**ISSUE: Forced Treatment and Restrictive Practices**

(See Article 15 on page 12 of DPO Australia Submission to the CRPD)

**Background**

Across Australia, mental health laws, policy and practice authorise the forced treatment of people with psychosocial 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[[1]](#endnote-1) and forced sterilisation, chemical, mechanical and physical restraint and seclusion.[[2]](#endnote-2)

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.”[[3]](#endnote-3)

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.[[4]](#endnote-4)

Children and adults with disability are also routinely subjected to unregulated and under regulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraint and seclusion including in mental health facilities, schools, hospitals, aged care, disability facilities and prisons.[[5]](#endnote-5) This includes a high number of people with disability,[[6]](#endnote-6) including children with disability, administered psychotropic medication, psychotropic polypharmacy,[[7]](#endnote-7) physical restraint and seclusion under the guise of ‘behaviour management’ policies and practice.[[8]](#endnote-8)

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector[[9]](#endnote-9)* only applies to disability services and not all the settings where people with disability experience restrictive practices, including schools, mental health facilities, within prisons and hospitals.[[10]](#endnote-10) It also maintains a focus on authorising, rather than eliminating restrictive practices.[[11]](#endnote-11)

The Committee on the Rights of Persons with Disabilities recommended that Australia end such practices.[[12]](#endnote-12)

**Proposed Questions**

**Please provide information on the measures taken to identify the laws, policies and practices authorising forced treatment, with a view to eliminating those laws, policies and practices.**

Please advise the Committee on steps taken to withdraw the interpretative declaration to article 17.

Please advise on all measures taken in law and practice to ensure that people with disability – including children with disability, are not subjected to behaviour modification or restrictive practices, including in disability services, schools, mental health facilities, prisons, aged care and hospitals.

Please update the Committee on measures taken to establish a national independent preventative mechanism to monitor places of detention, education, work and care, where people with disability live and/or access services.

**Endnotes**

1. Data on Electroconvulsive Therapy (ECT) performed on involuntary patients indicates that in Australia, women are three times more likely than men to be subject to the practice, across all age cohorts. 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. Available at: <http://wwda.org.au/papers/subs/subs2011/> [↑](#endnote-ref-1)
2. 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. [↑](#endnote-ref-2)
3. Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 64. [↑](#endnote-ref-3)
4. United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australi*a, 10th Session (4 October 2013) [8]-[9] & [33]–[34]. [↑](#endnote-ref-4)
5. See e.g., NSW Ombudsman, Inquiry into behavior management in schools – A Special Report to Parliament under s31 of the Ombudsman Act 1974, August 2017, <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/community-and-disability-services/nsw-ombudsman-inquiry-into-behaviour-management-in-schools-august-2017>; Julia Holman, ‘Physical restraints in aged-care homes reported to have caused five deaths over 13-year period’, ABC News, 6 January 2017, [http://www.abc.net.au/news/2017-01-06/physical-restraints-in-aged-care-homes-have-caused-deaths:-study/8165468](http://www.abc.net.au/news/2017-01-06/physical-restraints-in-aged-care-homes-have-caused-deaths%3A-study/8165468); Senate Community Affairs References Committee, ‘Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and linguistically diverse people with disability’ (November 2015), <<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report>>; National Mental Health Commission, ‘A Contributing Life, the 2013 National Report Card on Mental Health and Suicide Prevention’ (2013); Melbourne Social Equity Institute (2014) Seclusion and Restraint Project: Report, Melbourne: University of Melbourne page 67 [↑](#endnote-ref-5)
6. Particularly people with disability living and or receiving services in in institutional and other care settings, including schools. [↑](#endnote-ref-6)
7. ‘Polypharmacy’ is often defined as ‘five or more medications taken in a 24 hour period’. See: <https://www.doctorportal.com.au/mjainsight/2012/1/polypharmacy-and-its-risks-rise/> 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. Accessed at: <http://www.dhs.vic.gov.au/__data/assets/pdf_file/0007/666763/osp_senior_disability_mental_health_medication_implications_for_practice_policy_1010.pdf>. [↑](#endnote-ref-7)
8. For eg: In Victoria, chemical restraint is the most common form of restrictive intervention used by disability service providers, with ‘psychotropic’ pharmaceuticals being the most common chemical restraint. See: <http://www.publicadvocate.vic.gov.au/our-services/publications-forms/277-restrictive-interventions-in-victorias-disability-sector-issues-for-discussion-and-reform-1?path>= See also: See: *‘Open letter calls for royal commission into treatment of people with disabilities’*, [Online video] Lateline, ABC TV, 17 May 2017, accessed at: <http://www.abc.net.au/lateline/content/2016/s4670932.htm> [↑](#endnote-ref-8)
9. The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* was adopted by all governments in 2014. See: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector> [↑](#endnote-ref-9)
10. Australian Cross Disability Alliance (ACDA), Australian Centre for Disability Law (ACDL) and Advocacy for Inclusion (2015) *Australia’s Universal Periodic Review 2015: Fact Sheet on Restrictive Practices*. [↑](#endnote-ref-10)
11. Ibid. [↑](#endnote-ref-11)
12. Committee on the Rights of Persons with Disabilities, Concluding Observations for Australia’s 1st periodic review, UN Doc CRPD/C/AUS/CO/1, paras 35-36. [↑](#endnote-ref-12)