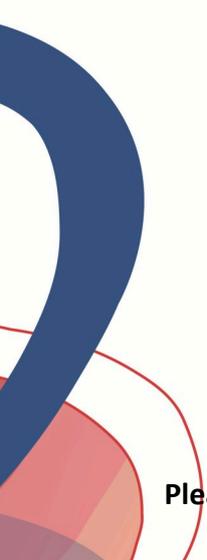


Week 3: Social Justice and Legislation





Social Justice and Legislation

Objective:

To explore why human rights are important and the part social justice and legislation play in committee-work.

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References and Further Reading:

National Pro Bono Resource Centre—occasional paper #1 ‘What is Social Justice?’

https://probonocentre.org.au/wp-content/uploads/2015/09/Occ_1_What-is-Social-Justice_FINAL.pdf

Mental Health Statement of Rights and Responsibilities—

<https://www1.health.gov.au/internet/publications/publishing.nsf/Content/pub-sqps-rights->

[toc#:~:text=This%20statement%20seeks%20to%20ensure,be%20confident%20in%20exercising%20them.](https://www1.health.gov.au/internet/publications/publishing.nsf/Content/pub-sqps-rights-toc#:~:text=This%20statement%20seeks%20to%20ensure,be%20confident%20in%20exercising%20them.)

The Fifth National Mental Health and Suicide Prevention Plan -

<https://www.mentalhealthcommission.gov.au/Monitoring-and-Reporting/Fifth-Plan/5th-National-Mental-Health-and-Suicide-Prevention>

What are human rights?

They are a right which is believed to belong to every person.

They are based on principles of **dignity**, **equality** and **mutual respect**. They are about being **treated fairly**, treating others fairly and having the ability to make **genuine choices** in our daily lives.

- www.humanrights.gov.au

What is social justice?

Justice in terms of the distribution of **wealth**, **opportunities**, and **privileges** within a society.'

- Oxford Dictionary

Social Justice can be defined as 'the way in which **human rights** are **manifested in the everyday lives** of people at every level of society"

-Wikipedia.com

The concepts of 'social justice' are used in context where people understand social justice to be about fairness **beyond individual justice**.

- *National Pro Bono Resource Centre Occasional Paper #1 'What is Social Justice?'*

What is social inclusion?

...that people should have sufficient financial and other resources to participate in economic, social, cultural and political life. Social exclusion involves the lack or denial of resources, rights, goods and services and the inability to participate in the normal relationships and activities available to the majority of people in a society, whether in economic, social, cultural or political arenas. It **affects both quality of life of individuals and the equity and cohesion of society as a whole**.

- *National Pro Bono Resource Centre Occasional Paper #1 'What is Social Justice?'*



How do these concepts relate to Consumer Representation?

How can you apply these concepts in the context of Consumer Representation?

Why are these important?



Image courtesy of Kittisak at FreeDigitalPhotos.net

The concept of **social inclusion** and **exclusion** is important for a number of reasons:

- *It broadens our understanding of disadvantage in the community beyond the single dimension of poverty to cover other factors – including process or systemic issues which impact on disadvantage, the denial of rights, and the lack of opportunity for participation in the various areas of modern life.*
- *It focuses beyond what exclusion is, to its consequences and impacts for individuals and society, in both the short and long term.*

- *It assists us to have a better understanding of the dimensions of marginalisation, disadvantage and inequality in society.*

For example, In South Australia, the social inclusion approach has worked across systems to improve responses to people experiencing multiple disadvantage, and has made inroads in areas such as homelessness, youth disengagement from education, mental health services, and access to recreation facilities.

When in committee meetings keep in mind the following principles of Social Justice:

- **Access** (greater equality of access to goods and services)
- **Equity** (overcoming unfairness caused by unequal access to economic resources and power)
- **Rights** (equal effective legal, industrial and political rights)
- **Participation** (expanded opportunities for real participation in the decisions which govern their lives)

- www.health.gov.au

To find out more read the following handouts:

ATCOSS Factsheet—Social Justice

National Pro Bono Resource Centre Occasional Paper #1

'What is Social Justice?'

<https://probonocentre.org.au>

What people think about Social Justice and Legislation

I think what's important around rights is not just that consumers have rights but that they know what those rights are so they can then self-advocate.

It's good to know what your rights are, so that if somebody is impacting on your rights you can say so and make sure they change what they're doing.

What I think:

Consumer Representation helps with destigmatisation of mental illness, because having someone who's had the lived experience of mental illness positively involved in the development of services I think is an important thing.

For a long time people who lived with mental health issues had things done to them, instead of done with them, and consumer rights is about changing that.

It's one thing having rights on a piece of paper, it's another being able to have them upheld, and they are totally different... ask from your knowledge of human rights 'why isn't it like this?'

If everybody had the ability to advocate for themselves, we might see more fairer legislation, so I would encourage everybody to do self-advocacy.

What are Human Rights?

What is the 'International Bill of Human Rights'?

- Universal Declaration of Human Rights – 1948
- International Covenant on Economic, Social and Cultural Rights - 1966
- International Covenant on Civil and Political Rights – 1966

Australia is a party to the seven major human rights treaties:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities

What effect do these have on rights in Australia?

- At the federal level, the Australian Government has an obligation under international law to respect, protect and fulfil human rights. This means the government is obliged to take action to ensure people can enjoy their human rights. The government must also refrain from action that would breach people's human rights.
- Ratification (Australia agrees to be bound at international law) does not make them part of Australian law (this is different in some countries, such as the US, where ratification automatically makes the treaty part of domestic law)
- Australia passes laws and introduces programs to implement the treaties (in part)
- Australia reports to UN committees on how it meets its obligations (but Governments regularly ignore findings by UN committees that it is not complying with them)
- e.g. Commonwealth anti-discrimination laws (race, sex, disability and age) all implement non-discrimination obligations in one or more of the UN treaties.



Image courtesy of
Hannah Busing at Unsplash

Information about Australia's Human Rights Framework:

[https://www.ag.gov.au/
rights-and-protections/
human-rights-and-anti-
discrimination](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination)

Also see handouts:

*Human Rights in Plain
English*

Defining Human Rights

Human Rights Act 2004 (ACT)

- There is no national Human Rights Act in Australia.
- Only Victoria and the ACT have Human Rights Acts
- In the ACT, the **Human Rights Act** protects most civil and political rights, and the right to education.
- The **Human Rights Commission** promotes the human rights and welfare of all people living in the ACT.
- The **Human Rights and Discrimination Commissioner** promotes human rights, identifies and examines issues, fosters public debate, and provides community education and information about human rights.
The Commissioner:
 - reviews the effect of laws on human rights, as well as advising the Attorney-General on anything relevant to the operation of the *Human Rights Act 2004*.
 - has the power to request leave by courts to intervene in relevant human rights cases, as well as inspection powers under the *Corrections Management Act 2008*.
 - can investigate complaints about discrimination.
 - cannot investigate complaints about breaches of the Human Rights Act. This happens through the courts.
- Public authorities in the ACT are required to comply with the Human Rights Act. So if, for example, the Health Directorate makes decisions that limit mental health consumers' rights, the Human Rights Act can be used to make them either justify the limitation, or change it.



For more information see

ACT Human Rights Commission:

hrc.act.gov.au

List of enshrined rights:

<https://hrc.act.gov.au/humanrights/guides-and-publications/detailed-information-enshrined-rights/>

The Disability Discrimination ACT 1992

What's it all about?

The Federal **Disability Discrimination Act 1992 (D.D.A.)** provides protection for everyone in Australia against discrimination based on disability.

Disability discrimination happens when people with a disability are treated less fairly than people without a disability.

Disability discrimination also occurs when people are treated less fairly because they are relatives, friends, carers, co-workers or associates of a person with a disability.

The DDA is administered by the **Australian Human Rights Commission**. If you believe you have been discriminated against because of your disability, the Commission can help.



Image courtesy of David Castillo Dominici at FreeDigitalPhotos.net

There are several key pieces of legislation that impact on the lives of people with disability in Australia:

Disability Discrimination Act 1992 (DDA)

UN Convention on the Rights of Persons with Disabilities (CRPD), 2006

Australia's National Disability Insurance Scheme (NDIS) Act, 2013

National Standards for Disability Services (NSDS), 2013

What areas of life does the D.D.A. cover?

The DDA makes it against the law to discriminate against someone if they have a disability in the following areas of life:

- *Employment*
- *Education*
- *Access to premises used by the public*
- *Accommodation*
- *Buying land*
- *Activities of clubs and associations. .*
- *Sport*
- *Administration of Commonwealth Government laws and programs*

To find out more see the following handouts:

Quick Guide to Discrimination; Disability Discrimination

Also check out:

Humanrights.gov.au

For example: Employers should choose the best person for the job, whether that person has a disability or not. They should make this decision based on a person's ability to perform the essential activities of the job. They should not make assumptions about what a person can or cannot do because of a disability.

The UN Convention on the Rights of Persons with Disabilities

What's it all about?

The **Convention on the Rights of Persons with Disabilities** is an international human rights convention which sets out the fundamental human rights of people with disability. It is the first binding international human rights instrument to explicitly address disability.

The Convention aims to enhance opportunities for people with disability to participate in all aspects of social and political life including access to employment, education, health care, information, justice, public transport and the built environment.

It consolidates existing international human rights obligations and clarifies their application to people with disabilities, rather than creating 'new' rights.

By ratifying the Convention, Australia accepts the obligation to recognise that people with disability enjoy legal capacity on an equal basis with others in all aspects of life and to take appropriate measures to provide people with disability access to the support they may require in exercising their legal capacity.

The Convention contains a series of Articles which set out general and specific obligations for States in relation to specific human rights and fundamental freedoms.

Part of Declaration Australia made upon ratification:

"Australia recognizes that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards;

Australia recognizes that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others. Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards; ..."



Image courtesy of David Castillo Dominici at FreeDigitalPhotos.net

To find out more see the following handouts:

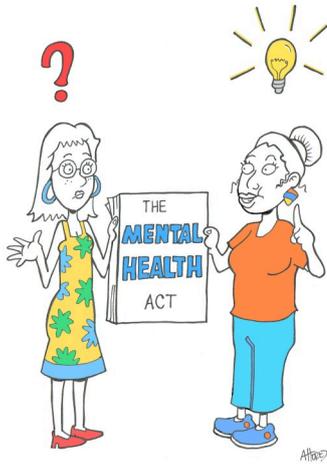
Overview of the UN CRPD

Also check out:

[Humanrights.gov.au](http://humanrights.gov.au)

<http://hrc.act.gov.au/humanrights/detailed-information-enshrined-rights/>

Mental Health Act 2015 (ACT)



- The **Mental Health Act 2015 (ACT)** refers to the legislation in the ACT that applies to the assessment, treatment, care and support of people experiencing a mental illness or mental disorder.

- The Act was the result of considerable stakeholder and public consultation and seeks to promote a renewed recovery-oriented approach to mental health service delivery. It brings the ACT's mental health legislation in line with human rights law, including the United Nations Convention

on the Rights of People with a Disability, and the Human Rights Act 2004.

Some changes to the Act:

- *Formal Consideration of a person's decision making capacity*
- *Support decision making*
- *Legal recognition of Advance Consent Directions and Advance Agreements*
- *Appointment and role of the Nominated Person*

Some objects and principles applying to the Act

- *Respect people's rights*
- *Support people to participate in decisions about their treatment and care*
- *Support people's recovery*
- *Exercise the least restrictive options*
- *Use the most suitable forms of communication*
- *Keep people with mental disorder or illness fully informed*

For more information see:

ACT Charter or Rights for people experiencing mental ill health or disorder

Supported Decision Making

- *A person with mental disorder or mental illness must always be given the opportunity to make decision about treatment, care or support to the best of his/her ability*
- *A person is to be supported to contribute to the decision about his/treatment, care or support to the best of their ability*
- *The person must be communicated with in ways they can understand*

Advance Agreements (AA) and Advance Consent Directions (ACD)

- *These document now have full legal recognition and apply even though the person lacks capacity*
- *And ACD contains the main decisions about the treatment*
- *And AA contains 'everyday matters (e.g. who will look after the house or pets)*
- *The AA can also contain treatment options/preferences*
- *The treating team must ensure that the person is informed about and given opportunity to enter into and AAS or ACD*

My Rights, My Decisions



For more information see:

- My Rights My Decision Form Kit
- actmhcn.org.au

The **My Rights, My Decisions program** supports consumers to express their views and preferences about their mental health treatment, care and support. Based on the Mental Health Act 2015 (ACT), the program helps consumers to be empowered and express themselves while they have decision-making capacity, so that their views are taken into account by their treating team if they have reduced decision-making capacity in the future.

A **My Rights, My Decisions Form Kit** has been developed in consultation with mental health consumers, ACT Health, ACT Disability, Aged and Carer Service, Carer's ACT, Legal Aid ACT and the ACT Human Rights Commission.

The Form Kit contains three parts and you may choose to complete one or more part:

Nominated Person form – A Nominated Person is someone you choose to help you make and express your decisions, be consulted and receive information about you and your treatment: to be signed by you and your Nominated Person

Advance Agreement form – Here you can say what your treatment preferences are and what should happen at home with your dependants, pets, bills and so on, and any relevant information about you, such as languages you speak: to be signed by you, a representative of your treating team, and your Nominated Person if you have one

Advance Consent Direction form – Here you can say what treatments you agree to or do not agree to, including medications, and who you do or don't want to receive information about you when you don't have capacity to decide: to be signed by yourself, a representative of your treating team, and one or two witnesses (refer to Form Kit about who can be a witness)

The Network holds free workshops to provide information about your rights under the Mental Health Act 2015 (ACT), and to support you to complete a draft of these forms ready for discussion, agreement and sign off by your treating team representative.

National Safety and Quality Health Service (NSQHS) Standards



The purpose of the **National Safety and Quality Health Service (NSQHS) Standards** is to protect the public from harm and to improve the quality of health service provision. The eight NSQHS Standards provide a nationally consistent statement about the level of care consumers can expect from health services.

The eight NSQHS Standards are:

- Clinical governance | Partnering with consumers
- Preventing and controlling infections
- Medication safety | Comprehensive care
- Communicating for safety | Blood management
- Recognising and responding to acute deterioration

For more information see:
www.safetyandquality.gov.au/standards/nsqhs-standards/partnering-consumers-standard

The **Partnering with Consumers Standard** recognises the importance of involving patients in their own care and providing clear communication to patients. This standard, together with the Clinical Governance Standard, underpins all the other standards.

The intention of the **Partnering with Consumers** standard is to create an organisation in which there are mutually valuable outcomes by having:

- Consumers as partners in planning, design, delivery, measurement and evaluation of systems and services
- Patients as partners in their own care, to the extent that they choose.

To do this health service organisations need to develop, implement and maintain systems to partner with consumers. These partnerships relate to the planning, design, delivery, measurement and evaluation of care. The workforce uses these systems to partner with consumers.

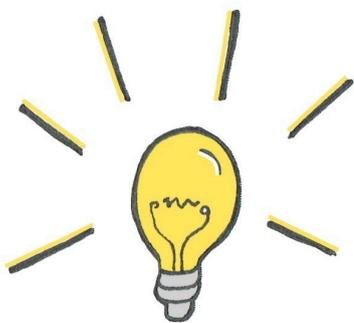
Supporting effective consumer partnerships means supporting multiple mechanisms of engagement. Meaningful methods of engagement range from representation on committees and boards, to contributions at focus groups, to feedback received through surveys or social media.

Consumer partnerships should be meaningful and not tokenistic. To maximise the contribution of partnerships, consumers need to be seen and treated as people with expert skills and knowledge. In the same way that clinicians and other organisational partners are respected for their areas of expertise, consumer partnerships need to be .recognised and valued for their unique perspective on the patient experience.

Video Notes: Social Justice and Legislation

What legislation/information have consumer representatives found useful when sitting on committees?

Watch to the video and list some strategies and tools/resources that you might want to use for consumer representation.



CRP Video: *Human Rights and Legislation*

Think about what you learned about Social Justice, Human Rights and Legislation.

What did you find the most interesting? Find most useful? Practical? Want to learn more about?

Are there some consumer issues related to social justice/rights that are of interest to you?

Something I want to take away from this module:



