



Australia's Human Rights Score Card

Australia's 2015 UPR—NGO Coalition Fact Sheet 10

People with Disability and Mental Illness

Introduction

Australia ratified the *Convention on the Rights of Persons with Disabilities* (CRPD) in 2008 and its Optional Protocol in 2009. Australia is yet to fully implement the CRPD in domestic law; however, it has developed the *National Disability Strategy* to outline how implementation across a range of areas will occur.

Since Australia's last Universal Periodic Review people with disability in Australia have continued to experience grave and systemic human rights abuses, contrary to the expectations of the CRPD and contrary to the recommendations of the Human Rights Council and other United Nations bodies.

Many of these concerns have been raised repeatedly with various United Nations bodies, but remain unaddressed or only partially responded to. Continuing areas of critical concern are:

Forced sterilisation

Forced sterilisation is a practice that remains legal and sanctioned by Governments in Australia. A 2013 Senate Inquiry recommended regulation of the practice not prohibition. For more than a decade, the UN has made multiple recommendations to Australia to legislate to prohibit forced sterilisation, but these have been ignored.¹

Australia's response to various Inquiry Reports² passes responsibility for action on forced sterilisation and 'sex normalising' practices to State and Territory jurisdictions; and retains the focus on better regulation and non-binding guidelines rather than prohibition of forced sterilisation. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and 'sex normalising' medical interventions within Australia.

¹ See UN Docs: CAT/C/AUS/CO/4-5; CRPD/C/AUS/CO/1; CRC/C/AUS/CO/4; A/HRC/WG.6/10/L; CEDAW/C/AUS/CO/7; CRC/C/15/Add.268; A/67/227; A/HRC/22/53. See also: FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization* <http://www.wvda.org.au/FIGOGuidelines2011.pdf> see also: Human Rights Council, 10th sess, UN Doc A/HRC/WG.6/10/L (3 February 2011) rec 86.39, p.15.

² Senate Standing Committee on Community Affairs, *Involuntary or coerced sterilisation of people with disabilities in Australia* (2013) Commonwealth of Australia http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/involuntary_sterilisation/first_report/index.htm

Proposed Recommendation:

Australia should adopt national uniform legislation prohibiting the use of sterilisation of children, and of adults in the absence of their prior, fully informed and free consent.

Violence

Violence against people with disability and mental illness in institutional and residential settings is a national epidemic and people, particularly women, frequently experience sustained episodes of violence. This violence is very difficult to detect, investigate and prosecute, due to the 'closed' nature of institutional settings. Lack of reporting and cover ups by staff and management, is a widespread and significant factor in the lack of investigation, prosecution and conviction of perpetrators.

The UN has long recommended that Australia investigate and address all forms of violence against people with disability, including urgent recommendations in 2013 to investigate and address violence against women and girls with disability in institutional environments³. These recommendations have not been acted upon.

Proposed Recommendation:

Australia should commission a National Independent Inquiry into Violence and Abuse against People with Disability and Mental Illness in Institutional and Residential Settings.

³ Committee against Torture, 53rd sess, UN Doc. CAT/C/AUS/CO/4-5 (3–28 November 2014); Committee on the Elimination of Discrimination against Women, 46th sess, UN Doc CEDAW/C/AUS/CO/7 (12 – 30 July 2010); Human Rights Committee, 106th sess, UN Doc CCPR/C/AUS/6 (15 October–2 November 2012); Committee on the Rights of Persons with Disabilities, 10th sess, UN Doc CRPD/C/AUS/CO/1 (2-13 September 2013); Committee on the Elimination of Discrimination against Women, 34th sess, UN Doc CEDAW/C/AUL/CO/5 (3 February 2006); Committee on the Rights of the Child, 60th sess, UN Doc CRC/C/AUS/CO/4 (29 May–15 June 2012); Office of the United Nations High Commissioner for Human Rights, Thematic study on the issue of violence against women and girls and disability, 20th sess, Agenda items 2 and 3, UN Doc. A/HRC/20/5 (30 March 2012); Rashida Manjoo, Special Rapporteur on Violence against Women, its Causes and Consequences, 67th sess, provisional Agenda Item 28, UN Doc. A/67/227 (3 August 2012).

Indefinite Detention

National figures indicate at least half of the Australian prisoner population has some form of psychosocial, cognitive or physical impairment, and the number of prisoners with disability entering or leaving Australian prisons throughout a year is in the tens of thousands. Aboriginal and Torres Strait Islander people with disability are almost 14 times more likely to be imprisoned than the rest of the population.

Justice diversion provisions for people with cognitive, psychosocial disability or mental illness within the criminal justice system deemed 'unfit to stand trial' have resulted in indefinite detention of people in prisons or psychiatric facilities without conviction. This is exacerbated by a lack of appropriate housing, therapeutic and disability support options.

Proposed Recommendation:

Australia should establish uniform national legislation, in line with international human rights law, to facilitate due legal process to end indefinite detention of people with disability without conviction.

Equality Before the Law

A number of Australian laws, policies and practices deny or diminish recognition of people with disability as persons before the law, or deny or diminish the right of a person with disability to exercise legal capacity. Whilst Australia does not have a plenary guardianship system these laws all breach, are inconsistent with, or fail to fulfil obligations under the CRPD.

Proposed Recommendation:

Australia should establish a nationally consistent supported decision-making framework that strongly and positively promotes and supports people to effectively assert and exercise their legal capacity and enshrines the primacy of supported decision-making mechanisms.

Restrictive Practices

Restrictive practices involve the use of interventions by carers, service providers and others that have the effect of limiting the rights or freedom of movement of people with disability and people with mental illness.

Proposed Recommendation:

Australia should continue work to date to eliminate involuntary treatment and restrictive practices, in all forms and settings, which restrict, inhibit and or limit the free movement and enjoyment of life of people with disability and people with mental illness.

Compulsory Treatment of People with Disability

Laws, policy and practice for involuntary treatment of people with mental illness and psychosocial disability in Australia limit individual rights to liberty and security and equal recognition before the law. The rate of forced community psychiatric treatment is increasing.

The compulsory treatment of people with disability in the form of an Involuntary Treatment Order (ITO), Supervised Treatment Order (STO) or Community Treatment Order (CTO) is authorised by mental health laws in all States and Territories in Australia.

While these laws vary across States and Territories, they have failed to prevent, and in some cases actively condone unacceptable practices, including invasive and irreversible treatments. As a result, many people with disability experience serious breaches of their human rights within the current legislative, policy and practice framework.

Proposed Recommendation:

Australia should conduct a comprehensive audit of laws, policies and administrative arrangements underpinning compulsory treatment to eliminate such laws and practices.

Access to Mental Health Services

One in five Australians experiences mental illness every year. People with mental illness and psychosocial disability face stigma and discrimination and experience lower life expectancies, higher rates of chronic and physical health issues, and lower rates of social and economic participation. These outcomes are particularly serious for certain vulnerable groups.

There remain inadequate community-based treatment options for people experiencing mental illness. There is currently no whole-of-government approach to improving outcomes for people with mental illness. National health and disability reforms since the last UPR are presenting significant risks of further deterioration in this regard.

Proposed Recommendation:

Australia should ensure people with mental illness have adequate and increased access to safe, appropriate and recovery-based services and supports.

Proposed Recommendation:

Australia should fulfil the commitments made in the Council of Australian Governments Fourth National Mental Health Plan 2004-2014 and recommit to a longer-term and cross-sector national mental health strategy.