

Rights of people with disability

NGO Coalition Fact Sheet 17

Discrimination against migrants and refugees with disability (page 77)

People with disability and their families may have their visa applications denied because of the strict health requirement under the *Migration Act 1958* (Cth).

Australia's Interpretive Declaration to article 18 of the CRPD allows this. Although the health requirement does not directly discriminate against people with disability, it is more likely that people with disability will not meet it.

Australia should:

- **repeal the migration exemption in section 52 of the Disability Discrimination Act 1992 (Cth) to ensure that discrimination on the basis of disability in migration law, policy and practice is unlawful.**
- **amend the health criteria in the Migration Regulations 1994 (Cth) consistent with the recommendations of the Australian Parliament Joint Standing Committee on Migration's 2010 report into migration and disability, *Enabling Australia*.**
- **withdraw its Interpretive Declaration to article 18 of the CRPD.**

Restrictive practices (page 77)

Children and adults with disability are routinely subjected to unregulated and under regulated behaviour modification or restrictive practices including seclusion, chemical, mechanical and physical restraint.

Such practices occur in mental health facilities, educational settings, hospitals, aged care, disability support facilities and prisons. .

Australia should strengthen efforts to eliminate restrictive practices in all forms and settings, which restrict, inhibit and or limit the free movement and enjoyment of life of people with disability.

Violence against people with disability (pages 78)

A 2015 Senate Committee found that people with disability experience high levels of violence and abuse in disability and mental health service systems, aged care, childcare, educational settings, hospitals and prisons.

Documented mistreatment includes assault, excessive use of force, rape, neglect, and physical restraint of children.

Contrary to the Senate Committee recommendation, Australia has ruled out a Royal Commission stating that the newly introduced disability support system, the National Disability Insurance Scheme (NDIS), has a quality and safeguards framework.

As only 10% of people with disability will receive services via the NDIS, this framework is inadequate to address the broad nature of violence being experienced, or to hold people and systems accountable for past injustices.

Australia should:

- **establish a Royal Commission into violence and abuse against people with disability. The Royal Commission should have specific and broad powers to compel witnesses, undertake a comprehensive investigation of all forms of violence and refer matters to law enforcement agencies.**
- **through the National Disability Strategy, act on the recommendations from the 2015 Senate Committee to provide nationally consistent measures to address all forms of violence against people with disability in a broad range of settings.**

Supported decision-making

(page 79)

Laws including guardianship, estate management and mental health laws diminish or deny the right of people with disability to the presumption and exercise of legal capacity.

This affects areas such as financial services, voting, public office, board participation, access to justice, will making and deposition, providing evidence in court proceedings, and, the opportunity for people with disability to choose what disability supports they need, who will provide them and when.

Australia's Interpretive Declaration to article 12 of the CRPD enables substitute decision-making regimes.

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.**
- **withdraw its Interpretative Declaration to article 12 of the CRPD.**

Forced sterilization (page 79)

Forced sterilisation of people with disability, particularly women and girls with disability, and people with intersex variations, is an ongoing practice in Australia.

There is no prohibition on forced sterilisation in Australia.

Australia should develop and enact national uniform legislation prohibiting the forced sterilisation of children with disability, and adults with disability in the absence of their prior, fully informed and free consent.

Compulsory treatment

(page 79)

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