



Children and Young People  
with Disability Australia

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**Submission on related policy, guidelines and the *Principles for the Reduction and Elimination of Restraint and Seclusion (the Principles)* in Victorian Government Schools**

Thank you for the opportunity to provide feedback.

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services and is a not for profit organisation. CYDA has a national membership of 5 300 and a growing social media presence with 22 500 followers across the three major platforms of Facebook, Twitter and LinkedIn.

CYDA provides a link between the direct experiences of children and young people with disability to the Australian Government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences and challenges faced by children and young people with disability.

CYDA's purpose is to advocate systemically for the rights and interests of all children and young people with disability living in Australia.

CYDA has significant concerns regarding the current policy, guidelines and the Principles which are being reviewed regarding restraint and seclusion of students with disability in Victorian government schools.

Experience of restraint and seclusion continues to be a shamefully common experience for students with disability in Victorian government schools. The reported prevalence of these practices by students with disability, families, educators and others is deeply disturbing as is the circumstances in which it occurs. Direct experiences also include incidents of chemical and mechanical restraint even though it is explicitly prohibited under existing policy.

The positioning of seclusion as an acceptable intervention for students is totally unacceptable and arguably a breach of human rights.

CYDA conducts an annual national survey on educational experiences of students with disability. In 2017, 22 per cent of students with disability in Victoria reported experiencing restraint in the last 12 months and 27 per cent reported experiencing seclusion. The prevalence had increased from the 2016 survey where the rates were 19 and 20 per cent respectively. Results of the CYDA 2018 national survey will be available in the near future.

Direct experiences reported to CYDA include:

*I witnessed my child being physically restrained for too long. The incident left a bruise on his wrist and when I complained to the Department of Human Services and the Education Department, I was told the matter had to be resolved between the school and me! In other words the school had to "self-discipline" itself - What a joke! I was totally disgusted with the way the matter was handled.*

*(My daughter was) penned off in the classroom and not allowed breaks when overloaded.*

*(My child experienced) restraint that led to the injury of a support staff member as she tried to intervene but instead escalated the situation putting my child and herself at risk. This staff member had no formal training or authorisation to physically restrain a child.*

*My son was restrained multiple times. He was left with bruising and locked in small rooms.*

*The Principal carried my son to the sensory room and locked the door. My son had a major meltdown and started to destroy the room.*

*Physical restraint was previously used (on my child) i.e. restrained by seatbelt into 'time out' chair bolted to flooring.*

*I have been told (my daughter) "cannot attend school without taking Ritalin" and also that "she MUST obey whether she likes it or not" or "she will have her enrolment reviewed".*

*Our son has been restrained in a chair that is bolted to a large piece of timber continuously throughout his day. He is only removed when taken to the toilet, where once again he is strapped to the toilet, or for outside play. While he is in class he is restrained at all times.*

*Three to four adults (held my son) down. The last method we heard about was telling him to pretend he was a jellyfish therefore going limp and not struggling. This was obviously after he had been restrained and put on the ground.*

*At the school that my son used to attend, he and two other children aged five to six years old were locked inside a small windowless room called the 'thinking room.' My son now has a fear of small confined spaces such as lifts...I was not informed before or afterwards by his teacher or school Principal of this event. It is only years later that my son remembers and has had the courage to tell me.*

The direct experience of students with disability clearly indicate that there are still significant issues regarding restraint and seclusion in Victorian government schools that have not been addressed by current Department of Education and Training policies and guidelines.

## FEEDBACK

Feedback in this submission is based on policies and guidelines regarding restraint and seclusion provided by the Department of Education and Training via email on 27 September 2018. These documents are:

- The Principles for Reduction and Elimination of Restraint and Seclusion in Victorian Government Schools;
- Restraint and Seclusion;
- Restraint of Students;
- Restraint and Seclusion: key points;
- Restraint and Seclusion: definitions;
- Restraint and Seclusion: legal obligations;
- Restraint and Seclusion: prevention and early intervention;
- Restraint and Seclusion: incident intervention;
- Restraint and Seclusion: de-escalation;
- Restraint and Seclusion: response and recovery;
- Restraint and Seclusion: working with parents and carers; and
- Restraint and Seclusion: professional development.

CYDA notes that the Department of Education and Training updated these documents on 20 November 2018. This occurred a day after the due date required for written feedback and prior to a scheduled meeting of stakeholders on 3 December 2018 to discuss the ongoing review. Due to the extremely recent nature of these changes and time constraints for providing feedback, a comprehensive review of these altered documents was not possible.

This submission provides general comment on issues of overarching relevance to the Principles and all supporting documents before providing specific feedback and comment on individual documents.

## General Comments

### Policy Underpinnings

It is CYDA's position that the use of restraint and seclusion, by their very nature, cause significant harm and in many circumstances, constitute a breach of human rights.

CYDA maintains that the positioning of seclusion as an acceptable intervention for students with disability is unacceptable. Further, it is CYDA's view that there is no safe way to implement restrictive practices and it should only be used 'in very limited circumstances' and 'as a last resort'.

This is in line with the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (National Framework)<sup>1</sup>.

While it is noted that the National Framework does not have jurisdiction in relation to education, CYDA believes that it should strongly inform Department of Education and Training policy and guidelines on restraint and seclusion.

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<sup>1</sup> Council of Australian Governments 2014, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, Commonwealth of Australia, Canberra, viewed 21 November 2018, <https://bit.ly/2zeOHMX>, p. 6.

CYDA notes that the *Restraint and Seclusion: incident intervention* document briefly but clearly acknowledges the inherent harm and trauma caused by restraint and seclusion. However, it is CYDA's view that this is not adequately reflected as a core concept in the Principles and other supporting documents. Conversely, some elements of Department of Education and Training policy and guidance contradict this statement by suggesting that school staff monitor a student during an intervention to ensure they are not harmed.

CYDA also maintains that the Principles and supporting documents do not sufficiently position the reduction and elimination of restraint and seclusion as the core business of these policies and guidelines. Instead, there is a substantial focus on managing and justifying circumstances under which restraint and seclusion can take place.

CYDA believes it is vital that all documents, particularly the Principles, are strengthened to acknowledge that restraint and seclusion are inherently harmful and position the need to eliminate these practices, on the basis that they cause harm, as a core concept.

### **Lack of Clarity and Subjectivity**

CYDA is concerned by the persistent use of terms, instances and examples that are undefined, lack clarity or are highly subjective. For example, key terms relating to the use of restraint and seclusion such as 'reasonable in the circumstances' lack clarity and are not accompanied by additional guidance regarding their application. Further, key terms used repeatedly across all documents such as 'problem behaviour' are not defined.

This lack of clarity creates significant uncertainty for students, families and schools regarding how the Principles should be applied. The reliance on subjective language also risks capturing and justifying a broad range of actions by schools that cause significant harm to students. It is therefore CYDA's view that the reliance on unclear terms and subjective assessments should be eliminated to the greatest degree possible, including through the inclusion of clear definitions and objective directions regarding the application of the Principles and the use of restraint and seclusion.

In specific feedback provided below, CYDA has identified the most concerning terms and sections impacted by a lack of clarity, however this issue affects all aspects of all documents provided.

### **Behaviour is Communication**

CYDA believes the Principles and supporting documents do not appropriately acknowledge behaviour, including behaviours of concern, as a form of communication. This is reflected in the policy and guideline's focus on responding to behaviour rather than actions and strategies that help determine what the student is seeking to communicate and how best to ensure the student's personal and educational needs are met.

It is CYDA's view that the Principles and supporting documents should be strengthened by clearly articulating and positioning as a core concept, an acknowledgement that all behaviour, including behaviours of concern, are communication.

### **Role and Purpose of Policies**

The devolution of responsibility to schools in Victoria and the optional nature of many of the Principles and supporting documents is of particular concern to CYDA. Policies and guidelines currently include no information regarding how these documents are distributed or how the Department of Education and Training ensures schools and individual staff read and understand the

documents. Further, there is no information regarding the consequences or processes which exist if these policies and guidelines are not adhered to.

It is CYDA's view that this undermines the efficacy and accountability of efforts to reduce and eliminate restraint and seclusion in Victorian government schools.

The lack of a systemic approach also undermines efforts to achieve change across the government school sector and ignores systemic barriers such as a lack of knowledge and expertise at the school level, ableist attitudes and a lack of resources to provide prevention based behaviour support.

### **Supported School Transport**

Students with disability are frequently subjected to restraint while on supported school transport. This includes distressing and harmful uses of physical and mechanical restraint such as seatbelt locks.

CYDA notes that page 14 of the Principles states that Departmental policy and guidelines which relate to restraint and seclusion apply to all staff who work 'directly and indirectly with students, and across all settings under the responsibility of the school'. However it is unclear from the documents provided to CYDA and wider policies whether this extends to supported school transport and if so, whether contracted staff are required to act in accordance with the Principles.

Further, it is unclear what policies and training are in place to ensure contracted staff have the appropriate knowledge and expertise to implement the Principles. Nor is it clear what the processes and accountability mechanisms are if contracted staff breach these policies and guidelines.

Given the frequency and impact of restraint used on supported school transport, it is vital that the application of the policy and guidelines to employees of bodies contracted by the Department of Education and Training eg transport services, is clarified.

### **Specific Feedback – The Principles**

CYDA has a number of concerns and recommendations regarding individual elements of the Principles as outlined below.

#### **Principle 1**

- The use of the term 'students with disabilities' is not in line with the social model of disability, which is meant to underpin Department of Education and Training policies and guidelines on restraint and seclusion. This should be amended to read 'students with disability'.

#### **Principle 2**

- It is not clearly articulated in this section how circumstances under which restraint and seclusion are allowable, should be assessed. There is a high reliance on subjective language such as 'reasonable in the circumstances' and 'as soon as imminent danger has dissipated'. It is CYDA's view that this Principle should be strengthened by providing clear criteria and definitions for key terms.
- The prohibition against the use of rooms or areas designed specifically for seclusion does not capture dual-purpose spaces, such as cupboards and store rooms. CYDA is aware from direct experience that the use of such spaces to seclude students does occur. The use of these spaces should be specifically prohibited under this Principle.

### Principle 3

- CYDA strongly supports the use of whole-of-school positive behavioural support frameworks as an approach to promote improved behaviour in schools.
- CYDA has liaised considerably with various stakeholders and the Department of Education, both in New South Wales and Queensland, throughout recent reform processes. Based on this experience, it is apparent that the implementation of PBS frameworks have not been implemented system wide and in a consistent way. This has been demonstrated in the *NSW Ombudsman Inquiry into behaviour management in schools*, which identified a clear need to increase quality control and scrutiny of Positive Behaviour for Learning framework implementation<sup>2</sup>. CYDA therefore questions the Principle's reference to PBS framework implementation to date as a 'success'.
- Currently this section specifies that behavioural interventions should be 'ethical and evidence based'. CYDA believes this should be amended to ensure interventions are consistent with human rights, reinforcing the rights based approach outlined in Principle 5.

### Principle 4

- Direct experience reported to CYDA demonstrates that mechanical restraint is still experienced by students with disability. This indicates that further promotion of the Principles and enhanced training needs to be undertaken to ensure teachers and other school staff understand and can appropriately implement existing policy and guidelines.
- Some families have also reported to CYDA that schools have stated that use of specific medications, which are believed to manage behaviour, is a precondition of school enrolment. CYDA maintains this coercive practice is a form of chemical restraint and should explicitly be prohibited under this Principle.
- The role of teachers in monitoring and providing advice regarding student medication set out in this section is highly problematic. Educators do not have the training or expertise to make judgements in relation to medication, this is a matter between the student, family and doctor. CYDA therefore believes this section should be amended to ensure it is not positioning teachers and school staff as potential experts in these matters.

### Principle 6

- Direct experience demonstrates that restraint and seclusion continues to be used for punishment or discipline, as a means of coercion or retaliation or as a convenience. As discussed under Principle 4, this indicates the need for further promotion of the Principles and training for teachers and other school staff.

### Principle 7

- This section states that staff should visually monitor students during instances of restraint and seclusion to ensure the student is breathing and has not come to any harm. This is not consistent with the concept that restraint and seclusion, by their very nature, cause trauma and harm as is acknowledged in *Restraint and Seclusion: incident intervention*. Further, it is highly questionable that visual monitoring is sufficient to ensure a student is breathing.

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<sup>2</sup> New South Wales Ombudsmen 2017, *NSW Ombudsman Inquiry into behaviour management in schools*, New South Wales Ombudsmen, Sydney, viewed 20 November 2018, <https://bit.ly/2v12d6B>

## **Principle 8 and 9**

- CYDA supports the development, implementation and review of Behaviour Support Plans (BSP) as a means of supporting the personal and educational needs of students.
- Neither the Principles nor supporting documents provide clear information or guidance regarding when schools should implement a BSP, except in response to an incident of restraint and seclusion. This supports a reactive rather than a proactive approach to developing and implementing BSP, which is not consistent with the Principles stated focus on prevention and early intervention.
- Principle 8 states only that a BSP 'should' be developed or reviewed with parents. CYDA maintains that this section should be strengthened to ensure parents and care givers are key informants of a BSP and must provide consent on an agreed finalised plan before it is implemented.
- It is important that students are also provided with the opportunity to participate in the development and review of BSPs. Depending on circumstances, some students will have valuable insights that could inform effective strategies.
- It is vital that the 'relevant professionals' involved in the development of a student's BSP are not limited to services or individual practitioners who are employed and/or engaged by the Department of Education and Training or the school. In many instances, particularly with the establishment of the National Disability Insurance Scheme (NDIS), the student may have a range of 'relevant professionals' who have a relationship, expertise and valuable knowledge which would be integral to the development of a BSP.
- These sections should include a central acknowledgement that the involvement of 'relevant professionals' in the development and review of a student's BSP should only occur with the consent of the student and the student's family.
- It is unclear from the information provided whether there is a process for resolving disagreements which may occur between families and schools in relation to BSP's and if so, what those processes are. This should be clarified in the Principles or supporting documents.

## **Principle 10**

- From the information available in the Principles and supporting documents it is unclear how school personnel are trained 'in how to collect and analyse basic individual student data to determine the effectiveness of positive behaviour support'. Teachers and school staff generally will not have the expertise or qualifications to undertake this analysis.
- CYDA questions how the requirement for trained personnel is monitored and assessed by the Department of Education and Training.
- This section only requires schools to make 'every effort' to use positive behavioural strategies to prevent the need to use restraint and seclusion. This approach is not consistent with Principles 8 and 9, nor is it consistent with a system wide approach.

## **Principle 11**

- CYDA notes that this section provides that staff should ensure the use of physical restraint and seclusion does not harm the student. As previously discussed, this and similar statements are not consistent with acknowledging the harm and trauma inherent in the use of restraint and seclusion.

## Principle 12 and 13

- It is not uncommon that families of students with disability who have been subjected to restraint and/or seclusion at school inform CYDA that the following is their experience: families were not informed of incidents in a timely manner; schools failed to inform families; schools refused to provide information; families were not invited to be involved in decision making; and schools actively excluded families from decisions relating to the student.
- CYDA does not support the use of qualifying language in this section as it undermines the rights of families to be informed and involved in decisions relating to their child. Parents and caregivers 'must' rather than 'should' be informed of Department of Education and Training policy on restraint and seclusion.
- Parents and caregivers 'must' rather than 'should' be notified of incidents of restraint and seclusion.
- Clear and mandatory timeframes for informing parents and caregivers regarding incidents of restraint and seclusion need to be included in the Principles, as the current timeframes are not sufficient to ensure prompt action.
- Parents and caregivers 'must' rather than 'should' be invited to be involved in reviewing existing strategies and developing new strategies to support their child.

## Principle 14

- This section states Department of Education and Training policies and guidelines will be reviewed based on data and evidence. However, CYDA and other organisations providing feedback to this review do not have access to this data. This substantially diminishes accountability and the capacity of organisations like CYDA to provide comprehensive feedback.
- CYDA urges the Department of Education and Training to prioritise making this data public.
- This section should be strengthened by including clear timelines for the completion of 'periodic' reviews.
- This section should provide clear guidance regarding the review process, including how stakeholders will be included and consulted, terms of reference for the review and eligibility criteria regarding who will form review panels or working groups.
- From the information provided it is unclear whether there is a process for when a student or family reports instances of restraint and seclusion that are not recorded by the school. This process should be clearly set out under this Principle or supporting documents to ensure accurate data collection and enhanced accountability.

## Principle 15

- CYDA is particularly apprehensive about the significant use of unclear and subjective language in this section. Neither this section nor any of the additional documents provide clear guidance regarding how many of the terms used in this section should be applied or assessed. For example, how is 'the effectiveness of restraint and seclusion in de-escalating the situation' defined? Clearer guidance should therefore be provided in this section or in supporting documents.

## Definitions

- Alarming, this section lacks a definition of 'physical force'. This is a key term whose application would likely have significant consequences for students and should therefore be clearly defined.
- This section states that the prohibition on mechanical restraints does not apply to devices that have been assessed and prescribed for the student. CYDA believes this section should be



strengthened by explicitly stating that the use of such devices be conditional on parental/care giver consent.

## **Specific Feedback – Supporting Documents**

This section of the submission limits feedback to supporting documents that contain additional information or information that is significantly different from the Principles.

### **Restraint and Seclusion: incident intervention**

- The inclusion of ‘breakaway techniques’ as an example of permissible protective physical interventions is concerning.
- The use of the term ‘guiding’ in this section is highly problematic. Direct experience reported to CYDA demonstrates that the term ‘guiding’ has been used by schools to justify instances of restraint. For example, the description ‘guiding the student to the ground’ was used in an incident where a student had been placed in a headlock and tackled to the ground.
- CYDA strongly supports the statement in this section acknowledging that restraint and seclusion, by its very nature, causes trauma and harm to the students. It is CYDA’s views that this statement should be included as a central element of the Principles.

### **Restraint of Students**

- CYDA is very concerned by the suggestion in this document that there are types of restraint and seclusion that would be consistent with the needs and circumstances of any student.
- The provision to monitor students for ‘distress’ is not consistent with the acknowledgement contained in other supporting documents that restraint and seclusion cause trauma and harm.
- In line with the acknowledgement that seclusion and restraint causes trauma and harm, prescribed actions to be taken after an incident should be amended to include psychological support for the student involved, not just support for staff and others who witnessed the incident. This should also be reflected in *Restraint and Seclusion: response and recovery*.
- It is unclear from this document who has access to records of an incident. For example, does this include all school staff? It is CYDA’s view that this section should be amended to provide greater clarity regarding who has access to the record and to include an obligation to provide a copy of the record to the family of the student involved.

### **Restraint and Seclusion: response and recovery**

- CYDA strongly opposes the suggestion, under ‘Determine any response’, that disciplinary measures may be appropriate in response to an incident of restraint and seclusion. This is not consistent with the circumstances under which restraint and seclusion are allowable under the Principles or the policy’s stated focus on prevention, early intervention and positive behavioural support. If disciplinary action is appropriate in the circumstances, this strongly suggests that restraint and seclusion were used in a way that is prohibited by the current policy.
- It is critical this section is removed to ensure schools and educators understand that students in these circumstances should be supported rather than punished.

### **Restraint and Seclusion: prevention and early intervention**

- The characterisation of incidents of behaviours of concern in this document, as occurring following a period of escalating behaviour or occurring without notice, does not reflect the complex reality of student behaviour and circumstance. For example, behaviours of concern may

arise in response to a change in the environment or may be preceded by subtle cues which were missed by school staff. Consideration of these complexities should be reflected in the document.

- The role of school staff prescribed in this document should include speaking with the student and the family. Usually the family, and depending on the individual circumstances also the student, will be able to provide invaluable insight that will positively contribute to prevention and early intervention strategies.
- CYDA supports the requirement for student and/or family consent prior to contacting relevant health and other professionals set out in this document. The requirement for student and/or family consent should also be included as a central element of the Principles.

#### **Restraint and Seclusion: working with parents and carers**

- It is CYDA's view that the use of the qualifying term 'should' in this document is inappropriate as it suggests that informing and involving parents is optional. As discussed previously, it is CYDA's view that qualifying language, relating to informing and involving parents and carers, should be strengthened to provide for clear obligations by using the term 'must'.
- This section should explicitly state the need for student/parental consent prior to involving professionals.
- This section should specify that other professionals involved in the development of an individual plan are not limited to those employed/engaged by the Department of Education and Training or the school. Students will often have pre-existing relationships with relevant professionals who have valuable expertise and knowledge to contribute to the plan. This is particularly the case since the establishment of the NDIS.

#### **Restraint and Seclusion: de-escalation**

- CYDA notes that the link to information on a student's Behaviour Support Plan leads to information about School Wide Positive Behaviour Support rather than information on individual plans. It is CYDA's view that the utility of this document/webpage for families and schools would be improved by linking it to relevant information on an individual BSP.
- The statement that 'teachers and other staff likely to be in close contact with the student should be familiar with the strategies outlined in the plan' is inconsistent with language used in the *Restraint and Seclusion: prevention and early intervention*. It is CYDA's view that these sections should be consistent and should be strengthened to create a clear obligation for staff to be familiar with the student's BSP.

#### **Restraint and Seclusion: professional development**

- From this document it is unclear how the Department of Education and Training or schools ensure that teachers and other staff complete the online course. Further, the optional online nature of the course raises serious questions regarding the level of knowledge and skills teachers and other staff could acquire through this process, given the complex nature of the subject matter.
- The 'Quick Quiz – Managing Challenging Behaviours in Your School' is overly simplistic and relies heavily on the individual accurately judging their own level of knowledge, rather than providing for a rigorous test of their knowledge and expertise.

CYDA also wishes to raise a number of issues relating to the 'Preventing and Responding to Extreme Behaviour in Special Schools' course. In particular:

- There is no clear definition of what constitutes 'extreme behaviours' or how this differs from behaviours of concern;
- The course content appears to be dated from 2013 and may therefore be out of date; and
- That 8 hours of online training does not appear sufficient to develop the adequate knowledge, skills and expertise in managing these behaviours or preventing and eliminating restraint and seclusion.

## **Additional Comments**

CYDA has serious concerns regarding the proposed membership of the Working Group to review the restraint and seclusion policy. CYDA maintains it is not appropriate or acceptable for the Working Group to include members who are known to have used and promoted the use of restraint and seclusion against students with disability.

CYDA has specifically emailed the Department of Education and Training regarding this issue and has not received any acknowledgement or response to date.

The inclusion of these individuals and the lack of response to CYDA's concerns, raises serious questions regarding the Department of Education and Training's commitment to developing policies that prevent and eliminate restraint and seclusion in Victorian schools. These matters must be addressed as a matter of urgency to ensure the success of the review process.

Thank you again for the opportunity to provide feedback and please contact CYDA if additional information or discussion is required.

## **CONTACT**

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