

## Forced Treatment and Restrictive Practices

Australia has not withdrawn nor repealed legislation, policies and practices that allow for behaviour modification or restrictive practices against people with disability, including children. Across Australia, mental health laws, policy and practice authorise the forced treatment of people with disability, limiting individual rights to liberty and security and equal recognition before the law. Laws have failed to prevent, and in some cases actively condone unacceptable practices, including invasive and irreversible treatments, such as the authorisation of psychosurgery, electroconvulsive therapy<sup>1</sup> and forced sterilisation, chemical, mechanical and physical restraint and seclusion.<sup>2</sup>

Forty-four to 80% of people with disability who show 'behaviours of concern' are administered a form of chemical restraint,<sup>3</sup> between 50% and 60% are subjected to regular physical restraint,<sup>4</sup> and those with multiple impairment and complex support needs are subjected to much higher levels of restraint and seclusion.<sup>5</sup> More than a quarter of all people with intellectual disability will be subject at some time in their life to some form of restraint and/or seclusion.<sup>6</sup>

A high number of people with disability, including children, are administered psychotropic medication, physical restraint and seclusion under the guise of 'behaviour management' policies and practices, including in schools, disability and mental health facilities, hospitals, and aged care settings.<sup>7</sup> There is no regulatory protective framework to protect children with disability from being subjected to behaviour modification and restrictive practices in schools.

The use of forced treatments and restrictive practices on people with psychosocial disability has increased sharply in recent years. Available data about electroconvulsive 'Therapy' (ECT) performed on involuntary patients (ie: without that person's consent) indicates that women are three times more likely than men to be subject to the practice, across all age cohorts.<sup>8</sup>

Australia's Interpretative Declarations on CRPD Articles 12 and 17 allow for the continuation of guardianship and mental health laws that deprive people of liberty on the basis of disability and subject them to forced medical interventions, both in institutions and in the community. While there have been some reviews and amendments to these laws, there has been no action to end involuntary internment on the basis of disability or to end forced medical interventions. As a result, many people with disability, particularly those with intellectual, cognitive and psychosocial disability, experience serious breaches of their human rights.<sup>9</sup>

Australia's Interpretative Declaration in respect of Article 17 of the CRPD effectively means that Australia believes that forced treatment complies with international law. Instead of addressing mental health laws as an inherent breach of human rights, States and Territories have focused on reviewing and amending mental health legislation in an effort to increase compliance with human rights.

However, the UN Special Rapporteur on Torture has stated that compulsory treatment of people with disability is "often wrongfully justified by theories of incapacity and therapeutic necessity", which is inconsistent with the CRPD, but "legitimised under national laws" and enjoying "wide public support as being in the alleged 'best interest' of the person concerned."<sup>10</sup>

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices (2014)*<sup>11</sup> and the *NDIS (Restrictive Practice and Behaviour Support) Rules 2018*<sup>12</sup> have significant limitations and permit States and Territories to authorise the use of restrictive practices. The Framework only applies to disability services and the *NDIS (Restrictive Practice and Behaviour Support) Rules 2018* only apply to National Disability Insurance Scheme (NDIS) participants. The Framework and the NDIS Rules focus more on when and how to use restrictive practices rather than prohibiting their use.

In 2013, the Committee on the Rights of Persons with Disabilities recommended to Australia to withdraw its Interpretive Declaration and to repeal laws that authorise forced treatment.<sup>13</sup>

In its 2017 review of the fifth periodic report of Australia,<sup>14</sup> the Committee on Economic, Social and Cultural Rights recommended that Australia: “Repeal all legislation that authorizes medical intervention without the free, prior and informed consent of the persons with disabilities concerned, abolishing the use of restraint and the enforced administration of intrusive and irreversible treatments.”<sup>15</sup>

Australia has not acted on the recommendations from the CRPD Committee and the Committee on Economic, Social and Cultural Rights, and people with disability in Australia continue to experience forced treatments and restrictive practices.

## Recommendations

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That Australia:

- Establish a nationally, consistent legislative and administrative framework for the protection of people with disability from behaviour modification and the elimination of restrictive practices across a broad range of settings.
- Modify, repeal or nullify any law or policy, and counteract any practice or custom, that enables deprivation of liberty on the basis of disability and forced medical interventions on people with disability.

## Endnotes

<sup>1</sup> See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings. Australian Cross Disability Alliance (ACDA); Sydney, Australia.

<sup>2</sup> Bevan, N., and Sands, T., (2016) Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia', Australian Cross Disability Alliance (ACDA); Sydney, Australia, paras 21-26 and 37-44.

<sup>3</sup> Lynne Webber, Mandy Donley and Hellen Tzanakis, 'Chemical Restraint: What Every Disability Support Worker Needs to Know' (Article, Office of the Senior Practitioner, 2008).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Australian Psychological Society (May 2011) Psychologists call for prompt end to restrictive practices in disability sector. Media Release; May 2011.

<sup>7</sup> For a discussion on Psychotropic polypharmacy in people with disability, see: Victorian Department of Human Services (2010) Disability, mental health and medication: Implications for practice and policy. A report prepared for the Office of the Senior Practitioner by: Dr Stuart Thomas, Kaisha Corkery-Lavender, Dr Michael Daffern, Dr Danny Sullivan; Centre for Forensic Behavioural Science, School of Psychology & Psychiatry, Monash University, Australia. See also: Dillon, M. (22 Feb 2019) What have we heard at the Royal Commission into Aged Care Quality and Safety so far? ABC News.

<sup>8</sup> See: Frohmader, C., & Sands, T. (2015) Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings. Australian Cross Disability Alliance (ACDA); Sydney, Australia.

<sup>9</sup> Disability Rights Now (2012) CRPD Civil Society Report on Australia.

<sup>10</sup> Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22<sup>nd</sup> sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 64.

<sup>11</sup> Australian Government, National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector. Department of Social Services.

<sup>12</sup> National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018

<sup>13</sup> United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Australia, 10th Session (4 October 2013) [8]-[9] & [33] - [34].

<sup>14</sup> Committee on Economic, Social and Cultural Rights (16 February 2016) Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Fifth periodic reports of States parties due in 2014, Australia. UN Doc No. E/C.12/AUS/5

<sup>15</sup> Committee on Economic, Social and Cultural Rights, (11 July 2017) Concluding observations on the fifth periodic report of Australia; UN Doc No. E/C.12/AUS/CO/5