

Office of the Senior Practitioner Disability Policy Unit

Restrictive Practices- protection or breach of rights?

World Elder Abuse Awareness Day Conference
15th June 2018



Today I will be describing how new strategies have supported the South Australian disability sector to reduce the use of restrictive practices and to ensure that, when they are used, they are used legally, minimally and for the shortest time possible.

Why do we take the use of restrictive practices so seriously?



Firstly, because of Magna Carta!

No free man can be seized or imprisoned except by the lawful judgment of his equals or by the law of the land.

The principles of Magna Carta hold to this day in that no-one can be deprived of his/her liberty unless there is a legal process to do that.

We dress them up in some professional language, but restrictive practices, used without legal authority, can be crimes and torts!



Secondly, because Restrictive Practices are Dangerous!

In the United States, a team of *Hartford Courant* reporters and researchers compiled a national database believed to be the first of its kind. The database:

- shed light on deaths that occurred during or shortly after psychiatric or developmentally disabled patients were restrained or secluded in hospitals, residential facilities and group homes.
- documented 142 deaths from 1988 to 1998 as identified by public agencies, advocacy offices and news accounts.



Freedom Under the Law

In respect to restrictive practices, as Australian citizens and residents we have the right to freedom from:

- False imprisonment
- Assault
- Battery

False Imprisonment

- is an action which is committed when a person directly subjects another to deprivation of freedom of movement without lawful justification.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

Cornelia Rau was found to have been falsely imprisoned from 5th April 2004 until 31st January 2005 and was subsequently awarded \$2.6M

Assault

- is carried out by a threat of bodily harm coupled with an apparent, present ability to cause the harm.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

Battery

- is intentionally and voluntarily bringing about an unconsented harmful or offensive contact with a person. The contact can be by one person of another or the contact may be by an object e.g. the intentional contact by a car.
- is an unconsented administration of a substance, including medication.
- Is an unconsented medical procedures.
- is both a crime and a tort and, therefore, may result in either criminal and/or civil liability.

People with Disabilities

- Although these rights and freedoms have always applied to people with disabilities, historically they have often not been recognised and enforced.
- The United Nations Convention on the Rights of People with Disabilities does not confer new rights, rather it requires us to ensure that these inherent rights of people with disabilities are guaranteed.

An Historical Perspective

People with disabilities...

- have been locked up. Without appropriate consent this constitutes false imprisonment.
- have been physically restrained. Without appropriate consent this constitutes battery.
- have been medicated. Without appropriate consent this constitutes battery.
- have been sterilized. Without consent this constitutes battery.

How did this Occur?

No-one asked the question “On what legal basis do we do this?” because essentially people with disabilities were seen as “other”...

It was assumed that basic rights did not apply to them.

Restrictive Practices

A practice, device or action that removes another person's freedom or interferes with another person's ability to make a decision. This includes detention, seclusion, exclusion, aversive restraint, chemical restraint, physical restraint and mechanical restraint.

They do not include the use of devices for therapeutic or safety purposes - unless the individual objects to their use.

Physical Restraint

The use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of controlling a person's behavior.

It does not include physical assistance or support related to duty of care or in activities of daily living.

However, if the individual objects to such support, it must be treated as a physical restraint.

Mechanical Restraint

The use of a device to prevent, restrict or subdue a person's movement or to control a person's behaviour. It does not include the use of devices for therapeutic or safety purposes (e.g. a splint).

However, if the individual objects to a therapeutic or safety device, it must be treated as a mechanical restraint.

Seclusion

- The sole confinement of a person, at any hour of the day or night, in any room in the premises where disability services are being provided where the doors and windows cannot be opened by the person.

Chemical Restraint

- The use of any medication to modify or control a person's behaviour or bodily function for a non-therapeutic reason.
- It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental illness, a physical illness or physical condition.

Environmental Restraint

The practice of making changes or modifications to prevent free access to all parts of the person's environment. This might include not allowing access to various parts of their house or locking refrigerators.

Exclusion

The act of preventing a person from participating in or being part of an activity or decision. Or deliberately ignoring or not including a person in an activity or decision.

Exclusion should not be used!

Aversive Restraint or Intervention

The practice of using physical, sensory or verbal responses to a person's undesired behaviour as a method of eliminating the behaviour.

In the past, some residents of institutions were rapped on the knuckles with a bunch of keys if they attempted to open a door.

More recently, people have been sprayed in the face with water in response to unwanted behaviours.

These interventions should not be used!

Psycho-social Restraint

The use of power-control strategies to control an individual by directing his/her behaviour, use of voice tone, ignoring the individual, withdrawing privileges, wheedling and manipulation.

These strategies should not be used.

The following Physical Restraints are not to be used in any circumstance!

Physical restraint in the form of:

- Supine restraint (face up)
- Prone restrain (face down)

These restraints are hazardous, potentially lethal and have caused deaths in the past.



Supine



Prone

The very first question to ask when considering using a Restrictive Practice!

Is there a legitimate purpose for using the restrictive practice?

It might be legitimate to consider putting a lock on the refrigerator if one of the residents has a eating disorder and free access to food is injurious to her/his health.

It would not be legitimate to put a lock on the refrigerator because one of the residents regularly spills the milk.

But surely restrictive practices are only used in situations where people are at risk?

The first person on the list of those 142 people who died was a 15 year old girl who suffocated while being held face-down on the floor for refusing to hand over a family photograph.

In South Australia in 2015, a young man was tackled and taken to ground in the foyer of a bowling alley when, in his exuberance, he ran into the centre and banged on the desk.

Who can Authorise the use of restrictive practices?

- Where a provider believes a restrictive practice is necessary, an appropriate professional must recommend its use.
- Seclusion, physical restraint and mechanical restraint require the authorisation of the South Australian Civil and Administrative Tribunal (SACAT).
- Physical restraint and mechanical restraint also require the consent of the guardian.
- Chemical restraint requires the consent of an authorised guardian and, if the individual objects to its use, authorisation by SACAT.
- Environmental restraint requires the consent of a guardian.

Sometimes using a restrictive practice is exactly the right thing to do!

- Using a restrictive practice might be necessary and indeed the right thing to do in an emergency situation to prevent harm to the individual or others e.g. grabbing someone to prevent him/her from running on the road.
- The courts/ coroner would probably take a very dim view if someone didn't intervene because "it was a restrictive practice".

Dangers of Seclusion

Around Australia, many people have died in legally sanctioned seclusion. This includes people who have suicided whilst secluded. If seclusion has been authorised, such seclusion must only occur within an environment that is safe, is non-threatening to the person and maintains the dignity of the person. Close supervision and monitoring must be used to ensure the safety and wellbeing of the person during the period of seclusion.

Seclusion is not an alternative to supervision!

Present Thinking

We recognise that:

- the use of unauthorised restraints is an infringement of rights that could lead to civil and/or criminal proceedings.
- restrictive practices are often used more for the benefit of the service provider than the individual.
- with new strategies we can reduce and eliminate the use of restrictive practices.

Current Australian Initiatives

The National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission will oversee a system of national safeguards including a complaints mechanism, incident reporting and investigations, Positive Behaviour Support competence standards, a Code of Conduct and other systems to deal with abuse, neglect and for addressing the use of restrictive practices.

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The Obligations of Service Providers

All South Australian Disability Service providers must:

- have a policy and procedures aimed at reducing or eliminating restrictive practices.
- record all uses of restrictive practices
- ensure all uses of restrictive practices are appropriately authorised
- ensure that all restrictive practices are used safely.

The Obligations of Service Providers

Before a restrictive practice is approved:

- There must be a legitimate purpose to consider using the restrictive practice
- All less restrictive alternatives will be investigated
- A positive behaviour support plan will be developed
- Appropriate authorisation and consent are obtained
- A regular review of the practice is planned
- Collateral outcomes on other clients will be outlined and documented.

Recording and Reporting

Disability service providers are responsible for maintaining clear and accurate records relating to all uses of restrictive practices, including records of each instance where a restrictive practice is used.

Monitoring will be undertaken by the Senior Practitioner, Care Concerns Investigation Unit, Community Visitors, the Office of the Public Advocate, the Health and Community Services Complaints Commissioner and families.

The NDIS Quality and Safeguarding Commission will also require recording and reporting of all uses of restrictive practices.

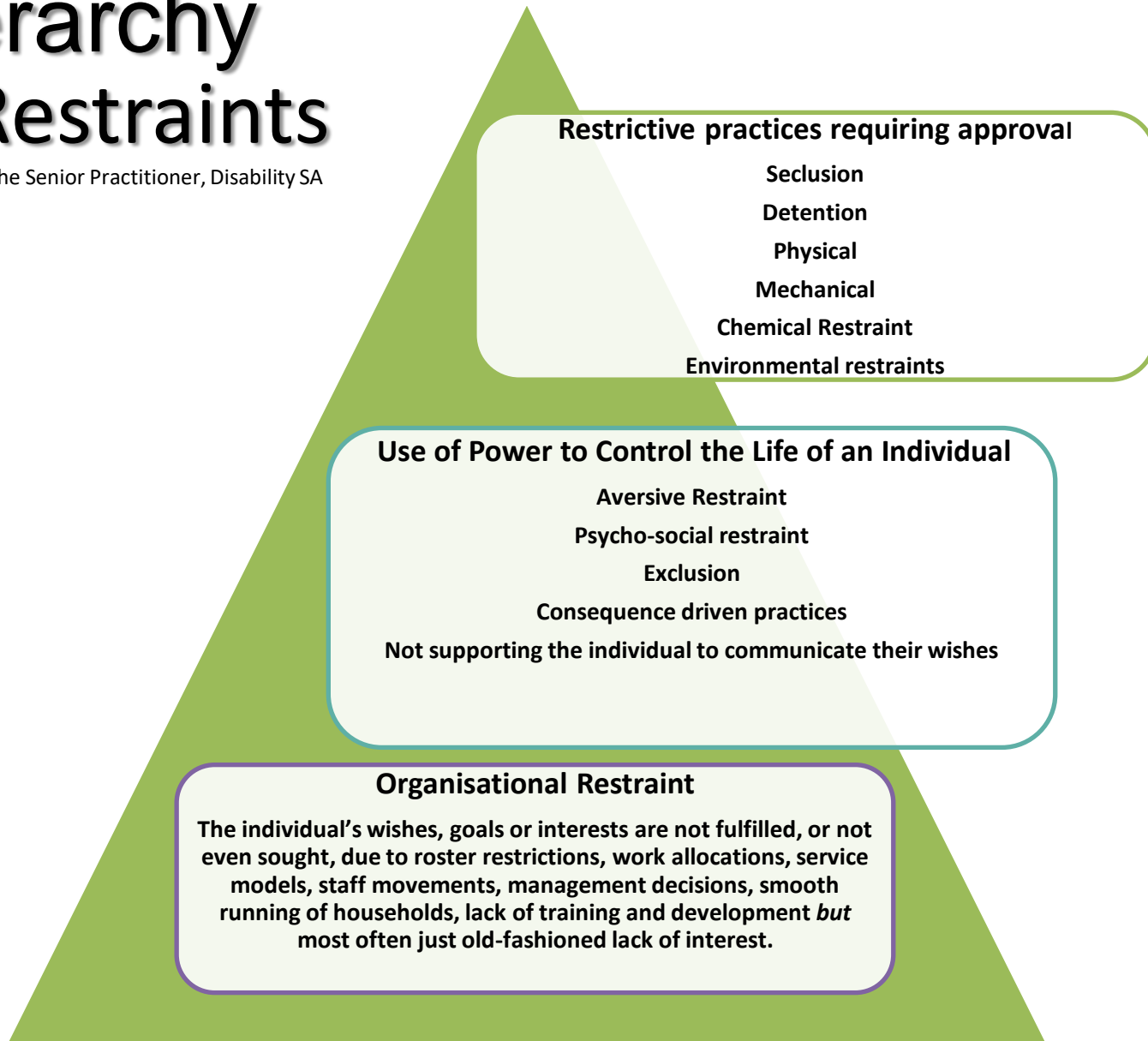
The Community Visitors Scheme

Many of the people supported by disability service providers are not able to protect their own interests and may be subject to abuse, neglect or the over-use of restrictive practices

In South Australia, we have the Community Visitors Scheme. The Principal Community Visitor and volunteer Community Visitors are able to go into disability services, observe practices that are occurring and inspect a range of documents relating to the care and support of residents.

Hierarchy of Restraints

The Office of the Senior Practitioner, Disability SA



Impoverished Lives

- “I am convinced that boredom is one of the greatest tortures. If I were to imagine Hell, it would be the place where you were continually bored.” - Erich Fromm, The Dogma of Christ
- “It is not inequality which is the greatest misfortune; it is dependence.” - Voltaire

What would our behaviour be like if we were always dependent on others, not supported to gain skills or exercise personal sovereignty and were perpetually bored?

John the Nuisance becomes John the Artist

John lived in a large residential service. He had started fires, destroyed property and stuffed towels down the toilet. There was constant agitation about his behaviour. Eyes rolled at the mention of his name!

A staff member loaned him an old camera and he was immediately entranced. He took some very interesting photos. With the help of staff he bought his own camera. He produced work that was considered outstanding and which was included in a mainstream exhibition. He attended the opening by the arts minister without any indication of his problem behaviour.

John's need to do dysfunctional things has greatly reduced and he continues to produce edgy art that sometimes offends; but isn't that what art is supposed to do?

How serious are we?

- Will we develop our capacity to develop support plans for all individuals who need them?
- Will we develop the skills of hands-on staff who work directly with people with behaviours of concern?
- Will we stop putting together households of people who share no common interests and who might not even like each other?
- Will we truly resource support plans so that individuals can have meaningful lives?

So are restrictive practices mechanisms for protection or breaches of rights?

- **They can be both!**
- **They can be used, as a part of our duty of care, to protect the individual or others.**
- **However there are new strategies that enable us to move away from using restrictive practices as the main or only way of responding to dangerous behaviours.**
- **If we don't explore and implement those strategies, restrictive practices are certainly breaches of rights!**
- **And restrictive practices used for the convenience of organisations are always breaches of rights!**

Some resources can be found in the following documents

- Human Rights
http://dcsi.sa.gov.au/_data/assets/pdf_file/0003/58107/Human-Rights-Guide-South-Australian-Disability-Sector.pdf
- Person-centred services
http://dcsi.sa.gov.au/_data/assets/pdf_file/0004/58108/Person-Centred-Guide-South-Australian-Disability-Sector.pdf
- Restrictive practices
https://dcsi.sa.gov.au/_data/assets/pdf_file/0018/55602/restrictive-practices-reference-guide-south-australian-disability-sector.pdf
- Positive Behaviour support
http://dcsi.sa.gov.au/_data/assets/pdf_file/0020/55604/positive-behaviour-support-guide-south-australian-disability-sector.pdf

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