



Children and Young People
with Disability Australia

Response to Disability Royal Commission
***Restrictive practices* issues paper**

October 2020

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Introduction

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability aged 0-25 years. CYDA has an extensive national membership of over 5,000 young people with disability, families and caregivers of children with disability, with the majority of our members being families.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- Listen and respond to the voices and experiences of children and young people with disability.
- Advocate for children and young people with disability for equal opportunities, participation and inclusion in the Australian community.
- Educate national public policy-makers and the broader community about the experiences of children and young people with disability.
- Inform children and young people with disability, their families and care givers about their citizenship rights and entitlements.
- Celebrate the successes and achievements of children and young people with disability.

CYDA is pleased to provide this brief response to the Disability Royal Commission's issues paper examining restrictive practices. We advocate for the elimination of all restrictive practices against children and young people with disability, in line with the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* and further applying to restrictive practices used in other settings.

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End the use of restrictive practices for children and young people with disability

Recommendations:

- There is principles-based, nationally consistent legislation in all states and territories to drive the reduction and elimination of restrictive practices in all settings, including services funded by the NDIS and those funded by other means, as well as education environments
- Restrictive practices are only authorised as an absolute last resort, utilising the least restrictive practice and for the shortest period possible
- There is transparent monitoring and reporting on the use of restrictive practices against children and young people with disability, in all settings and across states and territories
- Young people with disability, families/caregivers, advocates, and whistle-blowers can access clear complaints pathways, including greater investigation and compliance mechanisms
- Legislation and practice ensure the rigorous investigation of the use of restrictive practices, whether 'authorised' or unauthorised
- Governments invest in initiatives to educate service providers, schools, and other services about:
 - the rights of children and young people with disability
 - the national commitment to elimination of restrictive practices
 - the organisation's role and responsibility in reducing and elimination the use of restrictive practices.

As recognised by governments across Australia:

*"Reducing and eliminating the use of restrictive practices is consistent with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its intent to protect the rights, freedoms and inherent dignity of people with disability. Australia has ratified and agreed to be bound by the terms of the CRPD under international law."*¹

In 2014, the federal and state/territory governments agreed to a National Framework for the reduction and elimination of restrictive practices in disability services, however, data shows these practices continue to affect the lives of many people with disability.² Additionally, restrictive practices occur in other settings, including, for children and young people, in schools and education settings.

¹ Australian Disability Reform Council. (2014) *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*.

² Disability Royal Commission. (2020) *Issues paper: Restrictive practices*.

While we acknowledge the breadth of the issues around the use of restrictive practices for people with disability, in this response we focus on the use of restrictive practices in education. Data collected by CYDA over multiple years indicates restrictive practices are being used widely in education settings.

Australian students with disability are being placed in cages or isolated in other inappropriate structures sometimes referred to as “withdrawal”, “time out” or “calm” rooms, locked in cupboards, tied to chairs with belts, deprived of water for long periods and degraded in front of classmates.³ These practices were brought to the attention of the CRPD Committee at the 2019 review of Australia⁴ and were also the subject of a formal complaint to the UN Special Rapporteur on the Rights of Persons with Disabilities in 2016⁵.

Schools have a legislative and statutory responsibility to ensure the safety of students with disability at school, but CYDA members continue to report a range of abusive practices in schools, including the use of restrictive practice. Often this takes the form of restraint and seclusion, which is a breach of human rights⁶ and causes trauma and harm to students.

Restraint encompasses a range of interventions intended to manage student behaviour. It can include physical restraint and mechanical restraint where a device is used to restrain students, such as a belt. It can also include chemical restraint using medication to change a person’s behaviour and psychological restraint, which include the use of coercion or limit-setting to manage behaviour. Seclusion is the confinement of a person in a room or area from which their free exit is prevented. We have serious concerns these practices may be used for convenience, discipline, coercion, or retaliation, instead of carefully managed behaviour support.⁷

Existing national guidelines and frameworks do not directly address the use of restraint and seclusion in schools, and state and territory frameworks in respect of these matters are generally not aligned with the UN CRPD or the Convention on the Rights of the Child; they not only fail to protect the human rights of children and young people with disability, but in fact permit violations of those rights,⁸ often causing long term trauma and harm. CYDA’s 2019 education survey suggests that in some cases parents have opted for home schooling to avoid further trauma being inflicted on their child by their school.⁹

³ CYDA and All Means All. (2019) *Inquiry into Free and equal: An Australian conversation on human rights*, Joint submission to the Australian Human Rights Commission.

⁴ See All Means All Submission - Combined Second and Third Periodic Report of Australia – United Nations Convention on the Rights of Persons with Disabilities <http://allmeansall.org.au/wp-content/uploads/2019/08/Final-Endorsed-All-Means-All-Submission-Combined-Second-and-Third-CRPD-Periodic-Report-26-July-Web.pdf>

⁵ Sydney Morning Herald (11 August 2016) ‘Autism cage details emerge as United Nations investigates abuse of children’; Communication letter dated 22 March 2017, sent by the Special Procedures to the Australian Government by José Guevara, Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention, Catalina Devandas -Aguilar, Special Rapporteur on the rights of persons with disabilities, Maud de Boer-Buquicchio, Special Rapporteur on the sale of children, child prostitution and child pornography, Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Boly Barry Koumbou Special Rapporteur on the right to education

⁶ McCarthy, T (2018) Regulating restraint and seclusion in Australian Government Schools, A Comparative Human Rights Analysis, QUT Law Review Volume 18, General Issue 2 pp. 194–228ISSN: Online–2201-7275

⁷ Robinson, S. & Healy, A. (2019) *What is violence, abuse, neglect and exploitation of children and young people with disability?* [Fact sheet](#) developed for CYDA; McCarthy (2018), op. cit.

⁸ Tony McCarthy (2018) Regulating restraint and seclusion in Australian Government Schools, A Comparative Human Rights Analysis, QUT Law Review Volume 18, General Issue 2 pp. 194–228ISSN: Online–2201-7275

⁹ McCarthy (2018), op. cit.

One of the ongoing challenges is that there is no consistent data routinely collected in Australian schools on the rates of restrictive practices, including restraint and seclusion. CYDA has previously tried to obtain data on restraint and seclusion from state and territory governments through Freedom of Information (FOI) requests. Some jurisdictions have been able to provide this information at an aggregate level, but others, such as the Victorian Government, have refused to provide this information because it is too administratively burdensome. In general, the data collected across jurisdictions is piecemeal and does not provide the full picture of children and young people's experiences.

For example, for NSW CYDA has only be able to access information that is held by the Employee Performance and Conduct Directorate, which means there must have been an allegation made against an employee. Complaints are held and managed by schools, and therefore the NSW Education Department has advised it cannot provide full information on restraint and seclusion in schools. Further, there is no data on the extent of restrictive practices in early childhood services.

Additional detail on our FOI requests is provided in our October 2019 education submission to the DRC.

Extensive use of restrictive practices continues

CYDA has completed national education surveys consistently over the past six years, in 2015, 2016, 2017, 2019 and 2020. Our 2020 survey focuses on the experiences of children and young people with disability during the COVID-19 pandemic, with specific data on restraint and seclusion collected in previous surveys.

Respondents to our 2019 survey reported:

- 31 per cent of students with disability experienced restraint or seclusion in the last year and 11 per cent experienced both
- 21 per cent of students with disability experienced restraint in the last year, with the most common form being physical restraint, followed by psycho-social, mechanical, and chemical restraint
- 21 per cent of students with disability experienced seclusion in the last year. The settings for seclusion included solitary confinement with and without supervision in a room, classroom or staff office.¹⁰

Tables 1 and 2 below show detailed data about the restraint and seclusion reported by our survey respondents in 2019.¹¹ These findings are consistent with our 2017 data, with 19 per cent of respondents reporting the student experiencing restraint and 21 per cent experiencing seclusion in the previous year.

¹⁰ CYDA. (2019) *Time for change: The state of play for inclusion of students with disability – Results from the 2019 CYDA National Education Survey*.

¹¹ CYDA (2019), op. cit.

Table 1. Type of restraint experienced by students with disability (n=106)

<i>Type of restraint</i>	Number of students	Percentage
<i>Physical</i>	57	53.8%
<i>Psycho-social</i>	18	17.0%
<i>Mechanical</i>	10	9.4%
<i>Chemical</i>	6	5.7%

Table 2. Settings for seclusion of students with disability (n=106)

<i>Response</i>	Number of students	Percentage
<i>Solitary confinement</i>	28	26.4%
<i>Solitary confinement with supervision</i>	6	5.7%
<i>Room</i>	21	19.8%
<i>Staff office</i>	9	8.5%
<i>Isolated around school, corridors, playground, reception</i>	7	6.6%
<i>Classroom</i>	3	2.8%
<i>Detention, after school detention, internal suspension</i>	3	2.8%
<i>Recess and lunch</i>	2	1.9%
<i>During NAPLAN examination</i>	1	0.9%
<i>Did not specify</i>	2	1.9%

Qualitative feedback was also received in relation to restrictive practices and their impact on children and young people. The experiences and impact of restrictive practices is felt by students of different ages across the country, in both mainstream and special schools:

“Restricted practice with the use of weighted equipment in a time-out room with no communication with the family. Also has been locked in a support unit area and refused access to the mainstream area during recess and lunch”

- Family of a child aged 13–15 years, dual enrolment between mainstream and special education, regional NSW

“Initially the school tried to encourage ‘chemical restraint’ by encouraging me to have my son placed on Ritalin. But again I had to advocate that it is not required for my son's condition and only works on children with ADHD, which my child does not have”

- Family of a child aged 7–9 years, mainstream school, metropolitan Qld

“In the disability unit he was left in a room on his own and when he became agitated and broke a window they rang me and suspended him on two occasions. If I left him there any longer he would have been expelled. He only ever had behavioural issues in that environment”

- Family of a child aged 10-12 years, mainstream school, metropolitan SA

“Psycho-social restraint. A person who loves life and interacting with people often comes home and says ‘I don’t talk at school, I only talk at home’”

- Family of a young person aged 16-18 years, mainstream school, metropolitan Qld

“Has had to work in the principal’s office rather than the classroom”

- Family of a child aged 10-12 years, mainstream school, metropolitan Vic

“He was left briefly in a hot school taxi and felt scared that he couldn’t get out”

- Family of a child aged 7-9 years, dual enrolment between special school and mainstream school, metropolitan SA

“Made to sit on a bench in the playground and not move off it”

- Family member of a young person aged 13-15 years, special school, regional NSW

“Planning room, which is basically detention. Our son gets planning room when he leaves the classroom. He leaves the classroom because he has trouble to regulate his emotions. He is getting punished for something out of his control and understanding. Planning room is done in playtime at the school and they are not to leave that room until they are told and whilst in there they have to make a plan on how they can improve their behaviour. For a child with autism this is unachievable add they do not understand they have done anything wrong.”

- Family member, student with disability aged 7-9 years, regional NSW

Lack of appropriate investigation and compliance mechanisms

We are concerned that with the establishment of the NDIS Quality and Safeguards Commission, there will be a misconception among governments and community that the Commission is responsible for monitoring and oversight of all restrictive practices. However, we continue to hear of restrictive practices occurring in other settings for children and young people with disability, including early childhood services, disability services, health services, transport (including school transport), justice systems and child protection services.

We strongly recommend governments adopt a broad approach to reducing and eliminating restrictive practices across all settings, not just services funded through the NDIS.

We are further concerned that there is limited transparency and independence around the investigation of restrictive practice use and allegations of abuse against children. This is reflected in a recent situation in Victoria, with allegations of “violence, abuse and serious neglect”¹² against students at three special schools being investigated through the Department of Education rather than by an independent body.

CYDA wrote to the Victorian Minister for Education about this case, seeking additional information and noting our concerns about the lack of independent oversight – our letter and the Minister’s response are provided as attachments with this submission. We asked that the Minister consider appointing one of Victoria’s independent statutory authorities to conduct an arms-length review; however this request was not accepted by the Minister, and we were advised that even the terms of reference for the review are confidential.

Legislative and practice frameworks covering restrictive practices must include assurance of rigorous, independent investigation of allegations and human rights breaches.

¹² Carey, A. (2020) “Violence, abuse, neglect’: three Melbourne special schools in probe,’ *The Age*, 20 June 2020, available: <https://www.theage.com.au/national/victoria/violence-abuse-neglect-three-melbourne-special-schools-in-probe-20200620-p554ht.html>.