



Elder Abuse Action Australia

New South Wales Restrictive Practices Legislative Framework

ELDER ABUSE ACTION AUSTRALIA ACKNOWLEDGES THE TRADITIONAL CUSTODIANS OF COUNTRY AND ISLAND HOME ACROSS AUSTRALIA, THE LANDS ON WHICH WE LIVE AND WORK. WE PAY OUR RESPECTS TO THEIR ELDERS BOTH PAST AND PRESENT AND ACKNOWLEDGE THE CONTINUED CONNECTION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE TO LAND, SEA, SKY, COMMUNITY, AND CULTURE. SOVEREIGNTY HAS NEVER BEEN CEDED. IT ALWAYS WAS AND ALWAYS WILL BE, ABORIGINAL LAND.

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About Elder Abuse Action Australia

Elder Abuse Action Australia (EAAA) is a national peak body which was established in 2018 to create meaningful change in response to the need to address and eliminate the abuse of older people (elder abuse). Elder abuse has been recognised as a scourge on Australian society and the work of EAAA impacts positively on the older person, their loved ones, their communities, and society more broadly.

In the short period since its inception, EAAA has established itself as the leading authority on elder abuse in Australia and is best known for delivering the national elder abuse knowledge hub [Compass.info](https://compass.info). This valuable resource raises awareness of elder abuse by providing comprehensive and practical information and connects people to frontline services which tackle the abuse of older people.

In 2022 EAAA delivered the very successful National Elder Abuse Conference *Walk the Talk* in Hobart, followed the highly lauded 2024 National Conference *Turn up the Volume!* in Adelaide. Planning is currently underway for the 2026 National Elder Abuse Conference. In 2024 EAAA launched SPARK, the Seniors Panel for Advocacy Rights and Knowledge. This expert panel is made up of older people from every state and works to combat ageism and elder abuse by elevating the voices of older people and putting their needs at the centre of our work.

What we do

EAAA was established to confront the often-hidden problem of discrimination, neglect and mistreatment of older Australians. As the national voice for action, EAAA campaigns for a society that respects and values older Australians and is free from elder abuse. We use the tools of advocacy, policy development, research and capacity building to raise community awareness of elder abuse and improve the lives of older people.

Why we do it

Older people are among the most vulnerable of all Australians, not because of age itself, but due to the associated and intersected vulnerabilities associated with ageing. As people age, they increasingly rely on family, friends and carers for additional support. For many the experience of ageing is soured by discrimination, ageism, exclusion and abuse.

Older people have the same rights as everyone else. They have the right to be treated fairly, feel safe in their home, and live with dignity and self-determination. The abuse of older people affects individuals and society as a whole. It can limit the participation of older people in their communities and deny those communities the benefits of having older people fully contribute.

The Regulatory Framework must be expanded to apply to the use of Restrictive Practices against all people with a Disability and not just NDIS Participants.

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability* was established in April 2019 and handed down its final report in September 2023. The Final Report detailed the shocking nature and extent of abuse and neglect experienced by people with a disability including the improper and abusive use of restrictive practices¹. The Final Report also provided 222 recommendations across 9 key areas. Amongst these recommendations was Recommendation 6.35:

- a) *States and territories should ensure appropriate legal frameworks are in place in disability, health, education and justice settings, which provide that a person should not be subjected to restrictive practices, except in accordance with procedures for authorization, review and oversight established by law.*
- b) *The legal frameworks should incorporate the following requirements, appropriately adapted to sector-specific contexts:*
 - *Restrictive practices should only be used:*
 - *As a last resort, in response to a serious risk of harm to a person with a disability or others, and only after other strategies, including supported decision-making, have been explored and applied.*
 - *As the least restrictive approach possible to ensure the safety of the person with disability or others*
 - *To the extent necessary to reduce the risk of harm and proportionate to the potential negative consequences from the use of restrictive practices.*
 - *For the shortest time possible*
 - *Decisions to authorize restrictive practices should be subject to independent review.*
 - *The use of restrictive practices should be subject to independent oversight and monitoring.*
- c) *The legal frameworks should set out the powers and functions of a Senior Practitioner for restrictive practices in disability service provision (or equivalent authority) These powers and functions should include:*
 - *Promoting the reduction and elimination of the use of restrictive practices*
 - *Protecting and promoting the rights of people with a disability subjected to restrictive practices*

- *Developing and providing information, education and advice on restrictive practices to people with a disability, their families and supporters, and the broader community*
- *Consider applications to use restrictive practices in disability service settings and authorizing their use according to procedures consistent with the Draft Principles for Consistent Authorisation*
- *Developing guidelines and standards, and providing expert advice on restrictive practices and behaviour support planning⁶*
- *Receiving complaints about the use of restrictive practices and the quality of behaviour support planning*
- *Investigating the use of restrictive practices and the quality of behaviour support planning, either in response to complaints or of its own motion*
- *Acting in response to complaints and investigations where appropriate²*

Elder Abuse Action Australia (EAAA) as the peak body for the elimination of the abuse and mistreatment of older people in Australia, is encouraged to see the NSW Government seeking to implement this recommendation through the proposed Restricted Practices Legislative Framework³, noting that recommendation 6.56 of the Royal Commission also recommended the immediate cessation and prevention of certain restrictive practices⁴.

While EAAA is supportive of the Framework on a broad scale, we have significant concern that the Framework applies only to restrictive practices enacted against NDIS participants rather than to the entire cohort of people with a disability⁵. The consultation paper claims that the proposed approach encompasses most people with a disability in NSW⁶, however the inherent ageism of the NDIS, which prevents anyone aged 65 and over from applying for support⁷, means that this overlooks older people in NSW who are living with a disability.

52.3% of people aged 65 or over in Australia live with a disability⁸, this equates to more than 2.3 million people, or almost 800,000 older people in New South Wales. This is a significant number of people who are not protected from the misuse or abuse of restrictive practices under the proposed Framework.

EAAA understands that the likely response to this observation is that the Aged Care Act 2024 also regulates the use of restrictive practice⁹ with an in-depth regulatory framework for the use of restrictive practices found within the Draft Rules¹⁰. This assumption that older people with a disability are utilising aged care services is both ageist and quite simply, wrong. There are approximately 4.4 million people over the age of 65 in Australia¹¹ today of whom only 193,000 reside in residential aged care across both permanent and respite care¹². While significant additional numbers of older people are currently using home care, transition care, or support at home¹³ this still does not come close to accounting for the 2.3 million older people living with a disability.

Many of these people use other private or community support programs and practitioners due to the inappropriateness of aged care services to meet their needs. Some reasons for this are the



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unfair ineligibility for NDIS supports¹⁴ and long wait times for support at home packages¹⁵. None of these are reasons however that they should be excluded from protections when it comes to the use of restrictive practices.

Furthermore, EAAA draws the attention of the NSW Government to the fact that the Draft Rules for restrictive practices under the Aged Care Act 2024 apply only in aged care settings and do not extend to the use of restrictive practices in health and justice settings¹⁵, as does the proposed Framework¹⁶. EAAA strongly urges NSW to reconsider the limitation of this regulatory framework to NDIS participants only and to reject the ageist assumption that older people with a disability are not the concern of the disability sector.

The oversight of the inclusion of older people with a disability and the assumption that aged care legislation will regulate and protect them is concerning and must be addressed. Although this does not begin with NSW, as it is part of a broader pattern of structural ageism. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability itself had the same ageist shortcomings. The Royal Commission claimed to acknowledge the need for:

“A very broad scope of the inquiry, which directs us to examine and expose violence against and abuse, neglect and exploitation of people with a disability in all settings and contexts.”¹⁶

In spite of this assertion the Royal Commission also focused its attention on those aged 64 years and under because

“our terms of reference did not require us to inquire into matters dealt with by the Royal Commission into Aged Care Quality and Safety.”¹⁷

The Royal Commission into Aged Care Quality and Safety was exactly that; a Royal Commission that considered, among other things, abuses and mistreatments that were occurring within *Aged Care Settings and the Aged Care Service System*¹⁸. It was not a royal commission into older people, or even into institutional or systemic mistreatment and abuse of older people.

There are currently approximately 4.4 million people aged 65 and over in Australia¹⁹, of these:

- 193,000 are using residential aged care services, including respite care
- 258,000 are using in home care aged care services
- 816,000 are using in home support services
- 4,500 are using transition care²⁰.

This equates to 1.27 million people over 65 using aged care services of any kind, significantly less than one third of older people in Australia. There is no valid argument that older people with a disability will rely on aged care services, as the numbers simply don't add up. Not every person who uses aged care services has a disability - there are many other reasons a person may need support or aged care. Research from the University of Adelaide for example, found that more than half of Australians aged 65 years and older were frail or pre-frail²¹. Frailty is not considered a disability however it is associated with requiring additional care and assistance²².

There are no reliable figures as to how many people accessing aged care are living with a disability, but noting that there are a total of 1.27 million people using aged care services, and approximately 2.3 million people aged 65 years and older living with a disability, we know that



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even were the overlap 100% there would still be more than 1 million older people with a disability without access to aged care services. This number is not reduced by any discernible level by the NDIS, with only 34,820 NDIS participants over the age of 65²³.

The failure of the Disability Royal Commission to acknowledge this and include older people more specifically in their Inquiry is something that NSW must not repeat.

EAAA also has concerns about any reliance on the Aged Care Act Rules, currently in Draft form, even for those older people who do utilise aged care services. The Draft Rules currently provided and under consultation as they relate to the use and regulation of restrictive practices regulate these practices as they occur in aged care settings only^{24,25}. This means that the same regulations do not apply in other settings such as health care or justice settings, which are included in the proposed NSW Framework.

In addition, the Aged Care Act Draft Rules require a 'regular' review of restrictive practice use but fail to define what is meant by the term regular²⁶. No actual timeframe for review is required or specified. The Framework provided by New South Wales for consultation is superior to the Aged Care Rules in this aspect, requiring a twelve-month maximum term of restrictive practice and then additional authorisation for any future usage²⁷. Older people should not be excluded from these same protections purely because of the NDIS age eligibility criteria.

There is nothing to prevent NSW from including all people with a disability in the protections provided by the proposed framework. The Aged Care Draft Rules relating to restrictive practices explicitly allow states and territories to provide for their own legal requirements for the use of restrictive practices under section 162-15(1)(k) of the Rules as they pertain to Provider Obligations Consultation Draft²⁸.

EAAA congratulates the New South Wales on their commitment to preventing the abuse and mistreatment of people with a disability and the acknowledgment of the very real experiences of misuse and manipulation of restrictive practices. People with a disability are twice as likely to experience abuse as people without a disability²⁹ and removing the improper use of restrictive practices is an important step in seeking to eliminate these abuses. While the Framework provided is strong, in limiting its scope to NDIS participants NSW is echoing previous ageist and damaging assumptions made by the NDIS and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability.

Older people, and others who remain ineligible for NDIS services, deserve the same protections as all other people with a disability and must not be overlooked in this important reform.

EAAA strongly urges NSW to amend the framework to include all people with a disability as in scope and ensure that no misuse or manipulation of restrictive practices is allowed to occur in the state going forward.



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