

Ending institutional abuse in aged care

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Overview

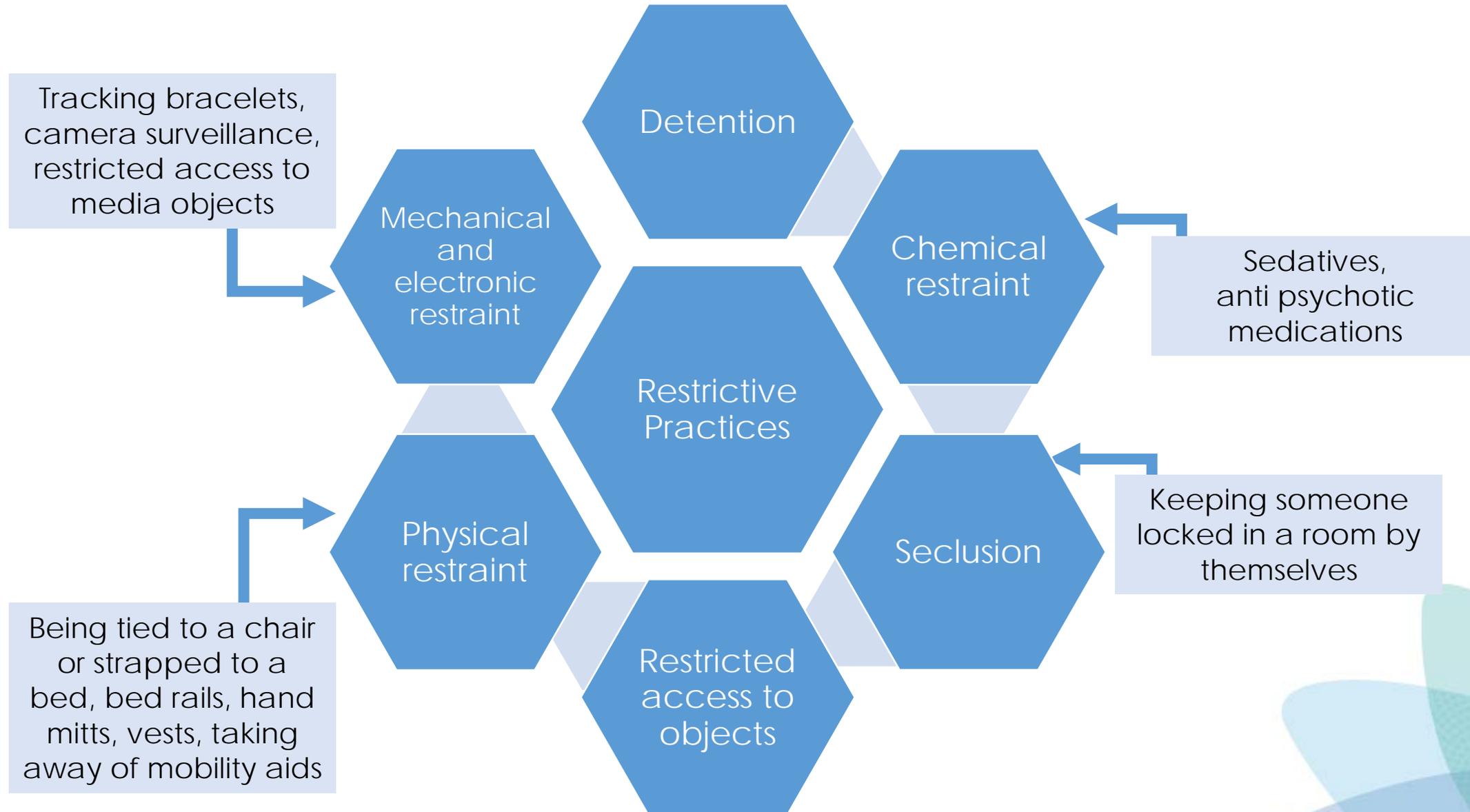
- Background
- What's the problem?
- The current law
 - Recommendations for reform
 - International comparisons
- The new standards and regulations
 - Why the changes are not enough
- So what's next?



Role of the Public Advocate in QLD

- Statutory appointment under the *Guardianship and Administration Act 2000 (Qld)*
 - Role is to undertake systemic advocacy to protect the rights and interests of people with impaired decision-making capacity
 - Powers include:
 - Right to all information necessary to monitor and review the delivery of services and facilities to those people
 - Intervene in legal proceedings involving the protection of the rights or interests of people with impaired capacity
 - Make reports about systemic matters that must be tabled in the Parliament
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What are restrictive practices?





Terry Reeves on his first day in a residential aged care facility and seven weeks later.

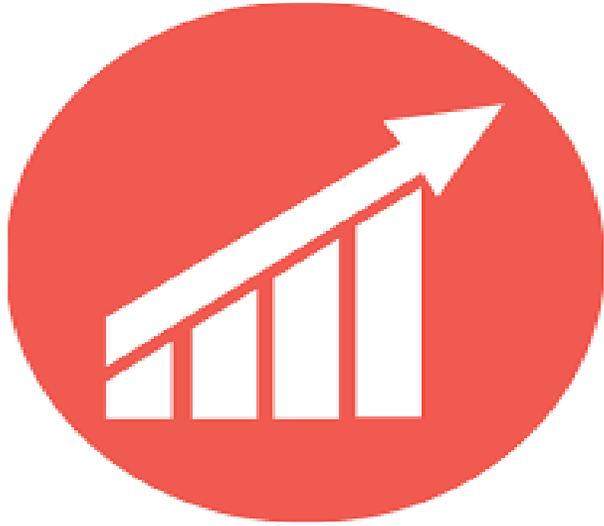
Photos: courtesy of ABC 7.30 report



What's the problem?

- Restrictive practices are being used routinely in residential aged care facilities
- They are primarily used to manage the challenging behaviours of people who have a diagnosis of dementia
- There is no formal legal framework to regulate and monitor their use and to ensure they are not being misused and that when they are being applied to people they are meeting acceptable standards of treatment and care
- Restrictive practices are being used despite studies indicating their use may result in negative physical and psychological effects on the person being restrained and may also be a breach of law and human rights





In 2018, an estimated 436,366
Australians are living with
dementia and this is expected
to increase to 589,807 by 2028
and 1,076,129 by 2058



Dementia is the single greatest
cause of disability in older
Australians



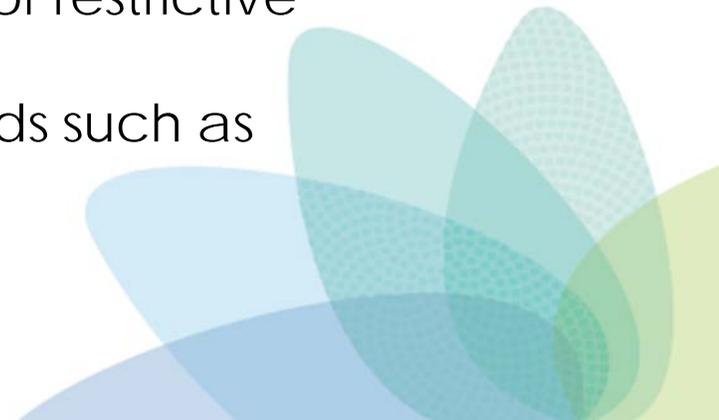
People with dementia
account for 52% of all residents
in residential aged care
facilities

The current law

- The Commonwealth *Aged Care Act (1997)* does not contain provisions that address or regulate the use of restrictive practices
 - Consequently, the use of restrictive practices in aged care settings, without legal justification or excuse, is unlawful and constitutes a form of institutional elder abuse
 - The outcomes of the inappropriate use of restrictive practices can include death or serious physical and psychological harm to the older person and can be devastating for their family and friends
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Recommendations for reform

- The Australian Law Reform Commission considers the use of restrictive practices in the aged and disability sectors to be a key human rights challenge for Australia and has recommended legislative reform
- *Elder Abuse Issues Paper* (June 2016) the ALRC recognised that some restrictive practices can constitute elder abuse, breach their basic legal and human rights
- The ALRC recommended aged care legislation regulate the use of restrictive practices and that the government consider additional safeguards such as establishing formal reporting and oversight mechanisms



International comparisons

- New Zealand, the United Kingdom, Scotland, the United States and most provinces of Canada have formal legal frameworks regulating the use restrictive practices in residential aged care
 - New Zealand laws set standards for the use of restrictive practices. The use of medication as chemical restraint is always in breach of the standards
 - The UK laws permit restraint only when it is the only practicable method of ensuring the welfare of the person or other residents and there are exceptional circumstances
 - The US Nursing Home Bill of Rights requires nursing home residents be free from “physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident’s medical symptoms”.
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The new standards and regulations



Aged Care Standards and Quality Indicators

New Aged Care Standards to be implemented on 1 July 2019:

- Organisational Governance Standard (Standard 8)
- Residential Aged Care Providers are required, under a clinical governance framework, to provide for the minimisation of the use of restraint

Aged Care Quality Indicator Program

- Previously voluntary, will be mandatory from 1 July 2019
 - Include a physical restraint indicator
 - Chemical restraint indicators (misuse of medicine) are to be included at a date to be determined
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Quality indicator 2: Use of physical restraint

The resource manual requires every resident be assessed for physical restraint

Provides the following key facts:

- Physical restraint is an infringement of the individual's right to freedom, dignity and autonomy
 - A restraint free environment is the recommended standard of care
 - There are many reasons why physical restraint is used but there is no evidence that demonstrates any benefit to aged care residents
 - The evidence indicates restraint does not prevent falls or fall-related injuries and is likely to exacerbate behaviours
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Why the changes are not enough

- The Aged Care Act 1997 still **DOES NOT** include a legal framework to permit and regulate the use of restrictive practices in residential aged care facilities
 - No formal authorised decision-maker who is accountable and no provision for review of decisions
 - No formal decision-making framework to guide decision-making and to ensure all appropriate considerations are taken into account
 - No requirement that the restrictive practices be a last resort, the least restrictive option and applied for the least time
 - No behaviour support plans required with a focus on reducing the use of restrictive practices
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To sum up...

Unregulated use of restrictive practices in residential aged care is a symptom of ageism in our community and in our aged care system

There is no other human services system that permits this unlawful treatment of people.



So what's next?



What's to be done?

- Continue to advocate for legislative change to for the proper regulation, reporting and monitoring of restrictive practices to ensure those applying them are accountable
- Other recent reports have also recommended these reforms including the Carnell-Patterson review initiated by the Commonwealth Minister for Aged Care and a national parliamentary inquiry into the quality of aged care
- Restrictive practices are primarily a legal and human rights issue, rather than a clinical issue
- Commonwealth Attorney-General has not acted on the ALRC's very clear recommendation, almost two years since the ALRC report



Next steps

- Make representations to the Aged Care Royal Commission seeking proper legislative reform and regulation of restrictive practices
- Continue to seek a commitment from the Commonwealth government that it will act to stop what is essentially institutional elder abuse
- Advocate for models of care that create environments that promote constructive behaviours and reduce and/or eliminate the need for restrictive practices in residential aged care



Thank you

