

Autistic Adolescents and the Rights of the Child in Australian

submission to The Committee on the Rights of the Child in relation to developing a General Comment on the Rights of Adolescents

Autism Aspergers Advocacy Australia commends the United Nations for highlighting that *discrimination against autistic persons is the rule rather than the exception* (link [here](#)).

Australia ratified the [Convention on the Rights of the Child](#). Unfortunately, Australia's federal Government refuses to enact the laws required to give this and other human rights treaties effect in Australia.

For example, Article 2 of the Convention expects that children with disability are protected against “discrimination of any kind”. Australia enacted its [Disability Discrimination Act 1992](#) (DDA). Instead of protecting children from **disability** discrimination, Australia's law and the associated legal system create and promote “lawful disability discrimination”.

- Judicial officers in Australia have little training or understanding of disability and rarely recognise disability discrimination.
- Sections 11 and 45 of the DDA protects most acts of disability discrimination against complaint ... when Australian judicial officials actually recognise discrimination, they regard most disability discrimination as lawful
- To our knowledge, the legal system in Australia has never found against a Government agency in a disability discrimination complaint.
- The legal system is expensive and families who pursue a disability discrimination complaint, given there is little prospect of winning, risk bankruptcy.

The High Court in Australia decided in *Purvis vs NSW* that a person's behaviour is not part of their disability. The High Courts decision says that any and every school (or service) can exclude a person with disability if the service provider believes the person with disability may behave dangerously, as is often believed to be the case for autistic students, that is students diagnosed with autism spectrum disorder (ASD). There is no service guarantee (“safety net”) for a person whose disability might contribute to “challenging” or dangerous behaviour: such a person has no legal right under Australian law to education (or possibly to other services).

The Government did change the DDA but as yet no one has any success testing the revised law. The changes do not seem to have improved protection of rights.

Purvis vs NSW was a key legal precedent in the *Walker vs Victoria* decision; a matter where the Judge described the applicant's disability as “misconduct” throughout his written decision. The Judge did not even recognise the applicant's disability.

The legal process in *Woodbury vs ACT* took ten years; such a delay completely denied the applicants any prospect of success. The legal system itself caused massive delays and the only reason we can discern is that the legal system regarded disability discrimination, especially in relation to children and adolescents, as unimportant. The legal system implemented its own disability discrimination.

Eventually, the Magistrate in *Woodbury vs ACT* said that failure and refusal to provide effective health care, rehabilitation and education appropriate for students with Autistic Disorder was not discrimination at all, even though the ACT health and education systems provides these services for students without disability, and for students with other disability types. He also said that even

had there been discrimination, Government agencies are protected in numerous ways from disability discrimination complaints.

The legal system in Australia puts the interests of the state well ahead of those of the child or adolescent, contrary to Article 3.

In relation to Article 6, Australia's Occupational Health and Safety laws do not ensure the safety of people with disability when they are in the care of a disability service. As well as major issues in Australia relating to harassment and abuse, adolescents and young people die while in the care of disability services and nothing is learned.

Issues of abuse in care have come to a head recently (see [here](#)). Australia has a poor record on safety and abuse of autistic children (for example, see [here](#) and [here](#)).

Article 2 of the Convention makes the Australian Government, the relevant State Party, responsible for ensuring needs of children (including adolescents) with disability are met. As far as we know, the legal system in Australia has never delivered an adverse disability discrimination finding against a Government agency.

And Australia's Prime Minister recently objected to the United Nations "lecturing" Australia on human rights (see [here](#), [here](#) or [here](#)).

Australia must change it's approach to the human rights of people with disability, including children and adolescents with disability.

The upshot is that most autistic Australian children, especially adolescents, are denied an effective or appropriate education. Schools do not have the required resources, expertise and education methods to educate autistic adolescents (link to data from 2012 [here](#) and 2009 [here](#)). These data from 2012 show "6% of [autistic Australian] children were not able to attend school because of their disability and 44% needed to attend either a special class in a mainstream school, or a special school". Only 50% of autistic children were included in mainstream school. These data do not show the number of autistic students whose school attendance is reduced ... which diminishes their education.

The Australian Government, in its [submission](#) to the United Nations [Day of General Discussion](#), fails (or refuses) to recognise the distinct nature of ASD. For example, in paragraph 10, the submission cites statistics for disability generally and ignores its own data (see above) showing its Inclusion policy and goals are not realised for autistic students. Statistics for students with disability generally avoids the data showing outcomes for autistic students are much worse than for students with disability generally. The Australian Government deludes itself, and misleads other when it can, about ASD. And the Australian Government's submission ignores the discrimination described above in Australia's legal system.

For autistic adolescents, school refusal is an increasing issue. A recent survey (see [here](#)) attributes school refusal to "avoidance" and identifies bullying as an issue. Clearly stress arising from change, tests, feelings of difference, feeling unsafe, uncompleted homework, etc. are also substantial factors.

While most families prefer inclusive education for their autistic child/ren, a substantial number of families, based on their experience, regard mainstream education settings as unsuitable or inappropriate for their particular child. Unfortunately, people with strong Inclusion ideology and without relevant experience often bully and harass families whose children are already damaged though so-called inclusive settings. In the UK, Baroness Warnock, who is credited as a key founder of the Inclusion movement, was criticised and denigrated for recognising that Inclusion is not always best for autistic children (see [here](#)).

A recent [report](#) to the United Nations Committee Against Torture said:

Restrictive Practices in Schools

... that many children with disability in both mainstream and special schools are being subjected to chemical and physical restraint and seclusion under the guise of 'behaviour management' policies and practice. There is strong evidence that children with disability are experiencing:

- solitary confinement to small rooms or small fenced areas as punishment for 'bad' behaviour;
- physical force, including being thrown to the ground and pinned down;
- chemical restraint by requiring parents to medicate their children otherwise they cannot attend school; and
- acceptance of self-harming behaviour without exploring why this is occurring at school.

Data suggest at least 70% of autistic adolescents identify with having mental health conditions (see [here](#)).

In Australia, [mental health services routinely deny access to autistic adolescents](#) (which contravenes Article 24). As a result of the [Burdekin Report \(1993\)](#), segregated mental health services were created for people with a dual diagnosis of intellectual disability and mental illness. But these services, and mental health services generally, mostly deny their service to autistic people who are seeking mental health service and supports. This is a major issue for autistic adolescents in Australia who are usually denied access to any mental health service or facility.

We believe mental health services in Australia must change their approach and develop inclusive mainstream mental health services that support all citizens, including services and support for all people with both disability and mental illness.

By definition, autistic people have difficulty communicating. Communities should listen to and appreciate whatever their autistic adolescents say directly on this issue. We disrespect them when we don't hear what they say ... and disrespect causes stress and anger.

The ASD community is also attuned to "behaviour as communication". We see behaviour in adolescents that communicate clear messages. We see behaviour including school refusal, stress, anxiety, depression, self-harm and domestic violence that should be recognised as communication more than (or as well as) "clinical/intervention targets" in autistic adolescents.

Though A4 does not have the resources to collect data across the wider community, we suggest people recognise "behaviour as communication" for adolescents generally. Try to interpret undesired or problem behaviour of adolescents generally, such as risk-taking, binge-drinking, drugs of dependence, decreased participation in sport, vandalism, extremism/radicalisation, self-harm, etc. as part of adolescents' communication. Their messages are of disengagement and/or stress.

Perhaps communities can intentionally involve adolescents and young adults in planning and delivering activities and supports with increased participation. Communities need to invest more in engaging their young people.

Bob Buckley
Convenor, Autism Aspergers Advocacy Australia.

31st March 2015

Autism Aspergers Advocacy Australia, known as A4, is the national grassroots organisation advocating for people living with autism spectrum disorder. A4 is unfunded and exists only on the internet to maximise accessibility for participants. A4 aims to represent the diverse views of its members across the ASD community.