



National Disability
Research Partnership

Eliminating Restrictive Practices – Evidence Gap Analysis

**Evidence to Action Brief for the
National Disability Research Partnership**

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Associate Professor Linda Steele, University of Technology Sydney
Associate Professor Dinesh Wadiwel, The University of Sydney

This document provides an overview of research gaps in knowledge on eliminating restrictive practices noted by two authors of *Restrictive Practices: A Pathway to Elimination* (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023).*

This gap analysis has arisen in the context of the research questions provided by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission') to the authors of *Restrictive Practices: A Pathway to Elimination*. Please see attached short summary report of *Restrictive Practices: A Pathway to Elimination* for context.

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Overarching framing issues

There are significant framing issues that should be considered in assessing current research gaps and future research needs on eliminating restrictive practices.

- **The human rights case and its implications for research on restrictive practices.** There is now a comprehensive body of research in international human rights law on the use of restrictive practices as constituting human rights violations, which is in alignment with expert opinions of United Nations Special Rapporteurs, and Guidelines, General Comments and emerging human rights jurisprudence of international human rights bodies including United Nations human rights treaty committees (e.g., UN Committee on the Rights of Persons with Disabilities) and the European Court of Human Rights.

This research and expert opinions make clear that most, if not all, practices described as ‘restrictive practices’ violate international human rights norms and protections because they are a form of torture, ill-treatment and / or violence, carried out on a discriminatory basis against people with disability. On that basis (irrespective of research evidence-base) use of restrictive practices must cease. This means that in our opinion it is not possible to conduct empirical research on the use of restrictive practices without contributing to further human rights violations.

Research on eliminating restrictive practices must occur alongside cessation of restrictive practices, rather than cessation being dependent on the outcomes of research. Research on eliminating restrictive practices does not need to be focused on *why* restrictive practices should be eliminated because this is already answered by international human rights law. Rather, the focus of research on eliminating restrictive practices must be on *how* restrictive practices are to be eliminated. And research exploring *how* restrictive practices are to be eliminated must be carried out through a human rights framework and centre the experiences and voices of people with disability.

- **The lack of evidence-base on how to eliminate restrictive practices.**
Eliminating restrictive practices from a society represents a human rights led transformation, comparable to other large scale social transformations such as eliminating formal racial segregation or ending child corporal punishment. We are not aware of any nation that has eliminated restrictive practices and there is no research and evidence-base on *how* to eliminate restrictive practices (i.e., specific approach, process). This means that, as far as we are aware, there is not a body of research available to assess the successful elimination of restrictive practices in a society. Lack of knowledge to guide society-wide transformation is not unusual and does not itself justify postponing action on transformation (e.g., climate change, violence against women, racial segregation).
- **The need for a reorientation of the language and framing used to discuss ‘restrictive practices’.** Many of the concepts related to restrictive practices (including ‘restrictive practices’, ‘challenging behaviour’, ‘behaviours of concern’) are informed by ableist understandings of behaviour, violence, and institutionalisation and segregation of people with disability. For example, the term ‘restrictive practices’ is itself an Australian policy and law euphemism used to describe practices that include, amongst other practices, non-consensual constraint, forced medication, forced menstrual suppression, chemical castration, and the use of short to long term solitary confinement used against people with disability on a discriminatory basis. Thus, for research to be directed towards discovering new knowledge on elimination of restrictive practices and not entrenching existing knowledge that sustains human rights violations, research will require radically different ways of framing people with disability, their behaviour and the circumstances in which live, and perceived problems and solutions underpinning and justifying restrictive practices.



Human rights of people with disability and use of restrictive practices

As discussed above there is an emerging international consensus that most, if not all practices described as ‘restrictive practices’ violate international human rights norms and protections are a form of torture, ill-treatment and / or violence, carried out on a discriminatory basis against people with disability, and on that basis (irrespective of research evidence-base) must cease. For this reason, there are no substantial gaps in the research on restrictive practices and their relation to international human rights obligations.

There are of course questions that policy makers may want clarity on such as whether a particular practice might constitute ill-treatment under international law, or what might be considered a reasonable use of force in a situation of ‘last resort’ to protect the safety of individuals. Because of the severity of human rights violations at stake, our view is that these questions should be addressed if and when they arise in a court of law and not by policy makers or researchers.

Nevertheless, we do have suggestions for human rights-oriented research. As above, we are not aware of any nation that has prohibited and eliminated restrictive practices and there is no research and evidence-base to support the specific approach to and process of elimination. However, many countries have engaged in significant transformations of policy and law that represent a ‘sea change’ or transformation in the treatment of individuals (particularly individuals belonging to marginalised communities).

Such studies are instructive as they provide examples of how societies eliminate entrenched socially and legally endorsed violence and discrimination. In *Restrictive Practices: A Pathway to Elimination* we suggested that ending corporal punishment of children is a useful example. Further research could identify relevant insights and lessons from these other contexts and explore how these apply in the context of elimination of restrictive practices.



Experiences of people with disability who are subject to restrictive practices

Our report *Restrictive Practices: A Pathway to Elimination* drew from a range of sources with the aim of understanding the experiences of people with disability who are subject to the use of restrictive practices. However, we note that much literature on restrictive practices is not framed using an approach that centres the experiences and rights of people with disability and there is a distinct lack of scholarly investigation of the experiences of those who are subject to these practices. This is a significant gap in relation to the transformational task of elimination, because a record of the experiences of those subject to gross human rights violations is central to full societal transformation and prevention of further harm.

In our view the following gaps relate to the lived experiences of people with disability who are subject to restrictive practices:

- Lived experiences of individuals subject to restrictive practices, particularly in contexts of schools, day programs, Australian Disability Enterprises, hospitals and family/private dwellings.
- Lived experiences of restrictive practices, particularly of First Nations people, members of the LGBTQIA+ community, and members of CALD communities.
- Lived experiences of people with disability subject to restrictive practices on a discriminatory basis in the criminal justice system.

Understanding lived experiences of restrictive practices in particular communities and in particular contexts is central to a deep appreciation of the enablers of and barriers to eliminating restrictive practices. Centring lived experiences is also vital from a human rights perspective in order to ensure research methodologies (as well as substantive research foci) progress human rights.



Ecological system and systemic drivers and enablers of restrictive practices

Restrictive Practices: A Pathway to Elimination explored how relational dynamics and environmental factors which shape and drive the use of restrictive practices might be understood in an ecological system. This system highlights interactions surrounding and involving the individual who is subject to restrictive practices. An ecological approach involves tracing and exploring the concentric circles of relationships, institutions and social structures that envelop and extend out from that individual, and which enable violence to occur. This approach involves a fundamental disruption of the conventional understanding of restrictive practices as a response to ‘challenging behaviour’ or ‘behaviours of concern’, on which much research related to restrictive practices is premised.

Following from this ecological model, there are gaps in research on restrictive practices related to the specific construction of the ecosystem in different settings and for different communities. This is vital to understanding the enablers of and barriers to eliminating restrictive practices. Some gaps include:

- Environmental, structural, organisational and economic contexts of ‘challenging behaviours’ and ‘behaviours of concern’.
- Impact on use of restrictive practices of under-resourced services and supports for people with disability, including across the life course.
- Role of financial priorities of disability and aged care services and funding frameworks (e.g., NDIS, education, health and aged care) in driving use of restrictive practices.
- Impact of discriminatory beliefs and dehumanising views in professions involved in authorising or overseeing restrictive practices (e.g., psychology, social work, law).
- Historical use of and lived experiences of restrictive practices in 20th century Australia, and the laws and professional practices that facilitated these practices (particularly across specific legislative reforms and policy changes such as deinstitutionalisation, guardianship, NDIS) to provide insight into how legal, systems and practice reforms directed towards reducing or eliminating restrictive practices or towards improving the lives of people with disability ultimately ended up sustaining restrictive practices.



Lifecourse and family dynamics

Focus on crisis-response and behavioural response contexts of restrictive practices has resulted in a narrow temporal frame for considering restrictive practices and less attention to impact of cumulative life factors:

- Developing decision-making skills and availability of supported decision making.
- Role of prenatal and early childhood services.
- Role of education in pathways into segregated systems and restrictive practices.

Focus on use of restrictive practices in institutional settings has resulted in an absence of research on use of restrictive practices in family and private dwelling settings, including:

- Impact of under-resourced services and supports across life course.
- Relationship between use of restrictive practices and availability and standard of education, disability accommodation, disability support and aged care services.
- Supports available to family members and informal care partners.
- Role of prenatal, early childhood and education systems in use of restrictive practices in family and private dwelling settings.
- Supports and resources available to people with disability to choose whether they live in family or private dwellings.





Current approaches to reducing or eliminating restrictive practices

The Disability Royal Commission made a recommendation – supported in principle by the Australian Government – that ‘the National Disability Research Partnership should commission a longitudinal study of the impact of positive behaviour support and other strategies to reduce and eliminate restrictive practices’. From our standpoint this recommendation is problematic. To the extent that positive behaviour support (PBS) is currently used as a means of regulating and authorising use of restrictive practices that are at odds with international human rights norms, and, in the case of practices that might rise to the level torture and ill-treatment, are prohibited under international law, it would be highly problematic to construct any sort of research study to ‘test’ the efficacy of these practices.

There are, however, some gaps relating to research on current approaches intended to eliminate restrictive practices:

- **Research on individualised support without use of restrictive practices.** Our report notes PBS remains very vague in definition. In an Australian regulatory context, PBS might be understood as ‘an individualised support approach that can also function as a means for regulated uses of restrictive practices’ (2023: 227). As noted above, it would be highly problematic to conduct research on the effectiveness of the use of restrictive practices. However, to the extent that PBS might include forms of individual support which enable the rights and flourishing of individuals with disability and do not require use of restrictive practices or other human rights violations, it may be useful to conduct research on the use of these.
- **Research on better environments:** Our research did not find models of success in disability service settings; however, we did note limited success in reducing restrictive practices in a small group of researched mental health settings. This research suggested leadership, organisational change and better staff dynamics could lead to reductions in the use of restrictive practices. However, concepts of ‘challenging behaviour’ and ‘behaviours of concern’ which are at the centre of restrictive practices focus attention on the individual as the problem and mask complex structural, environmental and organisational dynamics that shape and interpret individuals’ behaviour. Thus, there is a gap in research on elimination of restrictive practices around the impact of complex structural, environmental and organisational dynamics of service provision on individuals, and best strategies to address these.



Future approaches to eliminating restrictive practices

Restrictive Practices: A Pathway to Elimination identified an eight-point action plan to eliminate restrictive practices. More research is required to support how these points can be operationalised.

- **Prohibit restrictive practices:** *Restrictive Practices: A Pathway to Elimination* provides a partial analysis of current Australian laws relevant to restrictive practices, including guardianship regimes, and their relationship to international human rights principles. However, there is scope for a complete survey of Australian law underpinning use of restrictive practices and their relationship to international human rights obligations, and application of these laws (e.g., which groups of disabled people are more often subjected to restrictive practices pursuant to these laws and in what circumstances). The function of such research in advancing elimination is to identify all laws facilitating restrictive practices, noting law is a powerful dynamic in justifying and enabling restrictive practices. Noting the current system-specific regulatory approach to restrictive practices (e.g., NDIS, aged care), there is also scope for research on the reasons why regulation does not eliminate restrictive practices and does not deliver redress to individuals whose restrictive practices are unauthorised within the regulatory framework. Historical research on changes in law and policy over time will also further understanding of problems with a regulatory approach.
- **Attitudinal and norm change:** Research is needed to understand how ableism and intersectional discrimination circulates within specific communities and professions to develop targeted strategies for attitudinal and norm change. Research is also needed on how school and university education systems reproduce attitudes and norms that sustain use of restrictive practices. Research is needed on relationships between attitudinal and norm change – including attitudes and norms within professional contexts – and legal change.

- **Acknowledge and address historical injustice:** As discussed earlier, there is a dearth of research on historical use of restrictive practices and how these historical practices continue to shape present structural conditions and individual experiences. There is nascent research on disability and truth-telling and thus more research is needed to support the practices of historical research and truth-telling. Research on lived experiences and research on historical use of restrictive practice – essential to elimination and avoiding repeating past mistakes – could also explore approaches to knowledge translation to diverse audiences – e.g., arts-based practices, accessible communication – to ensure this research is widely available and engaged with.
- **Deinstitutionalise, desegregate and resource independent living:** Recent guidelines by the UN Committee on the Rights of Persons with Disabilities provide a detailed framework guiding governments on how to deinstitutionalise. However, further research is required on deinstitutionalisation and desegregation in Australia’s specific legal, funding and service systems, with the goal of implementing Article 19 of the CRPD.
- **Access to redress:** There is general understanding that people with disability are disadvantaged and marginalised in legal and justice systems and experience barriers to accessing justice. The research report *Complaint Mechanisms: Reporting Pathways for Violence, Abuse, Neglect and Exploitation (2022)* by Dinesh Wadiwel, Claire Spivakovsky and Linda Steele explored these dynamics in the context of complaints processes. However, the Disability Royal Commission did not commission a similar report in relation to civil justice systems. Nor did it commission research exploring the roles of civil justice systems and lawmakers, judiciary and legal professionals working within these systems in preventing and better protecting disabled people from violence, enabling and redressing violence against disabled people, and sustaining or unseating ableism underpinning this violence. In the specific context of restrictive practices this means there is a research gap on the availability and effectiveness of legal accountability and redress for people with disability who experience restrictive practices, including people with disability who are subjected to unauthorised or unlawful restrictive practices in current legal/regulatory frameworks where civil legal remedies are available. There is nascent research on disability and redress, but more research is needed on experiences and perspectives of people with disability on what is meaningful and important to them in redress processes and outcomes.



National Disability
Research Partnership

Email: info@ndrp.org.au

Phone: 03 9000 3813

www.ndrp.org.au