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DEFINING DIGNITY AND ITS APPLICATION TO AUSTRALIAN MENTAL HEALTH LEGISLATION

BIANCA MANDEVILLE*

The Convention on the Rights of Persons with Disabilities ('CRPD') has shaped the evolution of mental health legislation and policy so that people with a mental illness can participate in society 'on an equal basis with others' and as 'equal members'. This article will define dignity through a human rights discourse as it applies to the context of mental health legislation in Australia, in order to promote and support the human rights and autonomy of people with psychosocial disabilities. Applying the concept of dignity as an overarching principle, as it is in the CRPD, will help individuals with a mental illness exercise their capabilities in a way that protects their human rights and minimises stigma and discrimination.

* Bianca Mandeville is a consumer researcher with extensive experience as a Commonwealth Government and Community Lawyer. Bianca is currently completing her PhD, which critically examines the use of Community Treatment Orders, exploring legal and policy mechanisms and reforms that can support consumers within a human rights framework.

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I PROLOGUE

So many roads, so much at stake
So many dead ends, I'm at the edge of the lake
Sometimes I wonder what it is going to take
To find dignity.¹

The words above from Bob Dylan's song encapsulate how elusive it can be to attain dignity. Most individuals who have been diagnosed with a severe mental illness will have experienced this elusiveness and have had their inherent dignity infringed. This article will consider the importance of 'dignity' and how it relates to the treatment of mental health to people with psychosocial disabilities.²

II INTRODUCTION

Dignity is an important concept relating to people with psychosocial disabilities. Despite growing awareness, it will be argued that there has not been sufficient exploration in

¹ Bob Dylan, *Dignity* (1963).

² A term used to describe people with mental health conditions such as depression, bipolar, anorexia, schizophrenia and catatonia. Other terms used interchangeably in this paper are 'mental illness', 'mental disorder' and 'mental health issues' to be consistent with usage in current literature from different scholarly articles. Variability in language choice helps to ensure a connection with common parlance.

relation to how this concept can be applied to the treatment of mental illness and what the obligations are under the *Convention on the Rights of Persons with Disabilities* ('CRPD').³ The *CRPD* is the first international treaty specifically concerning the rights of people with psychosocial disabilities.⁴ The *CRPD* signals a paradigm shift in the application and practice of disability rights.⁵ This paradigm shift means that the status of a person with a disability has moved from an 'object of charity' to a 'subject with rights' who can make choices and actively participate in the community.⁶

This article will introduce a new focus on how the concept of dignity can be applied to the wording of contemporary mental health legislation in Australia, in a way that addresses the human rights of people with a mental illness. Firstly, an overview of the philosophical foundations of dignity will be explored, as it forms the basis of the understanding we have today.⁷ Secondly, human dignity in a human rights context, including the *CRPD*, will be defined and examined. Thirdly, the denial of dignity inflicted upon people with a mental illness will be considered. Finally, evaluating how inherent dignity is applied to domestic mental health legislation in Australia will be assessed. The *Mental Health and Wellbeing Act 2022* (Vic) ('Victorian Act') which came into force in September 2023, will be reviewed as an example of dignity being recognised and respected as an overarching principle in the Act. It will be argued that other Australian jurisdictions need to review, revise, or replace their mental health legislation to embrace dignity as an overarching concept that is compatible with the *CRPD*.

III BRIEF PHILOSOPHICAL FOUNDATION OF DIGNITY

There is no broad agreement on the definition of dignity in philosophy or law.⁸ However, there is a body of philosophical and legal literature that considers the meaning and role of human dignity from Roman antiquity.⁹ At that time, the word *dignitas* referred to the

³ *Convention on the Rights of Person with Disabilities*, opened for signature 30 March 2017, 2515 UNTS 15 (entered into force 3 May 2008) ('*CRPD*').

⁴ George Szukler, "'Capacity', 'Best Interests', 'Will and Preferences' and the UN Convention on the Rights of Persons with Disabilities' (2019) 18(1) *World Psychiatry* 34, 34.

⁵ Neeraj Gill, *Human Rights of Persons with Mental Disabilities* (PhD Thesis, University of New South Wales, 2020) 4.

⁶ *Ibid.*

⁷ Lucy Michael, 'Defining Dignity and Its Place in Human Rights' (2014) 20(1) *The New Bioethics* 1, 13.

⁸ Julia Duffy, *The Indivisibility of Human Rights and Decision-Making by, with and for Adults with Cognitive Disabilities* (PhD Thesis, Queensland University of Technology, 2022) 177.

⁹ *Ibid.*

honour and respect given to someone due to their high social status.¹⁰ Cicero formulated a broader concept of *dignitas*, holding that humans have inherent *dignitas* solely because they are human, not dependent on any particular additional status.¹¹ During the Middle Ages, the idea of *dignitas* was used to distinguish between Man and others because Man is made in the image of God.¹² During the Renaissance period, Pico della Mirandola connected dignity with freedom and autonomy, arguing that our dignity originated from our free will, which he believed was a gift from God.¹³ During the Enlightenment, Immanuel Kant grounded dignity in morality and autonomy.¹⁴ He stated that dignity was mostly associated with autonomy, which meant people ought to be treated as autonomous individuals able to choose their own destiny.¹⁵ He stated that human dignity was innate and intrinsic to all humans.¹⁶ This Kantian conception of dignity was secular and formed the foundation of our current understanding of inherent dignity that is used in many human rights instruments.¹⁷

IV DEFINING HUMAN DIGNITY IN A HUMAN RIGHTS CONTEXT & IN THE CRPD

It was not until the first half of the 20th century that dignity began to be part of human rights legal discourse in a significant way.¹⁸ After the atrocities of World War II, the importance of dignity was recognised and emerged widely in international legislation.¹⁹ This was clearly stated by the United Nations ('UN') in the *Universal Declaration of Human Rights* ('UDHR'),²⁰ which states in the Preamble: 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.²¹ Article 1 further states: 'All human beings are born free and equal in dignity and rights'.²² Much of the inspiration for the use of

¹⁰ Michael (n 7).

¹¹ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19(4) *European Journal of International Law* 655, 657.

¹² *Ibid* 658.

¹³ Michael (n 7) 14.

¹⁴ *Ibid*.

¹⁵ McCrudden (n 11) 660.

¹⁶ Duffy (n 8) 175.

¹⁷ Michael (n 7) 14.

¹⁸ McCrudden (n 11) 664.

¹⁹ Michael (n 7) 15.

²⁰ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) ('UDHR').

²¹ *Ibid* Preamble para 1.

²² *Ibid* art 1.

dignity in international and domestic human rights instruments originates from its use of dignity in the *UDHR*.²³ There are five explicit references to the concept of human dignity in the *UDHR*, two in the Preamble and three in the Articles.²⁴

Even though dignity is regarded as a guiding principle, it has not been considered as a substantive basis for a specific claim under human rights. Dignity has been considered a foundation of the *UDHR*, and other rights flow from dignity, but it has not generally been considered a stand-alone, justiciable right. The *International Covenant on Civil and Political Rights* ('*ICCPR*')²⁵ and the *International Covenant on Economic, Social and Cultural Rights* ('*ICESCR*')²⁶ both include that the rights in each covenant 'derive from the inherent dignity of the human person'.²⁷

The *CRPD* begins by confirming the principles of the UN Charter, including acknowledging the 'inherent dignity and worth and equal...rights of the people'.²⁸ The *CRPD* rests more heavily on dignity than any other UN human rights convention.²⁹ It is cited several times in its Preamble; its purpose outlined in art 1 incorporates the promotion of respect for dignity; and recognition for inherent dignity is declared in the first of its General Principles.³⁰ Article 1 *CRPD* begins with:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.³¹

The concept of human dignity is the key element and purpose of the *CRPD* because people are to be valued for their inherent self-worth by focusing on the equal moral status of every person simply by being human.³² The Preamble acknowledges 'the inherent dignity

²³ McCrudden (n 11) 667.

²⁴ Viviana Bohorquez Monsalve and Javier Aguirre Roman, 'Tensions of Human Dignity: Conceptualization and Application to International Human Rights Law' (2009) 11(1) *International Journal on Human Rights* 39, 45.

²⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('*ICCPR*').

²⁶ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('*ICESCR*').

²⁷ Duffy (n 8) 171.

²⁸ *Ibid.*

²⁹ Duffy (n 8) 178.

³⁰ *Ibid.*

³¹ *Ibid.* 173.

³² Elif Celik, 'The Role of the CRPD in Rethinking the Subject of Human Rights' (2017) 21(7) *The International Journal of Human Rights* 933, 939.

and worth and the equal and inalienable rights of all members of the human family’;³³ that ‘discrimination...is a violation of the inherent dignity and worth of the human person’;³⁴ and in addition that ‘the rights and dignity of persons with disabilities will make a significant contribution to redressing...profound social disadvantage...and promote...participation in the civil, political, economic, social and cultural spheres, with equal opportunities’.³⁵ Furthermore, art 3(a) starts with ‘Respect for Inherent Dignity’ and dignity is defined as ‘inherent’ and is linked with worth, equality and autonomy.³⁶

Cumulatively, the concept of dignity as self-worth and equality interacts with the idea of dignity and autonomy, as illustrated in the *CRPD*. This demonstrates that the meaning of dignity has evolved in the human rights context, specifically in the *CRPD*. This recognition of dignity in the *CRPD* reflects a broader response by scholars that the dignity of persons with a mental illness is inherent and associated with equality, worth, and fulfilment of their human rights.³⁷ The *CRPD* is groundbreaking international legislation because it emphasises positive rights by ensuring that state parties provide the services and support for people with psychosocial disabilities, promoting and protecting their human rights. The *CRPD* incorporates civil-political rights, including non-discrimination, autonomy,³⁸ and the right to be free from abuse,³⁹ alongside socio-economic rights, such as education and health,⁴⁰ necessary for social development.⁴¹

Under the *CRPD*, State parties are obligated to take measures to modify or abolish existing discriminatory laws, regulations, and practices, as well as providing services and support for persons with disabilities.⁴² These obligations include: a duty to provide necessary training regarding disability issues to those concerned with the administration of justice,⁴³ special programmes to assist people with psychosocial disabilities and their caregivers to deal with and combat exploitation,⁴⁴ providing

³³ *CRPD* (n 3) Preamble para 1.

³⁴ *CRPD* (n 3) Preamble para 8.

³⁵ *CRPD* (n 3) Preamble para 8.

³⁶ *CRPD* (n 3) art 3; Duffy (n 8) 173.

³⁷ Duffy (n 8) 178.

³⁸ *CRPD* (n 3) art 3 (a).

³⁹ *CRPD* (n 3) art 16 [4].

⁴⁰ *CRPD* (n 3) arts 24 [2], 25.

⁴¹ *CRPD* (n 3) art 15 [d]; Duffy (n 8) 174.

⁴² George Szmukler, Rowena Daw, and Felicity Callard, ‘Mental Health Law and the UN Convention on the Rights of Persons with Disabilities’ (2014) 37(3) *International Journal of Law and Psychiatry* 245.

⁴³ *CRPD* (n 3) art 13.

⁴⁴ *CRPD* (n 3) art 16.

community support services,⁴⁵ and overarching duties on States to increase understanding of disability services and issues⁴⁶ and to fight against discrimination.⁴⁷

The UN Committee on the Rights of Persons with Disabilities is established by the Convention.⁴⁸ States Parties must report to the Committee on their progress in implementing the *CRPD* on a periodic basis, after which the Committee publishes comments about this progress. Fundamentally, art 33 of the *CRPD* insists that governments ensure persons with disabilities and their representative organisations are fully engaged in monitoring the application of the *CRPD*.⁴⁹

The *CRPD* has been viewed as a global paradigm shift for the rights of people with mental illness because it has adopted an innovative human rights model, thus replacing the outmoded medical model present in preceding UN documents.⁵⁰ Mental disorder has transformed into a universal rights language as opposed to being an issue of charity.⁵¹ In other words, as stated in the *CRPD*, people with psychosocial disabilities now have a voice where their human rights are respected and promoted, and should no longer be treated as 'charity cases' whose rights, wills, and preferences are not heard. The *CRPD* adopts a human rights approach as it preserves the universal right to mental health by placing positive duties on states to uphold the mental health and well-being of their citizens to protect their dignity.⁵² The *CRPD* can progress the welfare and dignity of persons with mental health issues because human rights are what individuals are entitled to, and governments have a duty to uphold them.⁵³

Claims are made under specific rights, such as freedom of movement and privacy, and this has been the case in human rights claims regarding treatment of mental illness. This is also relevant as persons with psychosocial disabilities often have to deal with the illness itself as well as issues such as poverty, homelessness, social dislocation, and being stigmatised due to the social consequences of their illness.⁵⁴ Respect for dignity is very

⁴⁵ *CRPD* (n 3) art 19.

⁴⁶ *CRPD* (n 3) art 8.

⁴⁷ *CRPD* (n 3) art 5; Szmukler, Daw and Callard (n 42).

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Celik (n 32) 934.

⁵¹ *Ibid.*

⁵² Andrew Molas, 'Defending the CRPD: Dignity, Flourishing and the Universal Right to Mental Health' (2016) 20(8) *The International Journal of Human Rights* 1264, 1264.

⁵³ *Ibid* 1266.

⁵⁴ *Ibid* 1265.

important for people with a mental illness as Janet E. Lord states, 'disability rights advocates...have long argued that seeing persons with disabilities as equal in dignity is a necessary precondition to recognition of disability rights'.⁵⁵ The concept of dignity embraces equality and in particular socioeconomic equality because, without it, people with psychosocial disabilities cannot participate in society on an 'equal basis with others' and as 'equal members'.⁵⁶

As stated, in the UN High Commissioner on Human Rights report titled *Human Rights and Disability: The Current Use and Future Potential on United Nations Human Rights Instruments in the Context of Disability*:

Recognition of the value of human dignity serves as a powerful reminder that people with disabilities have a stake in and claim on society that must be honoured quite apart from any considerations of social or economic utility.⁵⁷

Specifically, human rights are often denied to people with disabilities because they may lack capacities or functions valued by the community. However, their value lies in their inherent human dignity.⁵⁸ Dignity, as an inherent value, has significant importance for mental illness due to the widespread history of people with mental illnesses being considered lesser and thus being treated without dignity. In 1817 the House of Commons established a committee to investigate the predicament of people with psychosocial disabilities in Ireland.⁵⁹ The committee described a distressing picture:

When a strong man or woman gets the complaint (mental disorder), the only way they have to manage is by making a hole in the floor of the cabin, not high enough for the person to stand up in, with a crib over it to prevent his getting up. The hole is about 5 feet deep, and they give this wretched being his food there, and there he generally dies.⁶⁰

⁵⁵ Janet E Lord, 'Preamble' in Ilias Bantekas, Michael Ashley Stein, and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press, 2018) 8.

⁵⁶ CRPD (n 3).

⁵⁷ Gerard Quinn et al, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability* (United Nations, 2002) 14.

⁵⁸ Duffy (n 8) 174.

⁵⁹ Brendan Kelly, 'Dignity, Human Rights and the Limits of Mental Health' (2014) 31(2) *Irish Journal of Psychological Medicine* 75, 76.

⁶⁰ Edward Shorter, *A History of Psychiatry: From the Era of the Asylum to the Age of Prozac* (John Wiley and Sons, 1997) 1–2, cited in Brendan Kelly, 'Dignity, Human Rights and the Limits of Mental Health' (2014) 31(2) *Irish Journal of Psychological Medicine* 75, 76.

Two hundred years later, in 2010, *The Guardian* reports on the death of a man diagnosed with schizophrenia in inner London:

[Mr AB] was found dead...having died from heart disease. Ulcers in his stomach were a strong sign of hypothermia. The 59-year-old, who had schizophrenia, lived in a dirty, damp and freezing flat, with mould growing on the floor and exposed electrical wires hanging off the walls. His boiler had broken, the bathroom ceiling had collapsed, and neighbours began to complain about the smell. His brother...describing the scene as 'squalor', said: *Even an animal couldn't have lived in that.*⁶¹

Even though there are two centuries between these reports, both incidents concern the denial of human rights to individuals with a mental illness and a violation of their human dignity.

V DIGNITY INFRINGED

An example of an infringement of dignity involves a mental health patient who does not feel that he is living in accordance with his own standards and values:

What chills my bones is indignity. It is the loss of influence on what happens to me. It is the image of myself in a hospital gown, homogenized, anonymous, powerless, no longer myself. It is the sound of a young nurse calling me 'Donald', which is a name I never use... That's what scares me: to be made hapless before my time, to be made ignorant when I want to know, to be made to sit when I want to stand, to be alone when I need to hold my wife's hand, to eat what I do not wish to eat, to be named what I do not wish to be named, to be told when I wish to be asked, to be awoken when I wish to sleep.⁶²

People living with mental health issues may undergo many forms of discrimination in their society which can affect their ability to live a life with dignity.⁶³ As Harding argues, persons living with mental health issues:

⁶¹ Brendan Kelly, 'Dignity, Human Rights and the Limits of Mental Health' (2014) 31(2) *Irish Journal of Psychological Medicine* 75, 76, quoting Eleanor Harding, 'Intervening behind closed doors', *The Guardian* (online, 31 March 2010) < <https://www.theguardian.com/society/2010/mar/31/mental-health-law-vulnerable-people-intervention>>.

⁶² Linda Barclay, 'In Sickness and in Dignity: A Philosophical Account of the Meaning of Dignity in Health Care' (2016) 61 *International Journal of Nursing Studies* 136, 139.

⁶³ Molas (n 52) 1265.

Not only have to deal with the symptoms of their illness but they are subject to coercive and repressive forms of abuse and large-scale neglect which comes from chronic institutionalisation in inhuman and humiliating conditions or through deinstitutionalisations and the failure to provide adequate community care.⁶⁴

For people living with a psychosocial disability, one of the most obvious challenges to dignity and a form of inhumane living conditions is shackling. This refers to the practice of imprisoning a person with a psychosocial disability using chains, locking them in a room, a shed, a cage, or an animal shelter, where they are forced to eat, sleep, urinate, and defecate in the same tiny area.⁶⁵ Human Rights Watch found evidence of shackling in 60 countries across Asia, Africa, Europe, the Middle East, and the Americas.⁶⁶ In many countries where shackling takes place, there is a widespread belief that mental health conditions are the result of possession by evil spirits or the devil, having sinned, displaying immoral behaviour, or having a lack of faith.⁶⁷ Consequently, people first consult faith or traditional healers and often only seek medical advice as a last option.⁶⁸ Shackling remains a largely hidden problem as it happens behind closed doors, often masked in secrecy, and hidden even from neighbours due to the shame and stigma.⁶⁹

While shackling is uncommon in Western democracies, in Australia many people with psychosocial disabilities are subject to mental health treatment that infringes on their dignity. Coercive practices may include compulsory admission and treatment, medication without consent, involuntary electroconvulsive therapy, seclusion and mechanical/physical/chemical restraints.⁷⁰ These coercive practices deny people with psychosocial disabilities their autonomy, dignity, and equality. In Australia, when people with psychosocial disabilities are denied freedom from violence and mistreatment, autonomy and independence, inclusion in the community and taking part in their own

⁶⁴ Harding quoted in Andrew Molas, 'Defining the CRPD: Dignity, Flourishing and the Universal Right to Mental Health' (2016) 20(8) *The International Journal of Human Rights* 1265.

⁶⁵ Human Rights Watch, 'Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide' *Human Rights Watch* (Webpage, 2020) <<https://www.hrw.org/report/2020/10/06/living-chains/shackling-people-psychosocial-disabilities-worldwide>>.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Piers Gooding et al., *Alternatives to Coercion in Mental Health Settings: A Literature Review* (Report, Melbourne Social Equity Institute, University of Melbourne, 2018). Gooding was commissioned by the United Nations Office at Geneva to inform the report of the United Nations Special Rapporteur on the Rights of Persons with Disabilities.

decision-making, their inherent dignity needs to be promoted and protected.⁷¹ Persons with psychosocial disabilities in Australia face discrimination, humiliation, and marginalisation and are exposed to emotional and physical exploitation in both mental facilities and the community, which infringes on their dignity.⁷² All these coercive practices infringe on the dignity of people in Australia living with a mental illness, who have the right to be protected against any kind of inhuman treatments, not to be subjected to stigma and discrimination, and to have access to high-quality treatments and care.⁷³ For this to happen, mental health legislation that abides by the *CRPD* would help guarantee a regulatory framework for mental health services, ensuring the human rights of people living with a mental illness are promoted and protected.⁷⁴

VI APPLICATION OF HUMAN DIGNITY ON AUSTRALIAN MENTAL HEALTH LEGISLATION

Australia generally has a reformist approach to mental health laws, reflective of international developments in human rights.⁷⁵ The mental health legislation is consigned to six states and two territories (totalling eight jurisdictions) allowing mental health acts to be revised, reviewed, or replaced at any given time.⁷⁶ Due to the ratification of the *CRPD*, the protection of rights for people subject to coercive practices under mental health legislation has been reformed in most Australian jurisdictions.⁷⁷

There are two ways of interpreting dignity as it relates to mental health legislation in Australia. Firstly, there are the enforceable legal rights that are actionable and tangible in the legislation, such as the right to legal capacity as asserted in art 12 of the *CRPD*, which guarantees the right to recognition before the law on an equal basis with others.⁷⁸ The

⁷¹ Catalina Devandas-Aguilar and Dainius Pûras, "Dignity Must Prevail" – An Appeal to Do Away with Non-Consensual Psychiatric Treatment World Mental Health Day' (Press release, United Nations Office of the High Commissioner, 8 October 2015) 1 <<https://www.ohchr.org/en/press-releases/2015/10/dignity-must-prevail-appeal-do-away-non-consensual-psychiatric-treatment>>.

⁷² *Ibid.*

⁷³ Getinet Ayano, 'Significance of Mental Health Legislation for Successful Primary Care for Mental Health and Community Mental Health Services: A Review' (2018) 10(1) *African Journal of Primary Health Care & Family Medicine* 1, 1.

⁷⁴ *Ibid.*

⁷⁵ Kenneth Kirkby and Scott Henderson, 'Australia's Mental Health Legislation' (2013) 10(2) *International Psychiatry* 38, 38.

⁷⁶ *Ibid.*

⁷⁷ Ian Freckelton, 'Mental Health Treatment and Human Rights' (2019) 44(2) *Alternative Law Journal* 91.

⁷⁸ Anna Arstein-Kerslake and Jennifer Black, 'Right to Legal Capacity in Therapeutic Jurisprudence: Insights from Critical Disability Theory and the Convention on the Rights of Persons with Disabilities' (2020) 68 *International Journal of Law and Psychiatry* 1, 3.

least restrictive principle is also in the mental health legislation. This ensures that any order made regarding care and treatment is to the least degree restrictive of the person's rights that is possible in the circumstances.⁷⁹ The concept of supported decision making is also a tangible right which, under the *CRPD*, requires that people with psychosocial disabilities be supported to make their own decisions regarding treatment.⁸⁰

The second interpretation of dignity, over and above the enumerated rights, could be applied as a broader cultural shift in the treatment of mental illness. This is accomplished through providing effective services and supports like access to education, health, and employment for people with psycho-social disabilities, backed by mental health policies and legislation that promote and protect their inherent dignity. The concept of dignity plays an essential role in the legislation to allow for this shift in treating people with a mental illness. To treat individuals with psychosocial disabilities with dignity is to use a holistic approach that goes beyond treatment and into the wider realm of providing the right services and assistance to achieve the best outcomes. This wider cultural shift is not just about providing services in the socio-economic sphere but applying the concept of dignity as it is in the *CRPD* to Australian mental health legislation to reduce, prevent, and end coercive practices.

In terms of recommendations on dignity-based legislation, it is important to take into consideration the wording of the Victorian Act, which embraces dignity in one of its new objectives:

To protect and promote the human rights and dignity of people living with mental illness by providing them with assessment and treatment in the least restrictive way possible in the circumstances.⁸¹

This new legislation acknowledges dignity front and centre. In addition, there are mental health and wellbeing principles that directly relate to implementing the principle of dignity in practice such as the dignity and autonomy principle that states:

⁷⁹ *Mental Health Act 2007* (NSW) s 68.

⁸⁰ 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, 150.

⁸¹ *Mental Health and Wellbeing Act 2022* (Vic) s 12(e).

The rights, dignity and autonomy of a person living with mental illness or psychological distress is to be promoted and protected and the person is to be supported to exercise those rights.⁸²

The least restrictive principle asserts:

Mental health and wellbeing services are to be provided to a person living with mental illness or psychological distress with the least possible restriction of their rights, dignity and autonomy with the aim of promoting their recovery and full participation in community life. The views and preferences of the person should be key determinants of the nature of this recovery and participation.⁸³

These guiding principles in mental health legislation may provide people with psychosocial disabilities comprehensive mental health and wellbeing treatment, recovery, and support services to be treated with dignity. These principles reflect the *CRPD* in that there is a conceptual shift from an 'object of charity' to a 'person with human rights' who can make decisions and actively participate in community life.

According to a Victorian Press release on 1 February 2023, one of the changes to the mental health care system resulting from the legislation was the establishment of an Independent Review Panel.⁸⁴ This panel was set up to review Victoria's mental health compulsory treatment criteria and to explore how the Victorian Act can better promote human rights. As stated by the Minister for Mental Health:

The Panel's work builds on the progress we've made to provide more robust safeguards and oversights to protect the dignity and autonomy of people experiencing mental illness.⁸⁵

Given the relatively recent enactment of the Victorian Act, it is difficult whether this legislation is effective for people with psychosocial disabilities and whether their dignity and autonomy are being promoted and protected. It is fundamental to have the right wording in the legislation that promotes dignity and encourages the effective exercise of rights and freedoms, all of which derive from the inherent dignity of a person. Real change may happen when the legislation applies human rights principles to people with

⁸² Ibid s 16.

⁸³ Ibid s 18.

⁸⁴ Hannah Jenkins, 'Work Begins to Amend Compulsory Treatment Orders' (Media Release, 1 February 2023) <<https://premier.vic.gov.au/work-begins-amend-compulsory-treatment-laws>>.

⁸⁵ Ibid.

psychosocial disabilities. The language of the Victorian Act promotes respect for human worth and non-humiliation and to be treated with dignity and autonomy. To conclude this point, it is apparent that human dignity can be viewed as the ‘foundation and justification of rights and duties: because of human dignity, human beings have rights and duties’.⁸⁶ It is clear that dignity is an all-embracing principle and if this is reflected in the way people with psychosocial disabilities are treated, then we shall see substantive change.

The Victorian Act is the only mental health legislation that seems to comply with the *CRPD* in terms of using dignity as an overarching principle that actively facilitates individuals with mental illness in exercising their capabilities and helps promote and protect their human rights. In other words, real change comes through the application of human rights language and being treated with dignity. It ensures that people with psychosocial disabilities are considered with respect, autonomy, and equality. As it has been argued, dignity is essential to human rights and having it in the Victorian Act as an overarching principle helps protect the rights of people living with mental illness from being devalued or discriminated against. The language of the Victorian Act promotes and encourages the effective exercise of rights and freedoms, all of which derive from the inherent dignity of the human person. To conclude this point, it is apparent that human dignity is the ‘foundation and justification for rights and duties: because of human dignity, human beings have rights and duties’.⁸⁷

The concept of dignity is applied to the treatment of mental illness as it is linked to the rights, views, and preferences of the person. These factors are key determinants of the nature of recovery and participation, emphasising self-determination and autonomy. In the wording of the Victorian Act, it is clear that the rights, dignity and autonomy of the person should be protected and promoted. This is a paradigm shift in comparison with other Mental Health Acts in Australia. For example, the Victorian Act has adopted an innovative human rights model that contrasts with the New South Wales⁸⁸ and Northern Territory’s mental health legislation.⁸⁹ The *Mental Health Act 2007* (NSW) and *Mental*

⁸⁶ Doron Shulziner, ‘Human Dignity — Functions & Meanings’ (2003) 3(3) *Global Jurist Topics* 1, 3.

⁸⁷ *Ibid* 3.

⁸⁸ *Mental Health Act 2007* (NSW).

⁸⁹ *Mental Health and Related Services Act 1998* (NT).

Health and Related Services Act 1998 (NT) do not have dignity as an overarching principle, and dignity is not cited in any major principle or guiding objective.

There are discrepancies and a lack of uniformity between the mental health Acts in the use of dignity. Using human rights language is fundamental, but it must be accompanied by recovery services that promote inherent dignity. The Victorian Act uses human rights language and is the only legislation that implements change through promoting recovery and self-determination services for people with psychosocial disabilities.

One effective way of helping to decrease disadvantage for people with psychosocial disabilities is through peer support services. Peer support in mental health is the help and support that people with lived experience of mental illness can provide to one another.⁹⁰ This approach involves people treating each other with dignity and respecting each other's inherent rights, thereby stripping away disadvantage, stigma and discrimination. Incorporating peer support into the healthcare system instils hope, improves community engagement and understanding of mental illness, enhances quality of life, and helps decrease disadvantage.⁹¹

Morgan, Wright and Reavley have noted that there are three long-standing education and community awareness programs that have achieved widespread impact over the past decade: *Mental Health 101*, *Mental Health First Aid* training, and SANE Australia's *Peer Ambassador Program*:

Mental Illness Education ACT (MIEACT) has run *Mental Health 101* courses for youth and adults in the ACT since 1993 with 8,000 people trained each year. These are 60-min workshops delivering contact and education to schools or workplaces. Consumer educators are guided by the Do NO Harm safe story-telling framework. A controlled trial of *Mental Health 101* Youth found increased knowledge about mental illness and reduced stigma after the training.

Mental Health First Aid (MHFA) training was established in 2000 and has trained 800,000 people across Australia. Training focuses on how to support a person developing a mental health problem or crisis and includes contact, education, and (optionally) a hallucination simulation activity. Training is delivered by accredited instructors who choose where to offer the course, such as workplaces, universities,

⁹⁰ Reham A Hameed Shalaby and Vincent O Agyapong, 'Peer Support in Mental Health: Literature Review' (2020) 7(6) *JMIR Mental Health* 1.

⁹¹ *Ibid.*

and other organisations. To maintain program fidelity, accredited instructors are required to regularly deliver MHFA courses and undertake continuing professional development. MHFA has been rigorously evaluated in Australia and internationally since its inception with 3 meta-analyses, 16 RCTs, 7 controlled trials, and a number of uncontrolled trials. Meta-analyses show the program leads to a reduction in stigmatising attitudes after training and up to six months later. Of note, the course has been evaluated in several culturally and linguistic diverse populations in Australia, including Vietnamese, Chinese, 'multicultural' communities, and Chinese international students, with positive effects on stigma. It has also been evaluated with health professional students, including nursing students and pharmacy students.

SANE *Australia's Peer Ambassador Program* also involves presentations in workplaces and community settings across Australia by people with lived experience. Ambassadors receive training and support to share their personal experiences and also contribute to advocacy projects. This is a long-running program which currently supports 110 Peer Ambassadors, with more than 1000 trained since 1986.⁹²

Having references to dignity in the legislation and as the overarching principle as it is in the Victorian Act means that people with psychosocial disabilities can be identified as having status, rights, autonomy and capabilities.⁹³ In addressing justice for people with psychosocial disabilities, it would mean that they enjoy equal status, respect, and recognition.⁹⁴ In more practical terms, adding references to dignity in the legislation and having it as an all-encompassing principle should help improve services when it is properly implemented as it would mean that practitioners, mental health tribunals, and courts would have to categorically take into account the effects of their decisions on the dignity of patients in every jurisdiction.⁹⁵ Treatment would have to be offered in a fashion that prioritises the provision of effective and efficient care in a respectful and dignified way.⁹⁶ It would advance the principles of the *CRPD* by protecting the human rights of all persons with a mental illness, giving them access to services such as employment, health,

⁹² Amy J. Morgan, Judith Wright, and Nicola J. Reavley, 'Review of Australian Initiatives to Reduce Stigma towards People with Complex Mental Illness: What Exists and What Works?' (2021) 15(10) *International Journal of Mental Health Systems* 1, 32.

⁹³ Elif Celik, 'Exploring the Use of the Concept Human Dignity in Disability Human Rights Law: From UNCRPD to EctHR' (2021) 17 *The Age of Human Rights Journal* 149.

⁹⁴ *Ibid.*

⁹⁵ Kelly (n 59) 1.

⁹⁶ *Ibid.*

and education, and promoting respect for their inherent dignity.⁹⁷ Prioritising dignity in this way would encourage all the other jurisdictions to review, revise and replace their mental health Acts.

The current Victorian mental health legislation is the worthiest Act to date that incorporates the concept of dignity, compared to other Australian jurisdictions. However, according to the then Minister for Mental Health, the Honourable James Merlino, 'there is a lot more work to do before we have the mental health and wellbeing system that protects the rights and dignity of all consumers, their families, and carers'.⁹⁸ While there is always room for improvement with legislation, it is not realistic to think that mental health legislation on its own protects or promotes the broader human rights of people living with a mental illness, specifically social and economic rights.⁹⁹ These rights may be protected through social and mental health policy and greater societal understanding, recognition, and reform.¹⁰⁰

In the context of mental health, there is a specific requirement for a wide-ranging, co-operative approach to human rights and dignity. An inclusive approach to treatment should include mental health service-users, families and carers, mental health service providers, social services, health and policy planners, voluntary groups, researchers, and legal practitioners.¹⁰¹ The actions of all these stakeholders directly influences the dignity and human rights of individuals with a mental illness and minimises stigma and discrimination.¹⁰² That is why it is crucial that the principle of dignity becomes the overarching principle in Australia's mental health legislation. This human rights concept should be taken well beyond mental health services and tribunals into the arenas of health and social policy, and throughout our community, to protect and promote the rights of people living with mental illness.¹⁰³

⁹⁷ Ibid.

⁹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 22 June 2022 (James Merlino, Minister for Education, Minister for Mental Health), cited in Chris Maylea, 'Does Mental Health Legislation in Victoria, Australia, Advance Human Rights?' (2023) 25(1) *Health and Human Rights Journal* 149, 151.

⁹⁹ Kelly (59) 12.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

VII CONCLUSION

As stated in this article, people living with a mental illness in Australia have had their dignity infringed upon. One way to protect and promote the inherent dignity of persons with mental health issues is to evaluate Australia's mental health legislation. Dignity is central to the *CRPD* and needs to be reflected in mental health legislation. It has been argued that dignity is an overarching principle in the Victorian Act, which will help ensure individuals with a mental illness are treated with inherent dignity and respect. This approach safeguards their human rights and helps eliminate discrimination and stigma. Dignity is vital to the treatment of mental health and to all people living with a mental illness, not just the minority who are subjected to involuntary detention and treatment.¹⁰⁴

¹⁰⁴ Kelly (n 59) 5.

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