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May 23, 2019

Incoming Parliamentary Joint Committee on
Human Rights
PO Box 6100
Parliament House
Canberra ACT 2600
human.rights@aph.gov.au



HRW.org

Dear Incoming Parliamentary Joint Committee on Human Rights:

Human Rights Watch is an independent, nongovernmental, human rights organization that conducts research and advocacy in over 90 countries on a range of human rights issues, including on the [rights of older people and the rights of people with disabilities](#).

Through extensive research on [overmedication of older people living in nursing homes in the United States](#), we documented how nursing home staff give antipsychotic drugs to residents with dementia to control their behavior for the convenience of nursing home staff or to accommodate the needs of the nursing home, despite rules against the misuse of drugs as “chemical restraints.” The use of antipsychotic drugs on older people with dementia is associated [with a nearly doubled risk of death](#).

Based on our experience documenting these harmful practices, we write to share our concerns regarding F2019L00511, the [Quality of Care Amendment \(Minimising the Use of Restraints\) Principles 2019](#), registered April 2, 2019. We urge you to issue a notice of disallowance of this regulation.

This legislation, which aims to regulate the use of restraints in aged care facilities, is inconsistent with Australia’s human rights obligations under a number of the treaties Australia has ratified, including the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities.

The use of physical or chemical restraints for punishment, control, retaliation, or as a measure of convenience for staff should be prohibited. This regulation does not prohibit such measures.

Use of restraints can amount to cruel, inhuman, or degrading treatment and any forced medical treatment violates the right to health under international human rights law, as detailed in the attached annex. Medicines should only ever be used for therapeutic purposes and with the free and informed consent of the person receiving them.

The United Nations Committee on the Rights of Persons with Disabilities criticized the use of restraints in its 2013 review of Australia, in which the Committee expressed serious concern that persons with disabilities are “subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.” The Committee called on Australia to take immediate steps to end such practices.

Instead of trying to regulate physical and chemical restraints, Australia should be working to end the use of all forms of restraints, including physical restraints, sedatives (chemical restraints), forced isolation, and forced psychiatric treatment as a means of managing or disciplining older people in aged care. The authorities should develop support and interventions for persons experiencing crises and emotional distress, including in nursing homes, that do not involve restraints. Any new law should also ensure informed consent for all treatment or interventions and ensure independent monitoring and effective, accessible, independent complaints mechanisms, including for individuals in aged care homes and their families.

We urge you to issue a notice of disallowance for this legislation that seeks to regulate practices that are incompatible with Australia’s international human rights obligations. Thank you for your consideration. Please do contact us if we may provide any further assistance.

Sincerely,

Elaine Pearson
Australia Director, Human Rights Watch
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Bethany Brown
Researcher on Older People’s Rights, Human Rights Watch
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Annex

F2019L00511, the [Quality of Care Amendment \(Minimising the Use of Restraints\) Principles 2019](#), registered April 2, 2019, aims to set limits on the use of physical and chemical restraints in aged care settings. However, as these practices are incompatible with Australia's international human rights obligations, including the right to be free from inhuman and degrading treatment and the right to informed consent for medical treatment, this regulation should be repealed and replaced with a robust prohibition on such practices.

Right to be free from inhuman and degrading treatment

The Joint Parliamentary Human Rights Committee noted in a December 2018 report on the National Disability Insurance Scheme (Restrictive Practice and Behaviour Support) Rules 2018 [F2018L00632], which sought to regulate restraint in National Disability Insurance Scheme-funded services, that "Australia's obligations in relation to the prohibition on torture, cruel, inhuman and degrading treatment or punishment are absolute and therefore cannot be limited."¹

The UN special rapporteur on torture has held that both seclusion and restraint can amount to torture or cruel, inhuman, or degrading treatment when used against people with disabilities in certain circumstances.² The special rapporteur on torture has also stated that "it is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychosocial or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions."³

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has stated in numerous concluding observations that laws that condone the practice of restraining persons with disabilities or using other coercive measures to control them, still reflect the medical model of disability and should be repealed.⁴

¹ Joint Parliamentary Human Rights Committee, Human Rights Scrutiny Report 13 of 2018, 4 December 2018

https://www.aph.gov.au/~/media/Committees/Senate/committee/humanrights_ctte/reports/2018/Report%2013/Report%2013%20of%202018.pdf?la=en.

² UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 1 February 2013, A/HRC/22/53, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/22/53, para 63. February 2013. <http://www.ohchr.org>

⁴ See, for example, CRPD New Zealand, Concluding Observations CRPD/C/NZL/CO/1 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsIOTAZAFn%2fy sap%2b9nlo7rkvRmNJ6uyxoc44CPcdshSlzpSxW%2bwhPoD0WnpuECahTAQtdCX5Yjd%2btcuc1aJHm%2fCQ>

In its Concluding Observations on Australia in 2013, the CRPD Committee noted its concern that “persons with disabilities, particularly those with intellectual impairment or psychosocial disability, are subjected to unregulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraints and seclusion, in various environments, including schools, mental health facilities and hospitals.”⁵ And it specifically recommended to Australia in 2013 that it needs to end such practices.⁶

Right to health and informed consent

The highest attainable standard of physical and mental health is a fundamental human right enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of Persons with Disabilities. The special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has expressed that informed consent “is a core element of the right to health, both as a freedom and an integral safeguard to its enjoyment.”⁷

The CRPD Committee expressed concern in its 2013 Concluding Observations that “under Australian law a person can be subjected to medical intervention against his or her will, if the person is deemed to be incapable of making or communicating a decision about treatment.”⁸

[Biz4qXZd2vaDYn8RQsT7v](#), para. 32, “The Committee recommends that immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities.”

⁵ CRPD Committee, Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), 21 October 2013, CRPD/C/AUS/CO/1, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/1&Lang=En (accessed May 21, 2019), para 35.

⁶ CRPD Committee, Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), 21 October 2013, CRPD/C/AUS/CO/1, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/1&Lang=En (accessed May 21, 2019), para 36.

⁷ Human Rights Council, Report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Puras, A/HRC/35/21, March 28, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/076/04/PDF/G1707604.pdf?OpenElement> (accessed September 10, 2017), para. 63.

⁸ CRPD Committee, Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), 21 October 2013, CRPD/C/AUS/CO/1, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/AUS/CO/1&Lang=En (accessed May 21, 2019), para. 33.