

Position Statement

Seclusion & Restraint

Endorsed: May 30th 2023

BEING's position

While BEING values the work undertaken by NSW Health to reduce episodes of seclusion and restraint, we believe that five years after the completion of the review, *"Mental Health Safety and Quality in NSW: A plan to implement recommendations of the review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities"* and three years after the finalisation of the new policy directive¹ it is time to review the progress made.

We note that the last progress update on the implementation of the seclusion and restraint recommendations was released in 2019.² At that time not all items were complete. For example, Item 19 (ensuring multidisciplinary teams deliver therapeutic programs on extended hours basis) was listed as amber.

Towards elimination

BEING supports NSW Health's goal to reduce seclusion and restraint. However, we would also like to see more action towards elimination of seclusion and restraint.

According to the NSW Mental Health Commission, incidences of seclusion have fallen by 27.2% over the past five years (to September 2022).³ BEING would like to see this trajectory continue.

NSW Health has set goals for reducing seclusion and restraint towards elimination as outlined in the 2018 report, "Mental Health Safety and Quality in NSW".⁴ Despite the reduction in seclusion practices, these targets have not been met.⁵

¹ Seclusion and Restraint in NSW Health Settings PD2020_004.

² See <https://www.health.nsw.gov.au/mentalhealth/reviews/seclusionprevention/Pages/impl-progress-update-mar-19.aspx> and <https://www.health.nsw.gov.au/mentalhealth/reviews/seclusionprevention/Pages/impl-progress-updates.aspx>.

³ <https://www.nswmentalhealthcommission.com.au/news/open-conversations-about-mental-health-seclusion>

⁴ The minimal goal of 5.1 incidences of seclusion per 1000 bed days are included in the current NSW Health Service Level Agreements between NSW Health and the LHDs. See mental health acute seclusion in the service performance measures document at <https://www.health.nsw.gov.au/Performance/Documents/service-indicators-measures.pdf>.

⁵ Regarding seclusion and restraint numbers note that even in hospitals without a mental health intensive care unit episodes of seclusion were above the current target of 5.1 per thousand bed days between October 2017

BEING would like to see seclusion and restraint not simply reduced but eliminated within a generation. To assist, BEING commits to holding NSW Health accountable to setting and meeting its own targets, which would demonstrate a strong commitment to elimination.

Chemical restraint

While we recognise that within NSW Health Services appropriate attention is paid to reducing the physical risk of sedation,⁶ we do not believe that sufficient consideration is given to the ways in which excessive chemical sedation is administered in NSW Health Mental Health Inpatient Units and Emergency rooms. This is concerning because chemical sedation can unjustifiably limit the freedom of mental health consumers. This issue does not solely relate to involuntary treatment of consumers who are being treated under the Mental Health Act 2007 (NSW).⁷ We strongly believe that the principle of always providing the least restrictive treatment modality is appropriate in all circumstances including in relation to the use of sedation.

The foundation for any discussion about chemical sedation is data. We welcome the recent commitment made by Mental Health Branch to collecting relevant data. With NSW wide data we will be able to move towards a better understanding of sedation across the mental health system and towards a reduction in the unjustified use of sedation in NSW Mental Health facilities.

Human rights and mental health

We also believe that it is time for Australian governments to take seriously that at a federal level we are signatories to human rights agreements that should have a real impact on policies and laws including Mental Health Acts across Australia. Article 14 of the *UN Convention on the Rights of Persons with Disabilities* asserts that signatory states must ensure that people living with disabilities must enjoy the right to liberty and security of person and that they are not deprived of their liberty simply because they live with a disability.⁸

As a signatory to the convention, Australians need to seriously debate the position of the Committee on the Rights of Persons with Disabilities (the Committee)⁹ who assert that "*article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment*".¹⁰ Further to this they also assert that "*Involuntary commitment in mental health facilities carries with it the denial of the person's legal capacity to decide about care, treatment, and admission to a hospital or institution, and therefore*

and December 2022. See chart 7 on page 13 of Bureau of Health Information. Healthcare Quarterly – Seclusion and Restraint Supplement, October to December 2022. Sydney (NSW); BHI; 2023.

⁶ https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/GL2015_007.pdf

⁷ Chapter 4 Care and treatment, Part 1, Division 1, Section 68 (a)

⁸ <https://humanrights.gov.au/our-work/disability-rights/overview-articles-convention-rights-persons-disabilities>

⁹ The committee are the UN body that has oversight of compliance with the charter by signatory nations.

¹⁰ <https://www.ohchr.org/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc> - September 2015.

violates article 12 in conjunction with article 14". It should also be noted that seclusion and restraint practices do not have any therapeutic value for consumers. ¹¹

In NSW involuntary treatment of people experiencing mental health crises is common and yet it is also at odds with our stated commitment to protecting the human rights of people living with psychosocial disabilities as articulated in the convention. If we took the principles of this charter seriously it would become part of positive law and not just a moral standard that we have signed to signal our virtue as a member of the international community.

It should be noted that the United Nations terminated its visit to Australia in October 2022 due to the NSW government preventing its torture prevention body full access to mental health facilities. ¹²

Background

Miriam Merten tragically passed away during an episode of seclusion in the Lismore Adult Mental Health Unit in 2014. The coronial inquiry following her death found that she died of traumatic and hypoxic brain injury after falling at least 25 times in seven hours while on psychotropic drugs. ¹³

In response to widespread public pressure in December 2017, NSW Health Carried out the *Review of Seclusion, Restraint and Observation of Consumers with a Mental Illness in NSW Health Facilities*. This review was carried out in collaboration with key stakeholders in the mental health sector including BEING Mental Health Consumers and Mental Health Carers NSW. ¹⁴

Following the completion of this review a new policy directive addressing seclusion and restraint in NSW health settings was also drafted and over the intervening years steps have been taken to reduce the use of seclusion and restraint across NSW.¹⁵ This work continues.

¹¹ Note that this view of shared by the Mental Health Commission of NSW. See <https://www.nswmentalhealthcommission.com.au/news/open-conversations-about-mental-health-seclusion>

¹² See, for example, the Human Right Law Centre's comments on this issue from February this year. <https://www.hrlc.org.au/news/2023/2/21/un-terminates-aus-visit>

¹³ <https://www.sbs.com.au/news/article/she-was-left-to-die-nsw-patients-family/ytqa901ae>,
<https://www.abc.net.au/news/2018-05-11/nsw-government-announces-sweeping-mental-health-reforms/9750650>

¹⁴ <https://www.health.nsw.gov.au/mentalhealth/reviews/seclusionprevention/Pages/about.aspx>

¹⁵ https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2020_004.pdf