



POSITION STATEMENT REGARDING
THE USE OF
RESTRICTIVE
PRACTICES ON
PEOPLE WITH DISABILITY

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

QAI believes that all human beings are equally important, unique and of intrinsic value. Everyone should be seen and valued as a whole person, first and foremost. The human condition is such that societies tend to devalue those who do not fit within their models of perfection.

Many people with disability experience a lifetime of devaluation from birth, through their school years and beyond. The imprint left upon people by the multiple layers of discrimination, exclusion and rejection is often a terrible burden of loneliness, pain or anger. When any, and at times the only, interaction they have with another person is in the form of a direction or instruction, a 'do this, don't do that' chorus echoed throughout the years, it is not unexpected, having regard to normal human behaviour, that some people will retreat into themselves while others will attempt to exert some will and determination. Social isolation, a lack of status or esteem is exacerbated by the proliferation of negative stereotyping which occurs within the disability sector and throughout the broader community.

This is exemplified by the preponderance of the use of the term 'challenging behaviours', which has evolved into the labelling and stereotyping of people who may, at times, communicate by using the only means available to them in times of duress. The exhibition of behaviours of concern to others is not an attribute of the person. When we address our language we can mitigate a tendency to prejudicial reactions that are reflected in our own behaviours. When actively and attentively listening to the person we can avoid adding to the angst experienced by the person and we can respond appropriately.

The use of Restrictive Practices on people with an intellectual or cognitive impairment is an issue of vital importance that touches on notions of human rights, equality, autonomy, choice, dignity and respect and pertains to a highly vulnerable, marginalised and disempowered group in our society. Restrictive Practices are imposed upon vulnerable people by those who abuse their power and exert domination over the person. The person viewed as exhibiting the behaviours of concern is restricted, thus exacerbating the problem. Therefore the perceived solution is to apply more or longer use of the particular restrictive practice or practices, entrenching and sanitising this approach as acceptable for the long term. The person gains an ill-deserved reputation that is difficult to shed.

QAI considers that, in attempting to understand a person's behaviour, it is imperative to start by understanding their life experiences; the environmental, relationship, sensory, mental health and physical factors that may be relevant; any difficulties they may face in communicating; and the situations in which they may feel unsafe, threatened or disempowered. In many circumstances, behaviour can be interpreted out of context and can be incorrectly labelled as unprovoked aggression or lack of cooperation justifying seclusion, containment or mechanical or chemical restraint when in fact, the use of Restrictive Practices is associated with an escalation in the manifestation of behaviours of concern, rather than a reduction.

QAI is firmly committed to the values of autonomy and self-determination for people with a disability and considers that, for people with an intellectual or cognitive disability, true informed consent requires that they are presented with real choices, enabled to express their views and preferences and have their autonomy and right to make decisions respected (irrespective of whether their choices may be objectively considered to be 'good' or 'bad').

QAI endorses a supported decision-making approach for people with an intellectual or cognitive disability. By this approach, the role of the supporter is to assist in scaffolding or

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maintaining the adult's capacity for longer than would otherwise be the case. This decision-making approach, by helping to develop decision-making capacity and respecting autonomous choice, decreases the incidence of communicative behaviours that may lead to the application of a Restrictive Practice.

Commencing with the ratification of the CRPD, which was adopted by the United Nations in 2006,¹ Australia has taken tentative steps towards a supported decision-making model. Rather than purporting to recognise new human rights, the CRPD seeks to apply established human rights to persons with disability.² The human rights recognised by the CRPD that are of present relevance include the right to equality before the law, the right to liberty and security of person, living independently and being included in community, the right to freedom from torture and cruel, inhuman and degrading treatment and the right to freedom of movement.³ These broad human rights are tailored specifically for situations where persons with a disability may experience a violation of these general human rights.⁴

Society should be constantly examined for any systemic biases which harm vulnerable and marginalised groups, and should be challenged. This includes ensuring that everyone has adequate access to the legal system: in a civil society, all members of that society should accept responsibility for the protection and development of equality before the law. All legislation, procedures and policies that impact on people with disability with particular emphasis on those that pertain to the use of Restrictive need to be reassessed to ensure their fairness and equitable treatment of people with disability.

When the approach is changed, by empowerment, enablement and ensuring a person with a disability is scaffolded by support from the right relationships, the perspective on that person can change from a negative to a positive one and their status can be elevated to equal citizenship. When perceptions and expectations are changed, our approaches, behaviours and responses also implicitly change. When we remove the burdens we place upon people, they can flourish and respond accordingly.

When an approach of respect, autonomy and enablement is integrated with practical supports and safeguards, relationships are correctly balanced. We return control and respect to formerly marginalised people and reduce or remove the use of Restrictive Practices.

It is important that support for vulnerable people with disability (including those purported to communicate at times in unique and possibly challenging ways) is viewed in the same context as the interdependency of societal norms. In the words of Eva Cox: "In a civil society, we need to recognise the supreme importance of social connections which include plenty of robust goodwill to sustain difference and debate... I want to persuade those in high places to recognise that we are social beings."⁵

¹ Australia signed the CRPD on 30 March 2007 and formally ratified it on 17 July 2008.

² Phillip French, 'Human Rights and Human Wrongs: A Human Rights Analysis of Queensland Restrictive Practices Legislation', Presentation to Queensland Advocacy Incorporated's Restrictive Practices Forum, 24 August 2010, 2.

³ These human rights are recognised more generally in the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment.

⁴ For example, the right of a person with a disability to live independently and be included in the community is rooted in the rights to liberty and freedom of movement: Article 19 of the CRPD.

⁵ Eva Cox, *Broadening the Views*, The 1995 Boyer Lectures: A Truly Civil Society.

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People with disability should be treated with the same dignity and respect as any other human being. We believe that everyone should be given access to a means of communication and outlets for their creativity and self-expression.

QAI asserts that the use of Restrictive Practices is a violation of human rights on the grounds that such treatment, if applied as a societal norm, would not be tolerated and would be viewed as criminal conduct. The application of Restrictive Practices on people with a disability is discriminatory, cruel, inhuman and degrading treatment that must be ceased.

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