

# Report on Restrictive Practices

Law Health Justice Community Advocacy Clinic

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*Prepared by:*

Teagan Arthur, Olivia De Ruygt, Lucinda Del Monte, Hailey Jihye Ha, Nhi Le, Kate McInerney, Lily Nguyen, Vi Nguyen, Mari Notaras, Nicole Perram, Tiffany Pizzuto, and Emma Talbot

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Community Advocacy Clinic  
Faculty of Law UTS

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## I. Introduction

In Australia, Commonwealth and NSW policies aim to reduce and eliminate the use of restrictive practices as outlined in the *National Framework on Reduction and Elimination* (2013)<sup>1</sup> and the *National Disability Insurance Scheme Act 2013* (Cth) ('NDIS Act').<sup>2</sup> Despite these policies, many people with disability continue to experience harmful practices. The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* has drawn attention to systematic problems with restrictive practices. It stresses that reforms are needed to uphold the dignity, equality, and inclusion of people with disability in Australia.<sup>3</sup>

## II. Legislative Regimes

### **Commonwealth Legislation**

Section 9 of the *NDIS Act* defines restrictive practices as practices that restrict the rights or freedom of movement of a person with disability. This includes seclusion and the use of chemical, mechanical, physical, and environmental restraints. In NDIS funded settings, restrictive practices can only be used where they are part of a Behaviour Support Plan that has been approved in line with the legislation. The *Aged Care Amendments Act 2022* and *Quality of Care Principles 2014* also establishes restrictive practices regulation in aged care homes, where it is only to be used as a last resort.<sup>4</sup>

### **New South Wales Legislation**

In NSW, there is no single law that governs the use of restrictive practices. Instead, it is regulated through a number of different pieces of legislation, each addressing certain aspects. This legislation includes *Mental Health Act 2007* (NSW), *Disability Inclusion Act 2014* (NSW), *Children and Young Persons (Care and Protection) Act 1998* (NSW), *Anti-Discrimination Act 1977* (NSW), and the *Health Care Complaints Act 1993* (NSW).

## III. Prevalence of Restrictive Practices

### **Statistics**

In Australia, data collection and reporting on restrictive practices is poor. As the Royal Commission noted, without reliable data "[t]he use of restrictive practices cannot be properly assessed, monitored over time or compared across settings or jurisdictions."<sup>5</sup>

In the 2020-2021 reporting period, the NDIS Commission received notification of 1,044,851 reportable incidents, 98.7% of which related to the use of unauthorised restrictive practice on people with disability. Notably, the overwhelming majority of unauthorised restrictive practices (93%) related to chemical and environmental restraint.<sup>6</sup>

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<sup>1</sup> Department of Social Services (Cth), *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (Report, 2013).

<sup>2</sup> *National Disability Insurance Scheme Act 2013* (Cth) ('NDIS Act') s 181H.

<sup>3</sup> Australian Human Rights Commission, *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Implementation of the CRPD* (Submission, December 2022)

<[https://humanrights.gov.au/sites/default/files/2023-03/ahrc\\_submission\\_to\\_the\\_drc\\_implementation\\_of\\_the\\_crpdc.pdf](https://humanrights.gov.au/sites/default/files/2023-03/ahrc_submission_to_the_drc_implementation_of_the_crpdc.pdf)>.

<sup>4</sup> Department of Health and Aged Care (Cth), 'Restrictive Practices in Aged Care – A Last Resort', *Australian Government Department of Health and Aged Care* (Web Page, 2022) <<https://www.health.gov.au/topics/aged-care/providing-aged-care-services/training-and-guidance/restrictive-practices-in-aged-care-a-last-resort?>>>.

<sup>5</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our Vision for an Inclusive Australia and Recommendations* (Final Report, September 2023) 82.

<sup>6</sup> NDIS Quality and Safeguards Commission, *Annual Report 2021-2021* (Annual Report, 2021) 3

<<https://www.ndiscommission.gov.au/sites/default/files/2022-02/ndiscommissionannualreport202021.pdf>>.

In the 2023-2024 period, the NDIS Commission reported that 19,659 Behaviour Support Plans were lodged with the Commission.<sup>7</sup> However, the NDIS Commission purports further work is needed to improve the quality of Behaviour Support Plans, and as a result, participants' quality of life.<sup>8</sup>

Altogether, it is essential that reliable data is secured to properly identify and prioritise problem areas which most need reform. Nevertheless, it is obvious that unauthorised restrictive practices are prevalent, and further work towards reduction and elimination is necessary.

### ***Firsthand accounts***

The trauma experienced during restraint is documented through firsthand accounts, which reveal experiences of pain, fear, harm, and violation. Many individuals conveyed a profound sense of fear. One individual stated, "I thought they were going to kill me." Others recalled, "I couldn't do anything, I was chained up", "having nightmares", and "I was afraid the staff were never going to take the restraint off."<sup>9</sup> Individuals frequently expressed a sense of helplessness: "I couldn't do anything. It was just like being chained up in a prison." Another said, "I felt like I was a slave. I was chained up; I couldn't do anything. I was under somebody else's command."<sup>10</sup> The sense of fear and powerlessness was, in some cases, accompanied by ongoing psychological effects: "Sometimes I keep dreaming things, having nightmares. Don't know why, I do worry about it."<sup>11</sup>

Further concerns were raised regarding restrictive practices. Some individuals reported being denied information about their seclusion: "The staff was reluctant to provide information on why and how long, what next. The staff wouldn't release me, even for a while, so that I could use the bathroom." Families also expressed concern. Jane, a mother and carer to Ava, noted that essential safety measures, such as the use of a seatbelt during a seizure, were misclassified as restrictive practices. She emphasised the need for improved oversight to distinguish between genuine restrictions and necessary safety supports.<sup>12</sup>

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<sup>7</sup> NDIS Quality and Safeguards Commission, *Our Annual Report 2023 to 2024* (Annual Report, 2024) 41 <<https://www.ndiscommission.gov.au/about-us/corporate-reports#paragraph-id-9478>>.

<sup>8</sup> *Ibid* 78–9.

<sup>9</sup> Hannah Butterworth, Lisa Wood and Sarah Rowe, 'Patients' and Staff Members' Experiences of Restrictive Practices in Acute Mental Health In-Patient Settings: Systematic Review and Thematic Synthesis' (2022) 8(6) *BJPsych Open* e178 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9634587/>>.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid*.

<sup>12</sup> 'Restrictive Practices', *Inclusion Australia* <<https://www.inclusionaustralia.org.au/story/restrictive-practices/>>.

## IV. Evidence-based solutions

Restrictive practices take shape in an ecological system of violence, coercion and control which extends out from individual people with disability, enveloping the person in concentric circles of relationships, institutions, and social structures.<sup>13</sup>

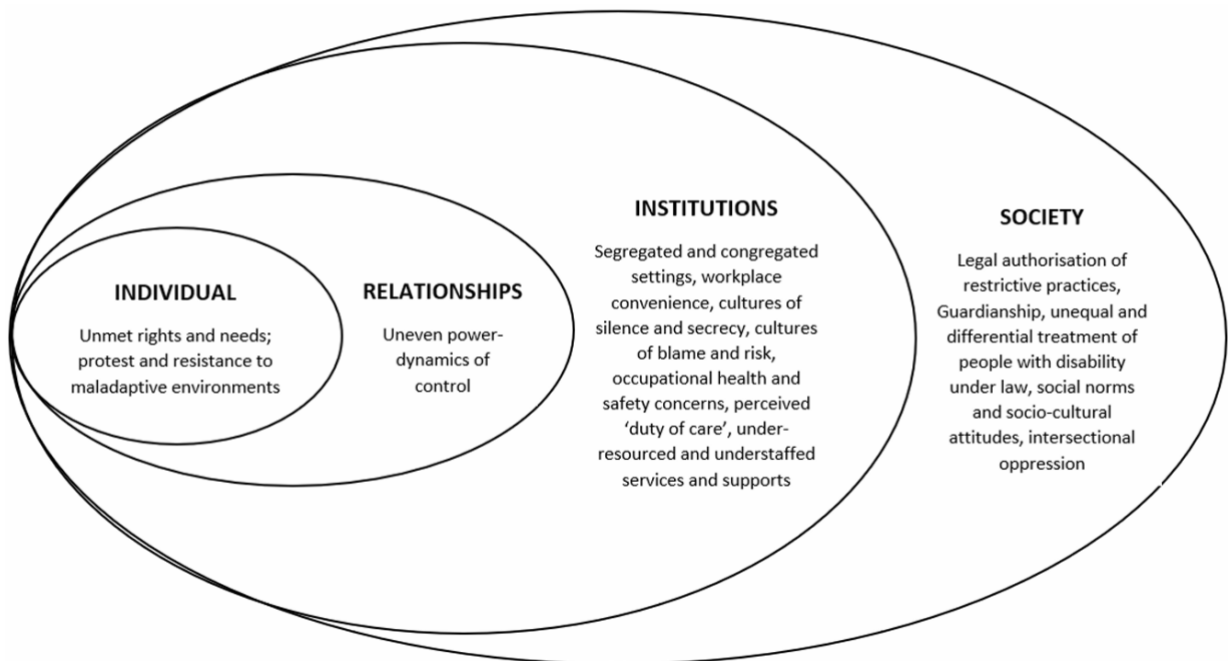


Figure 1 Ecological System of Violence, Coercion and Control (Spivakovsky, Steele and Wadiwel)

This section explores institutional considerations to reduce and eliminate restrictive practices focusing on the following four areas:

- A. Limitation of Positive Behaviour Support system;
- B. Research gaps and a lack of evidence-based approaches;
- C. Insufficient resources and training for workforce to improve frontline practices; and
- D. The need of a redress scheme for victims of unauthorised restrictive practices.

### A. **Limitation of Positive Behaviour Support system**

Positive Behaviour Support (PBS) is a psychosocial approach for preventing and responding to challenging behaviour, particularly among people with intellectual disability. Behaviour Support Plans are a key element of PBS, providing personalised written guides for caregivers to understand and manage challenging behaviours. The principles of PBS have been promoted both in Australia and

<sup>13</sup> Claire Spivakovsky, Linda Steele and Dinesh Wadiwel, *Restrictive Practices: A Pathway to Elimination* (Research Report, 2023) 5 <<https://disability.royalcommission.gov.au/publications/restrictive-practices-pathway-elimination>>.

internationally, including under the NDIS Quality and Safeguarding Framework. Despite this, the current evidence on the effectiveness of PBS is inconclusive.<sup>14</sup>

Studies show that service providers who receive PBS training tend to demonstrate better knowledge and confidence and are less inclined to use restrictive practices. However, it was unclear if any real changes were made when used in practice.<sup>15</sup> One small Dutch study reported improved quality of life and a reduction of challenging behaviours among care recipients after PBS staff training, but no change in the use of restraints. This was possibly due to under-reporting before the training was conducted.<sup>16</sup> Another study found that common barriers to effective implementation were apprehensive attitudes towards the use of PBS and difficulties in collaborating and communicating with other team members.<sup>17</sup> There is little research on the effectiveness of behaviour support plans and whether they contribute to the reduction of restrictive practices.<sup>18</sup> The quality of the plans and how well service providers can understand them are key factors that determine effectiveness. Plans written in overly technical language can make it difficult for providers to understand and apply the plans.<sup>19</sup> People with a disability are also rarely included in the development of their plans which can prevent personalisation. This undermines the purpose of behaviour support plans and, therefore, their effectiveness.<sup>20</sup>

## **B. Research gaps and a lack of evidence-based approaches**

The *NDIS Act* s 181H(e) explicitly states that the NDIS Quality and Safeguards Commissioner has a specific behavioural support function to conduct and publish research that develops strategies to guide NDIS providers toward the reduction and ultimate elimination of restrictive practices.<sup>21</sup> However, the NDIS Commission has faced criticism<sup>22</sup> for its shortcomings and inefficiencies in delivering reliable national data and analysis. Inaccurate data, poor quality case notes, and lack of provider training in systems and reporting, need attention.<sup>23</sup> Further research is essential to establish mechanisms that ensure high-quality data collection and consistent reporting. Improving data evaluation can enhance research to implement practical strategies and alternatives for the use of restrictive practices.<sup>24</sup>

Royal Commission findings highlighted the lack of evidence addressing the complexity of multiple care contexts and diverse social background experiences. Proposed research, therefore, should be co-designed with people with disability from all backgrounds and settings.<sup>25</sup> This includes gaps in research capturing the perspectives of women, LGBTQIA people, First People, and migrant and refugee people with a disability.<sup>26</sup> Aside from mental health settings, there has been limited research evaluating effective alternatives within context-specific settings. Trials must, therefore, be designed to capture best evidence outcomes. Research that addresses these gaps will guide evidence-based

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<sup>14</sup> N Cortez, C Smyth and I Katz, *Reducing Restrictive Practices: A Review of Evidence-Based Alternatives* (Research Report, UNSW Social Policy Research Centre., 2023) 66 <<https://disability.royalcommission.gov.au/publications/reducing-restrictive-practices-review-evidence-based-alternatives>>.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> ES Leif et al, “‘Stakeholders Are Almost Always Resistant’: Australian Behaviour Support Practitioners’ Perceptions of the Barriers and Enablers to Reducing Restrictive Practices’ (2023) 1(69) *International Journal of Developmental Disabilities* 66–82 <<https://doi.org/10.1080/20473869.2022.2116908>>.

<sup>18</sup> Cortez, Smyth and Katz (n 14).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> *NDIS Act* s 181H(e).

<sup>22</sup> Julia Duffy and Sam Boyle, ‘Australia’s Resistance to Implementing the Monitoring Mechanisms in the Optional Protocol to the Convention Against Torture: Restrictive Practices and People with Disabilities “in the Community”’ (2024) 62(3) *University of Louisville Law Review* 661.’

<sup>23</sup> Monica Cuskelly and Nicola Crates, ‘Research to Reduce the Use of Restrictive Practices: A Response to Recommendation 6.38 of the Disability Royal Commission’ (2024) 11(2) *Research and Practice in Intellectual and Developmental Disabilities* 234.

<sup>24</sup> Cortez, Smyth and Katz (n 14).

<sup>25</sup> Cuskelly and Crates (n 23) 244.

<sup>26</sup> Cortez, Smyth and Katz (n 14).

government policy to effectively reduce and eliminate restrictive practices, protecting the rights of all people with disability in Australia.

Several models have been adapted internationally to reduce restrictive practices. *LibRe*, developed in Spain, is a digital tool using surveys completed by directors, services providers, caregivers, family members, and people with disability to collect information about restrictive practices. *LibRe* provided an opportunity to reflect on practice and provided the detailed information required to enable change on an individual and organisational level.<sup>27</sup>

*No Force First*, was developed in the US in 2006. Central to the approach is the recognition that coercion, force or restrictive practices are harmful, and changes in practice and culture within an organisation can transform service user outcomes. Evidence indicates that this approach reduced physical restraints by 17% by creating more person-centred environments, building partnerships between care recipients and providers, and fostering trauma-informed care. It also encourages reflection after adverse events to improve care practices.<sup>28</sup>

In an Australian study, *Halt* proved to be an effective program for reducing chemical restraint, cutting regular antipsychotic use by 82%. The study involved 146 residents from 24 residential aged care facilities in Sydney from 2014-2017. Success factors included personalised de-prescribing, staff training, and more medical practitioner involvement.<sup>29</sup>

The *Safewards* model explains variation in conflict and containment rates across psychiatric wards by identifying six domains that give rise to 'flashpoints': the patient, community, patient characteristics, regulatory framework, staff team, and physical environment. It proposes ten interventions aimed at reducing conflict, focusing on de-escalation techniques, staff-patient communication, and agreed care standards.<sup>30</sup> A 2014-15 Victorian trial across 13 wards over 12 weeks, with a 12-month follow-up, showed a 36% reduction in seclusion rates. *Safewards* also reduced seclusion and conflict in adult and adolescent inpatient services. However, it has not been successful in all contexts, and none of the studies found a reduction in restrictive practices after implementation. This might be attributed to negative staff attitudes toward the intervention, competing organisational priorities, and organisational resistance to change.<sup>31</sup>

Overall, the evidence highlights that reducing restrictive practices effectively requires systemic, person-centred approaches that engage all stakeholders and support reflective practice. Further, given the number of promising interventions being introduced and trialled, well-resourced, systemic research is required to address research gaps and enable the effective implementation of evidence-based interventions.

### **C. *Insufficient resources and training for workforce to improve frontline practices***

While the perspectives of people with disability are of primary importance when assessing the success of evidence-based alternatives to restrictive practices, improving frontline practice, infrastructure, training, and culture can all help bring about change.<sup>32</sup> Workforce training is an essential component of all successful evidence-based alternatives to restrictive practice. In a 12-week trial of the *Safewards* model in Victoria in 2014-2015, a comprehensive and concerted effort to train all providers was shown to be more effective in reducing restrictive practice than the UK's self-directed staff training approach.<sup>33</sup> Staff autonomy and collective ownership of changes has also been highlighted as key

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<sup>27</sup> Victoria Sanchez-Gomez et al, 'A pioneer tool to reduce restrictive practices toward people with intellectual and developmental disabilities' (2024) *Behavioural Sciences* 14, 344, 13.

<sup>28</sup> Cortez, Smyth and Katz (n 14) 29.

<sup>29</sup> *Ibid* 33-34.

<sup>30</sup> Cortez, Smyth and Katz (n 14).

<sup>31</sup> *Ibid*.

<sup>32</sup> *Ibid* 6.

<sup>33</sup> *Ibid* 26.

factors to successful evidence-based alternatives.<sup>34</sup> Empowering service providers can reduce resistance to change and negative attitudes that impede the implementation of evidence-based alternatives.<sup>35</sup> Providing improved levels of staffing and being able to release staff from their usual work to access training and resources in managing behaviour would ensure evidence-based alternatives can be effectively implemented.<sup>36</sup> Given the limited data on evidence-based alternatives, the ability to combine elements of different models to best suit a particular environment should be considered best practice.<sup>37</sup>

Mindfulness interventions for frontline service providers have also been shown to positively impact the reduction in restrictive practices in studies conducted primarily in the US.<sup>38</sup> Particularly when combined with behavioural training, mindfulness techniques have been shown to effectively reduce restrictive practice use and increase positive interactions between providers and people with intellectual disability.<sup>39</sup> A reduction in incidents of aggression and a corresponding enhancement in quality of life for people with disability was also found to be an outcome of these studies.<sup>40</sup> Despite methodological limitations and potential jurisdictional variations,<sup>41</sup> these studies provide encouraging support of evidence-based alternatives for restrictive practices.

#### **D. The need of a redress scheme for victims of unauthorised restrictive practices**

As already noted, according to the NDIS Quality and Safeguards Commission, in 2020-2021 over a million uses of unauthorised restrictive practices were reported. Each of these unauthorised restrictive practices might constitute criminal offences or civil wrongs such as assault, Battery and false imprisonment.

The *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*,<sup>42</sup> outline the required actions by the Commissioner in relation to reportable incidents, which includes, referring incidents to other bodies like police, requiring providers to take remedial action (e.g. staff dismissal, environment changes), and authorising investigations and reports on findings. However, there is no clear requirement for the Commissioner to refer affected participants to legal services to seek justice. Mandating such referrals would better align with Australia's obligations under Articles 5, 12, and 13 of the United Nations Convention on the Rights of Persons with Disability (CRPD), which guarantee equal access to justice.

We support the recommendation in the *Research Report – Restrictive practices: A pathway to elimination*<sup>43</sup> for the establishment of a redress scheme for the NDIS participants who have experienced unauthorised restrictive practices. Redress schemes, administered by governments, offer simpler, faster, and more affordable access to justice, using lower standards of proof compared to court litigation. Australia's National Redress Scheme in response to the *Royal Commission into Institutional Responses to Child Sexual Abuse*, established in 2018, offers a model. Another example is Japan's *Compensation Act 2024*, which provides payments to victims of forced sterilisation under the former *Eugenic Protection Act* (1948-1996). Victims can receive up to 15 million yen in compensation, following a 2024 Supreme Court ruling that found the sterilisation law unconstitutional.

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<sup>34</sup> Ibid 29.

<sup>35</sup> Ibid 27.

<sup>36</sup> Ibid 18.

<sup>37</sup> Ibid 40.

<sup>38</sup> Michaela Sturgeon, 'The Impact of Mindfulness Interventions for Staff on the Care, Treatment, and Experiences of People with Intellectual Disabilities: A Systematic Review' (2023) 36(5) *Journal of Applied Research in Intellectual Disabilities* 978, 997 ('The Impact of Mindfulness Interventions for Staff on the Care, Treatment, and Experiences of People with Intellectual Disabilities').

<sup>39</sup> Ibid 996–7.

<sup>40</sup> Ibid 997.

<sup>41</sup> Ibid 996–7.

<sup>42</sup> *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018* (Cth) ss 26-7.

<sup>43</sup> Spivakovsky, Steele and Wadiwel (n 13) 271.

## **V. Recommendations**

Recognising the ongoing limitations of current Behaviour Support Plans, persistent research gaps, and critical deficits in workforce training, NSW must seize this opportunity to lead by example. By committing to transformative reforms, NSW can set a national benchmark in eliminating restrictive practices and promote a new standard of human rights-based care across all health and disability settings in Australia.

### **1. Improving Quality of Behaviour Support Plans**

The inadequate quality of Behaviour Support Plans requires immediate attention. Effective Behaviour Support Plans must involve a consultation process that enables people with disability to participate meaningfully in policy design and development. These plans should reflect the individual's cultural and personal context, including the perspectives of women, LGBTQIA+ individuals, First Nations peoples, and migrants and refugees with disability. Accordingly, co-design and co-production are critical to addressing the current limitations of Behaviour Support Plans.

### **2. Addressing Research Gaps and the Need for Evidence-Based Approaches**

Funding for longitudinal studies would provide useful knowledge of the longer-term effect of Behaviour Support Plans and comparative approaches for preventing restrictive practices. It is also imperative to develop data reporting requirements so that any data concerning restrictive practices are reported, evaluated, and provided to policymakers and service providers.

### **3. Enhancing Training for Frontline Workers**

The success of a Behaviour Support Plan is dependent on the skills and confidence of the service providers who implement it. Training, therefore, needs to be comprehensive, continuous, and responsive to feedback. Frameworks such as the *Safewards* and the *Six Core Strategies* indicate the significance of ongoing training in ensuring sustainability of positive approaches. Staff should also be trained in trauma-informed care, which has been found to be extremely effective in decreasing restrictive practice use and improving the ability to handle conflict. This supports better outcomes for individuals with intellectual disability and an improved environment of care.

### **4. Constructing a Redress Scheme**

There must be a formal redress process instituted for NDIS participants who are victims of unauthorised restrictive practices. Making an express requirement to refer to legal services will act to uphold the rights of people with disability and ensure access to individualised assistance. This is in line with Articles 5, 12, and 13 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which require equal recognition before the law and equal access to justice.

## **VI. Broader Roadmap**

To support the reduction and eventual elimination of restrictive practices, broader and overarching legislative reform should be undertaken in alignment with the policy goal. This section suggests measures for the broader reforms in three aspects:

- A. Alignment with International Law;
- B. National Human Rights Framework; and
- C. Wider Social Change and Social Awareness.

## A. Alignment with international law

Australia's current legislative framework raises concerns about the NSW Government's compliance with its obligations under international law, particularly in relation to establishing an independent oversight mechanism as required by the Optional Protocol to the Convention Against Torture (OPCAT).<sup>44</sup> The Commonwealth Government's interpretive declaration with regard to the CRPD also raises significant concerns.

### *Independent Oversight Mechanism under OPCAT*

Australia is a party to OPCAT, signing 2009 and ratifying in 2017.<sup>45</sup> OPCAT establishes oversight mechanisms to prevent torture and other cruel, inhuman, or degrading treatment or punishment in places of detention,<sup>46</sup> including a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)<sup>47</sup> and National Preventive Mechanisms (NPM).<sup>48</sup>

According to the *Annual Report of the Australian National Preventive Mechanism (2023-2024)*, the multi-body Australian NPM currently consists of 12 members across 6 Australian jurisdictions. However, membership of the Australian NPM is still incomplete with no NPM nominated in New South Wales, Queensland, and Victoria.<sup>49</sup> Given that the ACT Government introduced *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018 (ACT)* – which establishes a NPM –<sup>50</sup> the NSW Government is falling behind in not implementing the NPM mechanism or enacting dedicated legislation. Therefore, the NSW Government should designate a State NPM and initiate steps toward enacting dedicated legislation to ensure the proper functioning of the NPM and ensuring the national coordination of Australia's OPCAT response. This would comply with recommendations in the Australian Human Rights Commission's 'Road Map to OPCAT Compliance'.<sup>51</sup>

### *Australia's interpretive declaration*

An interpretive declaration is a unilateral statement by a party to a treaty that purports to specify or clarify the meaning or scope of a treaty or certain provisions.<sup>52</sup> Here, we recommend that the Australian Government withdraw its interpretive declaration to the CRPD concerning Articles 12, 17 and 18. Regarding Articles 12 and 17, Australia's interpretation allows for substituted decision-making<sup>53</sup> and compulsory assistance or treatment where necessary as a last resort.<sup>54</sup> Regarding Article 18 of the CRPD, the interpretive declaration allows Australia's migration health requirements to remain discriminatory.<sup>55</sup>

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<sup>44</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 18 December 2002, 2375 UNTS 237 (entered into force 22 June 2006) ('OPCAT').

<sup>45</sup> Australian Human Rights Commission, 'OPCAT: Optional Protocol to the Convention against Torture' (29 June 2021) <<https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>>.

<sup>46</sup> Duffy and Boyle (n 22) 661; *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 2002* (GA Res 57/199).

<sup>47</sup> OPCAT arts 2, 11-2.

<sup>48</sup> OPCAT arts 17, 18(1), 18(3), 19(a).

<sup>49</sup> Australian National Prevention Mechanism, Annual Report 1 July 2023-30 June 2024, 'Monitoring Places of Detention under the Optional Protocol to the Convention against Torture' 9.

<sup>50</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018 (ACT)*, s 8C.

<sup>51</sup> Australian Human Rights Commission 'Road Map to OPCAT Compliance' (17 October 2022) 9-10.

<sup>52</sup> Australian Human Rights Commission, 'Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability' (Report, March 2023) ('Human Rights Commission Report 2023'); International Law Commission, Guide to Practice on Reservations to Treaties (2011), submitted to the General Assembly as part of the ILC's report covering the work of its sixty-third session: UN Doc A/66/10, para 75 at [1.2].

<sup>53</sup> Australia, *Declarations and Reservations, Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('Australia's Interpretive declaration') <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>.

<sup>54</sup> *Ibid.*

<sup>55</sup> People with Disability Australia, *Response to the Disability Royal Commission Final Report* (Report, February 2024) ('PWDA Report') 30; Australia's Interpretive declaration (n 53).

## **B. National Human Rights Framework**

In the absence of comprehensive human rights protections in Australia, people with disability are not adequately protected from intersectional discrimination.<sup>56</sup> Australia is an anomaly among all other liberal democracies, in that it has not implemented key rights contained in human rights treaties through a cohesive legislative framework or constitution. The current gaps and inconsistencies in the legal protection afforded the rights of people with disability will continue in the absence of comprehensive human rights laws in Australia.<sup>57</sup>

## **C. Wider Social Change and Social Awareness.**

Restrictive practices are not just a policy or service issue, they reflect broader societal attitudes towards disability and mental health. They are often misunderstood or accepted as necessary, rather than recognised as human rights violations that should be minimised and eliminated. Their continued use is partly driven by deep-seated stigma and discrimination.<sup>58</sup> Ableist beliefs suggest that people with disability can be subjected to coercive or violent interventions that would never be acceptable for others. In care settings, such views are often masked as ‘protection’ or ‘compassion’. For some, other forms of discrimination, such as racism and sexism, can further justify the use of restrictive practices.<sup>59</sup>

To eliminate restrictive practices and achieve genuine inclusion, respect, and equal opportunity, the NSW Government must commit to fundamentally shifting sociocultural attitudes. This requires sustained public awareness campaigns that clearly highlight the human rights implications of restrictive practices, while emphasising dignity, autonomy, and viable alternatives. Equally important is the meaningful involvement of people with disability and their families through co-design in policymaking, service design, and advocacy. Only through these combined efforts can the NSW Government effectively dismantle restrictive practices and uphold the rights and dignity of all people with disability.

## **VII. Conclusion**

This report underscores the urgent need to eliminate unauthorised and harmful restrictive practices across all disability care settings in New South Wales. Despite existing legislative frameworks and policy commitments, systemic issues - including poor data quality, under-resourced frontline services, limited stakeholder engagement, and the absence of a robust human rights framework - continue to undermine progress. Effective change requires a coordinated, evidence-based, and person-centred approach, supported by comprehensive research, workforce training, and the implementation of redress mechanisms. It also demands broader reforms, including alignment with international obligations under OPCAT and the CRPD, the establishment of a NSW NPM, and a commitment to legislative and cultural change. The elimination of restrictive practices must be driven not only by policy and regulation but by a wider social commitment to dignity, inclusion, and justice for all people with disability.

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<sup>56</sup> Human Rights Commission Report 2023 (n 52) 19.

<sup>57</sup> Ibid; The Australian Human Rights Commission’s upcoming report, *Bringing Rights Home: A human rights act for Australia*, to be published in February 2023, will make the case for a federal human rights Act.

<sup>58</sup> Spivakovsky, Steele and Wadiwel (n 13).

<sup>59</sup> Ibid.