

23 January 2025

NSW Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

E: policy@dcj.nsw.gov.au

Re: Consultation Paper – A legislative framework to regulate restrictive practices

I hold the statutory office of Public Advocate in Queensland. My role is to be a systemic advocate for the rights of adults with impaired decision-making ability.

I write this brief submission to support the development of a Senior Practitioner authorisation model concerning restrictive practice usage in New South Wales.

I note that the proposed model – which constitutes a considered response to a series of recommendations made by the Disability Royal Commission – would apply initially to the provision of NDIS-funded services (by disability services providers). The proposed model would utilise authorised program officers to provide local authorisation of restrictive practices, with the Senior Practitioner retaining oversight of the scheme. The Consultation Paper flags the scheme's possible extension at a later date to other settings, including health, education, justice and out-of-home care.

I am in the process of finalising a discussion paper on this topic which proposes something similar for Queensland; I would be happy to forward that to you when it is complete. This state, as you would know, had legislation before the parliament last year which would have established a Senior Practitioner authorisation model concerning restrictive practice usage by disability services (but which didn't utilise authorised program officers). That legislation, you may know, lapsed in the lead-up to the 2024 state election.

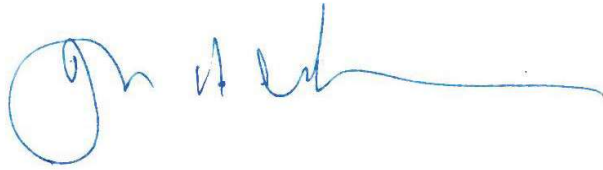
The Consultation Paper notes (p. 19) that the proposed framework would not cover aged care restrictive practices. This to my mind is one of the most pressing areas where reforms are warranted. The current Quality of Care Principles, which regulate the use of restrictive practices in aged care settings, are extraordinarily complex and utilise, in my view, a flawed 'consent' model of regulating restrictive practice usage. The Quality of Care Principles are due to expire in December 2026.

To illustrate briefly the current complexities that exist in relation to the authorisation of restrictive practices in aged care settings, the Quality of Care Principles have led to a rise in adult guardianship applications and appointments in many jurisdictions in order for aged care restrictive practice authorisers to be able to be identified. Meanwhile in Victoria, where guardians have been determined not to have authority to consent to aged care restrictive practices, new legislation has been enacted merely to enable the identification of aged care restrictive practice authorisers. The Quality of Care Principles also – very unusually – enable people listed on an automatic statutory hierarchy to consent on a person's behalf to an aged care restrictive practice (should other conditions be met).

As I say, the regulation of restrictive practices in aged care settings is extraordinarily complex and sub-optimal. I would encourage the government to consider extending the proposed Senior Practitioner role to oversee authorisation of aged care restrictive practices.

Thank you for this opportunity to contribute to an important reform process in New South Wales. I will be happy to forward the discussion paper I am completing in the weeks ahead. Please don't hesitate to get in touch if I can be of any assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)
Public Advocate