealth, State and Territory governments endorsed the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (the National Framework, 2014).² This framework acknowledges that there are times when restrictive practice is required and gives guidelines about how and when to use it. The National Framework states: “restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety for the person or others”. It also states that it should be used only as a last resort.

Definitions of restrictive practice include – seclusion, chemical restraint, mechanical restraint, and other restrictive practices.

The restrictive practice discussion paper for the ACT Government states: “restrictive practices undermine a person’s choices and preferences, and can also undermine a person’s chances of a rich and meaningful life” (p9). This statement reflects the nature of the rest of the paper, the stance being that restrictive practices are rarely appropriate and that there are always alternative courses of action. The National Framework states that there are occasions when restrictive practice will be required. For example, practice takes away someone’s choice, at a particular point in time, when that person’s choice is to hurt themselves or someone else. Society has established this choice is not one that another person has a right to make, and if any person chooses to hurt someone else there are restrictive practices in place that try to prevent them from doing so. If a person persists and succeeds in hurting others, then restrictive practices are a consequence of those actions. We are all subject to restrictive practices and at times they are appropriate.

Dialogue and thinking around restrictive practice identify that restrictive practices are used as discipline, retaliation, coercion, for convenience, and an ignorance of alternatives. And, that we all should be working towards reducing and eliminating restrictive practice in keeping with the intent of *the United Nation’s Convention on the Rights of Persons with Disabilities*.³ There needs to be distinction between abusive practices and necessary restrictive practices, and certainly all practices should be based on human rights.

Carers ACT agrees with the discussion paper’s comments about the rights of a person with disability to live a rich and meaningful life. However, the rights of a person without disability should not be secondary. Some unpaid family carers supporting a vulnerable person in a home environment who are being abused, physically, emotionally and financially by this person may have no other option but to use restrictive practices when it becomes necessary. Similarly, care support staff who have a right not to be abused in the work place also need methods so they can protect themselves and others from abusive behaviour.

² Australian Government Department of Social Services (2013) *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, Canberra. Available at: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>

³ United Nations (2006-2016) *The UN Convention on the Rights of Persons with Disabilities*, Geneva. Accessible: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

In relation to the ACT, the discussion paper identifies that among key stakeholder groups and sectors there are significant concerns in relation to the nature, extent and consequences of restrictive practices. It also identifies that the term 'restrictive practices' is not widely used or understood and that other terms are used – calming someone down, reducing stress, for their own safety and behaviour (p15). The paper identifies that while these terms emphasise good intentions, they risk understating the adverse consequences of restrictive practices.

The discussion paper also states: "Similarly, the comments are not intended as an indictment on families and other informal supports who are involved in such practices, because families can feel they are in very difficult situations especially when there are no other supports available. Nevertheless, the first step in moving forward is to name such practices for what they are, so that a collective focus can be built on finding better alternatives" (p15).

Carers ACT is concerned about the premise that family members are using restrictive practices as a matter of course. It also implies that this is done due to ignorance and does not take into account the need families have to protect the vulnerable person, themselves and other family members from harm. Carers ACT also notes that some practices being proposed as restrictive practices are commonly used and accepted parenting strategies for children without disabilities and are curious as to why these practices become restrictive when applied to children with a disability.

Carers ACT is concerned that while the above comments identify that informal, unpaid family carers or caring families may choose to implement restrictive practices when other supports are unavailable, the discussion paper does not identify how, or if, carers and caring families will be subject to the monitoring of the proposed Office of the Senior Practitioner, or included in the proposed Register of approved/declared restrictive practices.

Regarding the monitoring of restrictive practices by an Office of the Senior Practitioner the discussion paper suggests that some stakeholders would like to "include routine reporting on each occasion where physical, chemical, mechanical and secluding restrictive practices were being used" (pp 13-14). This suggestion would present significant reporting difficulties for many services or individual family carers. Carers ACT suggests a more workable solution would be when a person has some regular restrictive practice for reasoned safety issues, this agreed practice be included in their personal plan and reviewed by the Office as appropriate.⁴

The discussion paper also suggests that a service provider seek external permission before they can use restrictive practices on someone (p20). If this relates to having permission as part of a person's plan, then this would seem feasible. If this related to any time that restrictive practice would be required it would be unworkable since restrictive practice is used as a matter of urgency, in a time of crisis, and as a last resort.

Carers ACT is also concerned about the limited details about the proposed register of every person being subject to restrictive practices, including:

⁴ Through engagement with carers and caring families Carers ACT is aware that the use of restrictive practices on care recipients by service providers and cared workers can cause significant distress, particularly if these were unexpected or those they considered unreasonable.

- How would information for the proposed register be collected and used by the Office or another appointed agency
- How would the Office or appointed agency ensure the privacy of the people included in the proposed register in such a small jurisdiction as the ACT
- What inferences would be made against individual family carers, care support workers, and organisations that were required to use restrictive practices if the people they supported included in the proposed register

We acknowledge that these details may become more apparent through the consultation process, but suggest that further consultation with family carers and others would be appropriate before relevant policy or legislation is put in place.

The paper is heavily swayed to imply that restrictive practices occur for reasons of concern, with less discussion about their use out of necessity. While it is recognised that vulnerable people are abused, and this needs to be addressed, distinction is required between abusive behaviour that is malicious and used for discipline, retaliation, coercion, for convenience, and out of ignorance; and between restrictive practice that is planned to avoid harm. Grouping the two together is unhelpful, misleading, and potentially insulting to family carers, and care service staff who at times work or provide informal care under extreme conditions.

Carers ACT is concerned that although the discussion paper identifies the challenges associated with the purpose and consequences of restrictive practices, including lack of training for care workers, organisational resources for service providers, or sufficient support for family carers it doesn't address possible strategies to provide support to these groups to reduce inappropriate restrictive practices.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lisa Kelly', with a stylized flourish at the end.

Lisa Kelly
Interim CEO Carers ACT

14 March 2017