

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

14 March 2025

To the Department of Communities and Justice,

**A LEGISLATED FRAMEWORK FOR REGULATING THE USE OF RESTRICTIVE
PRACTICES ON PEOPLE WITH DISABILITY**

I am writing to you as **NSW Branch Committee President of the Australian Lawyers Alliance (ALA)**.

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

This submission addresses the consultation being conducted by the Department of Communities and Justice ('Department') on a legislated framework for regulating the use of restrictive practices on people with disability.

The ALA supports a legislative and regulatory response to the use of restrictive practices, as our members remain deeply concerned about the use restrictive practices on vulnerable persons – for example, people with disability who are National Disability Insurance Scheme (NDIS) participants.

The ALA has repeatedly warned federal and state/territory governments alike that the absence of workforce infrastructure planning ahead of the NDIS being introduced would ultimately pose risks for the safety and wellbeing of NDIS participants, especially those with complex care needs.

We submit that restrictive practices are a subset of the broader safety issues that need to be grappled within the NDIS and also within aged care contexts. Improperly applied restrictive practices are a subset of poor training and supervision of service and care providers, as a result of the aforementioned poor workforce infrastructure planning.

In response to the Department's Consultation Paper, ALA members have provided the following feedback:

- **3.2 Disability service provision setting – 3.2.1 Definition of the setting:** The ALA supports the inclusion of in-home care contexts.
- **4.3 Principles governing use of restrictive practices:**
 - The ALA notes the Department has proposed that future legislation would require that restrictive practices are only used in accordance with the principles listed in the Consultation Paper.¹
 - The ALA proposes the following addition to that list of principles: *Nothing in this Act shall be taken to affect the fundamental right of all persons, including those with a disability, to bring about the issuance of a common law writ of habeas corpus.*
 - We submit that it is important to educate the public, including NDIS participants, about common law avenues and the available common law remedies.
- **5.9 Liability – 5.9.1 Sanctions:** The ALA supports the imposition of sanctions for the misuse of restrictive practices.
- **5.9 Liability – 5.9.2 Immunity from liability:**
 - The Consultation Paper asks stakeholders to consider whether “the proposed framework provide for a legislated immunity from liability from the use of restrictive practices where the use was in accordance with an authorisation and done in good faith”.²
 - The ALA is concerned about the breadth of “done in good faith” and how open to interpretation that phrase is. This would need to be clearly defined in future legislation.
 - ‘Good faith’ must not, and must not be interpreted to, preclude negligence having been committed. This will ensure that the common law rights of people with disability are not eliminated or derogated by any future legislative framework on restrictive practices. A ‘best of intentions’ type of defence would be inappropriate and contrary to the policy intentions of this reform.

¹ Consultation Paper, p.22.

² Ibid, p.39.

Thank you for your attention on these important matters.

The ALA is available to provide further input on this matter to the Department. Please direct correspondence to Elenore Levi, Policy and Advocacy Manager, Australian Lawyers Alliance, at

[REDACTED]

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Genevieve Henderson'.

Genevieve Henderson
President, NSW Branch Committee
Australian Lawyers Alliance