SUBMISSION

Response to Draft National Report Australia's Fourth Universal Periodic Review

29 August 2025

NATIONAL MENTAL HEALTH CONSUMER ALLIANCE

Acknowledgement of Country

We acknowledge Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the land on which we work and pay our respects to Elders past and present. Sovereignty was never ceded.

The National Mental Health Consumer Alliance (the Alliance) has prepared this submission in response to the invitation to provide a submission in response to the Draft national Report Australia's Fourth Universal Periodic Review.

All references to 'Consumer' and 'lived experience' in this submission refer to mental health consumers with lived experience of mental health challenges and/or suicidality. We use the term "mental health consumers" as a catchall term due to its connection with our movement's history, but we acknowledge that different people self-identify with different terms. We do not include family, carers, kin or the bereaved in our definition of lived experience as it appears in this report.

About us

The Alliance is the national peak body representing mental health consumers. We work together to represent the voice of all mental health consumers on national issues. We are the people experiencing mental health issues/distress, at the table advocating with government and policy makers, and working with a robust network of grassroots communities.

More information is available on the Alliance's website: nmhca.org.au.

Executive Summary

Involuntary treatment is still commonplace in Australian mental health practice. People with lived experience of mental health challenges continue to be subjected to restrictive practices, including seclusion, physical restraint and chemical restraint in government-run and private acute and rehabilitation settings.

The National Mental Health Consumer Alliance (Alliance) is disappointed to note that the Draft National Report, Australia's fourth Universal Periodic Review (Draft National Report) omits any recommendation for the Australian Government to revoke its interpretative declarations of Article 12 - involuntary detention of people with mental health challenges and Article 17 - involuntary treatment of people with mental health challenges of the United Nations – Convention on the Rights of People with a Disability (UN-CRPD) and ratify these two Articles in full. If the Australian Government was to ratify these two Articles, people with lived experience of mental health challenges would be better protected from involuntary treatment.

We strongly recommend the Australian Government introduce a national Human Rights Act as recommended during the UPR in 2021. People living with mental health challenges would greatly benefit as it would ensure that Australia's compliance with the *Optional Protocol to the Convention Against Torture (OPCAT)* remains inadequate across Commonwealth, state, and territory governments. A central obligation under OPCAT is the establishment of a National Preventive Mechanism (NPM) in each jurisdiction to monitor places of detention. However:

- Victoria, Queensland, and New South Wales have yet to nominate their NPMs.
- Other jurisdictions with nominated NPMs lack sufficient legislative frameworks to ensure full OPCAT compliance, including necessary powers, immunities, and protections.
- The Australian NPM is a collective entity representing all appointed bodies nationwide, but its effectiveness is hindered by inconsistent implementation.

Following a failed 2023 visit by the UN Subcommittee on the Prevention of Torture (SPT), Australia faced international criticism for its lack of progress. Despite this, some nominated NPM bodies have shown promise, particularly in youth justice advocacy.

Recommendations

The Alliance recommends that the National Report to the Fourth Universal Periodic Review includes:

Recommendation 1: The Commonwealth Government must remove its interpretive declarations regarding Articles 12 and 17.

Recommendation 2: The Commonwealth Government must immediately commission national research on how to adequately implement legislative and policy changes to give effect to changes to the interpretation of Articles 12 and 17.

Recommendation 3: The Commonwealth Government must, through the National Mental Health Commission, in partnership with the Alliance and state and territory consumer peak bodies and other relevant stakeholders, co-develop a national plan to eliminate restrictive practices.

Recommendation 4: The Commonwealth Government must, with the state and territory governments, ensure all jurisdictions be compliant with OPCAT by requiring each jurisdiction to nominate a National Preventive Mechanism (NPM); that NPM is granted appropriate powers, immunities and protections to complete its work, and any barriers to future Subcommittee on the Prevention of Torture (SPT) visits are addressed.

Recommendation 5: The Commonwealth Government must develop a reporting framework that also indicates a jurisdiction's NPM.

Recommendation 6: The Commonwealth Government must introduce a national Human Rights Act within this term of government.

Recommendation 7: The Commonwealth Government fund First Nations-led peaks, including the lived experience peak Indigenous Australian Lived Experience Centre (IALEC) to lead the development of an implementation and action plan for domestic application of the UNDRIP.

Recommendation 8: The Commonwealth Government fund First Nations-led peaks, including IALEC, to develop First Nations led independent oversight and accountability under UNDRIP.

Recommendation 9: The Commonwealth Government must, in partnership with relevant peak bodies and other relevant stakeholders, co-develop a plan to introduce a national Human Rights Act, including a structure for the Human Rights Act to operate within and with other legislation and regulations and a timeframe for implementation.

Recommendation 10: The Commonwealth Government must remove it's interpretive declaration on Article 18 of the UN-CRPD and immediately commission national research on how to adequately implement legislative and policy changes to give effect to changes to the interpretation of Article 18.

1. Universal Periodic Review Report– what is missing

The National Mental Health Consumer Alliance (the Alliance) points out that the Universal Periodic Review Report (UPR Report) does not mention seclusion, restrictive practices, involuntary treatment and coercive practice. These practices subject people living with mental health challenges to cruel, degrading an inhumane treatment throughout Australia.

1.1 Involuntary treatment

Free and informed consent sits at the heart of general healthcare and is an enforceable right of healthcare consumers. The existence of mental health laws permitting involuntary treatment reflect a discriminatory withdrawal from such standards[1]. The United Nations – Convention on the Rights of People with Disability (UN-CRPD)[2] advises that State parties, of which Australia is a signatory, shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment[3]. Australia, however, has made interpretative declarations when it comes to Article 12 (involuntary detention of people with mental health challenges) and Article 17 (involuntary treatment of people with mental health challenges) both of which support the elimination of seclusion, restrictive practices, involuntary treatment and coercive practice.

Australia has previously stated that its understanding of Article 12 is 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*"[4].

[1] 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.
[2] Convention on the Rights of Persons with Disabilities | OHCHR (accessed 13 August 2025)
[3] https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf (accessed 12 August 2025)
[4] Supported and substitute decision-making | ALRC, https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/2-conceptual-landscape-the-context-for-reform-2/supported-and-substitute-decision-making/, accessed 18 August 2025

For Article 17, Australia stated its understanding was the "*Convention allowed 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*"[5].

Despite the Australian Health Minister's Advisory Council committing the Government in principle to action in this area in 2021[6], people with lived experience of mental health challenges continue to be subjected to seclusion, restrictive practices, coercive practice and involuntary treatment in community care settings, residential care and acute and non-acute inpatient units. This use of involuntary treatment is supported by the Australian Government's interpretative declaration of Article 12.

The Australian Institute of Health and Welfare (AIHW) reported that in 2022-23 just under half (43%), of all acute mental health care hospitalisations, or short term care provision, were **involuntary**. Just over a quarter (27%) of non acute mental health care provision, which includes rehabilitation and extended care, received in the public system were **involuntary**. These numbers have barely moved since Australia's last UPR in 2021, decreasing by just one per cent and 3 per cent respectively[7].

The Alliance notes that the Australian Government understands that involuntary admitted treatment in a hospital is something that should not occur, or at the very least be minimised, as it is one of the Key Performance Indicators for Public Mental Health Services[8], contributing to the performance and progress measurement of mental health services in Australia.

1.2 Restrictive treatment practices

United Nations Convention on the Rights for Persons with Disability

Australians with lived experience of mental health challenges continue to be faced with restrictive treatment practices - seclusion, physical restraint and chemical restraint. While seclusion numbers have decreased since 2009, little Government leadership has occurred in the national space to eradicate restrictive practices from mental health

[5] ibid
[6] national-principles-to-support-the-goal-of-eliminating-mechanical-and-physical-restraint-in-mental-health-services.pdf, accessed 18 August 2025
[7] https://www.aihw.gov.au/mental-health/topic-areas/involuntary-treatment (accessed 12/8/25)
[8] ibid

settings since the last UPR review in 2021. The Alliance notes that the National Draft UPR Report states that the Australian Government is making a $1.2 million investment to develop targets to reduce and eliminate restrictive practices[9]. We are unaware of how this is being spent or whether mental health challenges are within the remit of this investment.

The national data available identifying the rates of seclusion and physical (mechanical and physical) restraint reported 6 seclusion events per 1000 admissions and 11 physical restraint events per 1000 admissions[10]. There has been little to no movement in the number of seclusion and physical restraint since the last UPR in 2021, a decrease of two events per 1000 bed days and a decrease of one event per 1000 bed days respectively[11].

These breaches of human rights were evident in the results of the Alliance's first national human rights survey with people living with psychosocial disability conducted in 2024, finding that 13 per cent of respondents had been physically restrained in 2024[12]. There is no national data that identifies the number of people living with mental health challenges who are coerced into receiving treatment. 28 per cent (72/185) of respondents to our Human Rights survey[13] identified that they agreed to a course of care/treatment/action for their mental health because they feared that if they did not agree they would be subject to involuntary treatment.

There is no specific national data available on the use of chemical restraint. Again, our human rights survey found that of the 139 people who had been restrained, 12 per cent reported that they had been restrained with the use of chemical restraints without their consent, defined in the survey as "a medication or chemical given to you that you did not agree to, that had an adverse impact on your behaviour, body or emotions"[14].

[9] Australia's fourth Universal Periodic Review, https://consultations.ag.gov.au/rights-and-protections/upr/user_uploads/upr-report.pdf, acessed 18 August 2025
[10] Seclusion and restraint - Mental health - AIHW, https://www.aihw.gov.au/mental-health/topic-areas/seclusion-and-restraint, accessed 18 August 2025
[11] ibid
[12] As yet unpublished. Results available in Appendix 1.
[13] ibid
[14] ibid

Since Australia's last Universal Periodic Review conducted in 2021[15] the Australian Government held a Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) (2023)[16]. The Commission's Recommendation 6.36 recommended immediate action to provide that certain restrictive practices must not be used within health and mental health settings. This recommendation was not accepted in full because the Australian Government advised that it was one of the 50 Disability Royal Commission recommendations that fell within the sole responsibility of state and territory governments[17].

Recommendation: The Commonwealth Government must remove its interpretive declarations regarding Articles 12 and 17.

Recommendation: The Commonwealth Government must immediately commission national research on how to adequately implement legislative and policy changes to give effect to changes to the interpretation of Articles 12 and 17.

Recommendation: The Commonwealth Government must, through the National Mental Health Commission, in partnership with Alliance and state and territory consumer peak bodies and other relevant stakeholders, co-develop a national plan to eliminate restrictive practices.

Optional Protocol on the Convention Against Torture

Public mental health services still contain inadequate oversight despite Australia ratifying *the Optional Protocol on the Convention Against Torture* (OPCAT)[18] in 2017. Implementing OPCAT is part of ensuring that as a country we remain to the committed to the commitments in the *Convention Against Torture and Other Cruel, Inhuman or*

[15] https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/united-nations-human-rights-reporting/australias-universal-periodic-review (accessed 13 August 2025)

[16] Final Report | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (accessed 13 August 2025)

[17] Australian Government Response to the Disability Royal Commission | Australian Government Department of Health, Disability and Ageing, accessed 13 August 2025.

[18] Laura Grenfell and Steven Caruana, 'Are We OPCAT Ready? So Far, Bare Bones' (2022) 47(1) *Alternative Law Journal* 54; M Williams et al, *The Implementation of OPCAT in Australia* (Australia OPCAT Network, 2020) <https://researchportal.murdoch.edu.au/esploro/fulltext/report/The-Implementation-of-OPCAT-in-Australia/991005553786707891?repId=12138545200007891&mId=13138265890007891&institution=61MUN_INST>.

Degrading Treatment or Punishment to prevent and respond to instances of torture[19]. Restructive practices such as seclusion and restraint represent may themselves constitute torture.

Australian Governments – Commonwealth, state and territory – have failed to adequately implement OPCAT. Key amongst these duties is the appointment and proper legislative establishment of the National Preventive Mechanism (NPM) to monitor places of detention in each jurisdiction. Each jurisdiction is required to nominate and legislate their NPM to monitor places of detention within that jurisdiction. The 'Australian NPM' is the entity representing all the bodies and people appointed by Australian governments to NPMs across Australia.

At present, Victoria, Queensland and New South Wales have failed to nominate an NPM, while many other states that have done so require further legislative and other reforms to ensure all the relevant powers, immunities and protections for NPMs under OPCAT are ensured[20]. The failure of the Australian Government to implement recommendations following a failed mission from the Subcommittee on the Prevention of Torture to Australia in 2023[21] has led to international rebuke[22]. By contrast, public advocacy from Australian NPM bodies on youth justice indicate that some bodies that have been nominated have begun to do effective work[23].

The Australian Government should ensure that all jurisdictions are compliant with OPCAT by ensuring that:

- prioritising this as an area of concern and focus;
- each jurisdiction nominates a National Preventive Mechanism;

[19] Juan E Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/22/53 (1 February 2013) https://docs.un.org/en/A/HRC/22/53.
[20] Australian NPM, *Annual Report 2022-2023* (Australian NPM, 2023) 12–14 <https://www.ombudsman.gov.au/__data/assets/pdf_file/0019/304534/Australian-NPM-Annual-Report-2022-23-304534.pdf>.
[21] Urgent action needed following termination of UN inspection | Australian Human Rights Commission, https://humanrights.gov.au/about/news/urgent-action-needed-following-termination-un-inspection#:~:text=A%20delegation%20from%20the%20UN%20Subcommittee%20on%20the,took%20the%20extraordinary%20step%20of%20terminating%20the%20visit. accessed 18 August 2025
[22] Sarah Basford Canales, 'Watchdog to Examine Corruption Commission's Robodebt Decision after Complaints of Alleged "Corrupt Conduct"', *The Guardian* (online, 13 June 2024) <https://www.theguardian.com/australia-news/article/2024/jun/13/robodebt-nacc-anti-corruption-commission-watchdog-review-complaints-alleged-corruption>.
[23] Giovanni Torre, 'Torture Prevention Bodies Sound Alarm over Youth Justice in Australia', *National Indigenous Times* (15 October 2024) <https://nit.com.au/15-10-2024/14251/torture-prevention-bodies-sound-alarm-over-youth-justice-in-australia>.

- the NPM is granted appropriate powers, immunities and protections to complete its work[24] and
- any barriers to future Subcommittee on the Prevention of Torture (SPT) visits are addressed[25].

Beyond this, the mental health system fails to uphold human rights by failing to provide voluntary, safe and effective supports that meet peoples' needs in the community, leading to a reliance on biomedical approaches that unnecessarily restrict human rights[26]. This sits within a broader lack of action on human rights by various state and territory governments and the Commonwealth Government.

1.3 National Human Rights Act

Australia is now the only advanced democracy without a legislated Human Rights Act[27]. This means that while courts may consider international human rights laws and norms while interpreting domestic law, their enumerated rights are not directly enforceable and there are clearly defined roles for Parliament, Courts and the Executive with regards to human rights.

Ideally the work of the National Human Rights Act work would be aligned with the World Health Organisation (WHO) and Office of the United Nations High Commissioner for Human Rights (OHCHR) report, "Mental health, human rights and legislation" published in 2023.

The lack of a national legislated Human Rights Act has several impacts on the mental health system and other systems that impact people with lived experience of mental health challenges.

[24] See: Australian Human Rights Commission, *Road Map to OPCAT Compliance* (Australian Human Rights Commission, 2022) <https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf>.

[25] Georgia Hitch, 'UN Torture Prevention Body Cancels Australia Trip after Refused Access to Detention, Mental Health Centres - ABC News', *ABC News Online* (online, 21 February 2023) <https://www.abc.net.au/news/2023-02-21/united-nations-torture-prevention-cancel-australia-trip-jails/102001760?utm_campaign=abc_>.

[26] World Health Organization, *Mental Health, Human Rights and Legislation: Guidance and Practice* (2023) <https://www.who.int/publications/i/item/9789240080737>.

[27] Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (text, Commonwealth Government of Australia, 2024) 5 <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf>.

No directly enforceable rights

Mental health consumers and people with lived experience impacted by government agencies do not have directly enforceable human rights. Legislated human rights frameworks enumerate human rights to be protected before providing the mechanisms to redress those rights, including the ability to make complaints and to take matters directly to court.

Government commissioning and planning

The services and systems the Commonwealth Government has stewardship of are run without reference to human rights standards. Commissioning of services and systems planning directly impact human rights. In mental health, systems planning and commissioning decisions impact human rights by choosing between more and less restrictive services[28]. Bed-based services grounded in a biomedical context that are more restrictive on human rights, and decisions to fund them in place of less restrictive community-based and lived experience-led services, could raise questions of legality. This incentive can encourage consideration of less restrictive community-based options.

Weaker rights enforcement

The absence of a human rights framework can weaken rights enforcement. Concerns have been raised regarding Commonwealth regulatory oversight agencies such as the NDIS Quality and Safeguards Commission[29]. The absence of a legislative Human Rights Act means that the NDIS Quality and Safeguards Commission is not required to properly consider and comply with human rights when it makes regulatory decisions that impact NDIS participants.

[28] Simon Katterl and Chris Maylea, 'Keeping Human Rights in Mind: Embedding the Victorian Charter of Human Rights into the Public Mental Health System' (2021) 27(1) *Australian Journal of Human Rights* 58; Simon Katterl and Kerin Leonard, *Putting Human Rights at the Heart: Applying Human Rights* (Simon Katterl Consulting & Lionheart Consulting Australia, August 2023) <https://www.simonkatterlconsulting.com/writing/launch-of-new-resources-putting-human-rights-at-the-heart>.

[29] 'NDIS Providers Banned and Fined $1m, Independent Review Ordered after ABC Investigation', *ABC News* (online, 24 October 2023) <https://www.abc.net.au/news/2023-10-24/ndis-commissioner-bill-shorten-performance-four-corners/103003490>.

2. United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), was adopted by the UN General Assembly in 2007, with Australia a signatory in 2009. Since then, Australia has pledged in international forums to implement the Declaration and promote Indigenous peoples' rights on an equal basis. However, the Australian Government has, to date, not:

- Incorporated UNDRIP into domestic law, policy, and practice;
- Negotiated a National Action Plan with Indigenous peoples to guide its implementation; or
- Conducted an audit of existing laws, policies, and practices for compliance with UNDRIP.

When new legislation is introduced to federal Parliament, it must include a statement of compatibility with human rights. These rights are drawn from the seven instruments that Australia has ratified — but UNDRIP is not among them.

Recommendation: the Australian Government fund First Nations-led peaks, including the lived experience peak Indigenous Australian Lived Experience Centre (IALEC) to lead the development of an implementation and action plan for domestic application of the UNDRIP.

Recommendation: the Australian Government fund First Nations-led peaks, including IALEC, to develop First Nations led independent oversight and accountability under UNDRIP.

4. Comment on Implementation Status of Recommendations received by Australia at 2021 UPR

The comments on specific UPR recommendations from 2021 relate to people living with mental health challenges.

- Recommendation 135: Eliminate prison overcrowding and inadequate mental health institutions as well as revoke those laws or policies allowing indefinite detention of persons with disabilities.

  This recommendation was noted by the Australian Government with advice that it would be considered further. The Alliance would like further information on how this has progressed since 2021.

- Recommendations 178-179: Repeal laws and cease practices that enable the deprivation of liberty on the basis of impairment, including indefinite detention and compulsory mental health treatment: not implemented.

  As discussed above, the Government has not progressed this recommendation for people living with mental health challenges since the last UPR.

- Recommendation 203: Continue its efforts to provide health services in the rural and remote areas, especially in light of the outbreak of the COVID-19 pandemic.

  We would like to know the implementation status of this recommendation, accepted by the Australia Government. This is of keen interest in relation to regional/remote mental health services.

- Recommendation 235: Continue to expand and provide resources for the delivery of child-targeted mental health and support services.

  The Alliance notes that child-targeted mental health and support services funded by the Australian Government are based on the clinical model of mental health services, not the human rights model.

- Recommendation 314: Increase support for refugees and asylum seekers by reducing barriers to labour markets and education and by providing access to health care facilities, especially those aimed at improving mental health.

  The Alliance calls on the Australian Government to remove it's interpretive declaration on Article 18 of the UN - CRPD, as this excludes people from immigrating to Australia on the basis of disability, including psychosocial disability. This reinforces discriminatory concepts around psychosocial disability.

5. Recommendations

The Alliance recommends that the National Report to the Fourth Universal Periodic Review include:

Recommendation 1: The Commonwealth Government must remove its interpretive declarations regarding Articles 12 and 17.

Recommendation 2: The Commonwealth Government must immediately commission national research on how to adequately implement legislative and policy changes to give effect to changes to the interpretation of Articles 12 and 17.

Recommendation 3: The Commonwealth Government must, through the National Mental Health Commission, in partnership with the Alliance and state and territory consumer peak bodies and other relevant stakeholders, co-develop a national plan to eliminate restrictive practices.

Recommendation 4: The Commonwealth Government must, with the state and territory governments, ensure all jurisdictions be compliant with OPCAT by requiring each jurisdiction to nominate a National Preventive Mechanism (NPM); that NPM is granted appropriate powers, immunities and protections to complete its work, and any barriers to future Subcommittee on the Prevention of Torture (SPT) visits are addressed.

Recommendation 5: The Commonwealth Government must develop a reporting framework that also indicates a jurisdiction's NPM.

Recommendation 6: The Commonwealth Government must introduce a national Human Rights Act within this term of government.

Recommendation 7: The Commonwealth Government fund First Nations-led peaks, including the lived experience peak Indigenous Australian Lived Experience Centre (IALEC) to lead the development of an implementation and action plan for domestic application of the UNDRIP.

Recommendation 8: The Commonwealth Government fund First Nations-led peaks, including IALEC, to develop First Nations led independent oversight and accountability under UNDRIP.

Recommendation 9: The Commonwealth Government must, in partnership with relevant peak bodies and other relevant stakeholders, co-develop a plan to introduce a national Human Rights Act, including a structure for the Human Rights Act to operate within and with other legislation and regulations and a timeframe for implementation.

Recommendation 10: The Commonwealth Government must remove it's interpretive declaration on Article 18 of the UN-CRPD and immediately commission national research on how to adequately implement legislative and policy changes to give effect to changes to the interpretation of Article 18.

Recognition of Lived Experience

As a consumer lived experience-led organisation, the National Mental Health Consumer Alliance values the skill and expertise of consumers with lived experience. We pay tribute to those we have lost for the work that they have done to advocate for our rights. We acknowledge that we stand on the shoulders of giants who have paved the way for the rights we have today, and we will continue their work today and every day until the mental health system recognises and upholds our human rights.

Nothing about us without us.

Submission prepared August 2025. National Mental Health Consumer Alliance.

See nmhca.org.au for more information about the Alliance.

For questions about this submission, please contact us at policy@nmhca.org.au.