

Submission to the Joint Standing Committee on Treaties' Inquiry into
Australia's possible ratification of the United Nations Convention on the
Rights of Persons with Disabilities:
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The views in this submission represent those of the author and should not be taken as representing those of the ACT Government where he works.

Executive Summary

There are a number of good reasons for Australia to ratify the Convention. Perhaps the biggest debate within the disability sector is over access to limited public resources. The Australian Government's quick tick of approval for the ratification of the Convention, I suggest, should not be understood as an assessment that Australia meets all of the required conditions set out therein.

Introduction

As a person with profound Cerebral Palsy living with my wife of nearly eighteen years in our own home in the suburbs of the Nation's capital, I am, like many other people with disability, very excited to read the support that the Rudd Government has expressed in the Nationally Interest Analysis (NIA) for the ratification of the United Nations' Convention on the Rights of Person with Disability (the Convention). I am also the senior policy officer on disability for the ACT Government, though the views in this report are my own and not necessarily those of the ACT Government.

Main Reasons to Ratify

There are a number of good reasons for Australia to ratify the Convention.

1. Many of the Convention's Articles concern issues that are addressed through Commonwealth and/or State/Territory social security, disability / sex / race anti-discrimination, child welfare, disability services, civil wrongs and criminal laws. However, the process of preparing the NIA has highlighted considerable challenges for Australia to progressively implement over a reasonably timeframe.

2. The process of preparing the NIA has also resulted in those areas within the Australian Government, which are responsible for preparing reports to the United Nations' human rights conventions committees, having to educate themselves on the disability sector and the status of human rights for people with disability in Australia. This had not previously been necessary because none of the other human rights treaties mentioned disability in any substantial way and, hence, Australia's reports to the United Nations did not include this information.

3. Regular reporting to the United Nations should be seen as highly important because reporting specifically on issues that touch the lives of people with disability will enable the monitoring of the implementation of human rights measures over time and allow a degree of interjurisdictional comparison.

4. Australia's ratification of this Convention should also inform public debates around a number of ethical issues, such as euthanasia, involuntary sterilisation of minors, and experimental treatments on people with disability.

The Issue of Limited Access to Public Resources

Perhaps the biggest debate within the disability sector is over access to limited public resources. According to Australian Productivity Commission's 2008 Report on Government Services (page 14.9), total government expenditure on Commonwealth, State/Territory Disability Agreement (CSTDA) funded disability services in 2006-07 was \$4.3 billion. However, numerous submissions to the Senate Community Affairs' inquiry into the Funding and operation of the Commonwealth State/Territory Disability Agreement (CSTDA) argued that there is still considerable unmet need for disability services throughout Australia and it is expected to increase as parents and their sons and daughters with disability age, and as increases in medical science increases the survival on younger premature babies and badly injured crash victims. Indeed, the aforementioned bipartisan Senate Report, released on

8 February 2007, identified a range of major problems with the CSTDA and made a number of recommendations, including that both levels of government substantially increase their funding for disability services (Recommendation 21).

Ongoing Concerns

As a person with a significant disability, I am, as I said above, excited that the Australian Government is seriously considering ratifying this Convention. 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'. Such a bold statement could be naively understood as meaning that, once the Australian Government has greater constitutional authority to legislate in the area of disability services via the External Affairs power (section 51(xxix)), it will increase funding for these services. However, such an increase in funding could be achieved through the Appropriations Power (section 54) though perhaps with less control for the Australian Government. Alternatively, the statement could possibly be understood as meaning that the Australian Government either (1) does not think the level of unmet need is significant and it is up to the States and Territories to increase funding. Or (2) the Australia Government has failed to appreciate the magnitude of the shortfall in the level of funding required.

The Australian Government's quick tick of approval for the ratification of the Convention, I suggest, should not be understood as an assessment that Australia meets all of the required conditions set out therein. While basic food, water and medicines may be a human right priority in developing countries, such as say, Fiji, human rights issues are found in even the most developed of countries. In the case of *Waters v Public Transport Corporation* [1991] HCA 49, we saw a High Court judge, Justice Brennan, state that 'a measure of the civilization of a society is the extent to which it provides for the needs of the disabled (and of other minorities) and protects them from adverse and unjust discrimination which offends their human dignity.'