



FACT SHEET 7

TREATMENT OF PERSONS WITH DISABILITY: Restrictive practices & involuntary treatment.

RESTRICTIVE PRACTICES

Despite the enshrined legislative principles of 'least restrictive' and 'last resort' many people with disability in Australia are routinely subjected to behaviour modification or restrictive practices including chemical, mechanical, physical restraint, seclusion, containment, detention or time out. These practices are discriminatory and may constitute ill treatment and cause physical pain and discomfort, deprivation of liberty, prevent freedom of movement.

Restrictive practices can constitute humiliation and punishment and may be imposed as a means of coercion, discipline, convenience and even retaliation by those who provide support.

National Framework

In 2014 Commonwealth, state and territory disability minister endorsed the '*National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*.' The focus is largely on when and how to use restrictive practices and NOT on seeking to prevent use. Further it only applies to disability services and fails to recognise that restrictive practices occur in other situations. Finally it appears to be developed without reference to Australia's obligations under CAT or indeed the CRPD.

Situation in Queensland

2014 amendments to the *Disability Services Act 2006* (Qld) and *Guardianship and Administration Act 2000* (Qld) provide one month immunity from criminal prosecution to disability service providers to use restrictive practices whilst awaiting approval from the Public Guardian. These amendments were

promoted as increasing the human rights protections of people subject to restrictive practices; however they are procedural safeguards so they provide little protection.

2010 amendments to the above Acts saw the approval for short term use of restrictive practices increase from three months to six months. This increase was at the behest of service providers with the rights of person with disabilities being ignored.

INVOLUNTARY TREATMENT

Involuntary treatment in Australia, including for those people with a disability is largely regulated by Mental Health legislation. The legislation provides for the 'least restrictive alternative' and 'last resort'. Despite this and a lack of evidence that seclusion and restraint offer positive outcomes they are frequently used. This use can be associated with further trauma, risk of violence and potential human rights abuses.

Whilst mental health laws vary across Australia they all have failed to prevent, and indeed in some cases have condoned practices such as psycho-surgery, ECT and sterilisation (non-therapeutic). Concerns are raised that people with disabilities can be arbitrarily subject to involuntary treatment. Further these laws fail to comply with international human rights standards.

These laws also fail to prevent people with disability being subject to arbitrary detention. Some are detained in forensic disability services or high/medium security units of Mental Health facilities, despite being found not fit for trial or having been convicted of a crime. This period of detention often exceeds the maximum custodial sentence for the alleged offence and may be indefinite.

Interpretative Declaration CRPD Art 17

This interpretative declaration underpins Australia's mental health laws and whilst it remains, it is unlikely that existing legislative, policy or practice frameworks governing involuntary treatment will change.

Situation in Queensland

A number of people with disability are detained in psychiatric and disability forensic facilities due to lack of appropriate community housing and funded or informal supports.

HOW IS CAT BREACHED

Violation of Art 1

The use of restrictive practices and involuntary treatment can constitute torture:

- Environment it occurs
- Duration of use
- Vulnerability of person

Mental Health legislation is discriminatory because it limits human rights on basis of disability.

Violation of Art 2 & 4

Legislation exists in some Australian states which sanctions practices that are in violation of Articles 1 & 16, rather than to prevent or criminalise such practices.

Guardianship and mental health laws can increase vulnerability as they fail to recognise legal capacity of persons with disability. They also fail to question the use of restrictive practices or if the rights of the person are protected.

Violation of Art 14

People with disability are often unaware of their rights and even if they are aware, often unable or unwilling to access justice for such violations of their rights in this regard.

Limited redress is available to people with disability largely due to piecemeal State legislation rather than a national legislative framework to prevent and protect people with

disability from experiencing ill treatment (also violates Articles 2 & 4).

Violation of Art 16

Use of restrictive practices in the disability or mental health sector is cruel, inhuman or degrading treatment or punishment.

RECOMMENDATIONS

1. Australia must enact a Human Rights Act.
2. The Australian government must prioritise ratification of OPCAT.
 - OPCAT compliant detention monitoring framework (NPM)
3. Australia must develop a nationally, consistent legislative and administrative framework for the protection of people with disability from behaviour modification and restrictive practices, including the prohibition of and criminal sanctions for particular behaviour modification practices.
4. Australia must develop an evidenced based national plan that outlines positive behaviour supports strategies. Such a plan should also outline actions that lead to the elimination of environments and treatment approaches that have been shown to exacerbate behaviour that leads to application of inappropriate levels of restriction and restraint
5. Australia must remove the interpretative declaration on Article 17 CRPD.
6. Australia must develop effective mechanisms to identify and eliminate the use of restrictive practices - National reporting. This could be the NPM under OPCAT.

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC