

Convention on the Rights of Persons with Disabilities

Introduction

- 2.1 Australia signed the *United Nations Convention on the Rights of Persons with Disabilities* (the Convention, otherwise referred to as the CRPD) when it opened for signature in New York on 30 March 2007.
- 2.2 The Convention entered into force generally on 3 May 2008 following the deposit of twenty instruments of ratification or accession.
- 2.3 In May 2008 the Attorney-General, the Hon Robert McClelland MP, wrote to the Committee seeking its prompt consideration of the Convention as without early ratification, Australia would not be able to participate in the election of the Committee on the Rights of Persons with Disabilities, which will oversee the implementation of the Convention. In accordance with Article 34(6), the election of the Committee would be called no later than 3 July 2008 and held no later than 3 November 2008.¹
- 2.4 The Convention was formally referred to the Committee on 4 June 2008.

¹ NIA, paras. 2 and 3.

- 2.5 The Human Rights Commissioner and Commissioner responsible for Disability Discrimination, Mr Graeme Innes AM, also wrote to the Committee in April 2008 urging early consideration of the Convention in support of Australia's participation in selection of the Committee on the Rights of Persons with Disabilities. A number of submissions to this inquiry also supported early ratification.²
- 2.6 Recognising the importance of Australia's participation in the selection of the Committee on the Rights of Persons with Disabilities, the Committee provided a report to Parliament on 19 June 2008 recommending that binding treaty action be taken, and committing to provide a further detailed report on the provisions and obligations of the Convention. This report is included at Appendix D of this report.
- 2.7 The Australian Government ratified the Convention on 17 July 2008. Australia was one of the first Western countries to ratify the Convention. The Convention entered into force for Australia on 16 August 2008 – the 30th day after ratification.
- 2.8 As of 30 September, there were 135 signatories to the Convention and 40 countries had ratified the Convention.³
- 2.9 Subsequently the Attorney-General's Department informed the Committee that:

Timely ratification has secured Australia's participation in the first Conference of States Parties and the inaugural election of the Committee on the Rights of Persons with Disabilities. The election of the Committee has been called by the United Nations. Nominations for membership on the 12-person Committee close on 3 September 2008.

While Australia complies with the obligations in the Convention, several views have been expressed regarding the position of the Convention on substituted decision-making and compulsory treatment. Australia has therefore made interpretive declarations to clarify Australia's understanding of its ability to continue our existing practices on substituted decision-making and compulsory treatment, which include the necessary safeguards. Making such declarations was

2 For example: Human Rights Law Resource Centre, *Submission 1*, National Association of Community Legal Centres NACLC and Disability Discrimination Legal Centre DDLC *Submission 5*, Australian Lawyers for Human Rights, *Submission 10*.

3 See <http://www.un.org/disabilities/>

recommended by the majority of the disability sector organisations that were consulted by the Australian Federation of Disability Organisations and the Australian Task Force on CRPD Ratification.

The Government has also made a declaration setting out Australia's understanding of the interaction between the Convention and Australia's immigration processes. The declaration clarifies that Australia's immigration processes are in full compliance with the Convention.⁴

- 2.10 The Committee notes that Australia has nominated Mr Ronald McCallum AO as a candidate for election to the Committee on the Rights of Persons with Disabilities.⁵

Background

- 2.11 Australia was an active participant in the United Nations discussions and negotiations leading to the Convention on the Rights of Persons with Disabilities. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms for all people with disabilities and to promote respect for their inherent dignity.⁶
- 2.12 One in five Australians is currently living with a disability and it is projected that, with the ageing population, this figure is likely to rise.⁷ The Convention reflects and affirms existing protections provided to people with disabilities under Australia's domestic laws.

Obligations

- 2.13 The Convention does not create any new human rights. Rather it expresses existing rights in a manner that addresses the needs of

4 Additional information provided by the Attorney-General's Department, 22 July 2008.

5 Biographical details for Mr Ronald McCallum can be found at <http://www2.ohchr.org/english/bodies/crpd/crpd1.htm>

6 The Convention defines persons with disabilities to include 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'. National Interest Analysis (NIA), para.8.

7 NIA, para. 4.

people with a disability, including the practical obligations that Parties are required to implement.⁸

- 2.14 Parties are obliged to ensure and promote recognition of the fact that people with disability are entitled to all human rights and fundamental freedoms, without discrimination of any kind on the basis of disability (Article 4). Parties undertake to do this through appropriate legislation, policies and programs; by promoting research and development of accessible goods, services, facilities and technology; by promoting training for people working with people with disabilities; and through close consultation with representative organisations.⁹
- 2.15 Obligations within the Convention that stem from economic, social and cultural rights are subject to progressive realisation, which means fulfilling or achieving those rights over time, taking into account available resources (Article 4(2)).¹⁰
- 2.16 Parties are obliged to eliminate discrimination in:
- Marriage, family, parenthood and relationships (Article 23);
 - Education (Article 24);
 - Health (Article 25);
 - Employment (Article 27);
 - Standing of living and social protection (Article 28); and
 - Participation in political and public life (Article 29).
- 2.17 Parties must also recognise that women and girls with disabilities are subject to multiple forms of discrimination and take steps to ensure the full development and advancement of women (Article 6).¹¹
- 2.18 Parties must acknowledge the right of people to be recognised as individuals before law (Articles 5(1) and 12), and ensure that safeguards exist to prevent abuse where people receive support in exercising legal capacity (Article 12(4)).¹²

8 NIA, para. 9.

9 NIA, para. 10.

10 NIA, para. 12.

11 NIA, para. 16.

12 NIA, para. 17.

- 2.19 Articles 7(2), 7(3), 18(2), 23(2) and 23(4) set out provisions to protect children with disabilities, including ensuring decisions concerning children are made in the best interests of the child.¹³
- 2.20 People with disabilities must also be provided with access on an equal basis to the physical environment, transportation, information services and communications, and other facilities and services open or provided to the public, including in regional areas (Article 9).¹⁴
- 2.21 The Convention also includes obligations aimed at:
- enhancing the inclusion and participation of people with a disability in society (Articles 19, 20, 24, 26, 27, 28, 29 and 30);¹⁵
 - raising awareness, fostering respect and combating stereotypes, prejudices and harmful practices (Article 8);¹⁶
 - affording the inherent right to life (Article 10);¹⁷
 - ensuring liberty and security on an equal basis (Article 14) and preventing torture or cruel, inhuman or degrading treatment or punishment, including non-consensual medical or scientific experimentation (Article 15);¹⁸
 - ensuring liberty of movement and freedom to choose their residence and nationality, while not conferring any additional rights on people with disability in relation to immigration processes (Article 18);¹⁹ and
 - protecting against arbitrary or unlawful interference with privacy (Article 22).²⁰
- 2.22 Obligations are also imposed upon Parties in relation to implementation, monitoring and reporting, including collecting appropriate statistical and research data and reporting to the Committee on the Rights of Persons with Disabilities.²¹

13 NIA, para. 18.

14 NIA, paras. 19, 20 and 21.

15 NIA, paras. 22 and 23.

16 NIA, para. 24.

17 NIA, para. 25.

18 NIA, para. 26.

19 NIA, para. 27.

20 NIA, para. 28.

21 NIA, para. 29, 30 and 31.

Reasons for ratification

- 2.23 Australia has had a long-standing commitment to upholding and safeguarding the rights of people with disabilities. Ratification of the Convention reinforces this commitment and allows Australia's protections against disability discrimination to be promoted internationally. It also serves an important educative purpose by fostering a more inclusive society and further encouraging the participation of people with disability in the wider community.²²
- 2.24 The report from the CRPD Ratification Task Force outlined the impact of CRPD in Australia and concluded that:
- There was overwhelming support from the disability sector for ratification of CRPD;
 - There would be an extensive range of significant benefits in ratification;
 - Ratification of the CRPD will have significant positive economic, environmental, social and cultural impacts on Australia;
 - There are no disadvantages or negative impacts; and
 - There is no significant barrier to Australia ratifying the CRPD arising from any fundamental inconsistency between CRPS obligations and Australian laws, policies and programs.²³

Australian declaration

- 2.25 In ratifying the Convention on 17 July 2008 the Australian Government made a Declaration setting out Australia's understanding of a range of issues including substituted decision making, compulsory assistance or treatment of disabled persons, and Australia's immigration processes.
- 2.26 The text of the Declaration is as follows:

Australia recognises 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;

22 NIA, paras. 4, 6 and 7.

23 UN CRPD Ratification Task Force Members, *Submission 12* p. 1.

Australia recognises 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;

Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.²⁴

Some key issues raised in submissions

2.27 Submissions to the Committee were overwhelmingly supportive of ratification of the Convention, arguing that the Convention will:

- represent a shift to improve the recognition of persons with disabilities.²⁵ People with disabilities are among the most marginalised groups in society and at least one in five people in Australia has a disability;²⁶
- reinforce the status of people with disabilities as citizens with equal rights;²⁷
- educate people on the rights of persons with disabilities;²⁸
- promote human rights for persons with disabilities;²⁹

24 Australia's Declaration is published on the United Nations website www.un.org/disabilities/default.asp?id+475.

25 Australian Lawyers for Human Rights, *Submission 10*, p.1. and Final Report to the Australian Government Departments of Families, Housing, Community Services, and Indigenous Affairs, and Attorney General, *Exhibit 6*, p. 5.

26 NIA, para. 2.

27 Australian Lawyers for Human Rights, *Submission 10*, p.1.

28 Human Rights and Equal Opportunity Commission HREOC, *Submission 3*, p.2.

29 Human Rights and Equal Opportunity Commission HREOC, *Submission 3*, p. 2.

- have significant positive economic, environmental, social and cultural impacts on Australia;³⁰
- have no disadvantages or negative impacts for Australia;³¹
- require Australia to review laws, policies and programs relating to the rights of persons with disabilities;³² and
- provide Australia with the opportunity to participate in the inaugural election of the Committee on the Rights of Persons with Disabilities.³³

2.28 Notwithstanding the support for Australia ratifying the Convention, a number of submissions raised some concerns and issues about the Convention. These issues are discussed later in this chapter.

Implementation

2.29 The Attorney-General's Department has assessed that Commonwealth, State and Territory legislation, policies and programs comply with Australia's immediately applicable obligations and substantially implement the progressively realisable obligations in the Convention. These include: anti-discrimination legislation; disability services legislation; guardianship, administration and mental health legislation; the Commonwealth-State-Territory Disability Agreement; the National Disability Strategy; and other Commonwealth, State and Territory laws, policies and programs.³⁴ Accordingly, there were considered to be no significant financial or regulatory obstacles to ratifying the Convention.

2.30 Areas where it has been identified that the progressively realisable obligations can be enhanced are:

- General awareness raising;
- Education and training for people who work with, or in the course of their work interact with, persons with disabilities, particularly in the administration of justice;

30 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

31 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

32 NACLC and DDLC, *Submission 5*, p. 2.

33 Human Rights Law Resource Centre, *Submission 1*, p.2.

34 NIA, para. 32.

- Merit tested legal representation for persons with disabilities wishing to challenge guardianship and administration orders;
- More accessible signage in buildings;
- Encouraging the private sector to be mindful of accessibility issues and to adopt universal design in production, particularly by considering the needs of people with disability in the production of mobility aids and other assistive devices; and
- Improving access to services in rural and regional areas.³⁵

Consultation

2.31 A comprehensive consultation process was undertaken both during development of the text of the Convention from 2001 to 2006 and since July 2007, when the former Commonwealth Attorney-General wrote to his State and Territory counterparts and other relevant Commonwealth, State and Territory Ministers, informing them that the Government was commencing the process to ratification. The *Attachment on Consultation* to the NIA outlines the consultation process in detail. This process included:

- written and oral briefing to the Standing Committee on Treaties;
- consultation with States and Territories to ascertain that laws, policies, programs and services comply with the Convention's obligations;
- updates through the Standing Committee of Attorneys-General;
- consultation with Australian Government departments and agencies to ascertain whether Commonwealth laws, policies and programs comply with the Convention's obligations;
- consultation with the disability sector, industry and non-government stakeholders, which was also open to the public; and
- provision of funding to the Australian Federation of Disability Organisations (AFDO) to undertake consultation with the disability sector and report to the Government.

2.32 The Government examined the issues arising from the consultation process, including matters relating to the electoral acts, immigration,

³⁵ NIA, *Attachment on Implementation*, para. 12 and *Attachment on Consultation*, paras. 7 and 18.

non-refoulement³⁶, the right to life, mental illness, insurance, education policy, guardianship and administration, and sterilisation. It concluded that Australia complies with the relevant articles of the Convention.

- 2.33 The Committee also undertook its own consultation on the Convention, holding three public hearings in Canberra, Melbourne and Sydney and receiving 25 submissions.

Australia's policy towards migrants with disabilities

- 2.34 A number of submissions to the Committee raised the issue of reform to Australia's migration framework as it relates to migrants with disabilities, calling for a more balanced consideration of both the costs and benefits to Australia of migrants with disabilities.³⁷
- 2.35 As discussed above, the Australian Government has made a Declaration asserting that Australia's migration processes are in full compliance with the Convention. Nonetheless the Committee received a number of submissions and heard evidence highlighting the difficulties faced by migrants with disabilities in seeking entry into Australia.
- 2.36 On 29 July 2008, Mr Dougie Herd told the Committee of the difficulties faced by people with disabilities migrating to Australia:

I managed to migrate to Australia as a person with a disability despite all of the advice I was given that it was going to be impossible or nearly impossible. I think I was able to negotiate my way through the formal rights that I have because I am white, Anglo-Saxon, Protestant, middle class, was in a job, was confident to the point of arrogance, was a professional advocate, was trained to be someone who could negotiate their way through the mire of legal systems that they presented and have a 25-year history of working in the disability advocacy sector in Scotland, Europe and now in Australia. Not everyone comes with those sets of benefits. Many people who will come, particularly from a non-English speaking background, would find it more difficult to exercise

36 The principle of non-refoulement prohibits the expulsion or return (refoulement) of a person to a country where there are substantial grounds for believing they would face a real risk of torture, or arbitrary deprivation of their life.

37 For example: Mr Frank Hall-Bentick, *Submission 2*, p. 2. National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

and realise their formal rights as a consequence of the secondary indirect discriminatory forces that play upon them – which is not to say that Australian law is bad or that it is inconsistent or that it is second-rate but that we simply engage with that process from our different experiences. I am more advantaged in it than others. It did not harm me as a potential migrant to find my way through a stream known as ‘distinguished talent’, of which there are only about 250 migrants a year.

It did me no harm whatsoever to be working in a field so that I could have a relationship with the then Premier of New South Wales and get his disability advisor to get Bob Carr to sign a letter to say it was a good idea to bring Dougie Herd to Australia. Nor did it harm me at all to have the Premier of Scotland write a letter, because I happened to go to university with him 20-odd years ago and he and I shared a political background that might have something to do with students believing that they could change the world. But if you are the 13-year-old daughter of a professor of English who wants to migrate to Australia and you happen to have cerebral palsy, you will find that you cannot do that.³⁸

- 2.37 The Federation of Ethnic Communities Council (FECCA) and the National Ethnic Disability Alliance (NEDA) in their joint submission argued for the need to establish safeguards against potential indirect discrimination as a result of medical condition tests and suggested that reforms informed by the CRPD would provide a fairer policy setting for potential migrants with disabilities.³⁹
- 2.38 The FECCA and NEDA also notes that Articles 4(1)(b), 5(2), 18 and 23(4) may present some inconsistency with existing migration law and practice, and that modest reforms informed by the CRPD, would provide a fairer policy setting for potential migrants with disabilities.⁴⁰
- 2.39 A submission by Dr Ben Saul, a barrister for the National Ethnic Disability Alliance (NEDA) proffered a legal opinion on:

38 Mr Dougie Herd, *Transcript of Evidence*, 29 July 2008, pp. 21-22.

39 National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

40 National Ethnic Disability Alliance NEDA and the Federation of Ethnic Communities' Councils of Australia FECCA, *Submission 4*, p. 2.

- requirements under the *Migration Act 1958* (Cth), and the exemption of the “health test” of those provisions from the *Disability Discrimination Act 1992* (Cth); and,
- the ten-year waiting period for new migrants for the Disability Support Pension under the *Social Security Act 1991* (Cth), with Australia’s pending obligations under the *Convention on the Rights of Persons with Disabilities*. In short the advice concluded that:
 - Health requirements under migration law are permissible in principle under human rights law, to legitimately safeguard scarce medical resources in the community.
 - The current Australian health test, however, is not sufficiently restrictive so as to comply with the equal protection obligation under article 5 of the *Disabilities Convention*. The health test may give rise to unjustifiable indirect discrimination against some disabled migrants, because: (a) the threshold of the test is set too low, (b) the evidentiary requirements are not sufficiently strong, and (c) an applicant’s capacity to pay for the costs of their own disability care is not taken into account.
 - The ten-year waiting period for the *Disability Support Pension* under the *Social Security Act 1991* (Cth) impermissibly interferes with human rights to an adequate standard of living and to social protection under article 28 of the *Disabilities Convention*, the right to health of disabled persons under article 25 of the *Convention*, and in some circumstances may even amount to inhuman or degrading treatment contrary to article 16 of the *Disabilities Convention*.⁴¹

2.40 The Committee notes that the Attorney-General’s Department stated in evidence that:

[w]e consider that we do comply with those obligations under the convention. The process of immigration procedures apply equally to all applicants. They are also based on legitimate objective and reasonable criteria and our view is that they would not constitute discrimination in international law.⁴²

2.41 While the Government is confident that there is no inconsistency between the *Migration Act* and Australia’s international obligations,

41 Dr Ben Saul, Sydney Centre for International Law, *Submission 17*, covering page.

42 Mr Peter Arnaudo, Attorney-General’s Department, *Transcript of Evidence*, 16 June 2008, p. 5.

the Committee considers that in the light of the ratification of the Convention, it would be timely to carry out a thorough review of the relevant provisions of the Act and the administrative implementation of migration policy to ensure that there is no direct or indirect discrimination against persons with disabilities. Ratification of the Convention provides an opportunity to resolve any inconsistencies and effect positive reforms.

Right-to-Life

The Committee questioned the Attorney-General's Department in relation to Article 10 of the Convention which sets out right-to-life obligations and how this Article could be interpreted in relation to pregnancy terminations.

A number of concerns were raised during the consultations about Article 10, which sets out a right-to-life obligation. The right-to-life obligation in the disabilities convention is derived from Article 6 of the International Covenant on Civil and Political Rights, which is very much the same. The view that the government takes, and the general view, is that article 6 of the International Covenant on Civil and Political Rights was not intended to protect life from the point of conception but only from the point of birth. Given that that is clearly accepted by the international community that the disability convention does not create any new rights, the view we take is that the right to life in this convention would also carry the same meaning as it does in the International Covenant on Civil and Political Rights which we already are a signatory to.⁴³

Substituted Decision Making and Compulsory Treatment

- 2.42 A number of submissions raised concerns with Article 12 and Article 17 of the Convention which allow Substitute Decision-making and Compulsory Treatment as a last resort and subject to appropriate safeguards.⁴⁴
- 2.43 The issues of substituted decision making and compulsory treatment are controversial in Australia and internationally.⁴⁵ In broad terms Substituted Decision Making can be defined as a

43 Mr Peter Arnaudo, Attorney-General's Department, *Transcript of Evidence*, 16 June 2008, p. 7.

44 NACLC and DDLC, *Submission 5*, p. 3.

45 Mr Frank Hall-Bentick, *Submission 2*. p. 2.

process whereby decisions are made on behalf of people who are considered not capable of being able to make decisions for themselves.⁴⁶

2.44 Compulsory Treatment refers to medical treatment including measures taken for the treatment of mental illness, conducted without consent, or contrary to the wishes of the person receiving treatment.⁴⁷

2.45 The use of Substituted Decision Making and Compulsory Treatment are opposed by those who see coercive means as violations of a person's right to choose their medical treatments.⁴⁸

2.46 Claims that these interventions are only used as a last resort was disputed by Mr Frank Hall-Bentick who stated in evidence:

...recent figures certainly from Victoria tell us that in 2006-07, 10,500 people were actually on involuntary treatment orders.⁴⁹

This is by no means a last resort. For people to suggest that it is only being used as a last resort is really not portraying the real facts as they stand. These treatment orders are used to control people for the medical system, the institutional system, to get what they want done as quickly as they need doing, because the supported model of decision making does take time.⁵⁰

2.47 There was disagreement among some submissions about whether or not Australia should make a declaration at the point of ratification to interpret Australia's understanding of substituted decision making and compulsory treatment as they stand under the Articles of the Convention.

2.48 As noted earlier in this Chapter, the Government has now made a declaration. The Committee noted the Attorney-General's Department's evidence before the Committee (prior to a declaration being made):

During the process of consultations a number of views were expressed about the position in the convention on substituted

46 Australian Social Work, Volume 51, Number 3 September 1998.

47 NIA, (footnote) p.5.

48 Mr Frank Hall-Bentick, *Submission 2*, p. 2.

49 Mr Frank Hall-Bentick, *Submission 2*, p. 46.

50 Mr Frank Hall-Bentick, *Transcript of Evidence*, 28 July 2008, p. 46.

decision-making as well as compulsory treatment. Having regard to those views, the government proposes to make declarations setting out Australia's understanding of its ability to continue with its existing practices on substituted decision-making and compulsory treatment. The making of such declarations was also recommended by the majority of the disability sector organisations that were represented in the AFDO coordinated submission.⁵¹

Implementation of the Convention

- 2.49 Although the NIA states that assessment of Commonwealth, State and Territory legislation, policies and programs indicates that Australia complies with all immediately applicable obligations arising from the Convention, it was argued that the implementation of the Convention should be used as an opportunity to review existing laws, policies and programs.

The Australian government needs to undertake a national audit of laws, policies and programs in relation to people with a disability. Such a high-level review has not occurred since the 1980s, and would provide the basis for the formulation of a national action plan to ensure the realisation of CRPD rights.⁵²

- 2.50 The National Association of Community Legal Centres (NACLC) and the Disability Discrimination Legal Centre (DDLC) suggested that under the Convention there would be scope for a national review of laws, policies and programs relating to the rights of people with disabilities, to ensure the provisions of the Convention are reflected in service and practises which have a real impact on the daily lives of people with disabilities.⁵³ They called for a national audit of existing laws, policies and programs relating to the rights of peoples with disabilities, to ensure that the provisions of the Convention are reflected in the services.⁵⁴

- 2.51 The Committee was not persuaded that such a review is necessary as a stand alone exercise, but considers that an ongoing examination

51 Mr Peter Arnaudo, *Transcript of Evidence*, 16 June 2008, p. 4 .

52 Ms Therese Sands, *Transcript of Evidence*, 29 July 2008 p.17.

53 NACLC and DDLC, *Submission 5*, p.2.

54 NACLC and DDLC, *Submission 5*, p. 2

of laws, policies and programs could be undertaken by the Human Rights and Equal Opportunity Commission (see below).

Powers of the Human Rights and Equal Opportunity Commission

- 2.52 NACLC and DDLC argued that human rights institutions play an essential role in protecting and promoting the rights of persons with disabilities, and the Convention provides an opportunity to review current structures with a view to broadening the scope and powers of the Human Rights and Equal Opportunity Commission (HREOC). Submission 5 by NACLC and DDLC notes that this would require sufficient human and financial resources to enable HREOC to effectively monitor compliance and implementation of the rights stipulated in the Convention.⁵⁵
- 2.53 The Committee agrees with this view and suggests the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner, to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Optional Protocol

- 2.54 An Optional Protocol was adopted by the General Assembly as part of the overall package to the Convention. The Optional Protocol would allow the Committee on the Rights of Persons with Disabilities to receive and consider claims of violation of the Convention's provisions.
- 2.55 Many of the submissions to this inquiry urged the Committee to support the Optional Protocol arguing that it provides a mechanism whereby a remedy may be sought where domestic remedies are unavailable or ineffective. The Submission from the UN CRPD Ratification Taskforce stated:

Our report found that there was unanimous support for Australia to immediately sign and ratify the Optional Protocol to the CRPD, and that a failure to do so would reflect poorly on Australia's willingness to be accountable for the

55 National Association of Community Legal Centres and Disability Discrimination Legal Centre, *Submission 5*.

implementation of CRPD rights, and undermine its leadership in human rights in the international community.⁵⁶

- 2.56 As of 30 September 2008, 75 countries have signed the Optional Protocol and 24 countries have ratified it.
- 2.57 In the event that the Australian Government decided to ratify the Optional Protocol, the protocol would be referred to this Committee prior to binding treaty action being taken. At that point the Committee would conduct an inquiry into the question of ratification. The Committee urges the Government to consider the views expressed in submissions to this inquiry when developing its approach to the Optional Protocol.

State Reservations to the Convention

- 2.58 The submission from the Australian Lawyers for Human Rights noted that the Convention permits State parties to the Convention to enter reservations limiting the scope of the obligations they accept under the treaty.
- 2.59 The submission warns that experience with other human rights treaties suggests that there is a risk that some States may enter reservations which are incompatible with the object and purpose of the Treaty (and which are not permitted by international law).⁵⁷
- 2.60 The Committee agrees that this is a serious concern and urges the Government to carefully examine reservations entered by other state parties and to object to any reservations that appear incompatible with the object and purpose of the treaty.

Costs

- 2.61 The Government has assessed that the financial implications of the proposed treaty action are negligible given Australia already complies with the immediately applicable obligations and has substantially implemented the progressively realisable obligations.⁵⁸ However, Queensland has indicated that it considers full implementation of the progressively realisable obligations will carry significant resource implications.⁵⁹

56 UN CRPD Ratification Task Force, *Submission 12*, p. 2.

57 Australian Lawyers for Human Rights, *Submission 10*, p. 5.

58 NIA, para 34.

59 NIA, para 36.

- 2.62 There will be some costs involved in meeting reporting requirements and in travel to appear before the Committee on the Rights of Persons with Disabilities, which will be met from relevant agency resources.
- 2.63 The Committee is uncertain just how comprehensive the Australian Government's assessments of the cost implications for the Convention are. In this regard the Committee notes the submission by Mr David Heckendorf who observed that one of the biggest issues for the disability sector is access to limited public resources. Mr Heckendorf further commented that:
- I am concerned that, in the race to get a representative onto the Article 34 Committee on the Rights of Persons with Disabilities, Australia might be too optimistically eager in writing in the NIA that ratification would not lead to 'significant financial or regulatory implications.'⁶⁰
- 2.64 The Committee considers that the Australian Government, and the governments of the States and Territories, must be prepared to meet any implementation costs arising from the obligations of the Convention.

Conclusion

- 2.65 The Committee supports the Convention on the Rights of Persons with Disabilities and has recommended in Report 92 that binding treaty action be taken.⁶¹
- 2.66 In addition the Committee takes into account concerns expressed by witnesses to the inquiry and makes the following recommendations.

60 Mr David Heckendorf, *Submission 22*, p, 2-3.

61 Joint Standing Committee on Treaties *Report 92*, see Appendix D.

Recommendation 1

The Committee recommends that the Government consider expanding the role of the Human Rights and Equal Opportunity Commissioner to enable the Commissioner to provide Parliament with an annual report on compliance and implementation of the Convention and, if also ratified, the Optional Protocol.

Recommendation 2

The Committee recommends that a review be carried out of the relevant provisions of the Migration Act and the administrative implementation of migration policy, and that any necessary action be taken to ensure that there is no direct or indirect discrimination against persons with disabilities in contravention of the Convention.

