

2024



# Social Justice Report 2023

Human Rights for Mental Health Consumers in NSW

May 2024

**This report was created on unceded Aboriginal land. We acknowledge the Traditional Custodians of Country throughout Australia, and recognise their continuing connection to land, waters and culture. We acknowledge their Elders past, present and emerging, and acknowledge that Australia was, is and always will be Aboriginal Land.**

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Thank you to all the mental health consumers who worked on this report and thank you to all our partners for your ongoing support and collaboration. We also acknowledge that we are standing on the shoulders of giants who paved the way for us to do this work.

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## Introduction

BEING – Mental Health Consumers (**BEING**), is the peak advocacy body for mental health consumers in NSW.

BEING has developed a longitudinal survey<sup>i</sup> to better understand and communicate some of the strengths and weaknesses of service delivery from a mental health consumer and human rights perspective over time. The grassroots community of mental health consumers in NSW will be invited annually to respond to the survey, with the 2023 results serving as an initial benchmark.

This report provides an overview of some of the key human rights issues for NSW mental health consumers as identified in the 2023 survey. This serves to educate other people with psychosocial disability about our rights, and what actions we can take if our rights have been violated.

We have not attempted to cover all human rights issues relevant to the lives of people with psychosocial disability in this report. We are only getting started!

## Why human rights matter to mental health

Ensuring that mental health consumers feel safe reaching out for support is dependent on trust between consumers and the NSW mental health system. In NSW the *Mental Health Act 2007 No. 8* sustains trust by ensuring that the rights of consumers are both transparent and protected by governance structures such as the Mental Health Review Tribunal and the NSW Official Visitors Program. (Although we also note that some existing practices are not covered under the Act, such as seclusion and restraint. More on that later.)

One of the central ways in which trust can be built and sustained is by respecting the choices that we make as users of the mental health system or as people who choose not to use it. Currently the mental health care system in NSW does not allow people living with mental health issues to choose when or how they wish to be treated in some situations. Most other health care system users have the right to choose for themselves (aside for those impacted by highly infectious diseases).

In a mental health system where consumers can freely choose, the central focus of care would not be on enforcing treatment, but rather on the more human-centred activity of building and sustaining trust to ensure that consumers choose to use services in the mental health system when they require it, rather than fearing those services. This would in turn provide a more positive experience to both those it treats and for those who work in it.

Although significant steps have been taken towards ensuring that lived experience inclusion is a core part of mental service system and policy development, mental health service provision still stops short of eliminating involuntary treatment. BEING would like to see all mental health services take a human rights-based approach to providing services, including eliminating involuntary treatment.

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

The United Nations Convention on the Rights of Persons with Disabilities (**CRPD**)<sup>ii</sup> is an international human rights treaty which Australia became a signatory to in 2007.<sup>iii</sup> The CRPD is a legal document that protects the rights of all people with disability, including people with severe and persistent mental health challenges (also known as psychosocial disability). In signing the

CRPD, Australia agreed to align Australian policies and laws that impact people living with disabilities to the CRPD.

### Australia's interpretation of CRPD

Among the human rights that signatory countries committed to recognising under the CRPD, is the right for people with disability to choose whether to accept medical treatment for their disability, under Articles 12 (Equal Recognition Before the Law) <sup>iv</sup> and 17 (Protecting the Integrity of the Person).<sup>v</sup> However, when Australia ratified the CRPD in 2007, it instead stated that Articles 12 and 17 would be interpreted in a way that aligned them with current clinical mental health practice, which is committed to the use of involuntary treatment and substitute decision making. (Australia also placed an interpretive declaration on Article 18, however we haven't covered that in this report.)

This means that the way Australia currently interprets Articles 12 (equal recognition before the law) and 17 (protecting the integrity of the person) of the CRPD:

- (a) allows for substitute decision making (e.g. by carers, guardians, administrators, and clinicians), and
- (b) allows for compulsory treatment where judged necessary by a clinician.<sup>vi</sup>

So, in summary, rather than doing the hard work of implementing policies and laws which are aligned with the CRPD, Australian governments have chosen to simply continue to do things the way they have been done in the past.<sup>vii</sup>

The UN Committee on the Rights of Persons with Disabilities pointed out in its *Concluding observations on the combined second and third periodic reports of Australia* <sup>viii</sup> in 2019 that Australia had not sufficiently integrated the CRPD into Australian law and that there had been insufficient progress made to review and withdraw the interpretative limitations on Articles 12 and 17 outlined above.

BEING believes that Australia must do better in protecting the rights of people with psychosocial disability. While the CRPD only has the force of moral principle in Australia it will not be the powerful source of mental health reform that it could be.

In the NSW context, examples exist in current practice that demonstrate that the NSW Government has the know-how to align with the CRPD, such as the development of advanced care directives<sup>ix</sup> and of supported decision-making processes.<sup>x</sup> BEING therefore believes that it is not a lack of skills or knowledge holding NSW back, but a lack of socio-political will. BEING calls for the introduction of a NSW Human Rights Act that includes a complete adoption, without any declarations or restrictions, of the CRPD. It would also need to be enforceable and include review mechanisms.

### What this report includes

In this report we will be referring to some of the Articles which Australia made a commitment to in signing the CRPD and look at how consumers experienced those rights in 2023. One of the core features of the CRPD is that it applies to all people who “have long-term physical, mental, intellectual or sensory impairments”.<sup>xi</sup> In some Australian policy contexts, work has been done to create a more inclusive concept of disability aligned with CRPD that includes psychosocial disability.<sup>xii</sup>

BEING is aware that not all lived experience activists agree with the inclusion of people with psychosocial disability into a big tent understanding of disability.<sup>xiii</sup> However, we believe that the CRPD provides a model that supports the development of closer collaborative relationships between mental health consumer activism, neurodivergent activism<sup>xiv</sup> and disability activism.<sup>xv</sup> It is this solidarity between lived experience movements that will ultimately advance all of our human rights.

## Limitations of this study

BEING received 80 responses to its human rights survey this year. While we are aware that our small sample size imposes limitations on the conclusions we can draw from this initial survey, we believe that they will help to set the agenda for topics that should be explored more deeply over this and coming years, whether that is by qualitative, or quantitative means. Very large data sets collected by other organisations including the ABS and the AIHW also allow us to compare our data and to reality-check conclusions we draw.

However, as a longitudinal study we also believe that the depth and richness of the data will accrue over time. It is likely that these annual surveys will lead to related focus group and survey studies that engage more deeply with specific topics. We also note that the sample of responses to this survey are likely to be representative of the experiences of people living with psychosocial disabilities and as such some variation relative to other people with disability is also to be expected.

## Recommendations for institutions

Given there have been many investigations and documents written about how institutions can prevent human rights violations in the mental health system, broader anti-discrimination legislation, and advice by the Australian Human Rights Commission and others, **BEING is not providing recommendations for institutions in this report.** BEING notes that much of this previous work contained recommendations that have not yet been followed, which is a cause for great disappointment.

As a starting point, BEING would like to voice our support for the recommendations of the *Royal Commission into Violence Abuse Neglect and Exploitation of People with Disability* (we will refer to it as the Disability Royal Commission in this report).<sup>xvi</sup>

In general terms we are very pleased to see that the Disability Royal Commission appealed to the CRPD to provide a normative foundation. BEING is supportive of several of the Disability Royal Commission's recommendations including:

- Recommendations 4.1 to 4.4 which recommend the creation and implementation of an Australian Disability Rights Act.
- Recommendations 6.6 to 6.11 which recommend development of a better regime of supported decision making. The implementation of better supported decision-making supports for all people living with a disability (including psychosocial disability) will be an important step towards ensuring that people with disabilities are able to make decisions about their own needs.
- Recommendation 6.20 which recommends that Australia withdraw its interpretative declaration in relation to Article 12 of the CRPD, thus recognising the right of people living with a disability to be actively involved in making decisions about their own lives and treatment. BEING believes that the interpretative declaration which Australia made in

relation to article 17 of the CRPD, which relates to compulsory treatment of people living with psychosocial disabilities, should also be withdrawn.

- Recommendations 6.35 to 6.40 which recommend the development of contemporary Australian legal frameworks to oversee the use of restrictive practises in Australia. These recommendations include the elimination of the use of restrictive practices on children and young people in disability services and the recommendation that data be actively collected regarding the use of psychotropic medications in disability services.

BEING hopes that NSW Government’s final response to the Disability Royal Commission’s recommendations (due in mid-2024) includes reviews of both NSW Health policies and the NSW Mental Health Act.

BEING also believes that the final report of the Victorian Royal Commission into Mental Health points the way forward for NSW. Recommendation 42 of the report asks that the Victorian Government enact a new Mental Health and Wellbeing Act for Victoria that both strengthens accountability and monitoring arrangements for service delivery (Recommendation 42, 2, d) and “specifies measures to reduce rates and negative impacts of compulsory assessment and treatment, seclusion and restraint” (Recommendation 42, 2, e). Further, Recommendation 43 asks that the Mental Health and Wellbeing Act be reviewed five to seven years after enactment. Given the rapid changes in societal values, living circumstances and scientific understanding in relation to mental health issues it is vital that relevant legislation be reviewed and amended in a timely way.<sup>xvii</sup>

## Actions for people with psychosocial disability

BEING believes that action can be a motivating force for consumers. Therefore, throughout this report we have provided ideas for consumers to take action if you wish to (and if you have the spoons!<sup>xviii</sup>).

Below is a complete list of actions listed in this report.

- **Discrimination in the media:** If you find media coverage that stigmatises mental health issues, people with psychosocial disability, or irresponsibly reports suicide, you can report the item to [StigmaWatch](#).
- **Discrimination in a public place:** If you feel that you have been discriminated against in any public place due to your psychosocial disability, consider making a complaint to the [Australian Human Rights Commission](#) and [Anti-Discrimination NSW](#).
- **Discrimination while looking for work:** have questions prepared in interviews to ask about an organisation’s policies and practices that are designed to support people with psychosocial disabilities, including reasonable adjustments. If they seem unsure how to answer or do not reply enthusiastically about supporting people with disabilities, this might be a red flag. If you feel you have been discriminated against while looking for work, you can make a complaint to the [Australian Human Rights Commission](#).
- **Discrimination while at work:** read your organisation’s policies and procedures. If something seems to be missing, such as flexible working policies to support you with your psychosocial disability, and you feel safe to do so, ask your manager whether the organisation could implement such a policy. If you don’t have confidence in your organisation’s complaints policies, you can complain to your union (if you are a member), the [Australian Human Rights Commission](#), or the [Fair Work Commission](#) if you are eligible.

- **Social housing complaints:** if a complaint to your housing provider or tenancy manager has been unsuccessful, you can contact the [Ombudsman NSW](#) for advice or complaints about social housing.
- **Private tenancy complaints:** if a complaint to your landlord or rental agent has been unsuccessful, you can contact the [Tenants' Union of NSW](#) for advice about private rentals/tenancy and landlord issues, including NSW Civil and Administrative Tribunal (NCAT) hearings.
- **Seclusion and restraint complaints:** If you experience seclusion or restraint while you are in a mental health ward, call the Official Visitors Program (OVP) Phonenumber on 1800 208 218. Official Visitors are independent of the hospital and can advocate on your behalf. If you have already left hospital and had experienced seclusion or restraint, you can make a complaint to the NSW Health Care Complaints Commission and/or the [Australian Human Rights Commission](#), letting them know you have experienced discrimination in how you received your mental health care.
- **Health care complaints:** If you are prescribed any medication, the clinician must give you information about side effects. If they do not do this, you can insist that they do. Alternatively, if you don't feel able to self-advocate at that point in time, you can also make a complaint to the NSW [Health Care Complaints Commission](#).
- **Police complaints:** If you feel you have been treated unfairly by police, you can make a complaint to the NSW [Law Enforcement Conduct Commission](#).

In addition to the above actions, BEING also recommends that people with psychosocial disability:

- **Join us in calling for a NSW Human Rights Act.** Queensland, Victoria and the ACT have a Human Rights Act or similar, and so the rights of people in those jurisdictions are better protected. [Sign up to receive our email newsletter](#) to get updates about this.
- **Join us in calling for a federal Human Rights Act.** Some mental health decisions are made at a national level, so it is important that our rights are also protected under national legislation. [Sign up to receive our email newsletter](#) to get updates about this.
- **Become a member of BEING Mental Health Consumers.** Our advocacy is powerful because of the diversity of our members, who all have lived experience of mental health challenges. The more diverse our membership across NSW, the better we can influence improvements to the health system that are nuanced, intersectional, trauma-informed, and take a rights-based approach to mental health. Mental health consumers living or working in NSW can apply to become a member at <https://being.org.au/become-a-member/>.



## Key Theme: Discrimination

BEING ran a survey with mental health consumers in January 2024 about their human rights in 2023. We intend to do this each year, which means we will eventually have data covering a long period of time. This will help us to see whether human rights for people with psychosocial disability are improving. This long-term study is called a longitudinal study.

There are several areas in which respondents to our 2023 longitudinal survey told us they had experienced discrimination and exclusion because of living with mental health issues. The two articles of the CRPD that relate to the issue of discrimination are Article 5 and Article 8.

### CRPD Article 5 – Equality and Non-discrimination, CRPD Article 8 – Awareness raising and CRPD Article 24 – Education

In this section we provide a brief introduction to some of the core values of the CRPD. These include:

- Equality before the law which means ensuring that everyone, whether you are a person living with a disability or not is treated in the same way by the legal system;
- Equity which means that society is organised to allow everyone to have an equal chance to access things like education, health care and work;
- Related to these core values is non-discrimination which means not unfairly imposing different conditions on people living with disabilities; and
- Awareness raising which is actively supporting people to better understand what it is like to live with a disability.

We use these core values and principles as a way to better understand the responses to our survey.

#### Equality and Non-discrimination<sup>xix</sup>

Article 5 of the CRPD commits signatory states to prohibit “all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”<sup>xx</sup>

Anti-Discrimination NSW’s website says that “unlawful discrimination is when you are treated less favourably than somebody else because of your disability” (as well as several other protected characteristics).<sup>xxi</sup> In this context, disability includes “mental illnesses or psychiatric disabilities” (noting that BEING rejects this medicalised wording).

The *Disability Discrimination Act 1992* provides a series of definitions of disability for the sake of the Act. The most relevant here is sub-definition (g) which defines a disability as “a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour”.<sup>xxii</sup>

This means that discrimination against mental health consumers is against the law at various public locations including healthcare (such as in hospitals and GP offices), at work, in education, where goods and services are provided (including in the media), and where accommodation is provided. This is why these areas are of particular interest to BEING in the context of human rights.

BEING has observed that the term “stigma” is often used in this sector. We understand stigma to be the driving force behind discrimination, but because we are seeking solutions rather than

causes, we feel the word “discrimination” is more relevant when we talk about consumers’ human rights because there are legal human rights complaints mechanisms available for people who experience discrimination.

### Awareness raising <sup>xxiii</sup>

Article 8 of the CRPD commits signatory states to encourage a positive awareness of disability across their populations. Family, school and media are all identified in article 8 as important contexts for awareness raising. The ongoing identification of people living with mental health issues as at high risk of criminality is still a common trope in the Australian media.

We note that NSW does not have anti-vilification laws which would protect people living with mental health issues in NSW from hate speech. Providing people who live with mental health issues with the legal tools to protect themselves from hate speech would be one of the ways that we could start to define legally acceptable and unacceptable ways of talking about mental health.<sup>xxiv</sup> Providing clear definitions of hate speech when it comes to people living with mental health issues would also be a solid contribution to positively raising awareness in relation to mental health issues.

### Education

Article 24<sup>xxv</sup> of the CRPD commits signatory states to ensuring adequate access to education for people living with disabilities. Signatory states have committed to ensuring that reasonable accommodations are provided to ensure that all people living with disabilities are able to access an education in a format that allows the best outcome for them.

## Survey results

### Reasonable adjustments in the education system

Under the CRPD, reasonable adjustments are designated as “reasonable accommodations” and are defined as being “*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;*”<sup>xxvi</sup> This notion is further associated with a vision of universal design in the CRPD that encompasses both physical and cognitive access.

When reasonable adjustments or accommodations are provided, they ensure that the diverse needs of people with disability do not become barriers for participation. This means that different locations such as workplaces, schools and hospitals must be equally accessible to everyone regardless of their abilities. However, it also means that what happens in each of these key locations of work, education, and medical care must also be accessible.

Of the consumers who completed the question about whether they were provided with reasonable adjustments for their psychosocial disability while studying, over 2 in 3 (68%) said that reasonable adjustments were provided. Note that we do not have data about which parts of the education system these survey respondents are describing, so this number likely reflects a combination of tertiary, pre-tertiary, and technical study.

This implies that around 1 in 3 **didn’t** get the reasonable adjustments they were entitled to.

## Media and day to day discrimination

BEING's survey found that of the people who felt that this question was applicable to their situation, 9 in 10 consumers (89%) said they had observed discrimination towards mental health consumers by the media, and nearly all respondents (97%) had observed discrimination towards mental health consumers in day-to-day life.

Some examples of discrimination in the media include the assumption that people who live with mental health issues are dangerous and therefore the media looks for a medicalised mental health diagnosis as the explanation for crime.

BEING is concerned about these statistics given that there are several organisations charged with overseeing fair media reporting and would like to see these watchdogs step up and improve the way in which people with psychosocial disability are portrayed.

With regards to daily life, discrimination can include paternalism and the failure to respect the right of people with lived experience to choose for themselves. Often there is an unreflective assumption that if an individual lives with mental health issues they will also live with extensive cognitive limitations and that decisions will need to be made for them. Advocating against this kind of assumed incapacity to make decisions is at the heart of the CRPD. People who live with mental health issues have a range of other attributes, strengths and weaknesses like every other human being.

## Discomfort about disclosure and lack of understanding from others

BEING's survey found that of the people who felt that this question was applicable to their situation, half of consumers (49%) said they did not feel comfortable talking about their mental health issues and that 3 in 4 consumers (79%) felt that many people do not understand what a psychosocial disability is.



A question that arises here, is whether there is any relationship between the levels of discrimination observed by consumers in both the media and in daily life and this discomfort about sharing mental health challenges with other people?

Further investigation is needed to explore the relationship between the perception of discrimination and the large number of respondents who were uncomfortable about talking about mental health issues.<sup>xxvii</sup>

BEING also notes that in a National Stigma Report Card conducted in 2020, 7 in 10 people with complex mental health challenges said they had experienced stigma during the previous 12 months, and of those, 7 in 10 said they were reluctant to socialise or pursue new relationships due to stigma.<sup>xxviii</sup>

## Community inclusion

More than half of consumers (56%) who responded to the survey felt they did not have access to the services needed to feel part of the community, and a similar number did not feel included in the community (51%). However, 3 in 5 consumers (61%) felt they had access to the information they needed to live in the community. Quality of life is a significant issue for many people with psychosocial disability, even though many broadly have what they need to live.

## Actions for people with psychosocial disability

- **Discrimination in the media:** If you find media coverage that stigmatises mental health issues, people with psychosocial disability, or irresponsibly reports suicide, you can report the item to [StigmaWatch](#)
- **Discrimination in a public place** (including education institutions): If you feel that you have been discriminated against in any public place due to your psychosocial disability, consider making a complaint to the [Australian Human Rights Commission](#) and [Anti-Discrimination NSW](#)

## Key Theme: Workplaces

In this section we address some of the principles of the CRPD which refer to:

- The right to be able to access and sustain employment for people who are living with disabilities. This is a core right because for many people, whether they have a disability or not, work is an important way of both earning an income and building a sense of identity and purpose.
- Various rights that ensure that people living with episodic disabilities will be supported to return to the workplace during or after recovery. These rights are particularly important to people who live with psychosocial disability because episodic mental health issues can leave some people out of the workforce for long periods of time. Given how important work is to individuals, both to earn a living, and create meaning and purpose in a person's life, it is vital that rehabilitation and reemployment services be provided which focus on the specific needs of people with disability.

BEING's survey found that several institutional barriers still exist for people with psychosocial disability in NSW, making this one of the most concerning areas of human rights violations for people with a psychosocial disability.

Being able to access and stay at work is vital to people with lived experience. Having a reliable income ensures that consumers can afford daily living costs as well as the support they need for as long as needed. Employment also allows consumers to build self-esteem, relationships, and provide routine. At an international level the World Health Organisation has identified workforce participation as an important foundation for good mental health.<sup>xxix</sup> Some government agencies in NSW have integrated a recognition of the important role of work in recovery into their work. One example of this is the Recovery At Work tools developed by Safework NSW.<sup>xxx</sup>

## CRPD Article 27 – Work and Employment and Article 26 – Habilitation and rehabilitation

### Work and Employment<sup>xxxi</sup>

Under the CRPD, people living with psychosocial disabilities have a range of rights relating to workplace participation. The obligations which these rights impose on signatory states broadly protect the right of people living with disability to have full participation and representation in the workplace. This imposes obligations on a wide range of employers, given that workplaces include government, private, and not-for-profit organisations.

While the core obligations in relation to the CRPD lie with the Australian government and arguably governments in all jurisdictions, we believe that unions as key representative bodies for Australian workers should also be ensuring that they are protecting and advocating for the rights of people living with disability.

### Habilitation and rehabilitation<sup>xxxii</sup>

Closely connected to the previous rights relating to work and employment are the rights to habilitation and rehabilitation. Signatory states have an obligation to ensure that people who are living with disabilities, whether they have been lifelong, or have developed later in life are able to access appropriate rehabilitation services, including services that will allow them to transition back into meaningful employment if possible.

## Survey results

### Finding work

BEING's survey found that of the people who felt that this question was applicable to their situation, 1 in 3 consumers (33%) said they were unable to find work due to their psychosocial disability.

This is aligned with other surveys which have found that there is currently a 30% employment gap for people with disabilities. This means that 53% of people with disabilities are employed, compared with 83% of people without disabilities.<sup>xxxiii</sup> We acknowledge that federally funded disability employment services have been developed to provide support finding jobs for people with disability. Yet the disability employment statistic has remained roughly the same for many years. This suggests systemic discrimination among employers towards candidates with a disability.

### Discrimination, bullying and harassment

BEING's survey found that of the people who felt that this question was applicable to their situation, around 1 in 3 consumers (36%) felt that they had been bullied, harassed or discriminated against in the workplace during the year due to their psychosocial disability.

These employers are allegedly in violation of the CRPD. The general principles of the CRPD note that a core principle of the charter is to have

*"Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity".<sup>xxxiv</sup>*

Further to this under Article 27 (Work and Employment) the CRPD states that signatory states have an obligation to

*"Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances."*



The results from our survey are similar to the results found in an Australian Workers Union (AWU) survey conducted in 2023. AWU surveyed more than 1,200 workers nationwide and found that half of all workers had experienced bullying. It should be noted that the incidences noted in this survey may have occurred at any time in a respondent's working life (noting this differs from BEING's survey which only covers 2023).

According to the AWU's 2023 World Mental Health Day survey, "Psychological injury is the fastest growing workers compensation claim," with these claims looking to increase to one in three claims by 2030.<sup>xxxv</sup>

In October 2023, new Work Health and Safety legislation was introduced in NSW which includes new duties for employers to respond to, manage and prevent psychosocial risks in the workplace. BEING hopes this new legislation will see fewer incidences of bullying, harassment or discrimination directed at people with a disability.

## Provision of reasonable adjustments

The Australian Human Rights Commission defines reasonable adjustments as “changes to a job, which can be made to enable a worker to perform their duties more effectively in the workplace”. For people with a psychosocial disability, this may look like flexible start and finish times, requiring a specific location in an office space such as near a door, or bringing a Therapy Dog to work.

BEING’s survey found that of the people who felt that this question was applicable to their situation, more than 1 in 2 consumers (57%) said they were not provided with reasonable adjustments at their workplace during the year.

These employers are potentially in violation of the CRPD, which states under article 27 (i) that employers should “*ensure that reasonable accommodation is provided to persons with disabilities in the workplace*”.

Reasonable adjustments are vital as they ensure that consumers are not disadvantaged in the workplace and that the person can do their best work. Put another way, reasonable adjustments provide equity in the workplace for people with disabilities.

This is in stark contrast to the consumers who completed the question about whether they were provided with reasonable adjustments for their psychosocial disability while studying during the year. Of the people who felt that this question was applicable to their situation, more than 2 in 3 consumers (68%) said that reasonable adjustments were provided.

This leads us to the question of why workplaces have done a poor job of providing reasonable adjustments according to this survey's respondents. According to researchers, 50-70% of employees do not disclose their mental health challenges to their employer.<sup>xxxvi</sup> BEING believes that largely this occurs because employers have not provided a psychologically safe working environment.

## A living wage and hours of employment

BEING's survey found that 3 in 10 consumers (30%) said they don't have enough income to live on.

The survey also found that 8 in 10 consumers (84%) agreed that they had to compromise on employment due to their psychosocial disability, such as working reduced hours, or working in a more junior role than they were capable of.



BEING hopes that the [new workplace laws](#) will improve workplace psychosocial safety for mental health consumers. However, focusing on the laws alone is problematic, as they do not include many positive duties such as setting employment and leadership targets for people with disability, including psychosocial disability. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommended the introduction of targets for disability employment in the public sector, of at least 7% by 2025 and at least 9% by 2030. The Australian Network on Disability believes this should be extended to the private sector as well.

## Actions for people with psychosocial disability

- **Discrimination while looking for work:** have questions prepared in interviews to ask about an organisation's policies and practices that are designed to support people with psychosocial disabilities, including reasonable adjustments. If they seem unsure how to answer or do not reply enthusiastically about supporting people with disabilities, this might be a red flag.
- **Discrimination while at work:** read your organisation's policies and procedures. If something seems to be missing, such as flexible working policies to support you with your psychosocial disability, and you feel safe to do so, ask your manager whether the organisation could implement such a policy. If you don't have confidence in your organisation's complaints policies, you can complain to your union (if you are a member), the [Australian Human Rights Commission](#), or the [Fair Work Commission](#) if you are eligible.



## Key Theme: Housing

Several of the questions in this survey refer to housing accessibility, housing choice, and adequacy of housing.

The consequences of living with chronic and severe mental health issues can result in significantly lower income levels than many Australians. Some people with psychosocial disability work part time but are unable to access disability support pensions and as such, may be forced to subsist on a combination of Newstart and part time employment. Some people will experience homelessness, in part due to their mental health challenges.

In Australia's expensive cities, housing affordability can have a significant impact on the sort of housing people can afford and consequently the range of choice about where people with psychosocial disability live and who they live with. An individual's access to mental health support may also have an impact on the social and physical environment that is best for them. Some environments may well be more triggering than others.

Combined with this is the discrimination which some people living with mental health issues experience. While it may not be necessary to disclose mental health issues when accessing some types of housing, the feeling that mental health challenges need to be masked or hidden from housemates or landlords can be an additional burden for people living with psychosocial disability and may make it more challenging to build supportive connections between housemates in shared housing.

For these reasons, BEING believes that secure and appropriate housing is a key foundation for recovering and maintaining mental health.

## CRPD Article 19 - Living Independently and Being Included in the Community

Article 19 of the CRPD protects the rights of all people with disability to choose their place of residence and the people they live with.<sup>xxxvii</sup>

In Australia, people living with psychosocial disability often live with a significantly limited range of choice about where they live, and who they live with, compared with other Australians. For people with psychosocial disability in NSW who require high levels of housing support such as HASI<sup>xxxviii</sup> this can be especially challenging. Additionally, sustaining a tenancy can also be more challenging for people who experience episodic mental health crises.<sup>xxxix</sup>

## CRPD Article 28 - Adequate Standard of Living and Social Protection

Article 28 commits signatories such as Australia to recognise and protect the rights of people with disability to an adequate standard of living and ensure people with disability are supported to keep up with increases in the cost of living so they do not fall into poverty.<sup>xl</sup> It also commits signatories to ensure the accessibility of public housing for people with disability.<sup>xli</sup>

## Survey results

### Housing affordability and choice

BEING's survey found that of the people who felt that this question about housing affordability was applicable to their situation, 7 in 10 consumers (69%) liked their current housing and lived in an affordable house. However, and not surprisingly given the significant impact of cost-of-

living increases in recent years, one in four consumers (29%) said that they either could not easily afford, or did not like the housing they were living in.

Although a bare majority of consumers who responded to this question about housing choice (51%), said they had a choice of housing, nearly the same number (48%) said they did not. Housing choices in Sydney are likely to be significantly constrained by cost. In other areas of NSW, both cost and proximity to work or other services can be dual constraints (depending on a person's employment skills and experience). Further, if a person lives in public housing, they will likely not have a wide range of choices about where they live.



Note that a limitation on the question about housing affordability is that affordability was determined by the person answering the survey, rather than as a quantified percentage of income. This question provides an indication of perceptions and lived experience of housing affordability.

Article 28 of the CRPD commits signatory states to ensure that people with disability have an adequate standard of living and do not fall into poverty. While BEING does not contest the availability of both housing and income supports, the waitlist for government funded housing is very long.<sup>xlii</sup>

Further, BEING understands that Newstart Allowance and has become a proxy disability support payment for people not judged to be “disabled enough” by the NDIS and has a significantly lower cost to the government purse. The number of Newstart recipients judged to have partial capacity for work has increased from 26% in 2014 to 44% in 2023, according to the Australian Institute of Health and Welfare.<sup>xliii</sup>

In their most recent national survey of housing affordability, Anglicare advised that for a single person on the JobSeeker payment (for people who are sick or injured temporarily), no rental listings are affordable, and similarly on a disability support pension 0.1% of rental properties are affordable.<sup>xliii</sup> Since many people living with a psychosocial disability receive support from one of these funding sources, it seems reasonable to conclude that as a group, there is a very limited choice of housing.

BEING supports ACOSS's [Raise The Rate campaign](#), calling for an increase to Newstart and Youth Allowance so that everyone can keep a roof over their head and food on the table.

## Housing location

Of the people who felt that this question was applicable to their situation, more than 1 in 3 consumers (37%) felt that they could not choose where they lived.



The result of this question in the survey is not surprising given that many people living with psychosocial disability live on either low incomes or income support, and as stated above this means that they will usually have to accept whatever housing they are offered. For many people with psychosocial disability and depending on the mental health challenges they are living with, this may mean living a long way from support.

## Housemates

Although 7 in 10 (70%) of people felt they could choose who they lived with, nearly 3 in 10 (28%) felt they could not. Affordability is likely to have an impact here as well.

## Actions for people with psychosocial disability

- **Social housing complaints:** if a complaint to your housing provider or tenancy manager has been unsuccessful, you can contact the [Ombudsman NSW](#) for advice or complaints about social housing.
- **Private tenancy complaints:** if a complaint to your landlord or rental agent has been unsuccessful, you can contact the [Tenants' Union of NSW](#) for advice about private rentals/tenancy and landlord issues, including NSW Civil and Administrative Tribunal (NCAT) hearings.

## Key Theme: Restrictive Practices

In this section the two key rights that we address are equal recognition before the law and protecting the integrity of the person.

- To have equal recognition before the law means that you aren't treated differently to people who do not have a disability when appealing for legal protection. This is particularly relevant in the case of restrictive practices because people using health care services (other than mental health care) are usually not subjected to restrictive practices.
- For people living with psychosocial disability, respecting the integrity of the person can be understood as not subjecting anyone to treatments and medications which they haven't freely agreed to.

It comes as no surprise to BEING that restrictive practices emerged as an issue in the survey data. BEING is aware, through publicly available data, that restrictive practices continue in our state's hospitals and wards despite previous commitments to reduce and eventually eliminate these practices.

BEING continues to be disappointed by the existence of restrictive practices and the resistance to trialling alternatives (many of which have been well documented, including by the [Disability Royal Commission](#)). Restrictive practices are, in fact, State-sanctioned violence. As an agency committed to always providing evidence-based treatments, BEING asks that the Ministry of Health carry out appropriate trials of alternatives to restrictive practices that also support the human rights of mental health consumers.

## CRPD Article 12 – Equal recognition before the law and CRPD Article 17 – Protecting the integrity of the person

Read on its own, the CRPD does not allow all forms of involuntary treatment. However, under articles 12 and 17 of the CRPD, Australia **does** allow involuntary treatment, and BEING believes this was to protect existing systems from a debate about involuntary treatment.

The stance Australia has taken on the interpretation of these two articles undermined the work of people living with disability who were key contributors to the writing of the Charter and is arguably contrary to the spirit of the CRPD. In doing this, Australia has provided its service providers with artificial protection from a broad review of involuntary treatment in each of the state and territory Mental Health Acts. Reducing and ultimately eliminating seclusion and restraint would be a step towards a full application of the CRPD to Australia's mental health laws.

## Survey Results

### Physical restraint

BEING defines physical restraint as staff members (such as a nurse or security guard) using their body to prevent a mental health consumer from moving freely. They might do this with their hands (e.g. holding a consumer so they cannot move) or body (e.g. blocking a consumer from moving past them).

Restraint can be triggering for people with a history of trauma and is not a therapeutic treatment for people with mental health challenges.

There are currently more physical restraint events in Australia than seclusions and mechanical restraints combined.<sup>xlv</sup> Of concern is that nationally, the rate of physical restraint events has stayed much the same since 2015.<sup>xlvi</sup>

BEING's survey found that of the people who felt that this question was applicable to their situation, nearly 1 in 5 consumers (18%) said they were physically restrained in an inpatient unit.

### Chemical restraint

NSW Health's official definition of chemical restraint as, "The use of a medication or chemical substance for the primary purpose of restricting a person's movement."<sup>xlvii</sup>

BEING's survey found that of the people who felt that this question was applicable to their situation, around 1 in 6 consumers (17.5%) were chemically restrained.

It is important to note that there was a very strong correlation between respondents who had experienced physical and chemical restraint. This suggests that if a consumer experiences one type of restraint, they are highly likely to also experience the other.

### A word on data collection about restrictive practices

The [Bureau of Health Information](#) (BHI) which is a NSW government body, publishes data about restrictive practices in NSW on a quarterly basis. This data provides us with some information about seclusion and restraint in mental health units.

However, BHI does not publish information about any kind of restraint on mental health consumers in Emergency Departments, which is where many chemical and mechanical restraints take place.

Further, there is no publicly available data about chemical restraint in any setting. This prevents us from understanding whether the use of chemical restraint is increasing or decreasing over time.

BEING's advocacy for data transparency continues. In the meantime, we hope that this survey data may serve as an indicator of restraint in NSW over time.

### Actions for people with psychosocial disability

- **Seclusion and restraint complaints:** If you experience seclusion or restraint while you are in a mental health ward, call the Official Visitors Program (OVP) Phonenumber on 1800 208 218. Official Visitors are independent of the hospital and can advocate on your behalf. If you have already left hospital and had experienced seclusion or restraint, you can make a complaint to the NSW Health Care Complaints Commission and/or the [Australian Human Rights Commission](#), letting them know you have experienced discrimination in how you received your mental health care.

## Key Theme: Healthcare

Equality of access to healthcare is a really important issue for people who live with psychosocial disability in Australia because living with a debilitating mental issue can often mean that it is a struggle to access appropriate healthcare. This may be for several reasons such as cost of care, location of or access to care particularly for people living in rural or remote areas, and co-occurring physical health issues (which in some cases may be caused by the medications used to help manage mental health issues).

The Australian Government has produced an Australian Charter for Healthcare Rights,<sup>xlviii</sup> stating that in Australia, all consumers have the right to access, safety, respect, partnership, information, privacy and to give feedback. Despite this Charter, there are still some areas in health where people with psychosocial disability experience inequitable treatment including discrimination. This Charter demonstrates the limitations of documents which do not have any legal force. Truly committing to mental health consumer rights will require an Act that provides legally enforceable protections.

### CRPD Article 25 – Health

Article 25 of the CRPD states that people with psychosocial disability are entitled to equality of access to health services, as well as the right not to be discriminated against while accessing health services.

There are human rights in relation to health mentioned in other United Nations instruments,<sup>xlix</sup> which state the rights of all people. Some of these include statements that people have a right to be free from non-consensual medical treatment, the right to health-related information, and the right to not be discriminated against.<sup>l</sup>

## Survey results

### A choice of mental health supports

It is consistent with a commitment to providing as much autonomy as possible for consumers to also provide the greatest possible choice of services. Supporting choice, but then failing to provide the greatest possible diversity of clinical and non-clinical services is hypocritical. In the NSW this means that at a minimum there should, wherever possible, be a choice of clinical and lived experience services. In inpatient settings it may also mean that a greater range of therapeutic activities are made available as well.

BEING's survey found that of the people who felt that this question was applicable to their situation, 1 in 2 (50%) said they have a good choice of mental health supports, and likewise 1 in 2 said they do not.

Of those that believe they have a **good** choice of supports, males feel better about the choice of supports available, as do people living in metropolitan/urban areas (of Sydney) and People of Colour/Culturally and Linguistically Diverse people.



The results from this survey suggest that women, and people living in regional, rural and remote areas, feel their choice of supports is lacking.

In particular, people living in rural and remote areas may struggle to get repeat prescriptions if their medication is only able to be prescribed by a psychiatrist, given the inaccessibility of psychiatrists in rural and remote areas of NSW.

BEING's Rural and Remote Advisory Committee have raised several important issues in relation to accessing health care in rural and remote areas. GPs in rural and remote areas can often have wait lists. Access to more specialised mental health services in these areas is even more challenging given that face to face psychiatry is often only available on a fly in fly out basis and telehealth is not a reliable option for everyone as communications infrastructure is still limited in some rural and remote locations. Due to the limited number of inpatient services in rural and remote areas it can also be challenging to find services that are located close to family and other supports.

### Bulk Billing, and side effects of prescription medication

BEING's survey found that of the people who felt that this question was applicable to their situation, around 2 in 5 consumers (41%) were not provided with information about negative side effects of prescription medications by the clinician who wrote the prescription.

Interestingly, survey respondents who were unable to access bulk billing (through the Commonwealth's Better Access program which provides Medicare-subsidised health supports) were less likely to have side effects of prescription medications explained to them.

Informed consent implies that the consumer understands both the benefits and the risks of taking any medication. When a consumer is not provided with a good understanding of their prescription medications because a clinician has failed in their duty, this is a violation of bodily integrity.

Article 17 of the CRPD asserts that all people living with a disability have a right to have their physical and mental integrity respected. This in turn means that countries like Australia which have signed on to the CRPD have committed to respecting the bodily and mental integrity of people living with disabilities.

This means that mental health consumers have a right to understand the possible psychological and physical side effects of prescription medication **before** it is taken/administered. This issue is significant for mental health consumers given the impacts that some psychiatric medications can have on the body such as obesity, diabetes risk and sexual functioning. While BEING recognises that efforts are being made to ensure that the physical health of people who are long term psychiatric medication users is improved<sup>ii</sup>, more needs to be done.

### Interactions with emergency services

BEING believes that both police and ambulance services in NSW require more training to support consumers experiencing a mental health crisis with a trauma-informed approach.<sup>iii</sup> In

particular, police require training about trauma-informed responses, and police cadets require real-life interactions with people with psychosocial disability so that the first time they speak with somebody experiencing a mental health crisis is during training rather than on duty. BEING believe this will better prepare police for compassionate care by police for mental health consumers.

Of the people who felt that this question about interactions with emergency services was applicable to their situation, around 2 in 5 consumers (41%) said that they were **not** treated like everyone else by emergency services personnel. This implies that a trauma-informed approach was not used regularly and that emergency services must do better in this area.

### Actions for people with psychosocial disability

- **Health care complaints:** If you are prescribed any medication, the clinician must give you information about side effects. If they do not do this, you can insist that they do. Alternatively, if you don't feel able to self-advocate at that point in time, you can also make a complaint to the NSW [Health Care Complaints Commission](#).
- **Police complaints:** If you feel you have been treated unfairly by police, you can make a complaint to the NSW [Law Enforcement Conduct Commission](#).



## Is NSW upholding human rights in any corner of society?

There are a couple of areas where things are working OK for mental health consumers in comparison to the areas highlighted earlier in this report.

### Internet access for healthcare

The CRPD states in Article 25 that people who live with disabilities have the right to access the same range of health care services as all other people. This is an issue of equity of access. While BEING recognises that access to health services is challenging for all people living in rural areas, many people who live with a disability need to have more regular access to appropriate healthcare services.

Some of the issues which particularly impact people with psychosocial disability include access to reliable computer hardware and internet so they can attend appointments with mental health specialists such as psychologists or psychiatrists.

Of the people who felt that this question was applicable to their situation, around 4 in 5 consumers (86%) said they had regular and affordable access to the internet. This is good news when it comes to service provision now that many consumers need to or prefer to speak with their healthcare providers through video rather than face-to-face.

We also note that 14% of consumers said they do not have regular and affordable access to the internet. We are unclear from the data whether this group is living in rural, remote, or urban areas of NSW, or are rough sleepers.

### Complaints mechanisms

Complaints mechanisms are crucial to consumer rights, to improved service performance, and good monitoring of the mental health system. Unlike some other states such as Victoria, NSW does not have a specialist mental health complaints body. This is despite the unique and discriminatory laws that mental health consumers face that permit the use of compulsory treatment, seclusion and restraint.

Of the people who felt that this question was applicable to their situation, only 1 in 5 consumers (19%) said they had made a complaint about their mental health care. BEING does not have information about whether consumers didn't complain because they were happy with their mental health care services, or alternatively because they didn't know how to complain, or where to complain to, or whether a complaint would have any positive effect on health care services in the future.



According to the 2022-23 Annual Report of the NSW [Health Care Complaints Commission](#) (HCCC), there were 1,694 complaints relating to public hospitals received that year.<sup>liii</sup> Of those, 9.3% were complaints about mental health care in public hospitals, up from 6.9% the previous year.

In relation to complaints to HCCC relating to psychiatric hospitals more specifically, 47.1% of complaints were primarily related to treatment, followed by communications/information at 13.4% and consent issues at 9.2%.

Article 13 of the CRPD states that people living with disabilities have a right to equal access to justice. One of the first steps one can take when seeking redress for an unfair, discriminatory, or harmful situation is to make a formal complaint so that your situation can be remedied. Just as supported decision making is one of the ways to ensure that the choices of a person with lived experience are understood as clearly as possible, it is appropriate to ensure that complaints processes are accessible for people living with psychosocial disabilities or cognitive impairments.

## Conclusion

As a signatory to the United Nations Convention on the Rights of People with Disabilities (CRPD), Australian governments have an obligation to “take all appropriate measures” to remove existing laws and practices that are discriminatory, and “refrain from engaging in any act” that goes against the CRPD. As this report demonstrates, significantly more work needs to be done to eliminate discrimination and harmful practices for people with a psychosocial disability.

As such, BEING calls for the introduction of a federal Human Rights Act, a NSW Human Rights Act, as well as a comprehensive review the NSW Mental Health Act with a human rights lens. In doing so, many of the issues highlighted in this report – particularly in relation to restrictive practices – would be put under much more scrutiny.

## References

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<sup>i</sup> In a longitudinal survey or study the same series of questions is asked at various points over time to develop both a better understanding of the issues that are most important for a group of respondents at a given time, but also to understand the changes in issues over time. They will help us to understand the progress made, or not made over time in relation to the NSW mental health system from a consumer perspective.

<sup>ii</sup> <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

<sup>iii</sup> [tbineternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=en](http://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=en)

<sup>iv</sup> <https://social.desa.un.org/issues/disability/crpd/article-12-equal-recognition-before-the-law>

<sup>v</sup> <https://social.desa.un.org/issues/disability/crpd/article-17-protecting-the-integrity-of-the-person>

<sup>vi</sup> See the list of signatory declarations and reservations here:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en#EndDec)

[15&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en#EndDec) . Declarations and Reservations (Australia), opened for signature 30 March 2007, 999 UNTS 3 (entered into force 3 May 2008). But see also paragraph fifteen of

[https://disability.royalcommission.gov.au/system/files/2020-](https://disability.royalcommission.gov.au/system/files/2020-09/Australian%20Government%20Position%20Paper%20on%20the%20UNCRPD%20-%20Part%201%20-%20Australia%E2%80%99s%20position%20and%20interpretive%20approach.pdf)

[09/Australian%20Government%20Position%20Paper%20on%20the%20UNCRPD%20-%20Part%201%20-%20Australia%E2%80%99s%20position%20and%20interpretive%20approach.pdf](https://disability.royalcommission.gov.au/system/files/2020-09/Australian%20Government%20Position%20Paper%20on%20the%20UNCRPD%20-%20Part%201%20-%20Australia%E2%80%99s%20position%20and%20interpretive%20approach.pdf)

<sup>vii</sup> For an analysis of how an unrestricted CRPD could be applied to a state mental health act in Australia see Chris Maylea and Asher Hirsch, 'The Right to Refuse: The Victorian Mental Health Act 2014 and the Convention on the Rights of Persons with Disabilities' (2017) 42(2) *Alternative Law Journal* 149

<sup>viii</sup> See

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhshzSGolKOaUX8SsM2PfxU7sdcbNJCwLRF9xTca9TaCwjm5OInhspoVv2oxnsujKTREtaVWFXhEZM%2F0OdVJz1UEyF5leK6Ycmqrn8yzTHQCn> Particularly relevant in this context are sections 5 a and 5 b.

<sup>ix</sup> For an overview and assessment of their strength relative to the mental health act in NSW see <https://mhrm.mhcc.org.au/chapters/5-substitute-decision-making-and-capacity/chapter-5-section-f-advance-care-directives/> . Chapter 5, subsection F, subsection 4 (When do advance care directives apply?).

<sup>x</sup> Note that some disability agencies in NSW have made forward steps to integrate supported decision making into thier processes. See e.g. the NSW Trustee and Guardian

<https://www.tag.nsw.gov.au/news/supported-decision-making-and-my-rights-matter-project>

<sup>xi</sup> Article 1 of the CRPD (Purpose).

<sup>xii</sup> See for example work done in the NDIS space to ensure that NDIS funding is accessible to people whose disabilities are permanent, but only episodically disabling. See the *2022 NDIS legislation amendments – July update* <https://www.ndis.gov.au/print/pdf/node/7975> in which it is advised that episodic and fluctuating impairments can be considered permanent under for the *National Disability Insurance Scheme Act 2013*. See section 25

[https://www5.austlii.edu.au/au/legis/cth/consol\\_act/ndisa2013341/s25.html](https://www5.austlii.edu.au/au/legis/cth/consol_act/ndisa2013341/s25.html) .

<sup>xiii</sup> And so, for example, Anne Plumb in her 1994 article "...Distress or Disability?" argues for a radically social constructionist concept of mental health issues which suggests that we should speak not of those who are impaired by mental health issues, but of those who have survived the mental health system. From this perspective psychological impairment results from the response of the medicalised mental health system to non-normative behaviours and emotions, rather than being identified by it. See [https://eprints.lancs.ac.uk/id/eprint/69391/1/Distress\\_or\\_Disability.pdf](https://eprints.lancs.ac.uk/id/eprint/69391/1/Distress_or_Disability.pdf) for a copy of Plumb's seminal paper.

<sup>xiv</sup> An acronym for neurologically divergent. It is a blanket term which includes people on the autism spectrum, people living with ADHD, people with dyslexia and dyspraxia and a range of other neurologically atypical people. It is often contrasted with the term neurotypical. In political terms the neurodiversity movement advocates for a broader recognition, inclusion and respect for people who are neurologically distinct from the neurotypical norm. Neurodivergent people are understood as simply

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being naturally occurring neurological variants, who ought to be embraced and accepted and not pathologised.

<sup>xv</sup> For a more academic overview of these issues see Spandler, Helen, Anderson, Jill, Sapey, Bob *Madness, Distress and the Politics of Disablement* (2015) Policy Press – University of Bristol. This book expands on the debates around the appropriateness of including lived experience of mental health issues under a more general disability category. It contains contributions from both Tina Minkowitz, a key activist involved in drafting the CRPD and Anne Plumb a key critic of the idea of including mental health under a big tent understanding of disability.

<sup>xvi</sup> For a full overview of the recommendations see the executive summary of the Commission's recommendations at <https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>

<sup>xvii</sup> See Pg. 78 and 79 [https://content.vic.gov.au/sites/default/files/2024-01/RCVMHS\\_FinalReport\\_ExecSummary\\_Accessible.pdf](https://content.vic.gov.au/sites/default/files/2024-01/RCVMHS_FinalReport_ExecSummary_Accessible.pdf)

<sup>xviii</sup> Spoon Theory: [https://en.wikipedia.org/wiki/Spoon\\_theory](https://en.wikipedia.org/wiki/Spoon_theory)

<sup>xix</sup> [Article 5 - Equality and non-discrimination | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-5-equality-and-non-discrimination)

<sup>xx</sup> Article 5, subsection 2.

<sup>xxi</sup> [What is discrimination \(nsw.gov.au\).](https://www.nsw.gov.au/what-is-discrimination)

<sup>xxii</sup> *Disability Discrimination Act 1992*. See part 1, Section 3, Objects for an overview of the act and of the core rights which it enacts. <https://www.legislation.gov.au/C2004A04426/2018-04-12/text>

<sup>xxiii</sup> [Article 8 - Awareness-raising | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-8-awareness-raising)

<sup>xxiv</sup> See Katterl, Simon, 'Words That Hurt: Why Mental Health Stigma Is Often Vilification, and Requires Legal Protection' (2023) 0(0) *Alternative Law Journal* for an overview of anti-vilification laws relating to people living with mental health issues in Australia.

<sup>xxv</sup> [Article 24 - Education | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education)

<sup>xxvi</sup> [Article 2 CRPD. Article 2 - Definitions | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-2-definitions)

<sup>xxvii</sup> Note that the most recent ABS survey of Disability, Ageing and Carers (<https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-first-results/latest-release>) also identified significant rates of discrimination amongst disabled people as a broad group. The very high rates in our sample suggest that this may be an even bigger problem for people living with psychosocial disabilities in particular.

<sup>xxviii</sup> [Most people with complex mental health issues face stigma and discrimination, survey shows - ABC News](https://www.abc.net.au/news/2023-08-15/most-people-with-complex-mental-health-issues-face-stigma-and-discrimination-survey-shows-abc-news) See <https://nationalstigmareportcard.com.au/> for the latest data.

<sup>xxix</sup> The World Health Organisation provides a range of recommendations about how to improve the mental health of organisations and how to support workers living with mental health issues in its Guidelines on Mental Health at Work. <https://www.who.int/publications/i/item/9789240053052>

<sup>xxx</sup> [https://www.safework.nsw.gov.au/safety-starts-here/mental-health-at-work-the-basics/mental-health-at-work/\\_resources/documents/mental-health-recovery-at-work-tools-summary-of-research-findings](https://www.safework.nsw.gov.au/safety-starts-here/mental-health-at-work-the-basics/mental-health-at-work/_resources/documents/mental-health-recovery-at-work-tools-summary-of-research-findings)

<sup>xxxi</sup> [Article 27 - Work and employment | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-27-work-and-employment)

<sup>xxxii</sup> [Article 26 - Habilitation and rehabilitation | Division for Inclusive Social Development \(DISD\) \(un.org\)](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-26-habilitation-and-rehabilitation)

<sup>xxxiii</sup> These statistics derive from the the most recent survey of Disability, Ageing and Carers carried out by the Australian Bureau of Statistics in 2015. <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-first-results/latest-release>

<sup>xxxiv</sup> Article 3, sub-section d.

<sup>xxxv</sup> [50% of Australian workers report being bullied on World Mental Health Day - The Australian Workers' Union : The Australian Workers' Union \(awu.net.au\)](https://www.australianworkersunion.com.au/news/50-of-australian-workers-report-being-bullied-on-world-mental-health-day)

<sup>xxxvi</sup> <https://theconversation.com/should-you-tell-your-boss-about-your-mental-illness-heres-what-to-weigh-up-200907>

<sup>xxxvii</sup> Article 19, a. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html>

<sup>xxxviii</sup> <https://www.health.nsw.gov.au/mentalhealth/services/adults/Pages/hasi.aspx>

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<sup>xxxix</sup> See <https://www.ahuri.edu.au/analysis/brief/understanding-links-between-mental-health-housing-and-homelessness> for an overview of some of the main issues.

Also <https://www.ahuri.edu.au/sites/default/files/migration/documents/Final-Report-Trajectories-the-interplay-between-housing-and-mental-health-pathways.pdf> for a more detailed review.

<sup>xl</sup> Article 28, 2, b. Article 28 - Adequate standard of living and social protection | Division for Inclusive Social Development (DISD) (un.org)

<sup>xli</sup> Article 28, 2, d. Article 28 - Adequate standard of living and social protection | Division for Inclusive Social Development (DISD) (un.org)

<sup>xlii</sup> 24 Months as of 31st March 2024. <https://www.facs.nsw.gov.au/housing/help/applying-assistance/social-housing-waiting-list-data#social>

<sup>xliii</sup> See the subsection entitled *DSP and Newstart Allowance/JobSeeker*. Payment. <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/income-and-finance/income-support>

<sup>xliv</sup> <https://www.anglicare.asn.au/wp-content/uploads/2024/04/Rental-Affordability-Snapshot-National-Report.pdf> See page 9.

<sup>xlv</sup> [Seclusion and restraint - Mental health - AIHW](#)

<sup>xlvi</sup> *Ibid.*

<sup>xlvii</sup> *Policy Directive: Seclusion and Restraint in NSW Health Settings*, NSW Health, 6 March 2020. [https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2020\\_004.pdf](https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2020_004.pdf)

<sup>xlviii</sup> [https://www.safetyandquality.gov.au/sites/default/files/2020-12/11467\\_acsqhc\\_consumerguide\\_a4\\_web\\_fa01.pdf](https://www.safetyandquality.gov.au/sites/default/files/2020-12/11467_acsqhc_consumerguide_a4_web_fa01.pdf)

<sup>xlix</sup> <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>

<sup>l</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

<sup>li</sup> Of particular importance in this context is the Equally Well program. See <https://www.equallywell.org.au/>

<sup>lii</sup> [Position-Statement-First-responders-to-a-mental-health-crisis.pdf](#) (being.org.au)

<sup>liii</sup> <https://www.hccc.nsw.gov.au/ArticleDocuments/75/HCCC%20Annual%20Report%202022-23.PDF.aspx>



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