

To the Queensland Parliament's Legal and Community Safety Committee

Submission about the Human Rights Bill 2018

From John Tracey

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26/11/18

Hello,

My name is John Tracey and I am the full time carer of a family member with intellectual disabilities.

I am concerned that the Human Rights Bill 2018 bill does not enact or even acknowledge the UN Convention on the Rights of Persons with Disabilities (CRPD), or any other international human rights law ratified by the Commonwealth Government.

I am concerned that the Bill has no provision for the enforcement of human rights, even the limited version of human rights stated in the bill.

As such, it appears that the bill provides no protections from or remedies for human rights abuse of people with intellectual disability.

The bill commits the Attorney General to review the act in five years with consideration of human rights protected by ratified international human rights law including the CRPD – section 95 (First Review of Act).

Why has the consideration of ratified human rights law been postponed for five years? Why isn't ratified international human rights law considered to be relevant important now? Is Queensland not yet socially advanced enough to embrace international human rights law?

I urge the LACSC to amend the bill to comply with and enact the CRPD and all other international human rights instruments that have been ratified by the Commonwealth government, rather than postponing consideration of international human rights law for five years.

Australia was originally one of the nations that most enthusiastically promoted the CRPD to the UN. However once the UN did adopt the convention Australia was unable to ratify it because the Adult Guardianship systems in every state and territory did not comply with the CRPD at a fundamental level. The CRPD, article 12, affirms the presumption of legal capacity of all people. The convention prescribes supported decision making for people with impaired decision making capacity and outlaws the old mode of substituted decision making. However all of Australia's Adult Guardianship laws extinguish the legal capacity of impaired persons and institute regimes of substituted decision making.

Australia eventually ratified the convention in 2008 with the condition that Australia interprets the convention to allow substituted decision making as a last resort. However substituted decision making remains the routine and normal mode of all the guardianship regimes.

In 2013 the UN Committee on the Rights of Persons with Disabilities, the agency charged with monitoring and enforcing implementation of the CRPD, told Australia that its conditions of

ratification were not accepted by the UN, that Australia's Adult Guardianship systems did not conform to the CRPD and urged Australia to reform its guardianship laws. However Australia did not reform its guardianship laws which still today breach international human rights law.

The Human Rights Bill 2018 in its present form continues the Australian tradition of disregarding disability human rights.

Supporting human rights is difficult, it requires the reform of laws and institutions that deny human rights. The Human rights bill reforms nothing and enforces nothing.

At the time of writing this submission, the Guardianship and Administration Act and other legislation amendment bill 2018 is before the parliament awaiting its second reading. The LACSC endorsed this bill. There are many good things in the bill but section Clause 7, Replacement of s 11 (Principles for adults with impaired capacity) provides for the extinguishment of the presumption of legal capacity for people with impaired decision making capacity.

Common law presumes universal legal capacity. Ratified international human rights law dictates universal legal capacity. Federal and State anti-discrimination laws dictate equal legal capacity for all people. The present Guardianship and Administration Act dictates the universal presumption of legal capacity, no matter what the impairment might be.

However the Guardianship and Administration Act and other legislation amendment bill will, if passed, create a new class of people with fewer legal rights than an "ordinary" person.

Legal agency is the foundation of all human rights, yet this most fundamental human right is about to be removed from people in Queensland with intellectual disabilities.

This major reform to the Guardianship and Administration Act will effectively extinguish the act's first general principle, the presumption of capacity. The amendment has come about because the Attorney General's department requested it. It is not a response to people with disabilities, their carers or the disability sector.

QCAT, the Public Trustee and the Public Guardian all routinely disregard the statutory presumption of capacity, and have always done so. This is illegal, the act says they must presume capacity. The amendments seek to authorise this illegal denial of statutory rights. Rather than reforming the system because it acts unlawfully, the law is being modified to accommodate the unlawful activity – at the request of the agencies engaged in the unlawful activity.

In endorsing the Guardianship and Administration and other legislation amendment bill, the LACSC clearly did not consider the human rights inherent in common law, international law and the present GAA to be relevant. Instead of upholding human rights, the LACSC endorsed the legislative extinguishment of human rights and the authorisation of the denial of human rights.

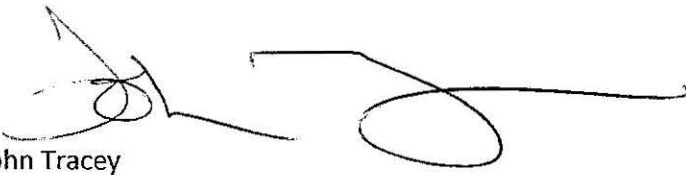
A Human Rights Act should be able to prevent this statutory removal of the most basic human right, but it has nothing of substance or affect. The bill, if passed, would not protect human rights.

I urge the LASC to return to the drawing board on human rights, beginning with a clear endorsement and implementation of ratified international human rights law – which includes mechanisms of enforcement and remedy.

Until somebody in the parliament takes international human rights law seriously, Queensland will remain guilty of international human rights abuse crimes against people with intellectual disabilities.

Following is a copy of the UN Committee on the Rights of Persons with Disabilities concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013). I urge you to consider its implications for Queensland legislation.

Thank you for considering my submission

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

John Tracey



United Nations

CRPD/C/AUS/CO/1

Distr.: General

Convention on the Rights of Persons with Disabilities

21 October 2013

Original: English

Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013)

I. Introduction

1. The Committee considered the initial report of Australia (CRPD/C/AUS/1) at its 107th and 108th meetings, held on 3 and 4 September 2013, and adopted the following concluding observations at its 118th meeting, held on 12 September 2013.
2. The Committee welcomes the initial report of Australia, and thanks the State party for the comprehensive written replies to the list of issues prepared by the Committee (CRPD/C/AUS/Q/1/Add.1).
3. The Committee commends the State party for its delegation, which included representatives of government ministries and the Disability Discrimination Commissioner. The Committee expresses its appreciation for the fruitful dialogue held with the delegation.

II. Positive aspects

4. The Committee commends the State party's adoption of the National Disability Strategy 2010-2020 to implement the Convention across all jurisdictions.
5. The Committee commends the State party for its international cooperation programmes supporting disability-inclusive development, which increases access to education, employment, health services, and law and justice.
6. The Committee commends the State party for introducing DisabilityCare Australia, a national scheme of self-directed disability support, which includes persons in need of intensive support.
7. The Committee welcomes the State party's commissioning, in June 2013, of the Australian Law Reform Commission to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. It also welcomes the funding by New South Wales and South Australia of pilot supported decision-making initiatives.

III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1 and 4)

8. The Committee is concerned that despite the adoption of the National Disability Strategy, the State party has not yet brought its legislation fully into line with the Convention. It is further concerned about the interpretative declarations that the State party has made on articles 12, 17 and 18 of the Convention.
9. **The Committee recommends that the State party incorporate all rights under the Convention into domestic law and that it review its interpretative declarations on articles 12, 17 and 18 with a view to withdrawing them.**
10. The Committee regrets that there are not enough mechanisms for consultation and engagement between Government and persons with disabilities and their organizations in all matters of policy development and legislative reform relating to the Convention.
11. **The Committee recommends that the State party, in partnership with persons with disabilities — including children with disabilities — through their representative organizations, establish mechanisms to ensure meaningful participation in the development and implementation of legislation and policies to implement the Convention.**
12. The Committee is concerned that not all organizations of persons with disabilities, including those of persons with psychosocial disabilities, and Aboriginal and Torres Strait Islander people, are provided with adequate resources for their operations.
13. **The Committee recommends that the State party take initiatives to increase the resources available for independent organizations of persons with disabilities, including organizations representing children with disabilities.**

B. Specific rights (arts. 5-30)**Equality and non-discrimination (art. 5)**

14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.

15. The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.

Women with disabilities (art. 6)

16. The Committee is concerned at reports of the high incidence of violence against, and sexual abuse of, women with disabilities.

17. The Committee recommends that the State party include a more comprehensive consideration of women with disabilities in public programmes and policies on the prevention of gender-based violence, particularly so as to ensure access for women with disabilities to an effective, integrated response system.

Children with disabilities (art. 7)

18. The Committee is concerned that the National Framework for Protecting Australia's Children is focused on the protection of children against violence, abuse and neglect, and that there is no comprehensive national policy framework for children, including children with disabilities, that articulates how the rights of children should be implemented, monitored and promoted.

19. The Committee recommends that the State party:

Step up efforts to promote and protect the rights of children with disabilities, by incorporating the Convention into legislation, policies, programmes, service standards, operational procedures and compliance frameworks that apply to children and young people in general;

Establish policies and programmes that will ensure the right of children with disabilities to express their views on all matters concerning them.

Accessibility (art. 9)

20. The Committee notes that the Disability Standards for Accessible Public Transport 2002 and the Disability (Access to Premises – Buildings) Standards 2010 introduce regulations to address accessibility barriers for persons with disabilities. However, it remains concerned at the level of compliance with accessibility standards and regulations in the State party.

21. The Committee recommends that sufficient resources be allocated to ensure the monitoring and implementation of the disability standards and requirements.

Situations of risk and humanitarian emergencies (art. 11)

22. The Committee notes with concern that despite the adoption of emergency response and mitigation plans at the local and state levels, disability needs are often not explicitly factored into disaster response measures, and that there are as yet no specific measures in national plans to address emergency intervention strategies for persons with disabilities.

23. The Committee calls upon the State party to consult with people with disabilities to establish nationally consistent emergency management standards to be implemented across all three levels of government, ensure inclusivity across diverse disabilities and cover all phases of emergency management preparation, early warning, evacuation, interim housing and support, recovery and rebuilding. The Committee further recommends the inclusion in national plans of emergency response schemes for persons with disabilities.

Equal recognition before the law (art. 12)

24. The Committee notes that the Australian Law Reform Commission has been recently commissioned to inquire into barriers to equal recognition before the law and legal capacity for persons with disabilities. However, the Committee is concerned about the possibility that the regime of substitute decision-making will be maintained and that there is still no detailed and viable framework for supported decision-making in the exercise of legal capacity.

25. The Committee recommends that the State party effectively use the current inquiry to take immediate steps to replace substitute decision-making with supported decision-making and that it provide a wide range of measures which respect a person's autonomy, will and preferences and are in full conformity with article 12 of the Convention, including with respect to a person's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry and to work.

26. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges and social workers, on recognition of the legal capacity of persons with disabilities and on the primacy of supported decision-making mechanisms in the exercise of legal capacity.

Access to justice (art. 13)

27. The Committee is concerned at the lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice for persons with disabilities, as well as the lack of guidance on access to justice for persons with disabilities. The Committee is further concerned that access to sign language interpreters or the use of Augmentative and Alternative Modes of Communication is not supported in all Australian states and territories.

28. The Committee recommends that standard and compulsory modules on working with persons with disabilities be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel. It further recommends that legislation and policy across the states and territories be amended to ensure access to justice for persons with disabilities, in line with article 13 of the Convention.

29. The Committee further urges the State party to ensure that persons with psychosocial disabilities are ensured the same substantive and procedural guarantees as others in the context of criminal proceedings, and in particular to ensure that no diversion programmes to transfer individuals to mental health commitment regimes or requiring an individual to participate in mental health services are implemented; rather, such services should be provided on the basis of the individual's free and informed consent.

30. The Committee further recommends that the State party ensure that all persons with disabilities who have been accused of crimes and are currently detained in jails and institutions, without trial, are allowed to defend themselves against criminal charges, and are provided with required support and accommodation to facilitate their effective participation.

Liberty and security of the person (art. 14)

31. The Committee is concerned that persons with disabilities who are deemed unfit to stand trial due to an intellectual or psychosocial disability can be detained indefinitely in prisons or psychiatric facilities without being convicted of a crime and for periods that can significantly exceed the maximum period of custodial sentence for the offence. The Committee is equally concerned that persons with disabilities are overrepresented in both the prison and juvenile justice systems, in particular women, children, Aboriginal and Torres Strait Islander persons with disability.

32. The Committee recommends that the State party, as a matter of urgency:

(a) **End the unwarranted use of prisons for the management of unconvicted persons with disabilities, focusing on Aboriginal and Torres Strait Islander persons with disabilities, by establishing legislative, administrative and support frameworks that comply with the Convention;**

(b) **Establish mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate support and accommodation;**

(c) **Review its laws that allow for the deprivation of liberty on the basis of disability, including psychosocial or intellectual disabilities, and repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability.**

33. The Committee is further concerned that under Australian law a person can be subjected to medical intervention against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment.

34. The Committee recommends that the State party repeal all legislation that authorizes medical intervention without the free and informed consent of the persons with disabilities concerned, commitment of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders.

Freedom from torture and cruel, inhuman or degrading treatment or punishment (art. 15)

35. The Committee is concerned that persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.

36. The Committee recommends that the State party take immediate steps to end such practices, including by establishing an independent national preventive mechanism to monitor places of detention — such as mental health facilities, special schools, hospitals, disability justice centres and prisons —, in order to ensure that persons with disabilities, including psychosocial disabilities, are not subjected to intrusive medical interventions.

Freedom from exploitation, violence and abuse (art. 16)

37. The Committee is concerned at reports of high rates of violence perpetrated against women and girls living in institutions and other segregated settings.

38. The Committee recommends that the State party investigate without delay the situations of violence, exploitation and abuse experienced by women and girls with disabilities in institutional settings, and that it take appropriate measures on the findings.

Integrity of the person (art. 17)

39. The Committee is deeply concerned that the Senate inquiry report into the involuntary or coerced sterilization of persons with disabilities, released in July 2013, puts forward recommendations that would allow this practice to continue. The Committee further regrets the State party's failure to implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the Working Group on the Universal Periodic Review

(A/HRC/17/10) and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), which address concerns regarding sterilization of children and adults with disabilities.

40. The Committee urges the State party to adopt uniform national legislation prohibiting the sterilization of boys and girls with disabilities, and adults with disabilities, in the absence of their prior, fully informed and free consent.

Living independently and being included in the community (art. 19)

41. The Committee is concerned that despite the policy to close large residential centres, new initiatives replicate institutional living arrangements, and many persons with disabilities are still obliged to live in residential institutions in order to receive disability support.

42. The Committee encourages the State party to develop and implement a national framework for the closure of residential institutions and to allocate the resources necessary for support services that would enable persons with disabilities to live in their communities. The Committee recommends that the State party take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence. The State party should therefore map the various forms of living accommodation, based on the needs of various kinds of persons with disabilities.

Freedom of expression and opinion, and access to information (art. 21)

43. The Committee is concerned by the State party's failure to provide all information in accessible formats and effectively promote and facilitate the use of Australian Sign Language (Auslan) as Australia's official sign language, as well as the use of all other forms of accessible formats of communication (deaf-blind interpretation, Braille, easy and plain English, audio description), in particular when persons with disabilities are engaged in official interactions.

44. The Committee recommends that the State party recognize Australian Sign Language as one of the national languages of Australia, and develop the use of other accessible formats of communication by allocating adequate funding for their development, promotion and use, in accordance with articles 24, paragraph 3, and 29 (b) of the Convention.

Education (art. 24)

45. The Committee is concerned that despite the Disability Standards for Education established to ensure access to education on an equal basis, students with disabilities continue to be placed in special schools and many of those who are in regular schools are largely confined to special classes or units. The Committee is further concerned that students with disabilities enrolled in regular schools receive a substandard education due to lack of reasonable accommodation. The Committee is also concerned that secondary school completion rates for students with disabilities are about half of those for people without disability.

46. The Committee recommends that the State party:

Step up its efforts to provide reasonable accommodation of necessary quality in education;

Conduct research into the effectiveness of current education inclusion policies and the extent to which the Disability Standards in Education are being implemented in each state and territory;

Set targets to increase participation and completion rates by students with disabilities in all levels of education and training.

Access to habilitation and rehabilitation (art. 26)

47. The Committee regrets the State party's medical model of habilitation and rehabilitation is not based on the human rights model.

48. The Committee recommends that the State party establish a framework to protect persons with disabilities from imposed habilitation and rehabilitation services without their free and informed consent.

Right to work (art. 27)

49. The Committee is concerned that employees with disabilities in Australian Disability Enterprises are still being paid wages based on the Business Services Wage Assessment Tool.

50. The Committee recommends that the State party:

Immediately discontinue the use of the Business Services Wage Assessment Tool;

Ensure that the Supported Wage System is modified to secure correct assessment of the wages of persons in supported employment;

Adopt initiatives to increase employment participation by women with disabilities by addressing the specific underlying structural barriers to their workforce participation.

Participation in political and public life (art. 29)

51. The Committee is concerned that persons with disabilities, in particular those with intellectual or psychosocial disabilities, are automatically excluded from the electoral roll. The Committee is further concerned that persons with disabilities face significant barriers in the voting process.

52. **The Committee recommends that the State party enact legislation to restore the presumption of the capacity of persons with disabilities to vote and exercise choice, and ensure that all aspects of voting in an election are made accessible to all citizens with disabilities.**

C. Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

53. The Committee regrets the low level of disaggregated data collected on persons with disabilities and reported publicly. It further regrets that there is little data on the specific situation of women and girls with disability, in particular indigenous women and girls with disabilities.

54. **The Committee recommends that the State party develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. The Committee further recommends that the State party commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**

55. The Committee regrets that the situation of children with disabilities is not reflected in data on the protection of children. It further regrets the paucity of information on children with disabilities, in particular indigenous children, alternative care for children with disabilities and children with disabilities living in remote or rural areas.

56. **The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children. It further recommends that the State party commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.**

National implementation and monitoring (art. 33)

57. The Committee is concerned that Australia lacks a participatory and responsive structure for implementing and monitoring the Convention in line with article 33 thereof.

58. **The Committee recommends that the State party immediately set up a monitoring system that is fully in line with the provisions of article 33 of the Convention.**

Follow-up and dissemination

59. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. The Committee recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in the relevant ministries, the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using modern social communication strategies.

60. The Committee requests the State party to disseminate the present concluding observations widely, particularly to representative organizations of persons with disabilities, non-governmental organizations, persons with disabilities and members of their families, in accessible formats.

61. The Committee encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its next periodic report.

Next report

62. The Committee requests the State party to submit its combined second and third periodic reports no later than 17 July 2018, and to include therein information on the implementation of the present concluding observations.