

## Introduction to human rights

This resource has been developed by National Disability Services (NDS), as part of the Person Centred Approaches Program, to assist individuals and organisations understand the key elements that support a human rights-based approach.

The Person Centred Approaches Program or PCAP is a state-wide professional development program consisting of information and support for not for profit disability organisations. Underpinning the PCAP is the understanding that a human rights-based approach is central to providing a truly person centred, individualised support options to people with disability.

‘Until the concept of disability disappears and is replaced by a society that is structured to support everyone's life relatedness and contribution - until that day my life and opportunities and the lives of every other person who carries the label ‘disabled’ depends on the goodwill of people in the human service system. Goodwill is no substitute for freedom’.<sup>1</sup>

## Human rights definitions

Human rights can be summarised as:

- Recognising and respecting the inherent value and dignity of all people
- Rights inherent to all people regardless of nationality, residence, gender, origin, colour, religion, language or other status. These rights are interrelated, interdependent and indivisible<sup>2</sup>

Article 1 of the *United Nations Universal Declaration of Human Rights* (UNHR) states: ‘all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’. Kofi Annan, former Secretary General of the United Nations stated ‘human rights are what reason requires and conscience demands. They are us and we are them. Human rights are rights that any person has as a human being; we are all deserving of human rights. One cannot be true without the other’.

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<sup>1</sup> Australian Government, 2009, Shut Out: The experiences of people with disability and their families in Australia, National Disability Strategy Consultation Report prepared by the National People with Disabilities and Carers Council

<sup>2</sup> United Nations Human Rights Office of the High Commissioner for Human Rights 2013, ‘What are Human Rights?’ Viewed May 2013, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

## **United Nations Convention on the Rights of Persons with Disabilities 2006**

The United Nations Convention on the Rights of Persons with Disabilities 2006 (UNCRPD) recognises that people with disability have the same rights as other people. The Convention aims to to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

## **Disability reforms**

### **National Disability Agreement**

The National Disability Agreement is a shared agreement between the Australian, State and Territory governments that provides the policy and financial framework for disability services. The Agreement outlines the governments' responsibilities for:

- Provision of disability services;
- Funding services to people with disability;
- Compliance with legislation; and
- Putting policy into practice.

The Agreement provides benchmarks, indicators and directions for policy and reform, which all governments are required to meet.

### **National Disability Strategy**

The National Disability Strategy provides a 10 year plan for improving the lives of Australians with disability, their families and carers. The Strategy reflects a unified commitment by all levels of government, industry and the community to address the barriers that people with disability face and aims to provide an inclusive society that enables all Australians with disability to fulfil their potential. The Strategy plays an important role in protecting, promoting and fulfilling the human rights of people with disability (an obligation set out in the UNCRPD).

The National Disability Strategy covers six key areas for reform:

- Inclusive and Accessible Communities
- Rights Protection, Justice and Legislation
- Economic Security
- Personal and Community Support
- Learning and Skills
- Health and Wellbeing

## **DisabilityCare Australia**

During 2011, the Productivity Commission undertook an inquiry into the feasibility of introducing a long-term disability care and support scheme in Australia. The Productivity Commission concluded that Australia should introduce a National Disability Insurance Scheme (NDIS).

The NDIS, now known as DisabilityCare Australia (DCA), provides a national disability insurance scheme for all Australians. Through providing individualised supports and community linkages for people with permanent and significant disability, DCA enables rights, inclusion and participation in society for all Australians with disability. The scheme commenced roll out in a number of launch sites from July 2013.

## **Stronger Together (NSW)**

Stronger Together provides 10 year plan to enable greater assistance and long-term practical solutions for people with a disability and their families, through reforms and service expansion. Following the first phase which had a focus on addressing unmet need, Stronger Together II: 2011-2016, now looks to the building of person centred service delivery for people with disability

The NSW disability service system is changing from a program based system to a system that provides people with a disability, their families and carers, with greater choice and control over the support and service arrangements they require. NSW is implementing these changes in line with the reforms occurring at a national level.

## **Person Centred Approaches: Living Life My Way 2014 (NSW)**

Living Life My Way is the NSW Government's reform framework that assists people with disability and disability services in NSW to transition to the National Disability Insurance Scheme (NDIS). It also guides people with disability and disability services to shift to a person-centred way of thinking/ operating services, particularly as people with disability will be given more opportunities to exercise more choice and control in purchasing their supports.

## **NSW National Disability Strategy Implementation Plan 2012 – 2014**

The NSW National Disability Strategy Implementation Plan 2012 – 2014 sets out how the NSW Government will meet the requirements set out by the National Disability Strategy. The plan sets out government actions and priorities in meeting the six key reform areas.

The NSW Government is committed to building a more inclusive, person centred system (with full access to mainstream, community and specialist services) to enable people with disability to have the same rights as other Australians.

## **Laws that impact on people with disability**

### **Disability Discrimination Act 1992 (Commonwealth)**

Australian law protects and promotes the rights of all people, including people with disability. The main Commonwealth Act that deals with the rights of people with disability is the *Disability Discrimination Act 1992*. The Act provides legal protection for people with disability from direct and indirect discrimination in all areas of life, including access to infrastructure, work and education.

The Act ensures that people with disability are recognised as people before the law, and that their rights are promoted within the community.

### **Disability Services Act 1986 (Commonwealth)**

The Disability Services Act provides a national legislative and funding framework for a range of disability services. The Disability Services Act also provides a set of guiding standards (1993, 2007) for the delivery of quality services known as the Disability Services Standards.

### **National Disability Service Standards**

The National Disability Services Standards aim to improve the quality of services for people with disability. The revised draft standards better reflect current language, values and reforms, reflect the nation's move towards person centred approaches and support human rights and quality management principles. The revised draft standards are:

- Rights
- Participation
- Individual Outcomes
- Feedback and Complaints
- Service Access
- Service Management

### **NSW Disability Services Act 1993**

The NSW Disability Services Act 1993 covers the provision of disability services in NSW, and terms and conditions for funding of organisations. The Act is currently under review, with new legislation expected to start in 2014.

### **Anti-Discrimination Act 1977 (NSW)**

The Anti-Discrimination Act 1997 outlaws racial, sex and other types of discrimination in certain circumstances and promotes equal opportunity between all persons.

## Further information

- [United Nations Convention on the Rights of Persons with Disabilities](#)
- [National Disability Agreement](#)
- [National Disability Strategy](#)
- [Disability Care Australia](#)
- [Disability Discrimination Act 1992: Commonwealth Law](#)
- [A Brief Guide to the DDA: Australian Human Rights Commission](#)
- [Disability Services Act: Commonwealth Law](#)
- [National Disability Service Standards](#)
- [Stronger Together: Ageing Disability and Home Care](#)
- [Person Centred Approaches: Ageing Disability and Home Care](#)
- [National Disability Strategy NSW Implementation Plan](#)
- [Disability Services Act Review](#)
- [Anti-Discrimination Act 1997](#)

## Human rights services

- [Australian Centre for Disability Law](#)
- [Australian Human Rights Commission](#)
- [Complaints Resolution and Referral Service](#)
- [Disability Rights and Information Service \(National\)](#)
- [Human Rights Council of Australia](#)
- [NSW Ombudsman](#)
- [NSW Trustee and Guardian](#)

Please note: This is not a comprehensive list. Specialist advocacy services also exist for people with disability who may be marginalised in other ways, for example people from a CALD background.

## Resources

- [Handicap International Training Tool](#) - An online teaching and training tool on the UNCRPD.
- [Human Rights Indicators for People with Disability](#) - A resource for disability activists and policy makers, that provides an introduction and commentary to the UNCRPD.
- [Know Your Rights: Disability Discrimination](#) (Australian Human Rights Commission) - covers disability rights information relating to the Disability Discrimination Act.

- [Speaking Up for Myself, Standing Up For Human Rights \(FREDA\)](#) - shows human rights in practice for people with disability.
- [From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations](#) - guide tailored for the community services sector that provides practical advice for leaders and managers about how to develop an increased understanding of human rights, and how to put this into practice.
- [Human Rights Resources: Self-Advocacy Resource Unit \(SARU\)](#) - a number of interactive human rights resources, relating to legislation, advocacy, decision making and service delivery.
- [It's About Ability: A Learning Guide on the Convention on the Rights of People with Disabilities](#) - guide that empowers children and young people with and without disabilities to speak out on the UNCRPD.
- [Everyone Has Human Rights, Understand Yours](#) - guide to understanding human rights for people with disability.

## Human rights in practice

### Working with children and families

Community consultations in the Dubbo, Narromine and Wellington regions in central NSW indicated that many children and families were not accessing the services and supports available to them. Transport barriers, discrimination, and services operating in ways that were offensive, denigrating, or culturally inappropriate among the reasons that families were not accessing existing services.

In response, four Early Childhood Coordinators were employed by Communities for Children Community Partners to increase:

- Access to appropriate services and opportunities for community connections for more children and families
- Identification, referral and support of families with additional support needs
- Services outreaching and connecting with families within their community context
- Stronger 'pathways' of coordinated services to identify the needs of and to support children and families

As a result more children and families, including Aboriginal children and families and children and families with additional needs, have increased access opportunities to appropriate services and community connections.

[Communities for Children Early Childhood Communicators](#)

## **Accommodation**

Tim, a young man in his final year of university, was injured and sustained an Acquired Brain Injury. As a result he became unable to walk or talk and he had a range of support needs for daily living.

Following an initial recovery period in which he lived at home with his parents, the young man found that like most young people, he wanted independence and freedom. The only type of accommodation available for a young person with 24/7 care needs was an aged care facility, a horrifying prospect for both Tim and his family. Fortunately they found Youngcare.

Tim was one of the first residents at the Youngcare Apartments Brisbane and enjoys all the life-changing benefits that came with having his very own apartment. Tim's rehabilitation has been remarkable and can be credited to the fantastic support network he has in his family, as well as the level of specialised care provided by his carers and the support offered at the Youngcare Apartments.

Where loneliness had been one of Tim's greatest hurdles, he is now surrounded by his mates and other young people. His friends and family can visit whenever they please, he can listen to his own music, eat his own food. Tim is living the kind of life every young person deserves, regardless of their care needs.

### [Youngcare](#)

## **Self-advocacy**

'My decision to lodge a DDA complaint set in motion a series of events that I could not foresee and the positive effects of which are still to be seen in the increasing interest in web accessibility and the availability of public documents in alternative formats such as Braille. Had I chosen not to lodge the complaint, there would also have been events that I could not foresee. In other words, my choice to do something had an impact, but my choice to do nothing would also have had an impact. The myriad interconnections between events and actions ensure that we all have an effect - multiple effects - on the world, whether we like it or not, and regardless of our choices. Advocates cannot always predict what the ultimate effects of advocacy will be, but they can be sure that there will be effects.'

The impact of the DDA, then, cannot be measured simply in terms of numbers of complaints, or individual successes and failures. Rather, the full impact of the DDA is to be seen in the many subtle and immeasurable ways in which it is helping to shape attitudes and replace the paradigm of benevolence with one of equality.'

Bruce Macquire

### [Human Rights and Equal Opportunity Commission](#)

## **Education and training**

A student with a vision impairment complained that course materials, while provided in electronic format, were not able to be accessed by the student's screen reader. This meant the student did not have access to course materials at the beginning of the course. The complaint was settled with the university agreeing to make a number of improvements to its services to students with disabilities including the development of a Disability Action Plan, the purchase and testing of improved text conversion software and expanding the role of its Disability Liaison Officer.

A number of similar complaints led the Commission to conduct a forum on access to tertiary education course materials in May 2002. Almost all universities participated, together with disability representatives, publishers, the Copyright Agency, the Attorney-General's Department and the Department of Education, Science and Training. Recommendations were agreed on access to copyright materials, provision by publishers of electronic formats, and better coordination of production and provision of materials in accessible formats.

### [Australian Human Rights Commission](#)

## **Positive behaviour support**

On occasions, the work of Melba Support Services - like many disability service providers – raises human rights issues, such as the use of restrictive interventions. To ensure that the rights of the people they support are being upheld and protected, Melba has instituted a Human Rights Committee with the functions of:

1. Monitoring and reviewing all individual rights restrictions of people whom Melba supports;
2. Reviewing policies and procedures;
3. Reviewing all incident reports; and
4. Having a role in the existing grievance procedure.

The Committee is made up of independent community members, medical practitioners and other relevant persons. When a client commences at the service a rights checklist is filled out to identify any restriction on rights that may be required to work with the client, this may include control of financial affairs, provision of sedative medication or physical restraint. Any rights restraint is reviewed by the Committee for any excessive incursions on rights and recommendations made to care workers to change the practice. A limitation period must be placed on any rights restriction and review occurs on a regular cycle.

### [Victorian Council of Social Services](#)

## **Negotiating access**

People with physical disabilities have been denied access to public transport in Australia and have had as a replacement segregated, purpose-built 'taxi services'. These taxi services have been limited in numbers and generally been under resourced, therefore have been unable to provide an equivalent means of transport to that which the general public enjoy. This situation is now changing as the result of three important pieces of work:

1. The Disability Advisory Council of Australia report in 1994: 'Target 2015 - A Vision for the Future' which was both an audit of transport in Australia and a proposal for implementing accessible transport over a 20 year timeframe;
2. Disability activists have lodged successful claims under the DDA; and
3. The development of National Disability Standards for Accessible Public Transport developed to assist in the implementation of accessible transport across Australia.

Although the process has been frustratingly slow, it has engaged all stakeholders and has been vital for the joint ownership of the standards. As a result of States and Territories using the Standards over the past 6 years we already have 25% of all metropolitan buses accessible now or approximately 1,200 in operation around Australia. A number of States have 100% accessibility to trains already and there is considerable work underway on infrastructure upgrades all over Australia.

### [Australian Human Rights Commission](#)

#### **Human rights education**

Wallara Australia has established a Human Rights Committee to ensure the rights of all people supported by the organisation. The Human Rights Committee has the responsibility to "review and advise on the use of any agency practices and procedures that could possibly infringe on the rights of any person as well as concern itself with Behaviour Support planning, rights protection issues, advocacy, investigation of incidents and injury reports."

The Committee has been active in developing or reviewing a range of policies consistent with human rights. The Human Rights policy outlines Wallara's philosophy on human rights, and also states the organisation's position on rights education for people receiving support, for Wallara staff, and for parents, family members and advocates. It also covers guardianship issues, informed consent, and Enduring Powers of Attorney. The Human Rights Committee has also developed or reviewed policies on 'Mistreatment, Abuse, Neglect and Exploitation', 'Making a Complaint', 'Families, Friends and Advocates', and 'Due Process'.

### [Victorian Council of Social Service](#)