



Dear High Commissioner for Human Rights

I understand that Australia's human rights performance is currently under review through the United Nation's process of Universal Periodic Review (UPR) — see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

I write in relation to Australia's Human Rights obligations to the growing number of Australians who are diagnosed with autism spectrum disorders, a group who mostly experience severe or profound disability through their entire lives.

I am sorry I did not respond more quickly to this review. I only became aware of it recently. The Australian Government funds various advocates for people with a disability but does little to help organisations advocating for people with autism spectrum disorders (see the attached response from Government). People with primary care responsibility for someone with an autism spectrum disorder do not generally have the capacity to monitor the processes of international law, especially when their government avoids involving them in such processes.

I understand you received submissions from the Australian Government (see http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_WG6_10_AUS_1_Australia.pdf) and from the government-funded Human Rights and Equal Opportunities Commission (see http://www.hreoc.gov.au/upr/upr_submission2010.html).

Both these submissions paint Australia's position on human rights more positively than is the experience of Australians with autism spectrum disorders though the Human Rights and Equal Opportunities Commission provides an appropriate summary ...

While Australia has a strong record of ratification of human rights treaties, there remains an 'implementation gap' domestically.⁷ The Australian Constitution and common law provides limited human rights protection.⁸ The absence of an entrenched guarantee of equality / non-discrimination in the Constitution is of particular concern due to current laws that discriminate against Indigenous peoples on the basis of race.⁹ While there are federal, state and territory discrimination laws, there are inconsistencies between them and their coverage varies and is not comprehensive.¹⁰ There is no other comprehensive human rights protection legislation and access to remedies for human rights breaches is accordingly limited.¹¹ **The Commission recommends that the Government fully incorporate into Australian law its human rights obligations, including through the adoption of a federal Human Rights Act.** The Australian Human Rights Commission's resources have also not kept pace with demand for its services, with the six statutory offices which constitute the Commission currently filled by four individuals¹² and substantial increases in complaint handling loads having led to backlogs in complaint handling.¹³ The Commission is particularly concerned that there is no national policy focus or monitoring of the rights of the child. **The Commission further recommends that a National Children's Commissioner be established to monitor compliance with the CRC.**

Para. 4, page 4 (references can be found in the source document)

The available data suggests there is substantial under-diagnosis of autism spectrum disorders in Australian adults. The most obvious consequence is that any prospect for or right to access disability services or support is unrecognised.

Australia has multiple levels of Government. The federal or national government is responsible for employment and supported accommodation. But the Government is not doing well in these areas. It has recognised that the indigenous population is doing very badly ... but it has not recognised that people with autism spectrum disorders are also doing very badly.

For example, the submission from the Australian Human Rights and Equal Opportunities Commission expresses concern over supported accommodation for people with a disability (paragraph 13, page 6) but the Government's submission indicates that to get the attention of the Australian federal government families may have to kick their adult child with an autism spectrum disorder (who typically cannot live independently) out of home so they are homeless ... and then the government will only attend to half of them by the year 2020 (paragraph 129, page 20).

The Government's refusal to recognise adequately the needs of people with autism spectrum disorders is a refusal to address basic issues of human rights.

While Australia has "ratified" several United Nations treaties on Human Rights, it has not taken the next crucial step of turning those treaties into law. For example, the UN Convention on the Rights of the Child gives a child the right to treatment, rehabilitation and education. These rights are not supported by Australian law or the legal system in Australia.

In relation to education, the Australian High Court decided in *Purvis vs NSW* (see <http://www.austlii.edu.au/au/cases/cth/HCA/2003/62.txt>) that any school can exclude a student if they fear or just do not like the child's behaviour. Many Australian schools simply exclude students with autism spectrum disorders when staff in a mainstream classroom cannot manage the child's behaviour ... often as a result of the school's inability to accommodate adequately a child with an autism spectrum disorder.

This denies many children with autism spectrum disorders equal access to education ... and the child's primary carer equal access to employment and economic participation. I suggest this is discrimination against students with autism spectrum disorders and their associates.

Clearly, the Australian Parliament sees discrimination against students with autism spectrum disorders as appropriate and the High Court of Australia regards such discrimination as lawful.

In Australia, many services and supports for people with a disability are the responsibility of the second level of government ... known as the state and territory governments.

The federal government funds the states and territory government to provide services and to report back on the services provided. The reports show that fewer than half of the children known to be diagnosed with an autism spectrum disorder actually get any service at all under this arrangement.

Clearly, "the state" (being both the federal and state/territory governments in Australia) is not meeting its responsibilities to protect the rights of children with autism spectrum disorders.

A recent report on the human rights provisions in the Australian Capital Territory show that the legal system at the state/territory level is seriously inadequate (see http://acthra.anu.edu.au/ACTHRA%20project_final%20report.pdf).

As well as problems with the law and the education of people working in the legal system, the legal system is dysfunctional in other ways. For example, discrimination matters take far too long: the seven distinct complaints that are all written up in *Woodbury & ors v Australian Capital Government [2007] ACTDT 4 (5 April 2007)* (see <http://www.austlii.edu.au/au/cases/act/ACTDT/2007/4.html>) took 6 to 10 years to hear, so there was no prospect that a decision could benefit the children involved. In the end, the Tribunal decided that proof the Government provided treatment and rehabilitation for most children but offered no rehabilitation for a child with Autistic Disorder, does not prove discrimination. The Tribunal decided that even had it accepted/understood this as proof of discrimination, such discrimination by the ACT Government would be “lawful discrimination”. The decision shows Australia’s position on disability discrimination. It says ...

122. Even if there had been discrimination, a number of “defences”, in particular section 27, would have applied in favour of the [Government].

People should have a right to a competent and timely legal system. Australians with a disability do not.

The judiciary in Australia accepts evidence from government officials that is clearly fabricated (I am happy to provide specific instances for anyone who is interested in this matter). So there is little or no prospect of challenging Government officials on decisions affecting the human rights of people with autism spectrum disorders through dysfunctional legal systems in Australia.

Australia is proud of its “equal opportunity” measures. People with paraplegia or quadriplegia experience the same gravity as everyone else: they have an equal opportunity to walk. The blind are bathed in the same photon levels as others ... so they have an equal opportunity to see. And people with autism spectrum disorders can apply for the same jobs as others ... they have an equal opportunity to work and to live independently.

The Australian Government does not recognise that equal opportunity may not help equalise outcomes.

The Australian Government does not recognise that its recently introduced *Helping Children with Autism* package provides around 5% of the essential early intervention that advice from its own Health Department says they need. I doubt that 5% of a cochlea implant would help a child hear and 5% of a course of antibiotics helps breed resistance.

Through its legislation, the Australian Government denies people with autism spectrum disorders the right to treatment, rehabilitation and education. It does not ensure their safety (including their *right to life*) when they are not in the care of their parents ... so vulnerable people with autism spectrum disorders die while they are in the care of government funded services.

Commentators from Aristotle to Gandhi, from Pearl S. Buck to George Bush are quoted as saying “a nation's greatness is measured by how it treats its weakest members”. On this measure, Australia performs poorly and could improve substantially.

Yours sincerely

R. Buckley
Convenor



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