

Chapter 17

The NDIS – A quantum leap towards realising social rights for people with intellectual disability

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Chapter summary

This chapter focuses on the economic and social rights of people with disability, such as access to resources and participation in employment or civic society. These are the spheres in which social workers are most commonly found, and which in Australia have had few legal safeguards. The chapter provides a brief review of the legal context of social work practice in the areas of disability services, anti-discrimination and decision-making. The later part of the chapter focuses on the potential implications of the *National Disability Insurance Scheme Act 2013* (Cth), both for the rights of people with disability and for social workers, as the scheme that commenced on 1 July 2013 is progressively implemented across Australia. The chapter concentrates on

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- Melbourne <<http://arrow.latrobe.edu.au:8080/vital/access/manager/Repository/latrobe:34255>>.
- Carney, T and Beaupert, F, 2013, 'Public and private bricolage – challenges balancing law, services and civil society in advancing CRPD supported decision making', 36(1) *UNSW Law Review* 175–201.
- Rioux, M, Basser, L and Jones, M, 2011, *Critical Perspectives on Human Rights and Disability Law*, Martinus Nijhoff, Leiden and Boston <www.brill.nl/critical-perspectives-human-rights-and-disability-law>.
- United Nations Enable, 1982, *World program of action concerning disabled persons* <<http://www.un.org/disabilities/default.asp?id=23>>.
- United Nations Enable, 1993, *Standard rules on the equalisation of opportunities for persons with disabilities* <<http://www.un.org/esa/socdev/enable/dissre00.htm>>.

Websites

No claim is made as to the accuracy or authenticity of the content of the sites suggested in this chapter. Site addresses change – if the address is no longer accurate, search using the title of the organisation concerned.

- ABC Radio National, *Big Ideas Podcast*, 22 October 2012, 'Adult Guardianship: Autonomy v protection' <<http://www.abc.net.au/radionational/programs/bigideas/big-ideas-22-october-2012/4320786>>
- ABC Radio National, *The Law Report*, 'Disability Discrimination Act 20 years on' <<http://www.abc.net.au/radionational/programs/drive/the-disability-discrimination-act-20-years-on/4546044>>
- Administrative Appeals Tribunal <www.aat.gov.au>
- Australian legislation (State and Commonwealth) can be found at AustLII <www.austlii.edu.au>
- NDIS <<http://www.ndis.gov.au/about-us>>

References

- Administrative Appeals Tribunal <<http://www.aat.gov.au/ApplyingForAReview/NDIS.htm>>.
- Administrative Appeals Tribunal, 2013, *Review of Disability Care Australia Decisions Practice Direction* <<http://www.aat.gov.au/LawAndPractice/PracticeDirectionsAndGuides/PracticeDirections/NDISPracticeDirection.htm>>.
- AIHW, 2002, *Unmet need for disability services: Effectiveness of funding and remaining shortfalls*, Australian Institute of Health and Welfare, Canberra.
- AIHW, 2008, *Disability in Australia: Intellectual disability*, Australian Institute of Health and Welfare, Canberra.
- AIHW, 2013a, *Disability support services: Services provided under the National Disability Agreement 2011–12 appendix*, Cat no AUS 173, Australian Institute of Health and Welfare, Canberra <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129543839>>.
- AIHW, 2013b, *Australia's welfare*, Australian Institute of Health and Welfare, Canberra.
- Auditor General Victoria, 2000, *Services for people with an intellectual disability*, Government Printer, Melbourne.
- Bigby, C, 2007, 'The challenge of implementing state disability policy to achieve second generation rights for people with disabilities', 43 *Just Policy* 68–75.
- Bigby, C, 2008, 'Known well by no one: Trends of the informal social networks of people with intellectual disability five years after moving to the community', 33(2) *Journal of Intellectual and Developmental Disabilities* 148–57.
- Bigby, C, 2011, 'Limits to choice for consumers with disabilities', *Online Opinion* <<http://www.onlineopinion.com.au/view.asp?article=11900>>.

- Bigby, C, 2013, 'A National Disability Insurance Scheme – challenges for social work', 66(1) *Australian Social Work* 1–6.
- Bigby, C, Bowers, B and Webber, R, 2011, 'Planning and decision making about the future care of older group home residents and transition to residential aged care', 55(8) *Journal of Intellectual Disability Research* 777–89.
- Bigby, C and Frawley, P, 2010, *Social work practice and intellectual disability: Working to support change*, McMillan Palgrave, Basingstoke.
- Bigby, C and Frawley, P, 2012, *Cultures of respect in group homes*, work in progress, LaTrobe University, Melbourne.
- Bigby, C and Fyffe, C, 2013, 'Making mainstream services accessible and responsive to people with intellectual disability: What is the equivalent of lifts and Labradors?', in *7th Roundtable on Intellectual Disability Policy*, La Trobe University, Melbourne.
- Bray, A, Dawson, J and van Winden, J, 2000, *Who benefits from welfare guardianship? A study of the New Zealand law and people with intellectual disabilities*, Donald Beasley Institute, Dunedin.
- Cambridge, P, 1999, 'Building care management competence in services for people with learning disabilities', 29 *British Journal of Social Work* 393–416.
- Carney, T and Beaupert, F, 2013, 'Public and private bricolage – challenges balancing law, services and civil society in advancing CRPD supported decision making', 36(1) *UNSW Law Review* 175–201.
- Council of Australian Governments, 2011, *National disability strategy 2010–2020: An initiative of the Council of Australian Governments*, Commonwealth of Australia, Canberra.
- Council of Australian Governments, 2011, *National disability strategy 2010–2020: Evidence Base*, Commonwealth of Australia, Canberra.
- Disability Rights Now, 2012, 'Civil society report to the United Nations Committee on the Rights of Persons with Disabilities compiled by disability representative, advocacy legal and human rights organisations' <<http://www.disabilityrightsnow.org.au/>>.
- Dunn, M, Clare, C and Holland, A, 2010, 'Living "a life like ours": Support workers' accounts of substitute decision-making in residential care homes for adults with intellectual disabilities', 54(2) *Journal of Intellectual Disability Research* 144–60.
- Emerson, E, 2007, 'Poverty and people with intellectual disabilities', 13 *Mental Retardation and Developmental Disabilities Research Reviews* 107–13.
- Fawcett, B and Plath, D, 2012, 'A National Disability Insurance Scheme: What has social work to offer?', *British Journal of Social Work*, Advance Access Publication 7 October, 1–16.
- French, P, 2013, 'The concept of reasonable adjustment in Commonwealth disability discrimination law and its implications for equality for persons with intellectual impairment', in Bigby, C and Fyffe, C, *Making mainstream services accessible and responsive to people with intellectual disability: what is the equivalent of lifts and labradors? Proceedings of the Seventh Roundtable on Intellectual Disability Policy*, La Trobe University, Melbourne.
- Gough, L, 2007, 'Walk a day in my shoes; managing unmet need on a daily basis', in Bigby, C, Fyffe, C and Ozanne, E (eds), *Planning and support for people with intellectual disabilities*, Jessica Kingsley, London.
- Ife, J, 2001, *Human rights and social work: Towards rights based practice*, Cambridge University Press, Melbourne.
- Ignys, E, 2013, *Understandings of the Conventions*, work in progress, La Trobe University, Melbourne.
- Kayess, R and French, P, 2007, *Out of darkness into light? Introducing the convention on the rights of persons with disabilities*, Oxford University Press, London.
- Kerzner, L, 2011, 'Paving the way to full realization of the CRPD's rights to legal capacity and supported decision-making: A Canadian perspective', in *From the margins: New foundations for personhood and legal capacity in the 21st century*, University of British Columbia, Vancouver.
- Kohn, NA, Blumenthal, JA and Campbell, AT, 2012, *Supported decision-making: A viable alternative to guardianship?* <<http://ssrn.com/abstract=2161115>>.

- Lewis, O, 2011, *Advancing legal capacity jurisprudence* <http://www.academia.edu/1163165/Advancing_legal_capacity_jurisprudence>.
- Manne, A, 2011, 'Two nations – The case for a disability national insurance scheme', 70 *The Monthly* <<http://www.themonthly.com.au/issue/2011/august/1314794058/anne-manne/two-nations>>.
- Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform, 2013, *Explanatory Statement to the National Disability Insurance Scheme Act 2013 and National Disability Insurance Scheme (Supports for Participants) Rules 2013* <<http://www.comlaw.gov.au/Details/F2013L01063/Explanatory%20Statement/Text>>.
- NDIS, 2013 <<http://www.ndis.gov.au/about-us>>.
- NSW ADHC, 2013, *Accommodation Support Options Framework*, New South Wales Department of Aging Disability and Home Care <http://www.adhc.nsw.gov.au/__data/assets/file/0005/261824/1211_ADHC_AccomSuppOptions_Framework_NoMarks.pdf>.
- NSW Council for Intellectual Disability, 2012, *Position statement: The NDIS and people with intellectual disability who live on society's fringe*, New South Wales Council for Intellectual Disability <<http://www.groups.psychology.org.au/Assets/Files/NCID%20Position%20Statement%202012.pdf>>.
- Office of the Public Advocate (SA), 2011, *Developing a Model of Practice for Supported Decision Making*, Office of the Public Advocate (SA).
- Productivity Commission, 2004, *Review of the Disability Discrimination Act 1992*, Productivity Commission, Melbourne.
- Productivity Commission, 2011, *Disability care and support*, Productivity Commission, Melbourne.
- Then, S-N, 2013, 'Evolution and innovation in guardianship laws: Assisted decision-making', 35 *Sydney Law Review* 133–66.
- United Nations, 1971, *Declaration of General and Special Rights of the Mentally Retarded*, United Nations, New York.
- United Nations, 1975, *Declaration on the Rights of Disabled Persons*, United Nations, New York.
- United Nations Convention on the Rights of Persons with Disabilities, 2006 <<http://www.un.org/disabilities/convention/conventionfull.shtml>>.
- Victorian Law Reform Commission, 2012, *Guardianship: Final report*, Victorian Law Reform Commission, Melbourne.
- Victorian Parliament, 1986, *Intellectually Disabled Persons' Services Bill*, Legislative Council Hansard, Melbourne.
- Woodhouse, 1974, *Compensation and Rehabilitation in Australia: Report of the National Committee of Inquiry*, AGPS.

Notes

- 1 See <www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>.
- 2 See <www.treatybodywebcast.org/category/webcast-archives/crpd/>.
- 3 See <www.publicadvocate.vic.gov.au/services/108/>.
- 4 See <<http://everyaustraliancounts.com.au/>>.
- 5 See <www.aat.gov.au/AATDecisions.htm>.
- 6 At the time of writing the Australian Law Reform Commission is undertaking a review of equal recognition before the law and legal capacity for people with disabilities, which will consider issues of supported decision-making and whether there is need for change in the NDIS legislation on this issue. See <http://www.alrc.gov.au/sites/default/files/pdfs/publications/whole_ip_44.pdf>.