

14 March 2025

NSW Government
Department of Communities & Justice (DCJ)
Locked Bag 5000
Parramatta, NSW, 2124
policy@dcj.nsw.gov.au

Carers NSW thanks the Department of Communities & Justice (DCJ) for the opportunity to respond to consultation regarding the restrictive practices legislative framework. This submission responds to elements of the framework we believe require further clarification. This submission will also highlight the importance carer recognition and inclusion where appropriate.

Carers NSW is the peak non-government organisation for carers in New South Wales (NSW). A carer is any individual who provides care and support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Carers NSW is part of the National Carer Network and a member of Carers Australia. Our vision is an Australia that values and supports all carers, and our goals are to:

- Be a leading carer organisation in which carers have confidence
- Actively promote carer recognition and support
- Actively support carers to navigate a changing service landscape that will be characterised by ongoing policy reform
- Promote connected community experiences and opportunities for carers that are inclusive of diverse carer groups
- Lead and advocate for carer-specific and carer-inclusive policy making, research and service delivery
- Continue to be a quality-driven, responsive and carer-focused organisation.

Thank you for accepting our submission. For further information, please contact Grace Cherrington, Policy and Development Officer at [REDACTED]

Yours sincerely,



Elena Katrakis
CEO
Carers NSW

Introduction

Carers NSW thanks the Department for Communities & Justice (the Department) for the opportunity to respond to the proposed legislative framework to regulate restrictive practices on people living with disability in NSW. We recognise the importance of reducing the use of restrictive practices and eliminating their use entirely where possible.

This consultation comes at a time of significant reform across the care and support sector, where states and territories are likely to have increased shared responsibility and oversight of the provision of services for older people and people living with disability as well as the families and carers who support them. As the NSW Government has existing oversight over health and mental health services, as well as other systems that intersect with the care economy (education, transport, housing), Carers NSW is supportive of a proposed legislative framework that strengthens the regulatory oversight of the NSW Government of restrictive practices.

Despite the clear merit in streamlining the regulatory oversight of restrictive practices, there are components to the proposed framework we believe requires further clarification and consideration. These concerns will be addressed in further detail throughout this submission but relate to:

- Continued understanding of the role of family and friend carers in the lives of people living with disability (and other members of the community receiving care), recognising their investment in the appropriate safeguarding of people living with disability.
- Ensuring any incoming legislative frameworks or policy directives embed principles of the NSW *Carers (Recognition) Act 2010* and associated NSW Carers Charter.
- How the proposed framework works collaboratively with people living with disability as well as their families and carers (where appropriate) and the pathways available where conflict among the Senior Practitioner and person living with disability or carer arises.
- How the proposed framework will integrate with existing restrictive practice legislation in other jurisdictions i.e. mental health.
- How people living with disability, their families and carers will be supported to understand and navigate the regulatory landscape of restrictive practices especially where they engage with multiple service systems.
- Opportunities for the NSW Government to expand its oversight of restrictive practices in other jurisdictions i.e. aged care.
- Provisions undertaken by the NSW Government to support disability providers (and other service providers) meet their requirements under the proposed framework, particularly where there are workforce shortages and limited financial resources available.
- How the proposed Senior Practitioner model will work with existing regulatory bodies like the NSW Ageing and Disability Commission to protect against duplication of existing services or programs that promote minimisation and reduction of restrictive practices through education and community engagement.

About carers

Though the scope of this consultation is clear; to strengthen and streamline the regulatory framework that oversees and authorises restrictive practices on people living with disability, Carers NSW wishes to highlight the role of carers in this conversation.

Carers NSW recognises that not all people with living disability receive informal support or would identify with having a 'carer'. However, family members and friends are important in the lives of all Australians, and the Australian Bureau of Statistics (ABS) has found that the majority of Australians with a reported disability who need assistance receive at least some of that assistance from a family member or friend;

in many cases, on a daily basis.¹ Additionally, more than one third (37.4%) of primary carers also have a reported disability themselves, more than twice the rate of non-carers (15.3%).²

For many people living with disability, the care provided by family members and friends plays a critical role in supporting their individual wellbeing, autonomy and self-determination. In addition to providing direct personal care and other practical and emotional support, carers are often active in supporting people living with disability to navigate, access and coordinate NDIS, mainstream and specialised services, as well as supporting participation in the community, and in education and employment.

Data from Carers NSW 2024 National Carer Survey³ shows that of the carers providing support to a person living with disability, over 80% provide support with cognitive and emotional tasks (including decision making) and more than three quarters (80%) are involved in supporting the person they care for manage their finances. Almost all respondents (89%) indicated they regularly monitored the person they care for or checked that they were okay. Over 70% are involved in advocating for the needs of the person they care for and providing support with behaviour, a higher response rate to other carers across NSW in other caring roles.

Carers responding to the Survey who support an NDIS participant provide, on average, nearly 60 hours of informal care per week. Most carers of people living with disability (87%) also regularly invest time in administration, and organising supports and services for the person they care for. This includes time spent on coordinating support services and formal care workers.⁴

This data indicates the depth and intensity of involvement by carers in the lives of people living with disability, including those who are supported by the NDIS. It shows that many carers are already providing crucial support that contributes to the safety and wellbeing of the person they care for. A lack of recognition of this support is detrimental to both carers and the people they care for.

Finally, under the existing NSW Restrictive Practices Authorisation Policy and the NSW Restrictive Practices Authorisation Procedural Guide (together, the Policy), carers have been closely involved in the management and authorisation of restrictive practices, either in the capacity of supporting the person they care for navigate and engage both the NDIS Quality and Safeguards Commission and NSW Restrictive Practices Authorisation Panel or providing substitute consent on behalf of the person they care for. Carers NSW understands the significant concerns had with the existing consent-based model for restrictive practices in NSW but wishes to use this as an example to highlight the close involvement of carers in the care and support of people living with disability.

Principles of carer recognition

The NSW Carers Charter⁵ and the Commonwealth Statement for Australia's Carers⁶ each state that the valuable contribution of carers should be recognised and supported. They also stipulate that the relationship between carers and the people they care for should be respected, and carers should be considered partners in care, with government bodies and providers acknowledging carers' knowledge and experience.

¹ Australian Bureau of Statistics (2024) *Survey of Ageing, Disability and Carers 2018*, TableBuilder Dataset, available online at: www.abs.gov.au

² Ibid.

³ Carers NSW (2025), *Carers NSW 2024 National Carer Survey*, Unpublished data.

⁴ Ibid

⁵ Carers (Recognition) Act 2010, Schedule 1 NSW Carers Charter

⁶ Carer Recognition Act 2010, Schedule 1 The Statement for Australia's Carers

The proposed framework offers a comprehensive overview of how the NSW Government intends to monitor and authorise restrictive practices on people living with disability with the goal to significantly reduce or eliminate their use entirely where possible. Carers NSW is supportive of this position, but believes further clarification is needed as to how the proposed framework will embed principles of relevant carer recognition legislation, especially where parts of the model rely on carers to support in its application. For example, the consultation paper refers to the Victorian Senior Practitioner model wherein an independent person (usually a carer or family member) is required to be available to explain the proposed use of restrictive practices and to advise them of their rights to a review of the decision to authorise restrictive practices.

Carers NSW welcomes policy directives such as the above mentioned that proactively engage carers in processes that have direct implications for the person they care for and their caring role. This approach also reflects the knowledge and expertise of the carer, who is often best placed to communicate the needs, understanding and preferences of the person they care for if they are unable to. While Carers NSW would support a similar approach in the NSW framework, we believe the role and value of carers should be clearly recognised, especially in circumstances where carers are engaging with the Senior Practitioner on behalf of the person they care for.

As such, Carers NSW respectfully reminds the NSW Government of its obligations the *NSW Carers (Recognition) Act* and associated Carers Charter as well as the importance of ensuring consistency among other regulatory frameworks – or the legislation that underpins them – such as the *National Disability Insurance Scheme Act 2013* which refers to the *Commonwealth Carer Recognition Act 2010*.

Promoting engagement and inclusion of people living with disability in the framework

The proposed regulatory framework marks a clear movement away from the existing consent-based model that is currently used in NSW. While a consent-based model suggests a collaborative and person-centred approach to the authorisation of restrictive practices, Carers NSW understands the genuine concerns regarding the appropriateness and efficacy of this model. In a special report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission), *Restrictive practices: A pathway to elimination* it is noted that “whether use of restrictive practices can be legitimated if its recipient has previously consented – but does not consent at the time of application – is contentious.”⁷

Carers NSW supports the exploration of alternative models of authorisation of restrictive practices such as the proposed Senior Practitioner model, especially as similar approaches to restrictive practices have been in effect in most other states and territories.⁸ Although these models do not require express consent from people living with disability or a substitute decision maker to authorise a restrictive practice, Carers NSW recognises the model requires engagement with people living with disability (and their families and carers where appropriate) in the development of a behaviour support plan.

Although the requirement for consultation for behaviour support plans reflects an intention to meaningfully engage with people living with disability about restrictive practices, Carers NSW believes further clarity is needed to understand how this will work in practice, especially how the views and preferences of people living with disability will be considered and prioritised in the plan. The knowledge and expertise of carers – where appropriate – should also be considered in these discussions, especially as carers may have advice on alternative, less restrictive strategies that can be used.

⁷ Spivakovsky, C., Steele, L., & Wadiwel, D. (2023). Research report–Restrictive practices: A pathway to elimination.

⁸ *Restrictive Practices Authorisation Frameworks for Australian States and Territories 2023*, edition accessed online: https://www.sa.gov.au/data/assets/pdf_file/0008/851687/Restrictive-practices-authorisation-frameworks.pdf

Carers NSW believes the framework should recognise the potential for this requirement to be affected by natural power imbalance between the person living with disability (or carer), the Senior Practitioner and other behaviour support workers. Clear directives should also be given in circumstances where people living with disability, their families or carers disagree with the proposed behaviour support plan.

Integration with other jurisdictions

Carers NSW is supportive of reform that facilitates increased alignment across the direct care and support sector, especially with respect to regulation. While improved integration stands to benefit all service users, Carers NSW believes it will be particularly beneficial to family and friend carers, who are often accessing multiple services either with or on behalf of the person they care for, or for themselves.

Many carers provide care and support to more than one person, which often involves engaging in more than one service system. The Carers NSW 2024 National Carer Survey found that the vast majority of respondents who were caring for someone receiving formal care services i.e. aged care services, disability (NDIS) care services or mental health services or even receiving formal support themselves, were engaged with two or more service systems.

Developing a regulatory framework on restrictive practices that seeks to span across multiple settings such as health, mental health, education and justice demonstrates a shared understanding by the NSW Government to ensure consistency for people living with disability who have restrictive practices used against them, as well as their families and carers.

While Carers NSW is broadly supportive of the proposed framework, we believe further information is needed to clearly understand the delegation of restrictive practice frameworks and how conflicts (if any) between frameworks are managed. For example, when the NSW Health *Policy Directive 2020_004 Seclusion and Restraint in NSW Health Settings* supersedes (if at all) the incoming legislative framework to regulate restrictive practices.

Integration with aged care settings

At the time of writing, the NSW Government does not have regulatory oversight of restrictive practices in aged care settings. While this lack of oversight has direct implications for people living with disability who may be receiving care in residential aged care facilities, it also contributes to the continued fragmentation of restrictive practices regulation.

Carers NSW recognises that the Aged Care Quality and Safeguards Commission holds the regulatory oversight of restrictive practices in aged care, but notes the process to authorise, monitor and respond to the use of restrictive practices differs vastly to the disability sector. The current framework does not extend to home care settings.

Carers NSW has written extensively regarding the current aged care regulatory landscape and the unique implications experienced by carers where there are gaps, such as limited oversight in home care settings. Our concerns and associated recommendations are best summarised in a submission responding to the Exposure Draft and Explanatory Statement of the *Quality of Care Amendment (Restrictive Practices) Principles 2022*.⁹ Carers NSW believes that with current workforce shortages and thin markets in the aged care and disability sectors, especially in regional and remote areas, there is a need for consistency in quality and safety measures to ensure that providers and paid care workers

⁹ Carers NSW (2025), Carers NSW Submission to Exposure Draft and Explanatory Statement of the *Quality of Care Amendment (Restrictive Practices) Principles 2022*. North Sydney, 2060.

working across multiple sectors do not have a range of different reporting requirements for restrictive practices. Inconsistencies in regulations and reporting requirements are likely to lead to confusion, increased administrative work and subsequently, poor compliance with quality and safety measures.

Supporting the sector to meet compliance requirements

The consultation paper explores possible authorisation structures, including an Authorised Program Officer (APO) who may have partial delegation to approve some restrictive practices or who would preliminarily authorise restrictive practices with final approval provided by the Senior Practitioner.

Under either model, Carers NSW understands that NDIS providers who are registered to provide behaviour support services will be required to directly employ an APO or engage an APO on a consultative basis. Given that APOs are required to have training in behaviour support, Carers NSW is concerned this requirement will reduce the already limited available workforce providing behaviour support.

The NDIS Quality and Safeguards Commission Quarterly Performance Report Q4 2023-24 indicates that in NSW there are approximately 2,954 behaviour support practitioners. While this workforce is larger compared to other states and territories, there is minimal publicly available data about the total number of active behaviour support plans, making it difficult to understand if current service needs are being adequately met. Carers NSW is concerned that this proposed model does not account for any workforce issues (known or unknown) related to behaviour support practitioners and the disability workforce more broadly. Additional concerns also extend to the ability of providers to allocate additional financial resources to fund the employment of APOs. Carers NSW acknowledges that the process to become a Registered NDIS Provider is often costly and administratively onerous, and is often identified by providers as a barrier to becoming providers of behaviour support services.

Carers NSW is concerned that without appropriate support, providers who are unable to maintain compliance with the proposed regulatory framework may be unable to continue providing behaviour support services. Where behaviour support providers withdraw from the NDIS market or offer different services that are not subject to the same regulatory requirements, people living with disability, their families and are most likely to be affected.

Integration with existing regulatory bodies

Though the scope of the Senior Practitioner is defined by restrictive practices used in formalised care settings, Carers NSW is eager to understand how its role will interact with other regulatory bodies in NSW, particularly the NSW Ageing and Disability Commission (ADC).

One of the core functions of the proposed Senior Practitioner is to provide guidance and education on restrictive practices and to promote the rights of people living with disability subjected to restrictive practices. As described in the consultation paper, part of this role would include developing and providing information, education and advice on restrictive practices to people living with disability, their families and supporters and the broader community.

Carers NSW understands and supports the increased awareness and understanding of restrictive practices and welcomes any training and resources that seek to support carers who support someone subject to restrictive practices. Where further clarification is required however, is how this function of the Senior Practitioner will work with the existing role and function of the ADC.

Currently, the ADC has powers to receive, respond to and investigate complaints of violence, abuse, neglect and exploitation of people living with disability and older people in their home or community. It

also plays a large role in raising public awareness to reduce and prevent abuse, neglect and exploitation of older people and adults living with disability. Under the current *Ageing and Disability Commissioner Act 2019*, the ADC also has regulatory oversight of the Official Community Visitors (OCV) scheme. Most recently, Carers NSW has worked with the ADC to develop resources on identifying and reducing restrictive practices in informal care settings.

To protect against unnecessary duplication of existing education and training resources that promote the minimisation and reduction of restrictive practices, Carers NSW recommends the NSW Department work to strengthen integration between the Senior Practitioner and ADC. Carers NSW also believes the Senior Practitioner should work closely with the ADC to ensure work undertaken to support family and friend carers is not undermined.

Conclusion

Carers NSW thanks the NSW Department of Communities & Justice for the opportunity to respond to the proposed legislative framework to regulate restrictive practices. This consultation presents a critical opportunity to strengthen restrictive practices regulation in NSW and improve alignment across various jurisdictions where restrictive practices may be used. Carers NSW has broad support for the proposed model, but believes the concerns raised in this submission must be carefully considered in order to best meet the rights and needs of people living with disability, their families and carers.