THE UNIVERSITY of ADELAIDE

South Australian Law Reform Institute

Review of the *Mental Health Act 2009* (SA)

Fact Sheet 5 – Restrictive Practice and Control Powers

What is a Restrictive Practice?

A restrictive practice takes a variety of forms and aims to limit a person's freedom to move. There are four types:[1]

1. **Chemical:** using medication without consent.
2. **Mechanical:** using a device, such as a lap belt, bed rails, a princess chair, clothing or low bed.[2]
3. **Physical:** using physical force with your hands or body or placing a person in a particular position which limits movement.[3]
4. **Seclusion:** placing a person in a room on their own, without a way to leave. For example, this may be a room with no ability to exit (a locked door) or no access to a call bell.[4]

What are control powers?[5]

Under the *Mental Health Act 2009* (SA) ('*MHA*'), authorised officers (such as a medical practitioner or paramedic) and police officers have the power to take over care and control of a person with a mental illness, who is at risk to themselves and others.[6] This person may be under an Inpatient Treatment Order (see Fact Sheet 3), a Community Treatment Order (see Fact Sheet 4), waiting for a transfer to a treatment centre or has failed to comply with a condition of their order. As part of exercising this power, an authorised officer or police officer may transport a person to a particular place, restrain a person using reasonable force or medication, enter a place or search and take harmful items. These powers may be used to assist and manage the treatment of a person. The rights of a person subject to these powers must be protected. They must be provided with support, communication assistance, a statement of rights and an explanation of what is happening and why.

Current issues

Restrictive practices and control powers raise issues relating to human rights, dignity, consent, the welfare of the person and the community. There are concerns relating to the appropriateness of laws allowing a party to use reasonable force. The way in which 'reasonable' is defined and applied in practice may also need to be clarified. If reasonable force is exercised, this may require the use of a restrictive practice. As a result, the nature and type of restrictive practice must be considered necessary in a particular situation. Who and how this is determined is another relevant consideration.

Consultation Questions

1. Should the *MHA* allow use of reasonable force and control powers? If so, when?
2. Who should be allowed to use force and exercise control powers?
3. What is 'reasonable' and how should this be defined?

[1] Office of the Chief Psychiatrist South Australia, *Annual Report of the Chief Psychiatrist of South Australia 2020-21* (Report, 18 November 2021) 25. Some practices may not be related to movement, such as searching belongings, restricting visitors/phone calls or access to a phone/computer.
[2] Aged Care Quality and Safety Commission, 'Overview of restrictive practices' (Web Page) <https://www.agedcarequality.gov.au/sites/default/files/media/overview-of-restrictive-practices_0.pdf>.
[3] Ibid.
[4] Ibid.
[5] See Office of the Chief Psychiatrist South Australia, *Section 56 – Care and Control* (Fact Sheet) 1.
[6] *Mental Health Act 2009* (SA) ss 56–7.

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