



Ethnic Community Services Co-operative

A voice for diversity and inclusion

(Formerly known as Ethnic Child Care, Family and Community Services Co-operative)

Feedback on the draft Restrictive Practices bill

Ethnic Community Services Co-operative (ECSC) thanks the Department of Communities and Justice for the opportunity to provide feedback on the draft *Persons with Disability (Regulation of Restrictive Practices) Bill 2021*. ECSC is a community-based not-for-profit organisation with over 40 years of experience in providing culturally responsive supports and advocacy for CALD people with disability. We are a registered provider of NDIS supports and work with government and service providers to promote the rights of CALD people with disability. This brief submission draws on our direct experience working with CALD communities, to highlight some of the key issues in the bill affecting CALD people with disability and their families.

Objects and principles

ECSC support the objects and principles of the draft Bill. In particular, we welcome the focus on protecting and promoting the rights and wellbeing of people with disability, as well as the recognition of the significance of culture, language and religious beliefs when making decisions about the use of restrictive practices.

Cultural competence and effective communication

ECSC welcomes the requirement for information provided to the NDIS participant to be “readily understandable”, when seeking consent to implement a restrictive practice or when providing notice of authorisations. We note that this is particularly important when an NDIS provider is assessing the capacity of a participant to consent to the use of a restrictive practice. It is imperative that assessments of capacity consider language and cultural barriers that may impact upon the communication between a participant and a provider. The bill should make provisions for participants and other concerned persons to appeal the assessment of capacity, where necessary.

In addition, we believe that the bill should also require information provided to appropriate trusted persons to be “readily understandable”, recognising that language or other communication barriers may also impact upon appropriate trusted persons. This should include access to accredited interpreters where required.

Community education

ECSC believes that effective communication and consultation with people with disability and their families about a topic as complex as restrictive practices, requires a shared understanding of the rights of people with disability and the purpose of restrictive practices. It extends beyond simply providing information that is technically “readily understandable”. We therefore believe that the bill should extend the functions of the Ageing and Disability Commissioner to specifically include supporting community outreach and education to raise community awareness (including amongst CALD communities) of the rights of people with disability in relation to restrictive practices.

Authorisation panels

We note the significant role of the additional Behaviour Support Practitioner in the authorisation panel, as the only member of the panel not directly involved in providing services to the participant. The independence and expertise of this practitioner is therefore of the utmost importance. We



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believe the bill should contain stronger, clearer language about the independence of this role. It is also critical that Behaviour Support Practitioners in these roles have high levels of cultural competence and expertise appropriate to the specific situation. We note that the 'Positive Behaviour Support Capability Framework', the key document outlining the capabilities required for the Behaviour Support Practitioner role, contains limited references to cultural competence, and only specifies these skills for 'proficient and above' practitioners.¹ This gives the impression that cultural competence is an optional extra for Behaviour Support Practitioners, rather than a core skill affecting communication and decision-making with people with disability and their families. Considering this, the Restrictive Practices bill should either require for the authorisation panel an NDIS Behaviour Support Practitioner who has been assessed as being 'proficient or above' according to the Positive Behaviour Support Capability Framework, or otherwise specify the skills and expertise required of this role.

ECSC welcomes the requirement for the authorisation panel to consult with the NDIS participant in ways that are "readily understandable" to the participant. We believe that this requirement should be extended to also require consultation with appropriate trusted persons where appropriate, such as in cases where it has been determined that the person with disability does not have capacity to consent to the use of the proposed restrictive practices in this situation.

Summary of recommendations

1. The proposed objects and principles should be maintained, including the recognition of the significance of culture, language and religious beliefs when making decisions about the use of restrictive practices.
2. When making assessments of capacity, NDIS providers should be required to consider language and cultural barriers (and any other factors) that may impact upon the communication between a participant and a provider.
3. Participants and other concerned persons should have a means available to them to appeal the assessment of capacity, where necessary.
4. Information provided to appropriate trusted persons should also be required to be "readily understandable", including access to accredited interpreters where required.
5. The functions of the Ageing and Disability Commissioner should be extended to specifically include supporting community outreach and education to raise community awareness (including amongst CALD communities) of the rights of people with disability in relation to restrictive practices.
6. The independence and expertise of the Behaviour Support Practitioner in the authorisation panel should be specified.
7. Authorisation panels should also be required to consult with appropriate trusted persons where appropriate.

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¹ See <https://www.ndiscommission.gov.au/pbscapabilityframework>