

Surveillance and Monitoring of People with a Disability

Background

This fact sheet provides guidance and information to ensure surveillance and monitoring of people with a disability is being done in a safe and lawful manner.

Is surveillance and monitoring a restrictive intervention?

Section 4 of the *Disability Services Act (2011)* states that a restrictive intervention is defined as 'any action that restricts the rights or freedom of movement of a person for the purposes of behavioural control'. In essence, such practices risk breaching people's human rights and can therefore only be employed in accordance with and in the context of an appropriate lawful justification.

Section 34 of the *Disability Services Act (2011)* divides restrictive interventions into environmental or personal restrictions. A personal restriction is defined as an intervention that consists wholly or partially of:

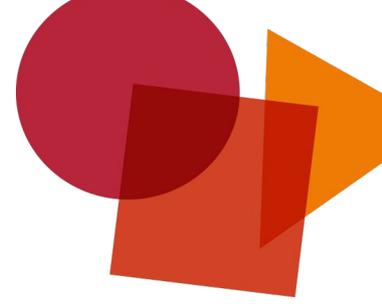
- "personal contact with the person so as to enable the behavioural control of the person; or
- the taking of an action that restricts the liberty of movement of the person".

The definition therefore might encompass surveillance and monitoring if support staff were using a device to restrict a person's freedom of movement (e.g. preventing a person leaving). This would be a personal restrictive intervention. It is therefore important for a service provider contemplating the use of electronic monitoring or 'line of sight' supervision to contact the Senior Practitioner to discuss whether or not the practice needs authorisation.

What is surveillance and monitoring?

Surveillance and monitoring can include the process of capturing audio, visual or positional information about a person using electronic methods:

- Audio monitors record and monitor speech, examples include baby monitors and intercoms;



- Visual monitors record and monitor visual images and include devices such as closed circuit cameras, still image cameras, and portable video devices;
- Positional monitors record the whereabouts of a person with global positioning system (GPS) devices which are the most commonly available method of monitoring a person's location;
- Surveillance and monitoring can also include 'line of sight' supervision in 'real time' by support workers to prevent a person with disability from pursuing a certain course of action.

Why would surveillance and monitoring ever be considered?

The primary reason service providers want to use surveillance and monitoring of the people they support is to keep them safe. This is particularly the case for 'line of sight' supervision and the use of GPS devices where supporting a person with behaviours of concern whilst accessing the community can involve high levels of risk.

Another reason often stated as a need to use monitoring devices such as CCTV to collect behavioural data of a person in their own home. The argument then follows that this information is more accurate and the footage can be used to train support staff.

There are also service driven reasons sometimes put forward to support the need for surveillance and monitoring which include, protecting staff from allegations of abuse, making a safer environment, and reducing the staffing ratio on the roster.

Is surveillance and monitoring ever effective?

A review of published studies by the Office of Professional Practice (Victoria) in 2016 found that there was no evidence to suggest that surveillance and monitoring protected people with disability from abuse and neglect.

Similarly Amaze, the peak body for people on the autism spectrum and their supporters in Victoria, has stated that there is no evidence to suggest that GPS devices are an effective intervention to prevent the risk of harm associated with 'wandering'.

Reviews of the literature in Britain have also concluded there is little evidence that having CCTV cameras in place guaranteed a safe environment or prevented violent incidents from occurring.

What are the ethical and legal issues of using surveillance and monitoring?

By far the biggest ethical issue surrounding the surveillance and monitoring of people with disability is the infringement of their rights to personal privacy and the privacy of their personal information.

The Convention on the Rights of Persons with Disabilities (CRPD) states that 'No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with their privacy...State Parties shall protect the privacy of personal information of persons with disabilities on an equal basis with others'.



A recent report by the Office of the Public Advocate (Qld) in 2014 recommended that service providers should seek the views of the people they wish to electronically monitor and informed consent should be obtained. However people being subject to surveillance and monitoring are often those most vulnerable and do not have the required decision making capacity.

Where a person lacks capacity to understand the nature and effect of an intervention a guardian may need to be appointed to provide consent. If the guardianship order has the appropriate power, the guardian may be asked to consent to, or make decisions about, a behaviour management plan for the represented person that includes surveillance and monitoring.

It is important to note that the 'person responsible' as provided for under the *Guardianship and Administration Act (1995)* can only consent to medical or dental treatment of an adult with disabilities so they do not have the power to approve any surveillance and monitoring being considered by a service provider. The decision maker must make decisions that are in the best interests of the person to meet the represented person's needs. So seeking legal advice may ensure you are acting appropriately. In keeping with the principles of the Act any behaviour management plan should support the least restriction to the rights of people with disability.

Are there alternatives to using surveillance and monitoring?

Conducting a comprehensive functional behaviour assessment and developing a positive behaviour support plan can increase safety and reduce behaviours of concern by identifying and so avoiding triggers, devising strategies to anticipate the needs of the person and encouraging the learning of replacement behaviours.

Improving the quality of behavioural information can be achieved by training staff in data collection techniques including what information you want to collect, improving data collection systems and the observational skills of the support team.

In principle, the better the support team knows the needs, preferences, and characteristics of the person they are supporting, the less likely the need will be for surveillance and monitoring.

Who can authorise the use of a personal restriction?

Under the *Disability Services Act 2011* approval for the use of a personal restriction may be granted under certain conditions. Approval to use the personal restriction needs to be granted by the Tasmanian Civil & Administrative Tribunal – Guardianship Stream (TASCAT), following a recommendation from the Senior Practitioner. The approval period can be from 3 months to 2 years and may be subject to a number of conditions.



How do I contact the Senior Practitioner?

The Senior Practitioner is available to discuss any issues or concerns relating to the use or potential use of a personal restriction on the contact details listed below.

Telephone: (03) 6166 3567 Mobile: 0428 197 474

Email: seniorpractitionerdisability@communities.tas.gov.au

Web: www.communities.tas.gov.au/disability/office-of-the-senior-practitioner

Further information about Restrictive Interventions can be found on the Riset Tas link below.



Access practice resources and restrictive intervention information via Riset-TAS online: [Riset-Tas Link](#)

References?

Amaze (2016). Wandering in people on the Autism Spectrum: A best practice resource. Melbourne, Victoria.

Desai, S. (2009). The new stars of CCTV: What is the purpose of monitoring patients in communal areas of psychiatric hospital wards, bedrooms and seclusion rooms? *Diversity in Health and Care*, **6**, 45–53.

Hayward, B. A. (2017). The arguments against camera and closed-circuit television surveillance in the homes of people with disabilities to protect from abuse and neglect. *Research and Practice in Intellectual and Developmental Disabilities*, **4:2**, 121-137.

Office of the Public Advocate (2014). Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland. The State of Queensland, Brisbane.

Please note: The information contained in this document is provided as an initial guide only. It is not intended to be and is not a substitute for legal advice. Service providers should seek their own independent legal advice with reference to the implementation of the legislation.