

The Secretary
Parliamentary Joint Committee on Human Rights
PO Box 6100, Parliament House
Canberra ACT 2600

Via email: human.rights@aph.gov.au

20th August 2019

Dear Secretary,

Re: Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 (principles).

I am writing to provide late feedback regarding Advocacy for Inclusion's concerns concerning the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*.

Advocacy for Inclusion (AFI) is a not-for-profit, independent, individual and systemic advocacy service that provides extensive human rights advocacy and supported decision-making support for and on behalf of people with disabilities in the ACT. We provide direct individual advocacy services for individuals with disability in Canberra, ACT and provide national systemic advocacy.

AFI has held the position that restrictive practices are fundamental violations of human rights. They can cause physical and psychological pain and discomfort, deprivation of liberty,¹ alter individual thought processes and deprive a person of their right to choice and control in their lives.² These practices can have significant adverse impacts on a person's mental and physical health and wellbeing.³ It also denies a person basic respect for their inherent dignity as human beings.

In regard to the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*, AFI supports and equally share concerns of other submissions made to the Committee⁴. The new principles will violate human rights obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and the *Protocol to the Convention Against Torture* (OPCAT) under the Commonwealth Government. Although there is no direct international human rights treaty or principles representing aged care or an aging population worldwide, the principles that underlie the UN CRPD should be recognised and applied in lieu.

¹ 'The term 'deprivation of liberty' employed in Article 4(2) of the OPCAT extends to places where people are held by an order of a public authority or at its instigation or with its consent or knowledge. It therefore covers both 'traditional places of detention' such as prisons and police cells as well as less traditional ones such as, but not limited to, social care homes, psychiatric hospitals and centres for children', sourced: University of Bristol Human Rights Implementation Centre (2011). *Deprivation of liberty as per Article 4 of the OPCAT: the scope*, p3. Assessed on 19th August 2019 from <https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/deprivationofliberty.pdf>

² CRPD Civil Society. (2012). *Disability rights now: Civil society report to the United Nations Committee on the Rights of Persons with Disabilities*.

³ 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>.

⁴ Submissions Made to the Committee:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/QualityCareAmendment/Submissions

Reducing and eliminating the use of restrictive practices is consistent with the United Nations Convention on the Rights of Persons with Disabilities (CRPD)⁵ and its commitment to protecting the rights, freedoms and inherent dignity of people with disability. Australia ratified and agreed to be bound by the terms of the CRPD under international law.

As an organisation representing people with disabilities, AFI is becoming aware and conscious that as Australia reaches a growing ageing population, people with disabilities will not be exempt. Australia's population is rapidly ageing, and there is an increasing demand for aged care facilities and services. According to the Productivity Commission's *Report on Government Services 2019*,⁶ 234,798 people were permanently situated in residential care and 60,278 in respite care over 2017-2018.

Among a growing ageing population are people with disabilities, who already experience restrictive practices in institutional settings including hospitals, mental health facilities, congregate and group home accommodations, are ageing and are often an after-thought when the discussion of aged care and quality of care is considered. With a growing ageing population on the rise, there will be increasing demand for subsidised aged care services in a care workforce that is already under pressure in both the aged care and disability sectors.

The Aged Care Royal Commission and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will both include evidence, stories and testimonies of the usage of restrictive practices and restraint in care. While AFI looks forward to the recommendations of each Royal Commission regarding the quality of care, education and awareness of restrictive practices used against service providers and facilities that implement care strategies; we ask the Committee to be wary and cautious of rapid change that will further conflict Australia's obligations to human rights.

AFI recognises that service provisions are often challenged to provide a safe and therapeutic service for clients who have complex high support needs, as well as providing the safest possible work environment for staff. A key feature missing from the current system and the proposed amendment by the Committee is accountability measures. As a reality, restrictive practices are 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 in both disability and aged care.⁷ It can also be used for convenience or for cost-effectiveness i.e. restrictive practices may be cheaper in the short term than implementing additional supports. AFI has worked with people with disability in particular, who were once chemically restrained frequently to manage 'challenging' behaviours. This is common and reflected practice in aged care.⁸ The Committee must consider practices must be strictly accounted for and monitored, yet they are not. In the proposed amendment, it is concerning that there is no mention of monitoring of chemical restraint.

In a training and education capacity, AFI provides training and advocacy support for people with disabilities to access and be aware of their rights to be supported in their own decision-making capacities. We are concerned that the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019* is focused on substitute decision-making and takes a backwards approach to allow people to make their own decisions.

A fundamental principle of Australia's rule of law is that people with disabilities, like all adults, have the right to make decisions that affect their lives and have their decision-making capacity respected and to be involved in any decisions made regarding restrictive practices.

⁵ 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).

⁶ Productivity Commission (2019). *Report of Government Services 2019, Chapter 14 Aged Care Services*, 14.6. Accessed on the 07 February 2019 from <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/community-services/aged-care-services/rogs-2019-part-chapter14.pdf>

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

⁸ Australian Law Reform Commission (2017). *Elder Abuse – A National Legal Response* (ALRC Report 131), p156. Accessed on 19th August 2019 from https://www.alrc.gov.au/sites/default/files/pdfs/publications/elder_abuse_131_final_report_31_may_2017.pdf

In conclusion, AFI urges the Committee to reconsider the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019* to regulate and support practices from a Commonwealth level that will be a backwards step to Australia's international human rights obligations. It is necessary that aged care facilities are compliant with the UNCRPD, OPCAT and other international human rights obligations to provide important additional oversight of human rights standards in aged care, with restrictive practices being minimised/eliminated.

This legislative amendment effectively supports restrictive practices without regulations, and it is AFI's view that ahead of the Aged Care Royal Commission, it will be a poor reflection on the Australian Government where the legislation will potentially come under review in the future to reflect future recommendations.

Thank you for your consideration.

Bonnie Millen
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Advocacy for Inclusion