

Human rights and *People with disability*



Australian
Human Rights
Commission

everyone, everywhere, everyday

This information sheet talks about some of the human rights issues faced by people with disability. It also highlights how a federal Human Rights Act could help deal with these issues.

Which human rights are we talking about?

Human rights are about everyone, and they are very important for people with disability.

Recognising that people with disability are often overlooked in human rights discussions, in 2006 the United Nations adopted the *Convention on the Rights of People with Disabilities* (the *UN Disability Convention*). And in 2008 Australia committed to protect and respect the rights in the *Convention*.

The *UN Disability Convention* sets out how human rights and freedoms apply to people with disability, including the right to:

- have the same access as everyone else to the physical environment, transport, information and communications, and other facilities and services
- live independently and be included in the community
- equal opportunity and inclusion in education
- the highest attainable standard of health and access to health and rehabilitation services
- effective measures to ensure the equal right of people with disability to work, including support for reasonable adjustments to be made to the work environment
- an adequate standard of living, including access to housing and to assistance with disability expenses where necessary
- equal recognition before the law and access to justice
- respect for privacy and family relationships
- be free from cruel, inhuman or degrading treatment
- freedom of movement and personal mobility.

What are some of the human rights problems facing people with disability?

There is strong evidence of continuing, unmet need for disability services, support and assistance in Australia in areas including:

- personal assistance and care
 - support for family carers
 - support to live independently
 - appropriate accommodation options, including supported accommodation and respite services
 - interpreting services
 - education aides and other adjustments to enable equal opportunity in education
 - access to assistive technology
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- support in meeting additional expenses when participating in employment, education and other areas of life
- employment support.

People with mental illness also face human rights problems. For example, many people cannot access the mental health treatment and support services necessary to live as independently as possible in the community. Some people with serious mental illness may end up in gaol because they cannot access the care and services they need.

Some young people with disability who need special support end up living in aged care nursing homes – surrounded by people four or five times their age. Some of these young people are less than 10 years old. They have no option other than living in aged nursing homes because there are not enough long-term care and support services available for people their age.

‘The prison system is not the place to provide care for those with a mental illness. My work and the work of others has shown that many people who end up in gaol do so as a result of not being able to access a mental health service.’

– Advocate, Victoria

Mental Health Council of Australia and Brain and Mind Institute in association with the Human Rights and Equal Opportunity Commission, *Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia – Summary* (2005) p 20.

‘For me this is not strong language, during the ten years I have been a carer of a severely physically disabled mentally ill person, I feel I have been treated less than human, and the person I care for, as well as others with disabilities, looked upon as worthless citizens who the governments wished didn’t exist. Our loved ones are offered inferior care, if care is what it can be called.’

– Carer, Husband, Northern Territory

Mental Health Council of Australia and Brain and Mind Institute in association with the Human Rights and Equal Opportunity Commission, *Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia – Summary* (2005) p 39.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia **by promoting greater understanding and respect among all people in Australia.**

What are the limitations of existing human rights protections for people with disability?

There are limited human rights protections for people with disability at the moment.

For example, currently our federal laws do not give people with disability an enforceable right to receive the support, assistance and other services they need.

However, if you feel that you have been discriminated against based on disability, you can make a complaint to the Australian Human Rights Commission under the *Disability Discrimination Act 1992* (Cth) (DDA). This might involve a complaint of discrimination in employment; education; access to premises;

the provisions of goods, services and facilities; the provision of accommodation; the sale of land or the administration of federal laws and programs. Or, you could make a complaint under state or territory anti-discrimination laws.

The DDA, and similar state and territory anti-discrimination laws, are making a big difference in some areas of life for people with disability. For example, there has been substantial progress towards accessible public transport, and the development of standards on access to buildings should lead to big improvements over time in this area.

However, there is a long way to go. For example, federal politicians and public servants still don't have to consider the rights of people with disability when developing and implementing new laws and policies about employment services, housing, health and social security.

How could we improve human rights protections for people with disability?

The Australian Human Rights Commission supports a Human Rights Act for Australia.

If Australia had a Human Rights Act, it could:

- make the **federal Parliament consider how laws impact on human rights** – for example, Parliament might be required to explain whether new laws are compatible with the rights in the new *UN Disability Convention*
- make the **federal government respect human rights when developing policy** – for example, policies about providing services for people with disability or support for their carers
- make **public servants respect human rights when making decisions and delivering services** – for example, by making sure that every Centrelink office has at least one person trained to work with people with disability
- provide a **range of enforceable remedies** if a government department breaches the human rights of people with disability.

A Human Rights Act could also provide a stronger framework for advocacy on disability rights issues.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

In addition to a Human Rights Act, there is a range of other ways in which the human rights of people with disability could be better promoted and protected in Australia. For example:

- enhanced protection of human rights in the Australian Constitution
- the further development of standards and codes under the DDA
- a National Disability Strategy based on the *UN Disability Convention*
- developing a national public education program about human rights, with a focus on the human rights of people with disability
- strengthening the DDA, such as by imposing positive obligations to provide equality of opportunities.

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Where can I find more information about the human rights of people with disability?

Australian Human Rights Commission:
www.humanrights.gov.au/disability_rights