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AGED CARE INDUSTRY  
ASSOCIATION

15 August 2019

Mr Ian Goodenough MP  
Chair  
Joint Parliamentary Committee on Human Rights  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Goodenough,

**RE: Inquiry into *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019***

The Aged Care Industry Association (ACIA) is a peak body for aged care providers. Our membership includes private and not-for-profit aged care providers, across residential aged care and home care. ACIA members operate over 14,000 residential beds across four states.

The Aged Care Industry Association (ACIA) welcomes the opportunity to make a submission to the Committee's inquiry into the *Quality of Care (Minimising the Use of Restraint) Amendment Principles 2019* (the Principles).

ACIA and our members have a number of concerns regarding the Principles, particularly in their interaction with human rights.

1. The requirement that a third party is required to consent to treatment prescribed for a patient by a doctor. If a GP has prescribed treatment for one of their patients, it is not the role of the Commonwealth, nor of a person who may claim to be a representative of the patient, to give or withhold consent to that treatment. It is not appropriate for an aged care provider, in following the directives of a care recipient's GP, to be required to seek approval from a third party – the provider is obliged to provide the care specified under the Commonwealth's legislative instruments (sections 54 and 56 of the Act), and the provider can be considered to have a duty of care toward the care recipient. To require disclosure of the content of communication between doctor and patient is not in accordance with these responsibilities.

The Principles do not provide a legal framework for providers to communicate a GP's prescriptions to a third party.

2. The provisions regarding consent to the use of restraint expose a care recipient to the risk of restraints being approved without the care recipient's wishes being considered.
  - a. For the use of chemical restraint, no consent is required – from either the care recipient or their representative. The care recipient is not required to be notified of the use of chemical restraint; notification requirements apply only to the care recipient's representative.
  - b. For the use of physical restraint, consent must be granted by the care recipient or their representative; by failing to define a hierarchy of consent, the Principles create the ability

for a representative to consent to the use of physical restraint even if a care recipient does not consent.

3. As noted by the Victorian Public Advocate, there are serious shortcomings in the definition of substitute decision-makers. Without wishing to repeat the work of the Public Advocate, ACIA shares these concerns, and particularly wish to support the Public Advocate's observation that representative roles are regularly disputed in the aged care context.

In addition, the wording of the Principles suggests that a care recipient can be restrained with their consent. This seems to stretch the meaning of restraint well beyond how it is generally understood. In essence, if a care recipient consents to a practice, it is unclear how it can be considered a restraint.

In concrete terms, if a care recipient or their representative requests a bed rail or concave mattress, this would constitute restraint under the Principles. Before an approved provider could agree to this request, they would need to:

- seek an assessment from a health practitioner;
- trial alternatives;
- document those alternatives, including updating the care recipient's care plan; and,
- use the requested devices for the minimum time possible.

The Commonwealth imposing such restrictions on a provider's ability to agree to a request from a care recipient is a concern for our members.

I note, in closing, that ACIA was not consulted on the wording of the Principles, and was therefore unable to provide this feedback during the drafting of the Principles.

Yours Sincerely,

Luke Westenberg  
CEO