



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS™

November 2018



Independent Living

ALHR POSITION STATEMENT

Disability Rights

INTRODUCTION



Australian Lawyers for Human Rights (ALHR) is deeply concerned about the pervasive denial of the right of persons with disabilities to live independently in places of their choice.

Historically, persons with disabilities have been presumed unable to live independently in the community and that has acted as a barrier for them in making choices and resulted in stigma and discrimination. Harmful stereotypes and discrimination can limit the freedom of persons with disabilities and prevent them from making their own choices and exercising their fundamental human rights.

ALHR is deeply concerned that 6,000 young persons with disabilities in Australia continue to be permanently accommodated in aged care facilities. This is highly inappropriate. Aged care facilities are designed for the specific needs of elderly persons at the end-stage of life. They are not designed to cater for, and support, young people.

The inability to exercise choice in living arrangements leads to social exclusion, engendering stigma, segregation and discrimination, and can lead to violence against persons with disabilities.

INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS

It is the position of ALHR that living independently and being included in the community is a fundamental human right enshrined in Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

In October 2013, the UN Committee on the Rights of Persons with Disabilities (The Committee) provided specific guidance to Australia on implementing these obligations: “The Committee encourages the State party to develop and implement a national framework for the closure of residential institutions and allocate the resources necessary for support services that would enable persons with disabilities to live in their communities. The Committee recommends that the state party takes immediate action to make sure that persons with disabilities are given a free choice of where they want to live and with whom and be able to receive the necessary support regardless of the place of residence. The State party should therefore conduct a mapping of the various forms of living accommodation based on the needs of various kinds of persons with disabilities.” [1]

General Comment No. 5, issued by the Committee focuses on the rights of persons with disabilities as articulated by Article 19 of the CRPD. Article 19 recognises that persons with disabilities have the right to live in the community, to choose their place

of residence, to decide where and with whom to live, to choose their living arrangements and to have access to support services.[2]

The involuntary placement of young persons with disabilities in aged care facilities also violates other articles of the CRPD. It is inconsistent with the basic principles enshrined in Article 3, such as respect for inherent dignity; individual autonomy, including the freedom to make one's own choices and independence of persons; full and effective participation and inclusion in society; accessibility; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities. Further, Articles 9, 17, 19, 25 and 28, of the CRPD are also invoked by not affording people with disabilities the opportunity to choose their place of residence or to choose with whom they live.

The involuntary placement of young persons who are under 18 years of age in aged care facilities also violates Australia's obligations under the Convention on the Rights of the Child (CRC). The CRC identifies four core principles that provide the

foundation for the realisation of all other children's rights: non-discrimination; the best interests of the child; survival and development; and respect for the views of the child. Pursuant to Article 3 of the CRC, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration.

Additionally, Article 2 of the CRC expressly prohibits discrimination on the grounds of disability. Article 23 of the CRC refers to the obligations of States parties and recognises that a child with mental or physical disabilities is entitled to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Furthermore, Article 25 of the CRC states: "when a child has been placed for the purposes of care or treatment, she/he has a right to a periodic review of treatment provided and all other circumstances relevant to the child's placement."



ALHR POSITION

Research has shown that young persons with disabilities who live long-term in aged care facilities experience extreme social alienation and declining emotional, physical and mental health.[3] This is because, while the aged care facilities provide basic shelter and care, they are not designed to cater for young persons with disabilities. For example, they do not provide adequate health rehabilitation, social interaction with other persons their own age, freedom of choice and support for independence or the specialised disability services and support that they may require.

Young people with disabilities are placed in aged care facilities predominantly because there is a lack of adequate and appropriate accommodation services, a lack of adequate funding, and because their families and carers can no longer care for them at home. ALHR is of the view that more funding is required by Commonwealth and State Governments to provide adequate and appropriate accommodation options to young people with disabilities to reduce the burden on ageing parents, and to provide better opportunities for young people to be in environments which allow them to grow and thrive as they enter adulthood. There are currently no adequate accommodation pathways for young people with disabilities, and aged care facilities are not the solution to this growing need.

ALHR strongly urges the National Disability Insurance Agency (NDIA) to address this issue as a matter of urgency. ALHR is alarmed that it may be some years before all young persons with disabilities in aged care facilities are rehoused and supported in suitable community-based accommodation under the National Disability Insurance Scheme (NDIS).

ALHR is further alarmed by the number of enquiries it receives about persons with disabilities experiencing violence in group home settings. There is a significant risk to the safety of persons with disabilities in group home settings, with violence and abuse a common occurrence. In contrast, specialist disability accommodation provides adequate housing and living requirements for persons with disabilities who have extreme functional impairment or very high support needs. ALHR reiterates its longstanding call for a Royal Commission into the institutional abuse of persons with disabilities. [4]

ALHR is concerned that the NDIA will force persons with disabilities seeking specialist disability accommodation into group home settings regardless of their personal preference. It is the NDIA policy that only a very small number of NDIS participants will be funded to live independently in specialist disability accommodation. NDIA policy evidences a clear bias towards group home settings to reduce support costs. ALHR submits that this outcome is not consistent with Australia's binding international legal obligations.

While it is highly desirable that all persons with disabilities with high support needs have access to specialist disability accommodation, the NDIA expects to fund only 28,000 places for persons with disabilities, which represents 6% of all NDIS participants, into specialist disability accommodation, at a cost of \$700 million per year. It is the view of ALHR that the NDIA should offer the option of independent living to all persons with disabilities who have

extreme functional impairment and high support needs for compliance with our international human rights obligations under the CRPD. This would give greater choice and control to persons with disabilities and thus align with the intent of the NDIS.

It is the view of ALHR that additional government funding is needed to develop specialist disability accommodation, in conjunction with the funding available under the NDIS. Young persons with disabilities require specific types of accommodation and ALHR calls on the Australian Government to make a financial commitment to investing in such accommodation so young people can live in integrity and dignity. The provision of adequate specialist disability accommodation will ensure persons with disabilities can exercise their right to independent living on an equal basis with others without stigma and discrimination.

The Committee in General Comment No. 5 emphasises that individual choice for persons with disabilities is not limited to their

place of residence, but includes all aspects of a person's living arrangements, including their daily schedule and routine, as well as their lifestyle.[5]

ALHR is particularly alarmed by the observations of the Committee that persons with disabilities have been presumed unable to live independently in the community; that support for independent living is either unavailable or tied to particular living arrangements such as shared homes; and that the living arrangements of some persons with disabilities has led to them being either dependent on their families and carers or being institutionalised.

ALHR is particularly concerned given that persons with disabilities already experience disproportionate hardship and are denied equitable opportunities in all spheres of life. Denial of the right to independent living devalues the lives and status of persons with disabilities.

RECOMMENDATIONS



RECOMMENDATIONS

In order to protect and promote the human rights of Australians with disabilities to independent living, ALHR calls on the Federal, State and Territory governments to:

A. Ensure that the NDIA is sufficiently funded so that it may provide adequate funding to persons with disabilities to allow them to live independently, receive the support they need, and to live with dignity.

B. Provide additional funding for the building of specialist disability accommodation.

C. Ensure that extra specialist disability accommodation is built as a matter of urgency to ensure the rapid transition of persons with disabilities to appropriate and supported housing. Such accommodation should be built across the community to afford persons with disabilities true choice about where they will live and to ensure that specialist disability accommodation is not concentrated in specific areas.

D. Recognise and uphold the rights enshrined in the CRPD and CRC which recognise the right to independent living and the rights for people with disabilities to live a life of integrity and dignity.

RECOMMENDATIONS

In order to uphold, protect and promote the human rights of Australians with disabilities to independent living, ALHR calls on the NDIA to:

A. Offer the option of specialist disability accommodation to all persons with disabilities with extreme functional impairment or very high support needs.

B. Cease forcing persons with disabilities into shared living arrangements in order to save money with the result of placing vulnerable individuals at risk of violence.

C. Adopt appropriate policies and actions to ensure that the rights of persons with disabilities to independent living are recognised.

D. Adequately fund the development of specialist disability accommodation and the supports and services persons with disabilities require to live independently in the community.

E. Immediately move all young persons with disabilities from aged care facilities to appropriate, supported housing in the community.

F. Allow eligible persons with disabilities choice and control over whether to live in a single residence dwelling or shared accommodation and ensure that affordable and appropriate housing is available to persons with disabilities.

G. Adopt a framework that recognises and upholds the rights enshrined in the CRPD and CRC which recognise the right to independent living and the rights for people with disabilities to live a life of integrity and dignity.



ABOUT ALHR

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia.

ALHR has active and engaged National, State and Territory committees as well as specialist national thematic committees. ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international human rights law in Australia in order to:

- Promote and support lawyers' practice of human rights law in Australia;
- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Engage internationally to promote human rights and the rule of law.

Through the provision of training, education, publications, CLE courses, conferences, seminars and mentoring, ALHR assists members to continue to develop their knowledge of human rights law and incorporate human rights principles into their areas of legal practice in Australia.

REFERENCES

- [1] Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013) CRPD/C/AUS/CO/1 available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnzSGolKOaUX8SsM2PfxU7tjZ6g%2FxLBVYsYEv6iDyTXyNk%2BsAB%2FHgrVpAKHcEYTB%2B1t%2FH3HX1F%2F%2Bo%2Bk3O4KhxfhPoTQZ3LeS75n8PHidYHE3>
- [2] The Committee on the Rights of Persons with Disabilities, General Comment No. 5: Article 19: Right to Independent Living, available at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>
- [3] Linda Reynolds, National Shame of Teenagers Trapped in Aged Care, The Australian, February 17, 2017, Available at: <https://www.theaustralian.com.au/opinion/national-shame-of-teenagers-trapped-in-aged-care/news-story/b43bace93ea7ea9e6c64c9645373951f>
- [4] The Senate Enquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings advocates for a Royal Commission to be called to investigate violence, abuse and neglect of persons with disabilities. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report
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INDEPENDENT LIVING ALHR DISABILITY RIGHTS POSITION STATEMENT

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November 2018

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