



Physical Disability Council of NSW
Ordinary People Ordinary Lives

**Submission for the Department of Families,
Housing, Community Services and Indigenous Affairs**

Reducing the risk of Restrictive Practices

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW

The objectives of PDCN are:

- “ To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship
- “ To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (ie self advocate).
- “ To educate and inform stakeholders (ie about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council appreciates the opportunity to consider, and make comment to on the proposed National Framework for reducing the Use of Restrictive Practices in the Disability Service Sector.

Comment

Section: Introduction

PDCN supports the draft Framework's recognition of the responsibilities of the Commonwealth, States and Territories in protecting the rights, freedoms and inherent dignity of people with disabilities by developing and implementing appropriate quality assurance and safeguards to reduce the use of restrictive practices¹

At paragraph four where reference is made to the *United Nations Convention on the Rights of Persons with Disabilities*, more emphasis should be made relating to the obligations of Australia as a signatory to the Convention, in particular²:

Article 10 Right to Life

Article 14 Liberty and Security of the person

Article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment

¹ Department of Families, Housing, Community Services and Indigenous Affairs (2013) Reducing the Use of Restrictive Practices

² United Nations Convention on the Rights of Persons with Disabilities

Article 16 Freedom from exploitation, violence and abuse

Article 17 Protecting the integrity of the person

PDCN has concern about the inconsistent language throughout the Framework. In the footnote of the introductory page reference to individuals with disability who use services are referred to as 'participants' Individuals are then referred to as 'clients' in the Key Guiding Principles and Core Strategies, and as the 'Consumer' at *point 6: Briefing Techniques*³.

PDCN would like to make comment on the use of the term 'client/consumer' throughout the framework. Terminology which delegates an individual into the sole role of 'client/consumer' of a support service, only imposes a negative role to a person who is already devalued, these interpretations becoming vehicles for stereotypes and role perceptions⁴. PDCN suggests the use of positive terms such as 'participant/individual'

Section: Definitions

PDCN disagrees with the use of the term 'challenging behaviour' the use of such a term only illicit confusion as to what behaviour would be constituted as 'challenging' or inappropriate, instead more identifiable terms such as 'behaviour of concern' should be used that would relate to behaviours of an individual where they are at risk of injury to their selves or others.

Clarity of 'environmental restraints' as referred to under *6. Other Restrictive Interventions*⁵ needs to be made clearer. Do these 'environmental restraints' refer to; as an example, high walls built around a garden to restrict an individual from gaining access to public pathways where they are at risk of becoming lost/injured; or are these 'environmental restraints' manipulations of the immediate environment for the individual e.g. tables placed in front of an individual to restrict movement? If so, PDCN would like to refer you in particular to:

Article 15 Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

³ Department of Families, Housing, Community Services and Indigenous Affairs (2013) Reducing the Use of Restrictive Practices

⁴ Lemay (1999) Roles, Identities and expectancies: *Positive Contributions to Normalisation and Social Role Valorisation* in A Quarter-Century of Normalisation and Social Role Valorisation: Evolution and Impact

⁵ Department of Families, Housing, Community Services and Indigenous Affairs (2013) Reducing the Use of Restrictive Practices

Article 25 Health

d. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care.

If use of environmental restraints were to the individual's immediate environment, there is the ethical concern of infringing the rights of the individual under the *United Nations Convention of Persons with Disabilities*⁶.

When considering techniques to be used when dealing with behaviours of concern, agencies should be aware of the false perception that punishment is the most successful form of intervention. Less aversive alternatives can be, and are just as successful.⁷

Section: Key Guiding Principles

PDCN agrees with, and supports the responsibilities to people with disability by having key guiding principles that are person centred, in particular PDCN strongly supports item 4.C *'Recognise that the use of restrictive practices may reflect a failure in the service system to understand the nature and function of the individual's behaviour'*⁸. Behaviours can be the result of a variety of contributing factors including health issues, biophysical characteristics, environmental factors, communication issues, programmatic arrangements or social contexts. Behaviours can also be due to side effects of aversive strategies that are being used to resolve behaviour⁹. Therefore the National Framework needs to recognise the variety of factors as identified are recognised and blame is not imposed onto the individual.

Where discussion, planning, review and reporting is occurring in relation to an individual, principles should make reference to including and having present the individual/family/guardian/person responsible to ensure person centred standards.

Section: Core Strategies for a National Framework for Reducing of the Use of Restrictive Practices in the Disability Service Sector

⁶ United Nations Convention on the Rights of Persons with Disabilities

⁷ La Vigna, G., & Donnellan, A. (1986). *Ethical Considerations+Alternatives to Punishment . Solving Behaviour Problems with Non Aversive Strategies*

⁸ Department of Families, Housing, Community Services and Indigenous Affairs (2013) *Reducing the Use of Restrictive Practices*

⁹ La Vigna, G., & Donnellan, A. (1986). *Ethical Considerations+Alternatives to Punishment . Solving Behaviour Problems with Non Aversive Strategies*

PDCN has identified earlier within the Framework there is a strong person centred focus, this focus is maintained in the Key Guiding Principles but becomes displaced in the Core Strategies, where there is a shift from a priority of being person centred to risk management of staff. This is made evident with focus on risk assessment tools and debriefing techniques where the safety of staff takes precedence over the wellbeing of the individual involved.

PDCN disagrees with point 3a (*Identification of baseline data, ability to set improvement and performance targets*¹⁰), setting improvement and performance targets only attributes blame onto the individual, another clear indication the strength of the person centred focus has been lost.

Section: Measuring Performance/ Effectiveness

PDCN recommends the Jurisdictional reporting on the progress of the implementation of the National Framework should occur more frequently than the suggested biennial basis¹¹.

Regular reporting is required to modify strategies and plans reflective of an individual's ever changing needs and circumstance. It also keeps in the mind of agencies, the importance of individual Civil Rights and their obligations and responsibilities they have as identified under *Article 33 – National implementation and monitoring, of the United Nations Convention on the Rights of Persons with Disabilities*¹²

From a management perspective regular reporting provides opportunity for what is referred to as *continuous improvement* where a quality review process is employed to refine and re evaluate what the organisation is doing and what adjustments may be required to achieve standards and their mission.¹³

¹⁰ Department of Families, Housing, Community Services and Indigenous Affairs (2013) Reducing the Use of Restrictive Practices

¹¹ Department of Families, Housing, Community Services and Indigenous Affairs (2013) Reducing the Use of Restrictive Practices

¹² United Nations Convention on the Rights of Persons with Disabilities

¹³ Lassiter, V., (2007) The role of process improvement in the non profit organisation