

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 4

People with disability

Implementation of the UN Convention on the Rights of Persons with Disabilities

Suggested Question

How does Australia's law, policy and practice ensure that people with disability are able to realise their human rights on an equal basis with others?

Background

People with disability do not enjoy their fundamental human rights on an equal basis with others in Australia. Although the *Disability Discrimination Act 1992* (Cth) provides limited protection from discrimination and harassment for people with disability in areas of employment, education and the provision of goods and services, many people with disability are unable to assert their rights due to the lack of human rights in legislation. As a result, many people with disability remain significantly disadvantaged in Australian society in relation to key indicators of social and economic well-being.

Proposed Recommendation

That Australia incorporate the Convention on the Rights of Persons with Disabilities into its domestic law through legislation.

Non-therapeutic sterilisation

Suggested Question

What steps is Australia taking to respond to the Concluding Observations of both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women in relation to non-therapeutic sterilisation of people with disability, particularly girls and women with disability?

Background

Non-therapeutic sterilisation of people with disability remains an ongoing practice in Australia and impacts most significantly on the rights of women and girls with disability. To some extent, State and Territory guardianship and child

protection laws regulate and provide a degree of protection from non-therapeutic sterilisation for all children and young people and adults with decision-making disability, but none makes non-therapeutic sterilisation explicitly unlawful. Comprehensive law reform is required to provide effective guarantees against such abuse.

From 2003 to 2007, Australia began to address non-therapeutic sterilisation of children by drafting nationally consistent legislation. However, this legislation aimed to regulate authorisation of non-therapeutic sterilisation rather than prohibit this form of abuse. The Australian Government discontinued this work because it believed that evidence indicated that sterilisation of children with intellectual disability had declined and that existing guardianship and court mechanisms for authorising sterilisation procedures were working adequately.

In 2005, the Committee on the Rights of the Child recommended in its Concluding Observations that Australia “prohibit sterilisation of children, with or without disabilities”.¹ In 2010, the Committee for the Elimination of Discrimination Against Women recommended in its Concluding Observations that Australia “enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent”².

Proposed Recommendation

That Australia enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability in the absence of their fully informed and free consent.

¹ Committee on the Rights of the Child, Concluding Observations, Australia, September 2005, 46 e.

² Committee on the Elimination of Discrimination Against Women, Concluding Observations, Australia, July 2010, 43.

Exercising the right to vote

Suggested Question

What steps will Australia take to immediately realise the right of people with disability to participate in the electoral process, including casting secret ballots freely and independently, on an equal basis with others?

Background

The ability of people with disability to vote independently and in secret in national, state and local government elections is still not a reality for many people with disability in Australia. This is despite the legal requirements to provide voting accessibility for people with disability under the *Disability Discrimination Act 1992 (Cth)* (DDA) and obligations under Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Barriers to exercising a right to vote include:

- lack of accessible polling venues; lack of accessible information; and lack of access to the same postal voting arrangements as other citizens;
- lack of ballot papers in accessible formats, such as Braille, and in formats other than print means that many people with disability have to rely on another person to record their vote, and therefore are not able to cast a secret ballot;
- provisions in legislation that enable people to be excused from voting if they are of “unsound mind” – these provisions exclude many people on the grounds of their impairment rather than on their capacity to understand and make decisions. This is contrary to principles and concepts of “capacity” contained in Article 12 of the CRPD.
- receiving penalty notices for not voting when many people with disability may not understand voting information or may be unwell at the time of the election.

Proposed Recommendation

That Australia conduct a thorough, critical review of the legislative and administrative arrangements governing electoral matters to ensure that people with disability can fully and equally participate in electoral processes, including obtaining the right to cast a secret ballot freely and independently.