



Submission to

Proposed National Framework for Reducing
Restrictive Practices in the Disability Service
Sector

Advocacy for Inclusion

June 2013

About Advocacy for Inclusion

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion provides individual, self and systemic advocacy services for people with disabilities. We provide information, education, and representation to effectively advocate for positive and inclusive outcomes for people with disabilities.

We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and the *ACT Human Rights Act*.

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Introduction

Advocacy for Inclusion is a not-for-profit non-government community organisation in the Australian Capital Territory. We provide individual, self and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We work directly with some of the most isolated people with disabilities who are subjected to a range of restrictive practices.

Restrictive practices are fundamentally violations of human rights. They can cause physical and psychological pain and discomfort, deprivation of liberty, alter thought processes and deprive a person of their property.¹ These practices can have significant adverse impacts on the person's mental and physical health and wellbeing.² It also denies a person basic respect for their inherent dignity as human beings. Restrictive practices must be eliminated in order to fulfil the human rights and wellbeing of people with disabilities.

In our experience, restrictive practices are often used to manage behaviours which may have escalated to aggression or agitation, but which have arisen out of unmet needs. These needs have not been catered for by the disability support system, or have not been properly understood or responded to by support people. Restrictive practices are also often used out of convenience or for cost effectiveness i.e. restrictive practices may be cheaper in the short term than implementing additional supports.

People with communication barriers may resort to behaviours that are seen as 'challenging' because their needs are not being heard by those around them. For example, we have worked with consumers who were once chemically restrained frequently to manage 'challenging' behaviours. Once they moved into a home of their choice and into a situation that better catered for their personal needs restriction became rare.

Restrictive practices can also constitute degrading and humiliating treatment and be used as a form of discipline, control, coercion and misuse of power by staff.³ For example, prominent paternalistic attitudes in the community lead to the view among some support staff that the person with disability should be punished for not conforming to behavioural expectations. This could involve withholding a favourite activity or food from the person, or secluding them in their bedroom.

Advocacy for Inclusion's experience with people subjected to restrictive practices tells us that it is a practice widely hidden from the broader community. A key feature missing from the current system is accountability measures. Because restrictive practices have serious consequences, particularly the denial of basic human rights, these practices must be strictly accounted for and monitored. Support systems and services must be drastically improved so that people with disabilities are better supported to communicate and have their needs met.

Advocacy for Inclusion welcomes the introduction of a National Framework. We have a number of important recommendations to ensure that the Framework supports the human rights of people with disabilities, and works towards the elimination of restrictive practices.

¹ CRPD Civil Society. (2012). *Disability rights now: Civil society report to the United Nations Committee on the Rights of Persons with Disabilities*.

² Spivakovsky, C. (2012). *Restrictive Interventions in Victoria's Disability Sector Issues for Discussion and Reform*.

<http://www.publicadvocate.vic.gov.au/file/Restrictive%20interventions%20discussion%20paper>.

³ CRPD Civil Society. (2012). As above.

Summary of recommendations

1. The purpose of the National Framework should be to eliminate restrictive practices.
2. Include a definition of environmental restraint as an issue of its own in the definitions list.
3. In the introduction, replace this statement:-

“People with disability who display behaviours that are challenging while in the care of disability service providers may be subjected to restrictive practices that involve restraint (including physical, mechanical or chemical) or seclusion.”

With this statement:-

“People with disabilities who are supported by disability service providers are at risk of being subjected to restrictive practices. This includes people with disabilities who sometimes engage in behaviours perceived to be harmful to themselves, others or property (often referred to as ‘challenging behaviours’). It also involves a relationship wherein the person with disability has some degree of dependence on the person/s providing support, creating a power imbalance that heightens their vulnerability to being subjected to restrictive practices.”

4. Ramcharan’s⁴ discussion of ‘challenging behaviours’ and the use of restrictive practices should be included in the National Framework. This supports the social model of disability, which emphasises the significance of context and social barriers. This model must be explored in the introduction where restrictive practices are explained, explicitly included in the Guiding Principles, and reflected in the Strategies.
5. Articles of the CRPD relevant to the use of restrictive practices should be explicitly engaged by the Framework.
6. The first paragraph of the Framework’s introduction must include a statement such as this:-

“Recognising an individual’s human rights is paramount, whereby restrictive practices represent a violation of those rights and freedoms. Australia is obliged, as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities*, to work towards the elimination of restrictive practices as measures that violate the human rights of people with disabilities.”

7. People with disabilities should be noted in the introduction as the central decision maker over their lives and supports, rather than only an active “participant”.
8. The OPCAT must be considered when developing the National Framework to assist in developing a Framework that will be relevant and workable in the future in light of Australia’s imminent human rights obligations.
9. Article 3 of the CRPD should be included in the Key Guiding Principles of the National Framework:-

The principles of the present Convention shall be:

⁴ Ramcharan, P. (2009). *A view from people with disabilities and family carers: A final research report to the Office of the Senior Practitioner*. Page 2. Retrieved from http://www.dhs.vic.gov.au/__data/assets/pdf_file/0008/608588/osp_experiencesofrestrictivepractices_pdf_0509.pdf

- a) *Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- b) *Non-discrimination;*
- c) *Full and effective participation and inclusion in society;*
- d) *Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- e) *Equality of opportunity;*
- f) *Accessibility;*
- g) *Equality between men and women;*
- h) *Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

10. Measures for documentation, benchmarking, evaluation, reporting and monitoring of restrictive practices and efforts to eliminate restrictive practices must be included explicitly in the list of Core Strategies.
11. The Core Strategies must include the development of legislative frameworks to mandate service providers to report all instances of restrictive practices to an independent statutory body, such as commonwealth or state disability discrimination commissioners, or state public advocate's offices.
12. Article 31 of the CRPD – statistics and data collection – must be engaged by the National Framework. It must be included in the Key Guiding Principles and reflected in measures outlined in the Core Strategies. This includes:-
- Disaggregation of data and statistics to identify and address barriers faced by particular groups among people with disabilities;
 - Dissemination of information to people with disabilities in accessible formats.
13. Article 33 of the CRPD – national implementation and monitoring – must be engaged by the National Framework. It must be included in the Key Guiding Principles and reflected in measures outlined in the Core Strategies. This includes:-
- Designating independent mechanisms (i.e. an independent statutory body) to monitor restrictive practices, and promote the elimination of restrictive practices in accordance with the CRPD nationally;
 - Establishing measures to fully involve people with disabilities and their representative organisations in the monitoring process.
14. 'Best interests' must be removed from the National Framework. Human rights should be the focus instead.
15. Amend Key Guiding Principle 1 (b) to:- "The primary focus of services is to uphold and promote human rights, community inclusion, wellbeing, quality of life, and maximum independence and autonomy of people with disabilities" [remove "safety"].
16. The term 'support' should replace references to 'care'.
17. Key Guiding Principle 3 (d) should be moved to the first sub-point to emphasise the person with disability as central decision maker. Person with disability should also be added into this point, to make clear that it is the person with disability with decision making authority.

18. Make clear in Core Strategy 1 that a person-centred focus entails the person with disability being supported to be the decision maker about their lives and supports, rather than only participants in these processes. Support providers and carers should collaborate with the person with disability as the central decision maker rather than as an additional participant in the process.
19. Emphasise the development of personalised behaviour support plan reviews (Strategy 1 [a]), tools (Strategy 1 [b]), and supports (Strategy 1 [c]).
20. Change Key Guiding Principle 3 (b) to:- “To strive for the adoption of *personalised* supports, including those informed by evidence-based and good practice, which promote the person with disability as central decision maker over their own lives and supports, and which maximise the person’s choice and self-direction.”
21. Review the wording and structure of Key Guiding Principle 3 (c) to ensure that the person with disability is clearly regarded as the natural authority over their own life, whilst families and support people are important support networks that should be included in support planning, with the person with disability’s permission.
22. Include in Core Strategy 1 (b) an emphasis on development of personalised, emerging and alternative risk assessment tools and ideas, which are supportive of human rights and person-centred approaches.

1. The term ‘reduce’

The ultimate aim of the National Framework must be to eliminate restrictive practices, rather than only reduce them. This is a more robust approach and makes clear the view that restrictive practices violate the human rights of people with disabilities. Western Australia’s *Voluntary Code of Practice for the Elimination of Restrictive Practices*, for example, uses the term ‘eliminate’ instead of ‘reduce’.⁵ Australia has not expressed any reservations about working towards the elimination of restrictive practices.

Recommendation 1: The purpose of the National Framework should be to eliminate restrictive practices.

2. Definitions list

Environmental restraint must be clearly included in the definitions list in its own right. Environmental restraint involves restricting a person’s behaviour or movement by changing, interfering, or controlling the person’s environment.⁶ For example, the removal of taps and the use of locks on cupboards and doors. It can involve using one’s body to block access to something. In Advocacy for Inclusion’s experience, this is practiced widely in supported accommodation but is often not acknowledged in organisational protocols or consumer behaviour support plans. It is a significant restrictive practice which must be explicitly acknowledged and monitored, and efforts put in place towards its elimination.

Recommendation 2: Include a definition of environmental restraint as an issue of its own in the definitions list.

3. The social model of disability

The social model of disability is an underpinning of the *National Disability Strategy*, which is the framework that overarches the provision of disability support services in Australia. It is also an underpinning of the *Convention on the Rights of Persons with Disabilities* (CRPD). It is, however, absent from the proposed National Framework and it must be an underpinning of the Framework. This model views disability as a social construct rather than a medical fact or diagnosis. Disability is seen as the relationship between social barriers and an individual’s impairment. Social attitudes, practices and structures cause the disability, rather than the impairment itself.

The concept of ‘challenging behaviour’

The concept of ‘challenging behaviour’ is subjective. What one person might think is harmful another person might think is safe and reasonable. This is not established in the proposed National Framework and it must be in order to frame the concept and use of restrictive practices as fundamentally subjective practices, laden with value judgements, varying perceptions, and conflicts.

Furthermore, the proposed Framework implies that restrictive practices are only used when a person engages in ‘challenging behaviour’. This is misleading, as restrictive practices can also be used in the absence of any ‘challenging behaviour’ and constitute power misuse by support staff and be used to degrade, control, or coerce a person with disability.⁷ It can also be used for convenience. For example, Advocacy for Inclusion had a case where a person’s taps were removed because the plumbing was noisy and the tenant liked to turn the taps on and off. This is a restrictive practice used for convenience as an alternative to fixing the plumbing. A

⁵ Disability Services Commission. (2012). *Voluntary Code of Practice for the Elimination of Restrictive Practices*. Retrieved from <http://www.disability.wa.gov.au/Global/Publications/For%20disability%20service%20providers/Guidelines%20and%20policies/Behaviour%20Support/Voluntary%20Code%20of%20Practice%20for%20the%20Elimination%20of%20Restrictive%20Practices.pdf>

⁶ Spivakovsky, C. (2012). *Restrictive Interventions in Victoria’s Disability Sector Issues for Discussion and Reform*. <http://www.publicadvocate.vic.gov.au/file/Restrictive%20interventions%20discussion%20paper.pdf>

⁷ CRPD Civil Society. (2012). *Disability rights now: Civil Society report to the United Nations Committee on the Rights of Persons with Disabilities*.

person with disability's vulnerability to restrictive practices comes not only from the presence of perceived 'challenging behaviours' but also out of a relationship of dependence, which creates a power imbalance and which can be misunderstood and misused.

Recommendation 3: In the introduction, replace this statement:-

“People with disability who display behaviours that are challenging while in the care of disability service providers may be subjected to restrictive practices that involve restraint (including physical, mechanical or chemical) or seclusion.”

With this statement:-

“People with disabilities who are supported by disability service providers are at risk of being subjected to restrictive practices. This includes people with disabilities who sometimes engage in behaviours perceived to be harmful to themselves, others or property (often referred to as 'challenging behaviours'). It also involves a relationship wherein the person with disability has some degree of dependence on the person/s providing support, creating a power imbalance that heightens their vulnerability to being subjected to restrictive practices.”

The concept of 'challenging behaviours' should be framed using the social model of disability, including exploration of the contextual factors that result in 'challenging behaviours' rather than just the individual factors. This is very important in framing the issue of 'restrictive practices' in a way that does not reinforce an approach that constructs people with disabilities as pathological. Advocacy for Inclusion considers Ramcharan's discussion of 'challenging behaviours' helpful for this purpose:

“Many behaviours seen as being 'of concern' can be understood better as adaptive behaviours to maladaptive environments. These behaviours can be seen as forms of 'resistance' or 'protest'.

“Behaviours of 'resistance' and 'protest' should be seen as legitimate responses to difficult environments and situations, and not a reason for restrictions designed to change the person and their behaviour.

“Changing the person and their behaviour should not be the starting point. Rather, it is necessary initially to examine how to change services, systems and environments as a means of changing behaviour.”⁸

This understanding of 'challenging behaviours' and restrictive practices must be used as the underpinning of the National Framework

Recommendation 4: Ramcharan's⁹ discussion of 'challenging behaviours' and the use of restrictive practices should be included in the National Framework. This supports the social model of disability, which emphasises the significance of context and social barriers. This model must be explored in the introduction where restrictive practices are explained, explicitly included in the Guiding Principles, and reflected in the Strategies.

4. Engaging the CRPD

Advocacy for Inclusion is pleased to see that the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) is included in the proposed framework. However, the relevant CRPD Articles are not

⁸ Ramcharan, P. (2009). *A view from people with disabilities and family carers: A final research report to the Office of the Senior Practitioner*. Page 2. Retrieved from http://www.dhs.vic.gov.au/__data/assets/pdf_file/0008/608588/osp_experiencesofrestrictivepractices_pdf_0509.pdf

⁹ Ramcharan, P. (2009). *A view from people with disabilities and family carers: A final research report to the Office of the Senior Practitioner*. Page 2. Retrieved from http://www.dhs.vic.gov.au/__data/assets/pdf_file/0008/608588/osp_experiencesofrestrictivepractices_pdf_0509.pdf

clearly engaged by the proposed Framework. We recommend that the National Framework engage with the CRPD more strongly.

Restrictive practices inherently violate a person's human rights, including:

Article 3: respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

Article 14: Liberty and security of person;

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment;

Article 16: Freedom from exploitation, violence and abuse;

Article 17: Protecting the integrity of the person.

Recommendation 5: Articles of the CRPD relevant to the use of restrictive practices should be explicitly engaged by the Framework.

5. Australia's human rights obligations

The proposed Framework introduction does not capture Australia's obligations to eliminate the restrictive practices imposed on people with disabilities, i.e. the statement "reducing and eliminating the use of restrictive practices is consistent with the United Nations *Convention on the Rights of Persons with Disabilities*". The introduction must make clear that eliminating restrictive practices is not only consistent with human rights principles, but is necessary in order to promote and fulfil human rights, as per Australia's international obligations.

Advocacy for Inclusion commends the existing sentence: "Recognising an individual's rights is paramount, whereby restrictive practices represents a deprivation of those rights and freedoms." We recommend that a statement along these lines with reference to "violation" of human rights and to the CRPD should be included in the first paragraph of the introduction, to set the scene for a National Framework that is firmly based on human rights principles.

Recommendation 6: The first paragraph of the Framework's introduction must include a statement such as this:-

"Recognising an individual's human rights is paramount, whereby restrictive practices represent a violation of those rights and freedoms. Australia is obliged, as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities*, to work towards the elimination of restrictive practices as measures that violate the human rights of people with disabilities."

The proposed Framework introduction does not clearly position people with disabilities as the decision maker over their own lives and supports. Instead, it notes people with disabilities as "active participants". People with disabilities must be respected as people who know their own best interests and who make decisions about their own lives, rather than only participants in these processes. This is more consistent with Article 3 of the CRPD: "respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons".

Recommendation 7: People with disabilities should be noted in the introduction as the central decision maker over their lives and supports, rather than only an active "participant".

Further, Australia will imminently sign on to the Optional Protocol to the *Convention Against Torture* (OPCAT). When developing the National Framework the government must anticipate Australia's obligations to the

OPCAT to assist in developing a framework that remains relevant and compliant with human rights obligations in the future.

Recommendation 8: The OPCAT must be considered when developing the National Framework to assist in developing a Framework that will be relevant and workable in the future in light of Australia's imminent human rights obligations.

6. CRPD Article 3

Advocacy for inclusion supports the use of the CRPD as the first guiding principle. Article 3 outlines the general principles of the CRPD and is adopted as the central set of principles of the *National Disability Strategy*. Article 3 is highly relevant to the issue of restrictive practices, and sets the standard for the treatment of people with disabilities generally, including by service providers. For these reasons, Article 3 should be specifically included in the guiding principles of the National Framework.

Recommendation 9: Article 3 of the CRPD should be included in the Key Guiding Principles of the National Framework:-

The principles of the present Convention shall be:

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- b) Non-discrimination;*
- c) Full and effective participation and inclusion in society;*
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- e) Equality of opportunity;*
- f) Accessibility;*
- g) Equality between men and women;*
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

7. Data collection and monitoring

Advocacy for Inclusion commends the inclusion of accountability and transparency through reporting and monitoring measures in the Key Guiding Principles, and data collection in the Core Strategies. However, reporting and monitoring of restrictive practices does not appear to be clearly included in the list of Core Strategies. Advocacy for Inclusion suggests that the principles of accountability and transparency should be included in the Guiding Principles list, whilst measures for documentation, benchmarking, evaluation, reporting and monitoring should be included explicitly in the list of Core Strategies.

To enhance accountability and transparency, legislative frameworks must be introduced to mandate service providers to report all instances of restrictive practices to an independent statutory body. If such measures are not developed, it is questionable that the National Framework could serve its purpose.

After the Restrictive Intervention Data System (RIDS) was introduced in Victoria a reduction in the use of restrictive practices was identified. This was thought to be due to a raised awareness among staff by naming restrictive practices for what they are and expecting that these interventions be acknowledged each time they are used.¹⁰

¹⁰ <http://www.dhs.vic.gov.au/for-service-providers/disability/service-quality-and-improvement/disability-act-2006-for-service-provider/Restrictive-interventions-and-compulsory-treatment/related-resources-holder8/restrictive-intervention-data-system-ebehaviour-support-plan>

Recommendation 10: Measures for documentation, benchmarking, evaluation, reporting and monitoring of restrictive practices and efforts to eliminate restrictive practices must be included explicitly in the list of Core Strategies.

Recommendation 11: The Core Strategies must include the development of legislative frameworks to mandate service providers to report all instances of restrictive practices to an independent statutory body, such as commonwealth or state disability discrimination commissioners, or state public advocate's offices.

Article 31 of the CRPD – statistics and data collection – requires that “States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.” Statistics and data collection should be used to identify and address the barriers experienced by people with disabilities in exercising their human rights, and data should be disseminated to people with disabilities. This is highly relevant to the issue of restrictive practices, as practices that fundamentally violate human rights. Information should be disaggregated to assess issues facing particular groups of people with disabilities, who may face heightened barriers to accessing their rights through experiencing multiple, or intersecting, disadvantage.

Recommendation 12: Article 31 of the CRPD – statistics and data collection – must be engaged by the National Framework. It must be included in the Key Guiding Principles and reflected in measures outlined in the Core Strategies. This includes:-

- **Disaggregation of data and statistics to identify and address barriers faced by particular groups among people with disabilities;**
- **Dissemination of information to people with disabilities in accessible formats.**

Article 33 of the CRPD – national implementation and monitoring – outlines states parties' obligations in regards to national implementation and monitoring. This includes the establishment of focal points and coordination within government to facilitate action in different sectors and at different levels for the implementation of the CRPD. It involves the establishment of independent mechanisms to promote, protect and monitor implementation of the CRPD. The government is also required to fully involve people with disabilities and their representative organisations in the monitoring process. Restrictive practices violate human rights and so must be monitored in accordance with CRPD Article 33 in order to work towards implementation of the CRPD.

Recommendation 13: Article 33 of the CRPD – national implementation and monitoring – must be engaged by the National Framework. It must be included in the Key Guiding Principles and reflected in measures outlined in the Core Strategies. This includes:-

- **Designating independent mechanisms (i.e. an independent statutory body) to monitor restrictive practices, and promote the elimination of restrictive practices in accordance with the CRPD nationally;**
- **Establishing measures to fully involve people with disabilities and their representative organisations in the monitoring process.**

8. The term 'best interests'

The term 'best interests' is highly contentious in the disability field and is associated with offensive paternalistic attitudes. It is a subjective concept and is often used in the context of others knowing the 'best interests' of the person with disability, rather than the person with disability themselves. 'Best interests' are used to justify restrictive practices and also gross breaches of human rights of people with disabilities, such as involuntary sterilisation. For these reasons, 'best interests' is not appropriate for the purposes of the National Framework and must be removed.

Recommendation 14: ‘Best interests’ must be removed from the National Framework. Human rights should be the focus instead.

9. The concept of ‘safety’ in Key Guiding Principle 1

‘Safety’ should not be included in the first set of Key Guiding Principles as this reinforces a paternalistic and protectionist approach to people with disabilities. In the context of restrictive practices, it lends to a preoccupation with risk management, which has become highly problematic in the lives of people with disabilities and the fulfilment of their human rights. It is often used as a justification for restrictive practices. The focus on human rights and wellbeing in Principle 1 already covers aspects of duty of care, which are important, without giving undue focus on ‘safety’.

Lacking from the Key Guiding Principle 1 is recognition that a primary focus of services should be to promote the independence and autonomy of people with disabilities.

We also suggest adding “to promote” human rights as well as “up hold”.

Recommendation 15: Amend Key Guiding Principle 1 (b) to:- “The primary focus of services is to uphold and promote human rights, community inclusion, wellbeing, quality of life, and maximum independence and autonomy of people with disabilities” [remove “safety”].

10. The term ‘care’

Negative connotations are often attached to the term ‘care’, including paternalism. ‘Support’ is a more widely accepted term.

Recommendation 16: The term ‘support’ should replace references to ‘care’.

11. Person-centred focus

Advocacy for Inclusion supports the person-centred focus adopted in the guiding principles and core strategy. However, the use of the term ‘person-centred’ in the proposed Framework does not reflect the true essence to person-centred approaches. Instead, it seems to reinforce the idea of service provider as central decision maker, whilst the person with disability is an additional participant in the process.

It also does not emphasise the importance of a personalised approach, rather than one size fits all. We recommend that the notion of the person with disability as decision makers over their own lives and supports must be more strongly represented as the central component of person-centred approaches in the Framework.

Recommendation 17: Key Guiding Principle 3 (d) should be moved to the first sub-point to emphasise the person with disability as central decision maker. Person with disability should also be added into this point, to make clear that it is the person with disability with decision making authority.

Recommendation 18: Make clear in Core Strategy 1 that a person-centred focus entails the person with a disability being supported to be the decision maker about their lives and supports, rather than only participants in these processes. Support providers and carers should collaborate with the person with disability as the central decision maker rather than as an additional participant in the process.

Recommendation 19: Emphasise the development of personalised behaviour support plan reviews (Strategy 1 [a]), tools (Strategy 1 [b]), and supports (Strategy 1 [c]).

12. Evidence-based and ‘best’ practice

We question the emphasis on evidence-based best practice in the guiding principles as it could lead to a preoccupation with the medicalization and professionalization of people with disabilities, rather than

appreciation for their personhood. We agree with the inclusion of evidence-based good practice in the principles, but recommend that this is included in a less absolute way.

Recommendation 20: Change Key Guiding Principle 3 (b) to:- “To strive for the adoption of *personalised* supports, *including* those informed by evidence-based and *good* practice, which promote the person with disability as central decision maker over their own lives and supports, and which maximise the person’s choice and self-direction.”

We also question the way that families and support people are positioned in the lives of people with disabilities in Key Guiding Principle 3 (c). Indeed, families and support people are vital in the lives of people with disabilities and it is considered good practice to include them in the support planning with people with disabilities. However, Principle 3 (c) is written in such a way that it implies that family and support people are also the “natural authorities” over the lives of people with disabilities, which must be clarified.

Recommendation 21: Review the wording and structure of Key Guiding Principle 3 (c) to ensure that the person with disability is clearly regarded as the natural authority over their own life, whilst families and support people are important support networks that should be included in support planning, with the person with disability’s permission.

13. Risk assessments

The reference to development of risk assessment tools in Core Strategy 1 (b) should be considered very carefully, as a preoccupation with risk is a key issue that restrains the rights of people with disabilities and can lead to circumstances where the person displays ‘resistance’ or ‘protest’, and can ultimately lead to the use of restrictive practices. Conventional risk management approaches are typically technical and can treat the person “as an object to be assessed by the ‘experts’ rather than as an agent in their own lives, part of a family, community and society, with legal rights and choices.”¹¹ Conventional risk assessments therefore tend to contradict person-centred approaches.¹²

‘Risk enablement’ is a relatively new approach to dealing with risks, which can be used as an alternative to conventional risk management strategies. Risk enablement “is based on the idea that the process of measuring risk involves balancing the positive benefits from taking risks against the negative effects of attempting to avoid risk altogether.”¹³ Risk enablement is consistent with person-centred approaches. Developing alternative and progressive approaches to dealing with risk, such as ‘risk enablement’, should be included in the Core Strategies.

Recommendation 22: Include in Core Strategy 1 (b) an emphasis on development of *personalised, emerging* and *alternative* risk assessment tools and ideas, which are *supportive of human rights and person-centred approaches*.

¹¹ Neill, M., Allen, J., Woodhead, N., Sanderson, H., Reid, S. & Erwin, L. (2009). A positive approach to risk requires person-centred thinking. *Tizard Learning Disability Review*, 14(4), p. 19

¹² Carr, S. (2011). Enabling risk and ensuring safety: Self-directed support and personal budgets. *The Journal of Adult Protection*, 13(3), 122-136

¹³ Manthorpe, J., & Moriarty, J. (2010). *Nothing Ventured, Nothing Gained: Risk Guidance for People with Dementia*. Department of Health, London. Page 8.

14. Conclusion

Advocacy for Inclusion welcomes the work towards a National Framework to address restrictive practices. This framework could play a key role in advancing the human rights of people with disabilities, particularly those most vulnerable to human rights abuses such as restrictive practices. The current proposal shows good premise however substantial work is needed to ensure that the human rights of people with disabilities are the focal point and to ensure that dated and negative views of disability are not reinforced. The use of popular terms such as 'person-centred' must be used carefully and meaningfully. A clear vision of eliminating restrictive practices must be the ultimate aim, in acknowledgement that restrictive practices are violations of human rights. The framework should outline robust strategies, including the development of legislative frameworks, to improve accountability and transparency around these very serious practices.

Advocacy for Inclusion is thankful to be a part of this consultation and looks forward to further developments on the Framework.