Illawarra Disability Alliance (IDA) submission in response to NSW Department of Community and Justice's Consultation Paper: A legislative framework to regulate restrictive practices, December 2024.

Introduction

Members of the Illawarra Disability Alliance (IDA) welcome this proposed change to the restrictive practices framework in NSW. While the current NSW restrictive practices authorisation policy provides a number of benefits for collaboration and review the current model results in common instances of non-compliance and inefficiency that is not satisfactory.

IDA member organisations who work across multiple jurisdictions noted the efficiency of the Senior Practitioner models in other jurisdictions in comparison to the current NSW model.

Underpinning much of the feedback was the view that the NSW Framework needs to align with other States and Territories with transferrable recognised qualifications for orgs who are working across multiple jurisdictions.

IDA members would also like to see that NSW State legislation interfaces neatly with other jurisdictions, all of which should align with Federal requirements in terms of the same definitions, the same reporting timeframes and requirements.

It was also highlighted by IDA members that this will be a significant change for all stakeholders involved in restrictive practices authorisation, including participants and Behaviour Support Practitioners, therefore the implementation process will need to be clearly articulated.

Note: this submission does not respond to all questions within the consultation paper only those for which there was feedback and information provided by members.

RE Questions 4 & 5: Question 4: *Do you support legislation requiring that restrictive practices on NDIS participants in the disability service provision, health, education and justice settings should be governed by the principles recommended by DRC Recommendation 6.35(b)? &* ***Question 5:*** *Are there any other principles that should be considered?*

Illawarra Disability Alliance members support legislation requiring that restrictive practices authorised for use in supporting NDIS participants in disability services are governed by those principles which have been recommended by the Disability Royal Commission's recommendation 6.35(b) and that these are sufficient to support the safeguarding of the rights of people with disabilities.

RE Question 6: *Should a legislative framework prohibit any practices? If so, which practices and in which settings?*

Illawarra Disability Alliance members support positive behavioural approaches and recommends the NSW framework prohibits the seclusion of children, the use of physical punishment and any practices which are intended to humiliate or frighten.

RE Question 7: *Do you agree that:*

- *the framework should use the NDIS definitions of restrictive practices?*
- *the Senior Practitioner should have the power to issue guidelines that clarify how the definitions apply in different situations?*

Illawarra Disability Alliance members are strongly supportive of a consistent national approach to restrictive practices and therefore agree that the framework should use the NDIS definitions of restrictive practices. The Senior Practitioner should also have the power to issue guidelines that clarify the application of definitions in different situations.

RE Question 8: *What role should the Senior Practitioner play in regulating behaviour support plans?*

In relation to the regulation of BSP's the members of the IDA expressed support for a consistent national approach to restrictive practices authorisation and supports the Senior Practitioner approach to requiring consultation with the person and / or key stakeholders on the part of the BSP without the requirement for consent. In the experience of IDA members the process of consent often may not be adequately informed by best practice in relation to the key principles under recommendation 6.35(b) of the DRC report.

It is recognised that a sophisticated skillset is required of APO's however IDA members involved in the consultation cautioned against a requirement for specific qualifications. APO's need to hold a similar level of ability as the Independent Specialists do now, i.e. not necessarily qualifications but rather related to demonstrated BSP competence and knowledge of compliance, legislation and process.

RE Question 9: *Is there anything else the proposed framework should do to improve the quality of BSPs?*

IDA members did emphasise the value that the panel process in NSW provides with regard to providing a collaborative forum for stakeholders with a shared interest in the participants behaviours of concern with positives reflected on in terms of getting stakeholders to share and discuss least restrictive alternatives and approaches across multiple settings that is often not presently being delivered at such a level of quality by the BSP alone due to a variety of factors including resource constraints. Therefore it is recommended that there is specific provision for requirements around consultation with relevant stakeholders in the development of the BSP.

RE Question 10: *Should APOs be empowered to either:*

- *authorise particular categories of restrictive practices without separate Senior Practitioner authorisation (a partially delegated model). If so, what categories of restrictive practices should be able to be authorised by APOs? Should these be prescribed by legislation, or through class or kind orders?*

- *provide preliminary approval of restrictive practices, with final authorisation provided in all cases by the Senior Practitioner (a two step model)? What would be the benefits and risks of the above models?*

IDA members recommend that when the new framework is introduced that the two-step model is followed with Senior Practitioner authorisation for all categories of restrictive practices required following preliminary approval from the APO. There would be the option to review this to move to a partially delegated model as the implementation of the model under the framework matures with for example chemical and environmental restrictive practices being authorised by APO's in future. In other jurisdictions where this occurs the system has been in operation for some time and to move straight to such an arrangement would create oversight risks for participants.

RE Question 12: *Should APOs be required to be employed by a single provider? Or should APOs be permitted to be consultants to a number of providers? If so, what safeguards should there be in relation to this?*

Members of the IDA who contributed to this submission were of the view that APO's could be employed by a provider but also consult to a number of providers to ensure coverage across the sector as many smaller providers will not have sufficient resources to recruit, support or retain APO's on their own. This way the skills and expertise of the Independent Specialist model in NSW could support transition to an APO model with potential that these specialists fulfill this function under the new framework. It should be noted this is time intensive and specialist work and there are concerns around the design of the framework as to how the time spent on APO duties is to be funded with DCJ Independent Specialist's presently funded through the state government there is a lack of clarity in relation to the proposed framework as to how this will be resourced.

Safeguards are critical and will need to include training and support to ensure consistency of approach with NSW State Government Senior Practitioner role around education of APO's. For example a mandatory micro credential for APO's to ensure they have demonstrated formal skills and knowledge around BSP and consultation processes for engaging with stakeholders is clearly understood and mandatory.

To manage conflict of interest for the APO's it should be required as part of the framework that they are separated from / not occupying operational management roles so that the position is very focused on the principles of human rights of participants (rather than for example program budgets, worker safety etc). It is of great importance that conflict of interest is managed and that the human rights of the person is protected. This combined with oversight of the Senior Practitioner will provide a strong safeguard in relation to this issue.

RE Questions 18, 19 & 20: Question 18: *Should the Senior Practitioner have complaints handling and investigation functions either on receipt of a complaint, on its own motion, or both? &* ***Question 19:*** *Do you agree the Senior Practitioner should have the proposed powers to respond to misuse of a restrictive practice? &* ***Question 20:*** *How should interaction with the NDIS complaints framework be managed?*

The NSW Framework needs to align with other States and Territories with transferrable recognised qualifications for orgs who are working across multiple jurisdictions.

IDA members would also like to see that NSW State legislation interfaces with federal legislation using the same definitions, the same reporting timeframes and requirements.

RE Question 26: *Are there any other functions which the Senior Practitioner should have? Should providers in the disability service provision setting be subject to any other requirements?*

IDA members responded that there appears to be limited reference to the expertise of people with lived experience at the governance level within the framework as presented and would like to see this strengthened and embedded into the legislation. For example, the Senior Practitioner may be required to report to an advisory committee made up of a majority of people with a lived experience of disability.

For further information in relation to this submission please contact:

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About the Illawarra Disability Alliance
https://illawarradisabilityalliance.org/

Illawarra Disability Alliance (IDA) is made up of not-for-profit disability providers working together to deliver better outcomes for people with a disability in our community. IDA aims are to:

- work collaboratively with people with disability, their carers, and across agencies and government to advocate for the rights of people with disability and promote inclusion.
- contribute to a strong functioning disability support network which proactively advocates for better outcomes for people with disability.
- represent the local region and support market stewardship by contributing to State and National policy discussions.
- ensure that as service providers we are well informed and supported.
- liaise with all levels of government on region specific issues (e.g., health, education, housing, NDIS, etc) in order to provide sound, timely advice that contributes to quality policy decisions.