8. Restrictive Practices

Contents

Summary

8.1 Restrictive practices involve the use of interventions and practices, such as restraint or seclusion, that have the effect of restricting the rights or freedom of movement of a person with disability.

8.2 Significant concerns have been expressed about the use of restrictive practices in Australia. While regulation of restrictive practices primarily occurs at a state and territory level, a combination of initiatives at a national level provide a timely opportunity to consider a national approach to reform of restrictive practices in a range of settings.

8.3 In this chapter, the ALRC proposes that the Australian Government and Council of Australian Governments (COAG) develop such a national approach, which should apply the National Decision-Making Principles and provide for supported decision-making in relation to consent to the use of restrictive practices, to the extent such practices are permitted.

Restrictive practices in Australia

8.4 Restrictive practices involve the use of interventions and practices that have the effect of restricting the rights or freedom of movement of a person with disability. These primarily include restraint (chemical, mechanical, social or physical) and seclusion.[1] People with disability who display 'challenging behaviour' or 'behaviours

1 See, eg, definitions in: Australian Government, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (2014) 4. *Disability Act 2006* (Vic) s 3(1). However, see also: Philip French, Julie Dardel and Sonya Price-Kelly, 'Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment' (People with Disability Australia, 2010) [2.48]—[2.51]. See also stakeholder submissions in relation to proposed changes to the definitions under the Proposed National Framework: NMHCCF and MHCA, *Submission 81*; NSW Council for Intellectual Disability, *Submission 33*; Physical Disability Council of NSW, *Submission 32*.

of concern'[2] may be subjected to restrictive practices in a variety of contexts, including: supported accommodation and group homes; residential aged care facilities; mental health facilities; hospitals; prisons; and schools.[3]

8.5 While restrictive practices may be used in some circumstances there are concerns that such practices can also be imposed as a 'means of coercion, discipline, convenience, or retaliation by staff, family members or others providing support'.[4] Such practices may infringe a person's human rights.[5] As a result, there are significant concerns about the use of restrictive practices in Australia. For example, the United Nations Committee on the Rights of Persons with Disabilities (UNCRPD) has stated that it

> is concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.
>
> The Committee recommends that the State party take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention—such as mental health facilities, special schools, hospitals, disability justice centres and prisons—in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions.[6]

8.6 The Australian Civil Society Parallel Report Group Response to the List of Issues as part of Australia's appearance before the UNCRPD in 2013 expressed concern that people with disability, especially cognitive impairment and psychosocial disability, are 'routinely subjected to unregulated and under-regulated behaviour

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2 The ALRC acknowledges that these terms are subjective and that in many circumstances such behaviour can be understood as 'adaptive behaviours to maladaptive environments' and may be a 'legitimate response to difficult environments and situations': Paul Ramcharan et al, 'Experiences of Restrictive Practices: A View from People with Disabilities and Family Carers' (Research Report, Office of the Senior Practitioner, 2009) 2. See also: Physical Disability Council of NSW, *Submission 32*.

3 See, eg, Office of the Public Advocate (Qld), *Submission 05*; Office of the Public Advocate (Vic), *Submission 06*; Public Interest Advocacy Centre, *Submission 41*; Central Australian Legal Aid Service, *Submission 48*; Children with Disability Australia, *Submission 68*; National Association of Community Legal Centres and Others, *Submission 78*. See also Victorian Law Reform Commission, *Guardianship*, Final Report No 24 (2012) 318.

4 Disability Rights Now, *Civil Society Report to the United Nations on the Rights of Persons with Disabilities*, August 2012, 241.

5 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 3, 14—17, 19; Juan E. Mendez, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (A/HRC/22/53, 1 February 2013). Several stakeholders called for ratification of the Optional Protocol on the Convention Against Torture: Central Australian Legal Aid Service, *Submission 48*; Public Interest Advocacy Centre, *Submission 41*. See also, Committee on the Rights of Persons with Disabilities, 'Concluding Observations on the Initial Report of Australia, Adopted by the Committee at Its Tenth Session (2–13 September 2013)' (United Nations, 4 October 2013) [35]—[36]; Michael Williams, John Chesterman and Richard Laufer, 'Consent vs Scrutiny: Restrictive Liberties in Post-Bournewood Victoria' (2014) 21 *Journal of Law and Medicine*.

6 Committee on the Rights of Persons with Disabilities, above n 5, [35]–[36].

modification or restrictive practices such as chemical, mechanical and physical restraint and seclusion'.[7]

8.7 The regulation of restrictive practices in Australia primarily arises under state and territory disability services and mental health legislation, and under a range of policy directives, statements and guidance materials. There is significant inconsistency in the regulation of restrictive practices across jurisdictions, and the numerous frameworks 'conspire to make the legal framework in this area exceedingly complex'.[8]

8.8 Restrictive practices regulation in jurisdictions such as Victoria, Queensland and Tasmania occurs through disability services legislation.[9] The approach in other jurisdictions includes policy-based frameworks, voluntary codes of practice, and regulation through the guardianship framework.[10] There is also relevant reform activity in relation to disability services legislation in a number of jurisdictions.[11]

8.9 In the context of the mental health system, jurisdictions such as Victoria and Queensland have detailed provisions relating to restrictive practices, combined with minimum standard guidelines[12] and a policy statement.[13] Legislative provisions are less detailed in other jurisdictions.[14] In NSW, the use of restrictive practices is regulated by a lengthy policy directive.[15] Mental health legislation is, however, an area of ongoing review and reform, with implications for the regulation of restrictive practices.[16]

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7 Disability Rights Now, 'Australian Civil Society Parallel Report Group Response to the List of Issues, CRPD 10th Session Dialogue with Australia, Geneva' (September 2013).

8 Michael Williams, John Chesterman and Richard Laufer, above n 5, 1.

9 *Disability Act 2006* (Vic); *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014* (Qld); *Disability Services Act 2011* (Tas).

10 For example, in NSW, guidelines govern the use of restrictive practices in relation to adults: NSW Department of Family and Community Services, *Behaviour Support Policy*, Version 4.0 (March 2012). In addition, the use of a distinct number of restrictive practices requires completion of a documented plan, involving authorisation by an internal Restricted Practices Authorisation mechanism. Guardians appointed under the *Guardianship Act 1987* (NSW) may be authorised to consent to the use of restrictive practices for people over 16 years of age. Restrictive practices in relation to children are governed by *Children and Young Persons (Care and Protection) Act 1998* (NSW) and *Children and Young Persons (Care and Protection) Regulation 2012* (NSW). The WA Disability Services Commission is reviewing its 2012 Voluntary Code of Practice for the Elimination of Restrictive Practices in 2014.

11 For example, in NSW, consultation in relation to a draft of the Disability Inclusion Bill 2014 (NSW) which would replace the *Disability Services Act 1993* (NSW), concluded in February 2014. In December 2013, amendments to the *Disability Services Act 1993* (SA) contained in the *Disability Services (Rights, Protection and Inclusion) Amendment Act 2013* (SA) took effect, requiring prescribed disability service providers to have in place 'appropriate policies and procedures for ensuring the safety and welfare of persons using the service', which may include policies and procedures addressing restrictive practices.

12 *Mental Health Act 1986* (Vic) ss 81–82; Victorian Chief Psychiatrist's Guideline, *Seclusion in Approved Mental Health Services* (2011).

13 *Mental Health Act 2000* (Qld) pt 4A; Queensland Health Department, *Policy Statement on Reducing and Where Possible Eliminating Restraint and Seclusion in Queensland Mental Health Services* (2008). See also, Queensland Health Department, *Mental Health Act 2000 Resource Guide* (2012).

14 See, eg, *Mental Health Act 2009* (SA) ss 7(h), 90, 98; *Mental Health Act 1996* (WA) ss 116–124; *Mental Health and Related Services Act 1998* (NT) ss 61-62; *Mental Health (Treatment and Care) Act 1994* (ACT).

15 NSW Health, *Aggression, Seclusion & Restraint in Mental Health Facilities in NSW*, Policy Directive (June 2012).

16 In Tasmania, the new *Mental Health Act 2013* (Tas) which regulates restrictive practices commenced on 17 February 2014; and the new *Mental Health Act 2014* (Vic) commences on 1 July 2014. There are also

8.10 At a national level, in March 2014, Commonwealth, state and territory disability ministers endorsed the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (the National Framework). The National Framework outlines high-level principles and core strategies to reduce the use of restrictive practices in the disability services sector. It represents a commitment 'to the high-level guiding principles and implementation of the core strategies to reduce the use of restrictive practices in the disability service sector'.[17]

8.11 There are also relevant guidelines at a national or Commonwealth level including guidelines released by the Royal Australian and New Zealand College of Psychiatrists and the Australian Psychological Association,[18] and the Australian Government Department of Health.[19]

Opportunity for national reform

8.12 Stakeholders expressed significant concern about the use of restrictive practices.[20] The ALRC accepts that the overall objective of reform to laws and legal frameworks with respect to restrictive practices should be to reduce, and where possible, eliminate the use of restrictive practices.[21]

8.13 Regulation of restrictive practices primarily occurs at a state and territory level. However, a combination of recent initiatives at a national level—the National Framework; the development of a national quality and safeguards system for the National Disability Insurance Scheme (NDIS); and the National Seclusion and Restraint Project—provide a timely opportunity to consider a national approach to reform of restrictive practices in a range of settings.

8.14 The National Framework contains high-level principles and strategies designed to reduce the use of restrictive practices in the disability services sector. In March 2014, the COAG Disability Reform Council indicated that 'the core strategies

several reviews of mental health legislation in a number of jurisdictions: ACT— the second exposure draft of the *Mental Health (Treatment and Care) Act 1994* (ACT) was drafted in 2013; WA—the Mental Health Bill 2013 (WA) was adopted by the Legislative Assembly on 10 April 2014; review of the Bill in the Legislative Council is pending; SA—the Department of Health has completed public consultation on the *Mental Health Act 2009* (SA) and its report to Parliament is expected in June 2014; Queensland—submissions to a review focusing on areas for improvements to the *Mental Health Act 2000* (Qld) closed in August 2013; NSW—a report was tabled in Parliament in May 2013: 'Review of the NSW Mental Health Act 2007: Report for NSW Parliament, Summary of Consultation Feedback and Advice' (NSW Ministry of Health, May 2013).

17 Australian Government, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (2014) 2.

18 'Evidence-Based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector' (Australian Psychological Society, 2011).

19 See, eg, Department of Health, Decision-Making Tool: Supporting a Restraint Free Environment in Residential Aged Care (2012). See also: Senate Committee on Community Affairs, Parliament of Australia, *Care and Management of Younger and Older Australians Living with Dementia and Behavioural and Psychiatric Symptoms of Dementia* (2014).

20 See, eg, National Association of Community Legal Centres and Others, *Submission 78*; Central Australian Legal Aid Service, *Submission 48*; NSW Council for Intellectual Disability, *Submission 33*; Physical Disability Council of NSW, *Submission 32*; Office of the Public Advocate (Vic), *Submission 06*; Office of the Public Advocate (Qld), *Submission 05*.

21 Australian Government, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (2014) 1–2.

embodied in the National Framework will guide governments in development of national quality and safeguards system for the NDIS'.[22]

8.15 Another factor is the proposed development of a national quality assurance and safeguards system in the context of the NDIS. During the roll-out of the NDIS, state and territory quality assurance and safeguards frameworks will apply.[23] However, as the NDIS is fully implemented and states and territories reduce or cease funding for disability services,[24] and in the light of the move away from block funding to individualised funding, there will be a need for a national approach to quality assurance and safeguards.

8.16 In developing the national quality assurance and safeguards system for the NDIS, the intention appears to have been to use the National Framework to shape the restrictive practices-related elements of that system.

8.17 Stakeholders discussed and highlighted a number of challenges in developing such a system, including for example, the need for registration and regulation of all service providers who receive NDIS funding. In particular, while the focus of the NDIS on participant control over funding is a positive change, the potential for new and unregistered services to enter the market poses challenges for maintaining standards and safeguards, particularly in relation to the use of restrictive practices.[25]

8.18 In addition, given the variety of settings in which restrictive practices are used, there is a need for a national or nationally consistent approach to regulation beyond the disability services sector and the NDIS. The ALRC suggests that rather than simply including regulation of restrictive practices within a broader national quality assurance and safeguards system for the NDIS, the Australian Government and COAG should also facilitate the development of a national or nationally consistent approach separate from the NDIS system.

8.19 The third notable development is the National Seclusion and Restraint Project, which aims to identify best practice in reducing or eliminating seclusion and restraint and may help produce an important evidence base upon which a national approach to reducing and eliminating the use of restrictive practices could be developed.[26]

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22 COAG Disability Reform Council, Meeting Communique, 21 March 2014.

23 Australian Government, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (2014) 2–3; *Intergovernmental Agreement on the NDIS Launch*, 7 December 2012.

24 See, eg, statement by NSW Department of Family and Community Services that from 1 July 2018, 'the NDIS will fund all disability supports in NSW': NSW Department of Family and Community Services, *Disability Inclusion Bill 2014: Consultation Draft, Information Booklet* 6.

25 See, eg, Office of the Public Advocate (Qld), Submission 05.

26 The Project was established by the National Mental Health Commission in partnership with the Mental Health Commission of Canada and a number of key Australian bodies, including the Australian Human Rights Commission. The National Mental Health Commission has also 'engaged an interdisciplinary team of researchers from the University of Melbourne to look at best practice in reducing and eliminating the use of seclusion and restraint in relation to mental health issues and help identify good practice treatment approaches. The research team aims to identify what factors drive current practice in service delivery to evaluate how these factors can lead to best practice': National Seclusion and Restraint Project, Project Information <www.socialequity.unimelb.edu.au/seclusion-and-restraint/project-information/>.

8.20 A number of stakeholders expressed their support for a national regulatory approach or framework in relation to restrictive practices.[27] For example, the Public Interest Advocacy Centre (PIAC) submitted that it

> agrees that national regulation or framework for the regulation and reduction of restrictive practices is needed. PIAC considers that any regulation must ensure higher standards of treatment and very tight regulation of restrictive practices. PIAC notes that any regulation needs to reflect the principles reflected in the CRPD and the UN Principles.[28]

8.21 The National Mental Health Consumer and Carer Forum and the Mental Health Council of Australia (NMHCCF and MHCA) recommended the development and adoption of

> nationally consistent legislation governing restrictive practices, of which seclusion and restraint are included, be developed and adopted across all states and territories. This legislation should include standardised terminology and definitions and set clear and effective practice standards.[29]

8.22 The development of a national approach to the regulation of restrictive practices, separate from the NDIS system, could take a number of forms. It could, for example, build upon the foundation provided by the existing National Framework to provide further detail in addition to the high level principles and core strategies to guide state and territory approaches. It might involve the development of a new national framework and arrangements.

8.23 A number of stakeholders emphasised the need for binding regulation. For example, the Disability Discrimination Legal Service (DDLS) submitted that it would be 'insufficient' to simply have a framework and hope that the relevant organisations will abide by its 'guidelines'.[30] Instead, a binding form of regulation is necessary. Stakeholders such as the DDLS and the National Association of Community Legal Centres (NACLC) recommended that a national framework or approach 'be binding on organisations that receive federal funding, via inclusion in service agreements'.[31] Consistent with the NMHCCF and MHCA suggestion, regulation could also take legislative form.

8.24 The ALRC does not intend to make a specific proposal about the form any national or nationally consistent approach should take. Such a proposal would extend beyond the scope of this Inquiry.[32] Broadly, however, it is likely that an approach which incorporates legislation and national guidelines, codes of practice or policy

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27 Central Australian Legal Aid Service, *Submission 48*; Public Interest Advocacy Centre, *Submission 41*; Office of the Information Commissioner, Queensland, Submission 20; Carers Queensland Australia, *Submission 14*.

28 Public Interest Advocacy Centre, *Submission 41*.

29 NMHCCF and MHCA, *Submission 81*.

30 Disability Discrimination Legal Service, *Submission 55* attachment 1.

31 Ibid. See also: National Association of Community Legal Centres and Others, *Submission 78*; Carers Queensland Australia, *Submission 14*.

32 See Ch 1.

directives, as well as education, training and guidance material would be appropriate.[33] Such an approach may address the concerns of stakeholders about the focus of the National Framework being

> more on when and how to use restrictive practices rather than seeking to prevent their use, or looking at the environmental factors that may be causing an individual to behave in a way which introduces restraint as an option. The Framework is not premised on changing services, systems and environments as the starting point for changing individual behaviour, but remains focused on changing the person themselves.[34]

8.25 The interaction between the National Framework, the proposed NDIS national quality assurance and safeguards system, state and territory legislation, and any new national approach also needs to be considered.[35] Disability Rights Now suggested that, given the use of restrictive practices in a range of contexts, 'any framework on restrictive practices needs to recognise this, and be part of a wider overarching strategy addressing violence and abuse of people with disability in general'.[36]

8.26 A national or nationally consistent approach may provide a vehicle through which some of the systemic concerns of stakeholders, for example in relation to data collection, might be addressed.

A national approach to regulation of restrictive practices

Proposal 8–1 The Australian Government and the Council of Australian Governments should facilitate the development of a national or nationally consistent approach to the regulation of restrictive practices. In developing such an approach, the following should be considered:

(a) the need for regulation in relation to the use of restrictive practices in a range of sectors, including disability services and aged care;

(b) the application of the National Decision-Making Principles; and

(c) the provision of mechanisms for supported decision-making in relation to consent to the use of restrictive practices.

8.27 While not making a specific proposal about the exact form any national or nationally consistent approach should take, the ALRC considers that in developing such an approach, a number of key issues should be considered.

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33 See, eg, S Kumble and B McSherry, 'Seclusion and Restraint: Rethinking Regulation from a Human Rights Perspective' 17 *Psychiatry, Psychology and Law* 551–561.

34 Disability Rights Now, above n 7.

35 See, eg, Australian Psychological Society, Submission 60. See also Michael Williams, John Chesterman and Richard Laufer, above n 5.

36 Disability Rights Now, above n 7.

Broad application

8.28 In order to be effective, the regulation of restrictive practices needs to cover the use of restrictive practices in a range of settings.[37] This is particularly important given that people with disability may be subjected to restrictive practices in a variety of contexts, including: supported accommodation and group homes; residential aged care facilities; mental health facilities; hospitals; prisons; and schools.[38] Broad application of any national or nationally consistent approach would address one of the key shortcomings of current approaches to restrictive practices, including the National Framework, which is limited to the disability services context.

8.29 A key additional area of Commonwealth law to which a national or nationally consistent approach should apply is aged care.[39] Concerns about restrictive practices in aged care were highlighted by a number of stakeholders. For example, the Office of the Public Advocate (Vic), highlighted concern about 'the high use of restrictive interventions on residents of aged care facilities' and stated that it 'would like to see greater regulation and on-site auditing of this practice'.[40] Similarly, in March 2014, the Senate Community Affairs References Committee recommended (in the context of aged care), that 'the Commonwealth develop, in consultation with dementia advocates and service providers, guidelines for the recording and reporting on the use of all forms of restraints in residential facilities'.[41]

Encouraging supported decision-making

8.30 The ALRC proposes that any national or nationally consistent approach to the regulation of restrictive practices should reflect the National Decision-Making Principles and make provision for supported decision-making.

8.31 While limited to disability services, the National Framework incorporates guiding principles, including reference to a 'Person-Centred Focus' which states that

> 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.[42]

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37 See, eg, Disability Discrimination Legal Service, Submission 55 attachment 1. See also P French, J Dardel and S Price-Kelly, 'Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment' [2009] *People with Disability Australia*.

38 See, eg, National Association of Community Legal Centres and Others, *Submission 78*; Children with Disability Australia, *Submission 68*; Central Australian Legal Aid Service, *Submission 48*; Public Interest Advocacy Centre, *Submission 41*; Office of the Public Advocate (Vic), *Submission 06*; Office of the Public Advocate (Qld), *Submission 05*.

39 In relation to aged care, see, eg, John Chesterman, 'The Future of Adult Guardianship in Federal Australia' (2013) 66 *Australian Social Work* 26.

40 Office of the Public Advocate (Vic), *Submission 06;* Office of the Public Advocate (Qld), *Submission 05.*

41 Senate Committee on Community Affairs, Parliament of Australia, *Care and Management of Younger and Older Australians Living with Dementia and Behavioural and Psychiatric Symptoms of Dementia* (2014) rec 14.

42 Australian Government, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, (2014) 7.

8.32 The National Framework also provides for '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.[43]

8.33 The corresponding core strategy states that one of the key implementation areas is the 'availability of tools to assist people with disability and their guardians or advocates (where appropriate) to participate in decision making'.[44]

8.34 The ALRC considers that the National Framework provides a useful starting point for the potential application of the National Decision-Making Principles and supported decision-making in the context of restrictive practices.

8.35 People with disability have the right to make decisions about matters which affect their life, including in relation to the use of restrictive practices. As a result, any national approach must ensure that decisions about, and consent to, restrictive practices are ultimately those of the person on whom the practice is being used. In circumstances where the person requires decision-making support there should be provision for decision-making which incorporates a person-centred focus and provides for supported decision-making. For example, a person may require support to make decisions about, or consent to, the use of restrictive practices under a behaviour support plan. In the context of aged care, it may be necessary for a representative who has been appointed to fully support the person in relation to restrictive practices-related decisions, including expressing or constructing the will and preferences of the person with disability, or considering the human rights relevant to the situation.

8.36 Importantly, in Chapter 10, the ALRC proposes review of state and territory guardianship, mental health and disability services legislation—the key legislation under which restrictive practices are currently regulated. One aim of such review, in ensuring legislation is consistent with the National Decision-Making Principles, would be to encourage supported decision-making, and a shift from an objective best interests test to one relating to will, preferences and rights. As a result, in circumstances where a decision in relation to restrictive practices is made at a state or territory level by a substitute decision-maker, such as a guardian, ideally they should have regard to the will, preferences and rights of the person with impaired decision-making ability.[45]

8.37 Finally, consistent with the Safeguards Guidelines under the National Decision-Making Principles, restrictive practices must be least restrictive of the person's human

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43 Ibid.

44 Ibid 10.

45 For prior consideration of the role of state and territory appointed decision-makers in relation to restrictive practices, see, eg, Victorian Law Reform Commission, *Guardianship*, Final Report No 24 (2012); P French, J Dardel and S Price-Kelly, above n 37; Michael Williams, John Chesterman and Richard Laufer, above n 5.

rights; appealable; and subject to regular, independent and impartial monitoring and review.

8.38 This approach is consistent with that recommended by a number of stakeholders. NACLC, for example, expressed its support for the proposed National Framework but suggested that it could be strengthened by reference to guiding principles.[46] PIAC submitted that any national or nationally consistent approach should ensure that restrictive practices:

> are only implemented as a last resort; are implemented for the least amount of time possible; are recorded, monitored and reviewed; have tight safeguards in place that are focused on minimising risk to staff, patients, carers and family; and are undertaken with a focus on ensuring decency, humanity and respect at all stages.[47]

Other issues

8.39 A number of stakeholders raised systemic issues in relation to the use and regulation of restrictive practices, including: the lack of facilities and resources; positive behaviour management; the role of psychologists and others in mitigation of 'challenging behaviours' and multi-disciplinary interventions; the need for education, awareness raising and training of relevant staff; the need for penalties and criminal sanction; and the need for a national approach to data collection.[48] While these concerns are important, the issues do not related directly to concepts of legal capacity or decision-making ability and the ALRC does not intend to make proposals in these areas.

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46 National Association of Community Legal Centres and Others, *Submission 78*.

47 Public Interest Advocacy Centre, *Submission 41*. See also: Senate Committee on Community Affairs, Parliament of Australia, *Care and Management of Younger and Older Australians Living with Dementia and Behavioural and Psychiatric Symptoms of Dementia* (2014) recs 14, 15.

48 See, eg, NMHCCF and MHCA, *Submission 81*; Australian Psychological Society, *Submission 60*; Disability Discrimination Legal Service, *Submission 55*; Central Australian Legal Aid Service, *Submission 48*; Physical Disability Council of NSW, *Submission 32*. See also: National Mental Health Commission, 'A Contributing Life, the 2013 National Report Card on Mental Health and Suicide Prevention' (2013).