



Disability and Human Rights

ISSUES PAPER

Walk the Talk: Realising the National Disability Strategy and our human rights promises

Summary of QAI's position

The development of the National Disability Strategy (NDS) represented an exciting opportunity for Australia to foster a fresh national response to people with disability that is consistent with the human rights obligations Australia has assumed by signing and ratifying a suite of international treaties and conventions. The NDS sets out a 10 year national plan aimed at improving life for all people with disability, including developing strategies to protect people with disability from violence, exploitation and neglect.

Yet we are now past the half-way point in the life of the NDS. The preliminary indicators of progress are not encouraging and suggest there has not been a consistent commitment to faithful implementation of the intent of the NDS.

Within the new paradigm of the National Disability Insurance Scheme (NDIS), it is important that we reflect upon our achievements to date and look at not only how far we have to go, but how we are to get there, if we are to translate the stated vision of the NDS into reality by 2020. The progressive rollout of the NDIS in Australia has generated much speculation on the impact this scheme will have on the human rights and lives of people with disabilities. In essence, the NDIS was introduced as a means of giving power and control over their lives to Australians with disability.¹ The move towards individual funding schemes under the NDIS is intended to give power to people with disability, thereby respecting their human rights so that they can make decisions with respect to the services they receive, and from whom, thereby elevating the citizenship status of people with disability.² Yet as Dickinson notes, 'human rights protection and market-driven consumer systems are unlikely bedfellows,' noting that people do not 'live their lives according to the sort of silos that we typically use to organize government services' and concluding that without significant change, the NDIS will 'struggle to fully realise human rights for people with disabilities'.³

This paper considers the intersection of the United Nations' human rights treaties and conventions and their relevance for ensuring respect for the fundamental rights of all persons with disabilities to participate in an ordinary, inclusive life in Australia. We explore the position

¹ Productivity Commission Inquiry Report. *Disability Care and Support*. 31 July 2011.

² Helen Dickinson, 'Will the NDIS and individualisation of disability services enhance human rights?' *Right Now*, 22 February 2016.

³ Helen Dickinson, 'Will the NDIS and individualisation of disability services enhance human rights?' *Right Now*, 22 February 2016.

that, notwithstanding the many and varied sources of agreement on the importance of protecting and promoting the human rights of people with disabilities in Australia, we presently do not walk the human rights talk in Australia.

We invite discussion on ways to progress towards the goal of ensuring all people with disability enjoy an ordinary and inclusive life and translate the distinct yet common visions of the NDS, NDIS and international human rights treaties into reality.

Detailed Synopsis

A: The relevance of the NDS, in the context of Australia's international human rights obligations concerning people with disability and the opportunities created by the NDIS

The National Disability Strategy 2010-2020 (NDS) is a 10 year national policy framework designed to improve life for Australians with disability and their families and carers. The NDS is the culmination of commitment by all levels of government, industry and the community to a unified national approach to policy and program development. Marketed as a means by which Australia would become an inclusive, enabling and equal environment for those with and without disabilities, the NDS was designed to complement the commitments Australia made by signing and ratifying the Convention on the Rights of Persons with Disabilities (CRPD).

The vision of the NDIS was to enhance the choice and control afforded to all Australians with disability.

B: Human rights treaties – what they say (not what we do)

The UN treaties and conventions that are relevant to the rights of people with disability to enjoy an ordinary and inclusive life are:

- Convention on the Rights of Persons with Disabilities (CRPD)
- International Bill of Human Rights, comprised of:
 - ❖ Universal Declaration of Human Rights (UDHR)
 - ❖ International Covenant on Civil and Political Rights (ICESCR)
 - ❖ International Covenant on Economic, Social and Cultural Rights (ICCPR) (and two Optional Protocols)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT).

Common to all of the UN treaties and conventions is recognition of and respect for a core collection of human rights which, together, provide a strong protective cushion – in theory at least. Many of the human rights proclaimed by a majority of the UN treaties and conventions are essentially the same human rights (such as the right to life), although they may be slightly differently expressed. This is so whether it is a general human rights treaty (such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political

Rights or the International Covenant on Economic, Social and Cultural Rights) or a subject-matter specific treaty (such as the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child or the Convention Against Torture). QAI asserts that this builds a compelling case for the universal acceptance of these rights as core human rights that should be explicitly protected for all people, by enacting them in Australian legislation that is binding at both a state and territory level.

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly in December 1948, was for more than a quarter of a century following its creation the sole human rights benchmark for the international community. The UDHR, as a universal declaration, is just that – it makes declaratory statements about the existence and importance of human rights for all human beings, irrespective of where they reside and whether or not their country has formally accepted the principles of the UDHR. As such, it articulates fundamental human rights principles to which all countries should aspire without creating any binding contractual obligations. While the UDHR is not legally enforceable, it set the moral and legal benchmark for human rights protection and provided a basis for the development of a host of international treaties and conventions, as well as national constitutions and human rights laws and charters. The subsequent creation of the ICESCR and the ICCPR and Optional Protocols, for example, provided a means of implementing the legal and moral obligations established by the UDHR, strengthening the UDHR and realising its provisions. Yet the realisation of these rights in Australian law remains limited – we do not have an international or supra-national court with jurisdiction to prosecute human rights breaches or instances of non-compliance with human rights treaties (by way of contrast, consider nations subject to the jurisdiction of the European Court of Human Rights) and this significantly weakens the practical power of international humanitarian law.

The scope of the UN human rights Covenants are not quite so universal as the UDHR – they exist in the form of multilateral conventions and are therefore only legally binding on those countries that have formally accepted them, by ratification⁴ or accession.⁵ So whilst the UDHR is broader and more aspirational, the UN conventions and treaties seek to express fundamental human rights in a way that countries can and should commit to in a way that can be practically realised.

The Convention on the Rights of Persons with Disabilities is the most comprehensive of the UN conventions insofar as the human rights of persons with disabilities to live an ordinary and inclusive life are concerned. The CRPD specifically focusses on the human rights of persons with disabilities and addresses and protects core rights in two key ways:

- demanding protection from the most flagrant types of rights abuses (this includes freedom from discrimination, torture and cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse); and

⁴ Formal validation of a proposed law, usually achieved by vote.

⁵ The absolute or conditional acceptance by one or several states, of a treaty already concluded between one or several states, of a treaty already concluded between other sovereignties.

- establishing positive rights (including the right to privacy, freedom of movement, access to justice and to **inclusive** health, housing, education and employment).⁶

The other conventions touch on many of these same rights, sometimes from the perspective of a particular, vulnerable group such as children (Convention on the Rights of the Child) or ethnic minorities (Convention on the Elimination of All Forms of Racial Discrimination) and sometimes in the form of blanket protection for certain types of rights (Convention Against Torture). Even where they apply to different vulnerable groups, there are many similarities – consider the shared experiences of abuse, detention and exclusion that are sadly often the plight of both people with disabilities and refugees.

As another international regulatory mechanism, there are a number of international bodies established to monitor compliance with the treaties and conventions and assess the human rights performance of members States, such as Australia. The UN Human Rights Council and the Office of the High Commissioner for Human Rights were established to oversee the protection of human rights. They can issue recommendations regarding human rights, such as during a Universal Periodic Review. There are eight UN-linked human rights treaty bodies, to which member States must submit regular reports on the implementation of rights under the Convention and which in turn make recommendations in the form of ‘concluding observations’. It is also the function of officers such as UN Special Rapporteurs to investigate, monitor and recommend solutions to specific human rights problems.

Yet while specific penalties and sentences are imposed by countries and states on people who breach domestic laws (relevantly here, the laws of Queensland or Australia), there is no robust equivalent at an international level. For example, breach of a provision of the Queensland Criminal Code can result in the imposition of a penalty such as a term of imprisonment; breach of a provision of the CRPD cannot. The conventions and the recommendations made by UN bodies are recommendatory only, rather than legally binding with a penalty imposed for breach and the system essentially relies upon countries wanting to respect human rights and to establish a positive reputation in this regard within the international community. At least in the Australian experience, this is not always a sufficiently compelling motive to respect human rights to which we have committed, particularly where there is a perceived economic or political cost to do so. Sadly, in Australia in recent years we have increasingly distanced ourselves from our previous leadership and highly regarded reputation in the human rights arena. This now leaves Australia open to judgement and lack of credibility when casting aspersions on the human rights breaches of other countries.

In light of the non-binding nature of both the UN Conventions and the recommendations made by UN committees reviewing members States’ compliance with the conventions, NGOs and other organisations and individuals that advocate to protect and defend human rights

⁶ Note that the word ‘inclusive’ is stipulated in the CRPD to address the historic and traditional exclusion experienced by people with disability over the centuries and in more western societies: L. Chenoweth. ‘A brief history of Institutions: Some fundamental assumptions’. Presentation given at Queensland Advocacy Incorporated’s *Renaissance: Now or ??* Forum. August 2014.

within their respective countries play an important role in working to implement the UN conventions and recommendations.

QAI contends that the human rights fault line is not at the point of recognition or understanding of human rights, but at the point of translation from the international to the national level of legal regulation. The Australian Government must honour the commitments it has made in signing and ratifying the international treaties by enacting a full set of legislation that comprehensively implements these human rights in Australian law.

C: Focusing on specific areas

The cross-over between the subject matter of the various international human rights treaties and the focus on people with disability can mean that a particular human rights violation can simultaneously give rise to a rights breach under several different UN conventions and could also be the subject of recommendations by several different UN committees, councils or Special Rapporteurs.

Some of the more general human rights that may be of relevance for persons with disability are protected by all or most of the core human rights treaties. For example:

- the **right to equality and non-discriminatory treatment** is proclaimed by Article 5 of the CRPD, Article 2.2 and 3 of the ICESCR, Article 2 of the CRC, Article 2 of the CEDAW and Article 5 of the CERD;
- the **right to participate in political and public life** is protected by Article 25 of the ICCPR, Article 1.1 of the ICESCR, Article 7 of the CRC, Articles 7 and 8 of the CEDAW and Article 5(c) of the CERD;
- **liberty and security of the person** is proclaimed in Article 14 of the CRPD, Articles 9 and 10 of the ICCPR, Article 5.1 of the ICESCR, Articles 16.1 and 9 of the CRC and Article 5(b) of the CERD;
- **freedom from torture and cruel, inhuman or degrading treatment or punishment** is proclaimed in Article 15 of the CRPD, Articles 7 and 10 of the ICCPR, Articles 2.2, 9, 37 and 39 of the CRC and Article 16 of the CAT;
- **freedom from exploitation, violence and abuse** is proclaimed in Article 16 of the CRPD, Articles 9, 32, 36, 37 and 39 of the CRC, Article 6 of the CEDAW and Article 2.1 of the CAT;
- **respect for the home and the family** is proclaimed in Article 23 of the CRPD, Article 23 of the ICCPR, Article 10.1 of the ICESCR, Articles 5, 8 and 21 of the CRC, and Articles 13.1 and 16 of the CEDAW;
- the **right to education** is proclaimed in Article 24 of the CRPD, Articles 13 and 14 of the ICESCR, Articles 28 and 29 of the CRC, Article 10 of the CEDAW and Article 5(e)(v) of the CERD;
- the **right to health** is proclaimed in Article 25 of the CRPD, Articles 11.2 and 12 of the ICESCR, Articles 3, 17, 24 and 25 of the CRC, Article 12 of the CEDAW and Article 5(e)(iv) of the CERD;
- the **right to work and employment** is proclaimed in Article 27 of the CRPD, Articles 6.1 and 7 of the ICESCR, Article 11 of the CEDAW and Article 5(e)(i) of the CERD;

- the **right to an adequate standard of living and to social protection** is proclaimed in Article 28 of the CRPD, Article 1.1 of the ICESCR and Article 27 of the CRC;
- the **right to participate in political and public life** is proclaimed in Article 29 of the CRPD, Article 25 of the ICCPR, Article 1.1 of the ICESCR, Article 7 of the CRC, Articles 7 and 8 of the CEDAW and Article 5(c) of the CERD;
- the **right to participate in cultural life, recreation, leisure and sport** is proclaimed in Article 30 of the CRPD, Article 27 of the ICCPR, Article 15.1(a) of the ICESCR, Articles 17, 18.3, 30 and 31 of the CRC, Article 13.3 of the CEDAW and Article 5(e)(vi) of the CERD.

The mutual recognition of these core human rights across a diversity of important human rights instruments demonstrates the fundamental importance of these human rights, as recognised by a large sector of the international community (including Australia). This provides a compelling argument for the formal adoption of these core human rights in Australian law, in a way that is binding on all actors at both a state and federal level.

D: The reality of human rights protections in Australian law

There is currently ad hoc and incomplete legislative protection of human rights at a state level in Queensland and at a federal level. There are some human rights protections found in certain statutes, but they are piecemeal and not sufficiently robust or effective.

In the laws pertaining to persons with disabilities, we note the following human rights protections:

- Anti-discrimination law – the *Anti-Discrimination Act 1991* (Qld) and the *Disability Discrimination Act 1992* (Cth). While these statutes arguably provide the strongest legislative protection for human rights in Queensland at present, they are very limited in their strength, coverage and enforceability and weakened by the breadth of the exemptions to the legislation.
- Guardianship law – paradoxically, the General Principles, which purport to protect a person’s human rights can serve both as a sword and a shield to the recognition of human rights. This is evident when entities (both government and non-government) give a weighting to the separate principles so that one is seen as more important than the other. For instance, some statutory bodies consider *Principle 10 – Appropriate to the circumstances* as being more important than *Principle 2 – Same human rights*. As a result, the decision-making process is skewed to the statutory body’s objective and not necessary that of the individual. In QAI’s experience references to human rights in the GAA and General Principles are not operative, merely declaratory in effect. QCAT hearings appear to be influenced by the tribunal member’s ideology and the fact that guardianship grew from and remains part of a paternalistic system. In reality this means that it is difficult to anticipate with any accuracy any outcome even if the factual scenarios are similar. Whilst some members will focus on the individual as autonomous and endeavour to uphold their rights, others succumb to the competing demands to expedite a decision, or to acquiesce to a more powerful voice of government, service providers or other authorities to control or protect that individual or others. A Human Rights Act would

ensure that the individual's rights are upheld more robustly than currently occurs.

- The *Disability Services Act 2006* (Qld) – this Act purports to acknowledge and safeguard the rights of people with disability, promote their inclusion in the community, ensure they have choice and control in accessing services and that the services they receive are safe, accountable and responsive to their needs. The DSA is built around the principle that people with disability have the same human rights as others. Yet a key problem with this legislation (that is not unique to the DSA) is that the drafting of the legislation insofar as human rights principles are concerned is declaratory only – there are no operative provisions that translate this broad statement into practice, nor are any of the other human rights contained in the CRPD, or more generally in international law, recognised or incorporated. This is a significant practical hurdle. However, it illustrates the general approach taken by Parliament to human rights (not only in disability-specific areas, but across the board): we support human rights in theory and will happily state it, but we will not accompany this declaration of support with any concrete measures that mean that human rights are actually respected or protected in practice.
- The *Mental Health Act 2000* (Qld), and forthcoming *Mental Health Act 2016* (Qld) offers some human rights principles, including in the general principles underpinning administration of the Act
- The *Forensic Disability Act 2011* (Qld) also contains some recognition and stated protection of human rights principles.

QAI's experience is that, particularly insofar as the *Disability Services Act 2006* (Qld) and the *Forensic Disability Act 2011* (Qld) are concerned, the human rights principles are no more than empty promises – we are yet to see respect for the human rights of a person with disability subjected to a Forensic Order (Disability), for example.

In general, Australia significantly struggles to translate the different human rights into practice, perhaps particularly where it comes to vulnerable people with disability. There are a number of reasons for this.

- Firstly, we have some gaps in knowledge and understanding about how to do this in practice. While the Conventions all articulate strong visions of equality and rights protections, in certain areas (including mental health and mental capacity law in particular) there can be different views about how to give practical effect to these visions.⁷ This is noted to be the case with aspects of the CRPD – in particular, with how to achieve the paradigm shift required by the CRPD to a supported decision-making model. While academics and officials are struggling to grapple with the means of safeguarding while respecting the human rights of people with disability, at all levels respect for the will and preference of the person should be the first and foremost consideration, provided that they have all the information, guidance and support necessary to make the decision. Anything that interferes with this final decision should be subject to scrutiny and review. The CRPD seeks to ensure that all people with disability will enjoy the same rights as

⁷ See P Bartlett, 'The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law' (2012) 75(5) *Modern Law Review* 752 for a discussion of this issue.

everyone else where possible. In the decision-making realm, some people with disability may need support to do so. In circumstances where there is a decision which a person clearly cannot make, the substituted decision-making model supersedes the supported decision-making model in that instance only. This approach to decision-making is, from QAI's perspective, far preferable to applying the 'best interests' approach – a substitute decision-maker should be in a position to know what the person would decide if they had capacity; a decision purportedly made in the 'best interests' of a person can be made by a person who doesn't even know the person and thus would be unlikely to be able to gauge what their preference would be.

- People with disability are also largely invisible from human rights discourse. Scholars such as Phillip French argue that there has been a failure to substantially recognize persons with disability as right-bearers, and a tendency to view the needs and concerns of persons with disability in terms of social development and population health rather than in terms of human rights.⁸
- The somewhat abstract and general nature of the traditional formulation of some key human rights has created difficulties in the application of these rights with certainty to specific violations more likely to be, or uniquely, experienced by persons with disability; and
- There is also a lack of disability-related experience and expertise in human rights protection and implementation agencies.
- Funding is another issue – Australia is prepared to invest significant funding into certain measures (including incarcerating a disproportionately high proportion of the population of people with disability, in prisons and forensic detention and mental health facilities, and funding certain service providers to apply Restrictive Practices on people with disability). However, in other ways we are reluctant to allocate sufficient funding, including for appropriate personal, social, habilitative and rehabilitative supports to people with disability to live in the community.

E: Opportunities for reform – points for discussion

- ❖ How can we help to translate the NDS vision into reality?
- ❖ How can we strengthen the international legal jurisdiction?
- ❖ What is the role of international opinion and sanctions in compelling decision-makers within a country to heed international legal norms?
- ❖ What kind of grass roots action can prompt compliance with international humanitarian law? In Australia we have seen examples where social movements have heralded significant, positive change. For example, the 'One Punch Can Kill' campaign, Rosie Batty's leadership in the area of domestic violence, and the movement towards same sex marriage all drew a broad and varied support base and made a significant positive impact. What are the core ingredients needed to build a successful grass roots movement to protect the human rights of people with disability?
- ❖ The NDIS, as it stands today, has been constructed differently to the aspirations and

⁸ Phillip French, Jeffrey Chan and Rod Carracher, "Realizing Human Rights in Clinical Practice and Service Delivery to Persons with Cognitive Impairment who Engage in Behaviours of Concern" (2010) 17(2) *Psychiatry, Psychology and Law* 245, 245-6.

hopes of people with disability, the proponents of the NDIS and the Productivity Commission. How can we address some of the core concerns with the NDIS, from a human rights perspective, which include:

- many people with disability will be ineligible for an NDIS funding package;
 - the only 'choices' supported by the NDIS will be mainstream choices that align with the National Disability Strategy vision – more creative choices that depart from traditional care service patterns may not be supported;
 - the NDIS does not address structural inequality;
 - the NDIS does not challenge broader barriers to inclusion, nor does it provide funding for many of the types of services and programs that offer pathways to greater inclusion.⁹
- ❖ How can we hold decision-makers more accountable for human rights breaches?
 - ❖ Consider some of the following proposals:
 - The introduction of **legislative protection of human rights**. Alternatively, a commonly discussed solution to addressing the deficits in statutory human rights protection in Queensland, and Australia, is the amendment of existing legislation. Do you think this is a reasonable proposal? QAI has favoured the approach of introducing a Human Rights Act to the introduction of a collection of amending Acts, for reasons of simplicity, completeness and the impact that the introduction of a Human Rights Act has in making a statement about the value of human rights in Queensland and Australia. In addition to a Human Rights Act, we think there is a need for a Disability Justice Plan to safeguard the human rights of people with disability.
 - **The development of human rights indicators** to protect vulnerable people in key areas.
 - **The enactment of implementation legislation** – UN conventions and treaties are not binding within the laws of Australia unless specifically included in Australian state or federal legislation. It is therefore vital that the Australian Government enact domestic legislation that implements the obligations which it has agreed to respect and protect. In the absence of this step, and in the absence of effective international execution mechanisms, the conventions are unenforceable and not mandatory - offering no concrete protection against human rights violations. In Australia, the CRPD is referred to in state and federal legislation. However, at times the references can be incongruent with the intent and provisions of the CRPD. A clear example of this can be seen in the case of the indefinite detention of persons with an intellectual or cognitive impairment within the Forensic Disability Service Unit in Queensland (discussed above). This is purported to be within the context of the CRPD human rights framework yet is in practice counter to the aims and intent of the CRPD. This demeans the intentions of the Australian government when it signed and ratified the CRPD, and demeans the CRPD itself. Clear and accurate translation of our obligations as signatories to each of the human rights treaties would help to guard against the practice of utilising these treaties to justify government-sanctioned action that is directly contrary to both the spirit and intent of the relevant UN convention.

⁹ Helen Dickinson, 'Will the NDIS and individualisation of disability services enhance human rights?' *Right Now*, 22 February 2016.

- **Ensuring successful follow-up of UN recommendations** – Media and concerted social media reporting to the public widely of the existence of the obligations, and of any relevant UN recommendations specific to Australia will engage the public in debate and discussion around key issues. This can best be illustrated by offering key examples that will prompt public engagement and grass roots movement. International law is often seen as an abstract and theoretical concept that is largely irrelevant to Australia. This is a false assumption that must be challenged and dismantled.
Ensuring relevant institutions are aware of the obligations and recommendations, and of their potential role in respecting the obligations and actioning the recommendations.
- **Lobbying relevant Government Ministers and politicians** to take action within their portfolios and areas of coverage and to put pressure within caucus for action by the Government. Public shaming of government and statutory bodies or service providers that continue to flout the human rights of people with disability will be a motivation to change laws, policies, abuses and poor practices.
- **The role of the judiciary** – judges can incorporate relevant UN Recommendations, Concluding Observations and Views of treaty bodies to help determine the just outcome in a particular case. It is important for human rights lawyers to bring these recommendations and observations to the court's attention in relevant cases, generating awareness of them by the judiciary and hopefully persuading the judge to incorporate them into Australian case law. It is possible for lawyers to do this not only when representing a party to a proceeding, but as a special interest intervenor or friend of the court in a matter in the public interest. This latter option significantly broadens the scope for community legal organisations and NGOs to become involved in cases impacting on the human rights of vulnerable groups, such as persons with disability.
- **Ratification of the Optional Protocol to the Convention Against Torture** – Australia signed the OPCAT on 19 May 2009 yet has failed to give it teeth by ratifying it. Many of our present practices are not consistent with the CAT. Ratification of the OPCAT would commit Australia to establishing National Preventive Mechanisms (NPMs) to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment falling short of torture. In practice, what this means is that Australia would be committed to opening up all places of detention in Australia, as well as relevant offshore locations (primarily military and immigration detention facilities), to inspection and establishing inspection facilities for these institutions. The types of institutions are many and varied, and include prisons, juvenile detention institutions, police stations, locked psychiatric wards and immigration detention centres, as well as prisoner transport, court security, military detention facilities and aged care hostels – all institutions where residents are detained involuntarily. Transparency and public scrutiny not only protects and safeguards detainees, but signifies to them that the public cares about them, and those who work there. With that knowledge and connection, people residing in detention will not be quite so isolated and scared, and improved relationships will eventually and inevitably lead to earlier release.

Conclusion

The intersection of the international human rights treaties in core areas strengthens, rather than detracts from, the human rights that overlap. The proclamation of fundamental human rights in a variety of international human rights treaties demonstrates the widespread importance of these rights for all people, everywhere. Some of these rights are then tailored to a particular vulnerable group – this is the work of the CRPD for people with disabilities.

Many of the human rights treaties, including the CRPD, remain measured to some degree against the human rights yardstick that is the UDHR, which remains unique in applying to all humans irrespective of their country of residence and whether that country has signed or ratified other human rights instruments. As the initial, authoritative statement of the importance of respecting human rights, it continues to be the benchmark for humanity's common means of defining core human values and dignities. The UDHR has been strengthened by the conventions that have followed it, which have provided a lawful basis to assert key human rights at the international level.

French and associates assert:¹⁰

Although human rights in their original formulation have always applied to persons with disability on the same basis as they have applied to others, in reality these rights have largely failed to penetrate to the principal sites of human rights violation experienced by persons with disability. Even where human rights discourse and practice have penetrated to some degree, it is strongly arguable that implementation efforts have not been sufficiently precise, or sufficiently potent, to enliven the full beneficial content of key human rights.

The CRPD stipulates 'inclusive' health, housing, education, employment etc as a strong statement to redress the hundreds of years of exclusion experienced by people with disability. This exclusion is the foundation of the discrimination, neglect, abuse, control and coercion, isolation, segregation, congregation, and restriction that continues to be imposed and accepted practice for many years, despite the illusion that our society has evolved civilly by ratifying the CRPD. One need only peruse the legislation, policies and practices that, by their very existence, are devaluing and discriminatory against people with disability, in that they are not imposed on any other members of Australian society. This is because we still have not emerged from under the rock of austere patriarchy that recoils from advancing people with disability into the centre of Australian citizenship.

People with disability are the only Australians who are:

- Forced or coerced to live with strangers not of their choosing, in dwellings not of their choosing, in locations not of their choosing, and escalating their chances of sexual abuse, violence, exploitation, eviction and homelessness;

¹⁰ Phillip French, Jeffrey Chan and Rod Carracher, "Realizing Human Rights in Clinical Practice and Service Delivery to Persons with Cognitive Impairment who Engage in Behaviours of Concern" (2010) 17(2) *Psychiatry, Psychology and Law* 245, 245.

- Shunted to private hostels and for-profit boarding houses where they are charged 85% of their pension for sub-standard food, with no privacy for visitors, phone calls, or even personal care;
- Subjected to the application of Restrictive Practices (drugging, bondage, imprisonment, isolation, chemical castration);
- Indefinitely detained without having been convicted of a crime;
- Paid slave wages for work.

To elevate people with disability to the equitable ordinary life enjoyed by other Australians, will require vigorous and sustained action, with the abovementioned extremes addressed before the national rollout of the NDIS.

It is well recognised that paradigmatic shifts are initially accompanied by disbelief and resistance,¹¹ then following by acceptance and incorporation as a cultural norm. Research also shows us the potential for changes in law to powerfully impact upon mindsets in a particular area. In the context of the international humanitarian reforms brought about by the CRPD, Lord and Stein explain:¹²

Human rights norms have power to work change through non-legal mechanisms.... [They] trigger belief changes by providing information to societies about the human rights ideas with the attendant effect of serving as educational tools for altering social mores.

We must compel the Australian Government to initiate this paradigm shift, and begin the process of formalising and normalising human rights protection that should have been commenced long ago.

¹¹ Kristen Booth Glen, 'Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship and Beyond' (2012-2013) 44 *Columbia Human Rights Law Review* 93, 99.

¹² Janet E Lord & Michael Ashley Stein, 'The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities' (2008) 83 *Washington Law Review* 449, 474-75.