

Forced Medication in Australia: An International Perspective

Numerous international recommendations and the [United Nations Convention on the Rights of Persons with Disabilities](#) (UNCRPD) condemn forcible medication, yet it continues to be allowed under Australian law.

Australia was the only country of the 79 that have ratified UNCRPD to reserve its right to forcibly medicate the disabled.

Australia is a signatory to the United Nations Convention on the Rights of Persons with Disabilities, and has done much to improve the standards and mechanisms for people with disabilities in Australia.

However there is still more to be done according to the [recent observations](#) of the Committee on the Rights of Persons with Disabilities (the body of human rights experts tasked with monitoring the implementation of the Convention).

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The main concerns of the Committee were that:

1. Australia 'has not to the full extent enacted legislation that corresponds to the contents of the Convention';¹
2. 'that there is a lack of mechanism for consultation and engagement between Government and persons with disabilities and their organisations in all matters of Convention policy development and legislative reform.'²
3. 'The Committee is concerned that the scope of protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than under the Convention and does not provide the same level of legal protection to all persons with disabilities.'³

In particular, the issue of forced medication on people with disabilities (who are capable of making decisions for themselves) is one which requires significant change in Australia, as the forcible administration of powerful drugs with often very destructive side-effects remains legal (in NSW and similar legislation in all other Australian jurisdictions) under the *Charter for Mental Health Care* and the *Mental Health Act 2007*, (NSW) [s 84](#).

Although the Committee's concerns do not explicitly address the issue of forcible medication, this is because Australia ratified the Convention in 2008 subject to the reservation that:

Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. "Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards." (http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#EndDec)

According to prominent International law expert Professor Stephen Hall, 'it is not uncommon for states to make declarations concerning their understanding of a treaty's meaning or effect,' these provide 'a mechanism by which a State can tailor the terms of a treaty, the text of which has already been adopted, to its own will.'⁴

¹ Concluding Observations of the Committee on the Rights of Persons with Disabilities, 4 October 2013, point 8

² Concluding Observations of the Committee on the Rights of Persons with Disabilities, 4 October 2013, point 10

³ Concluding Observations of the Committee on the Rights of Persons with Disabilities, 4 October 2013, Point 14

⁴ Hall, *Principles of International Law* (3rd ed. LexisNexis Butterworths, 2011) 97

The above 'interpretive declaration' is one that allows the forced medication of disabled people to continue, legally, in Australia. As demonstrated in the ongoing case of [Saeed Dezfouli](#), the qualifications of 'where such treatment is necessary, as a last resort and subject to safeguards' are clearly being used far too liberally (and were likely designed with this in mind).

Unfortunately, due to the structure of Australian National law, the Australian government is entitled to make reservations such as these, even though Australia was the only one out of the 79 countries who have ratified the convention, to make such a reservation. Consequently, the international community has no sway to prevent such 'interpretive declarations', even where they allow direct violations of the convention such as these to occur. (Except where, under article 19 of the Vienna Convention on the Law of Treaties, the reservation is incompatible with the objects and purposes of the treaty).

Perhaps there remains an argument as to whether these reservations, and the forcible medication that they allow, are contrary to the objects and purposes of the Convention, but there aren't any consequences even if they are, it would just mean that Australia wouldn't be part of the treaty.

The recommendations of the Commission are similarly incapable of causing actual policy change, although there is clearly much work to be done in the broader area of disability rights in Australia. Thus it falls to us as Australians to rectify this injustice ourselves. Australia needs to catch up with the rest of the world and start truly giving people with disabilities a fair go.

Thus it remains up to us, to you, to spread the word and fight to achieve changes in the Australian policies and laws regarding forcible medication on people with disabilities and disabled people in the care of the Australian criminal justice system.