

3 September 2019

Mr Tim Reardon
Secretary
NSW Department of Premier and Cabinet
GPO Box 5341
Sydney NSW 2001

By email: RPA.Review@dpc.nsw.gov.au

Dear Mr Reardon

Review of restrictive practices authorisation in NSW

We welcome the work that the Department of Premier and Cabinet is undertaking to review the existing framework for the authorisation of restrictive practices in NSW.

Many of Legal Aid NSW's clients have complex needs and have experienced significant trauma and abuse as children. Our casework experience has included instances of clients being subject to restrictive practices which have exacerbated trauma and led to an escalation in challenging behaviour, which has ultimately resulted in arrest and incarceration.

We strongly support efforts to reduce and eliminate the use of restrictive practices. We also endorse the broad view the Department has taken in terms of potential settings where an authorisation mechanism may apply.

One of the guiding principles outlined in the consultation paper is that decisions around the use of restrictive practices should be person centred. In our view, this suggests that an individual's Behaviour Support Plan should travel with them, and the same restrictions and protections around the use of restrictive practices should apply, regardless of what setting a person is in at a particular time. People with disability are entitled to protection from unwarranted use of restrictive practices at all times, and their rights should not vary based solely on where they are at a certain time of the day.

One option raised in the consultation paper is the extension of an authorisation framework to schools. The NSW Ombudsman's 2017 inquiry into behaviour management in schools highlighted that restrictive practices such as seclusion and restraint were sometimes used in NSW schools in the absence of a behaviour

support plan. In some cases, practices were used 'repeatedly and over an extended period of time before concerns were raised'.¹ The Ombudsman also noted that practices were sometimes used in ways that were inconsistent with the Department's own guidelines. An overarching authorisation mechanism that applies in all settings may assist in providing additional oversight and monitoring, to ensure that vulnerable children are not subject to unregulated use of restrictive practices.

Our casework experience has also demonstrated that, in some cases, there is a lack of understanding among providers as to what constitutes a restrictive practice. For example, we have received conflicting information from the NDIS Quality and Safeguards Commission and from a registered provider as to whether particular supports constitute mechanical restraint.

We have also encountered confusion in relation to the applicability of authorisation mechanisms to family members seeking to use restrictive practices. Again, we have received conflicting advice from providers and from the NDIS Quality and Safeguards Commission as to whether or not a behaviour support plan is required, before a family can use a restrictive practice. It is not always clear what the basis for this advice is, and at times these decisions can appear ad hoc. While other stakeholders are better placed to provide input on the appropriateness of a formal mechanism in family settings, we suggest that the situation for families could be improved by greater clarity and transparency in relation to the use of restrictive practices.

Thank you for the opportunity to comment on the consultation paper. If you have any questions about our submission, the responsible officer within Legal Aid NSW is Bridget O'Keefe, Senior Law Reform Officer, who can be contacted on [REDACTED] or [REDACTED]

Yours sincerely



Brendan Thomas
Chief Executive Officer

¹ NSW Ombudsman, *Inquiry into behavior management in schools* (2017), p 28.