



Villamanta Disability
Rights Legal Service Inc.

Villamanta Disability Rights Legal Service Inc.

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Restraint and Seclusion

How do I go about making a complaint?

Restraint, in particular, is often a feature of services used by people with disabilities and older people. Practices such as keeping people behind locked doors or using medication to sedate people or control behaviour have become so commonplace that often very little thought is given to the human and legal rights of the people who are subject to these practices.

This Information Sheet outlines some of the important legal and human rights issues around the use of restraint and seclusion. Whether you are a person using a service, an advocate for service users, or a person working within a service, we hope this information will be of use to you. We hope that it will assist you to ensure that restraint or seclusion is only used as a last resort and then only in accordance with the law.

It should be noted that this information is not a guide to behaviour management. It does not attempt to offer any suggestions about how best to manage behaviour that may be considered "inappropriate" or "unacceptable". It only talks about unlawful or inappropriate ways behaviour is managed and makes some suggestions about what to do if you think this is happening.

It should also be noted that this sheet only contains general information. It should not be used as a substitute for proper legal advice. Every situation is different. If you are unsure about the legal rights and wrongs of a particular situation get independent legal advice. It's important to talk to someone not employed by your organization, someone who doesn't have a vested interest in the outcome but who has expertise on these sorts of issues. Just complying with internal policies and procedures may not be enough. Policies and procedures may be developed without regard to the legal and human rights of people who use a service.

Possible sources of independent legal advice are listed below.

What is restraint or seclusion?

The *Disability Act 2006* and the *Mental Health Act 2014* have technical definitions for the

Important Note - This Information Sheet has been produced only for use in Victoria, Australia. Some of the laws mentioned in this Information Sheet will be different in other places.

terms "restraint" and "seclusion". These are discussed in more detail later, but for the general purposes of this Information Sheet, the terms "restraint" and "seclusion" mean the following:

Restraint

Restraint is anything that impedes or stops the free movement of a person.

Physical

This includes putting a person's arm in a splint; tying someone to a chair, putting something in front of a chair (like an over-bed table) that prevents the person sitting in the chair from moving; putting someone in a bean bag, when they need help to get out, removing or disabling a wheelchair used by a person who relies on one; or fastening doors so that some people aren't able to leave a room or a building when they want to.

Chemical

This means giving someone medication or drugs to make him or her sleepy or stop them moving around as easily as they normally can.

Psychological

This includes using threats or coercion to prevent a person from going where they want to; or making a person think they are locked in a room when they aren't or making a person think he or she has to follow "rules" about where they're allowed to go when the rules are unfair and arbitrary.

Seclusion:

Seclusion means confining a person in a room, or some other space, by themselves. A person is secluded if he or she is shut in a room by themselves without any way of getting out except if someone comes to release him or her. This can happen if a person is locked in a room by themselves. It can also happen if a person is put in an unlocked room on their own, but can't get out for some reason; for example their wheelchair may have been confiscated or they may not be able to use a door handle.

When might restraint or seclusion be lawful?

Under the Disability Act 2006

The *Disability Act 2006* regulates services to people who have an intellectual disability. The *Disability Act 2006* set out the circumstances when the use of restraint or seclusion is permitted. These provisions, if complied with, will give a lawful excuse for the use of restraint or seclusion.

Definitions

Restraint:

The *Disability Act 2006* refers to "restraint" as meaning chemical restraint or mechanical restraint.

Seclusion:

Seclusion means the sole confinement of a person with a disability at any hour of the day or night in any room in the premises where disability services are being provided of which the doors and windows cannot be opened by the person from the inside, which the doors and windows are locked from the outside; or to a part of any premises in which disability services are being provided generally.

Criteria

For restraint or seclusion to be lawful, it must be necessary:

- to prevent a person injuring themselves or others, or
- to prevent the person destroying property where to do so could involve the risk of harm to themselves or any other person, and
- should be the least restrictive alternative available.

Procedural requirements

For either restraint or seclusion to be lawful, the following procedures must be complied with. The restraint or seclusion must have been:

- incorporated as part of the person's Behaviour Support Plan and approved by the authorised program officer; or,
- is not applied for longer than the shorter of the following periods—
- the period of time that has been authorised by the Authorised Program Officer; or
- the period of time during which the use of the seclusion or restraint is necessary

If seclusion is to be used—

- the person is supplied with bedding and clothing which is appropriate in the circumstances
- the person has access to adequate heating or cooling as is appropriate in the circumstances
- the person is provided with food and drink at the appropriate times; and
- the person is provided with adequate toilet arrangements
- Any other requirements imposed by the Senior Practitioner are complied with.

Appealing the use of restraint or seclusion

The Disability Act *does not* provide a "right" to have a plan independently reviewed. Instead, a person who is unhappy about the contents of their plan may "make a complaint" to the service provider, which must have a complaints mechanism in place. The person may also make a complaint to the Disability Services Commissioner ("the Commissioner"). The Commissioner may accept or reject the request to deal with a complaint, or may decide to deal with some aspects of the complaint, but not others.

Penalties for the wrongful use of restraint or seclusion

As well as being liable for damages for false imprisonment or assault, anyone who uses restraint or seclusion outside the provisions in the Act is guilty of a statutory offence. This could mean a fine of up to \$3,177.6.

Under the Mental Health Act 2014

The *Mental Health Act 2014* is now the law governing compulsory mental health treatment in Victoria. The *Mental Health Act 2014* set out the circumstances when the use of restraint or seclusion is permitted. These provisions, if complied with, will give a lawful excuse for the use of restraint or seclusion.

Definitions

Restraint :

The *Mental Health Act 2014* refers to bodily restraint. 'Bodily restraint' means a form of physical or mechanical restraint that prevents a person having free movement of his or her limbs, but does not include the use of furniture (including beds with cot sides and chairs with tables fitted on their arms) that restricts the person's ability to get off the furniture.

Seclusion:

'Seclusion' means the sole confinement of a person to a room or any other enclosed space from which it is not within the control of the person confined to leave

Criteria

A person receiving mental health services in a designated mental health service may be kept in seclusion if seclusion is necessary to prevent imminent and serious harm to the person or to another person to administer treatment or medical treatment to the person.

Procedural requirements

The Act sets out the provisions that staff applying seclusion interventions must comply with.

For either restraint or seclusion to be lawful, the following processes must be complied with. The restraint or seclusion must have been:

- approved in advance by an "authorised psychiatrist" or,
- if an "authorised psychiatrist" is not immediately available, a registered medical practitioner or the senior registered nurse on duty.
- the registered medical practitioner or the senior registered nurse must notify an authorised psychiatrist about the use of seclusion as soon as practicable.

Appealing

The Mental Health Tribunal (the Tribunal) is an independent statutory tribunal established under the Mental Health Act 2014. The Tribunal is an essential safeguard under the Act to protect the rights and dignity of people with mental illness. The primary function of the Tribunal is to determine whether the criteria for compulsory mental health treatment as set out in the Mental Health Act 2014 apply to a person.

If you plan on raising the matter directly with the manager of the service, you may find that getting support from an advocate will be helpful. You may find it difficult to try and discuss these things with a service manager without someone to support you. Where possible, try to get support from someone who has a good knowledge of what the law says about the use of restraint and seclusion.

Some useful numbers:

<p>Villamanta Disability Rights Legal Service Inc. Phone: 1800 014 111 www.villamanta.org.au/</p>	<p>Disability Services Commissioner Phone: 1800 677 342 www.odsc.vic.gov.au/</p>
<p>Office of the Public Advocate Phone: 1300 309 337 www.publicadvocate.vic.gov.au/</p>	<p>National Disability Services Abuse Hotline Phone: 1800 880 052 www.disabilityhotline.net.au/</p>
<p>Disability Justice Advocacy Phone: (03) 9474 0077 Free Call: 1800 808 126 www.justadvocacy.com/</p>	<p>Mental Health Legal Centre Phone: (03) 9629 4422 or 1800 555 887 (freecall for country callers only) www.communitylaw.org.au/clc_mentalhealth/</p>
<p>STAR Victoria (Advocate for people who have an intellectual disability) Phone: 9650 2730 www.starvictoria.org.au</p>	<p>Leadership Plus (Advocate for people who have an intellectual disability) Phone: 9489 2999 www.leadershipplus.com/</p>