



Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
PO Box 6021
Canberra ACT 2600

16 October 2008

Dear Committee Secretary

Consultation on the Possible Accession to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities

The National Association of Community Legal Centres and the NSW Disability Discrimination Legal Centre welcome the opportunity to contribute to the Consultation on the Possible Accession to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (the Optional Protocol). Attached to this letter, at Appendix 1, is a description of the work of both organisations.

NSW DDLC, representing NACLC, has actively participated in and had presence at the Ad Hoc Committee Meetings since 2002. Through NACLC's accreditation to ECOSOC, the NSW DDLC was able to send delegates to seven of the eight Ad Hoc Committee meetings. NSWDDLC also attended and participated in UN ESCAP Workshops on the Regional Follow-up from and Preparation for the Ad Hoc Committee Meetings, held in Bangkok. NSW DDLC was involved in negotiations at the Ad Hoc Committee around the development of the Optional Protocol.

Overview

As detailed in our submission to the National Interest Analysis and to this Committee on the ratification of the Convention, we strongly supported the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and we congratulate the Australian Government on its speedy ratification of the CRPD.

As the principal document enunciating the rights of people with disability, CRPD is an important document for over one quarter of Australia's population. Without acceding to the

Optional Protocol however, the importance and significance of CRPD will not be realised. Human Rights are only as effective as their ability to be implemented. Outside of the powers mandated by the Optional Protocol, the Committee on the Rights of Persons with Disabilities has limited powers to promote the implementation of the Convention.

The Optional Protocol provides an opportunity to strengthen the weak enforcement ability of CRPD. If adopted, the Optional Protocol gives people with disability the ability to make a direct complaint to the Committee on the Rights of Persons with Disabilities. The Committee will only consider complaints related to incidents within the domestic jurisdiction of State Parties to the Optional Protocol and only when the complainant has demonstrated that available domestic remedies have been exhausted. The inquiry procedure allows the Committee, upon receipt of reliable information, to initiate inquiries into grave or systemic violations of CRPD by a State Party.

Perhaps of greater significance though is the symbolic effect of acceding to the Optional Protocol. Becoming a party to the Optional Protocol provides a valuable opportunity for the Australian Government to again demonstrate its commitment to CRPD and the opportunities of people with disability all over the world. We strongly urge the Australian government to accede to the Optional Protocol in its entirety.

The Benefits of Accession to the Optional Protocol

There are multiple benefits of accession to the Optional Protocol. Some of these are discussed below:

Demonstrate the Government's continued commitment to people with disability and promote social inclusion of people with disability

1. Given this government's commitment to people with disability through such measures as the development of the National Disability Strategy, the National Mental Health and Disability Employment Strategy and the Disability Strategy for Australia's Aid Program, as well as the recent increase in the disability pension, accession to the Optional Protocol in its entirety would reinforce its commitment to people with disability. It will send a message to both the international community and Australians that the Australian government is committed to upholding the rights of people with disability.
2. The normative effect of this message cannot be understated: it will foster a more inclusive society encouraging the participation and inclusion of people with disability in all aspects of community life. Not to do so is to actively contribute to their continuing social exclusion.

3. Accountability to a Treaty Body for the implementation of CRPD rights may also encourage Australian government agencies to commit to CRPD Rights and is likely to result in fewer individual complaints being taken to the Committee.
4. In Australia's federalist system, regional and federal governments may have separate and independent legislative power. Therefore, the actions of one level of government may be contrary to CRPD while the other is not. Accession to the Optional Protocol would help to ensure that all levels of government find domestic methods to set uniform standards in accordance with CRPD.
5. Governments change, as do systems of power and cultural attitudes. Even though the current Australian Government may seem supportive of disability rights now, a future government may not be so committed and it is important to take action to ensure continuing protection.

Demonstrates Australia's commitment to the international human rights system and treaty monitoring

6. We also recognise and support the Australian Government's desire to provide leadership in the Pacific region and internationally, on the broader issue of international human rights. Acceding to the Optional Protocol would provide Australia with the opportunity to enter a new dialogue with community members and our Pacific neighbours about the importance of international human rights mechanisms in the context of upholding the rights of people with disability.
7. A demonstration of Australia's commitment is particularly significant at this time given the upcoming election of the Committee on the Rights of Persons with Disabilities.

Complements and strengthens existing protections for people with disability in Australia

8. The *Disability Discrimination Act 1992* (Cth) incorporates most of the obligations imposed by CRPD. Where legislation departs from CRPD, Australia continues to lead the way in ensuring the realisation of the human rights of people with disability. For this reason, individual complaints mechanisms under the Optional Protocol will not replace existing domestic remedies. However, human rights are only as effective as their ability to be enforced and existing remedies are not always effective. Where they fail, the Optional Protocol establishes a procedure whereby people with disabilities can access a formal mechanism to pursue protection of their human rights via a complaint to the Committee on the Rights of Persons with Disabilities.

9. An individual complaint may then assist Australia in identifying broader systemic issues underlying that complaint. For example, we note that Australians currently have the option of making a direct complaint to the United Nations (UN) under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The case of *Toonen*¹ and the impact of the ICCPR Committee's decision on Australian domestic law is a powerful example of the role UN decisions can play in supporting Australia's State, Territory and Federal Governments to uphold human rights.
10. Any findings by the Committee may then assist in preventing future violations of CRPD.

What needs to be done to implement the Optional Protocol

11. The Optional Protocol can be implemented within Australia's existing political and legal systems with negligible financial implications.
12. As noted in the National Interest Analysis on the ratification of CRPD, the Convention does not create any new rights and Australia is in compliance with many of the obligations under the Convention.
13. Accession to the Optional Protocol will not carry additional obligations other than to co-operate with the inquiry process. Further, Article 2 of the Optional Protocol sets out strict requirements in relation to admissibility of a communication, including the requirement that all domestic remedies are exhausted. Very few complaints have been received by any of the treaty bodies under the individual complaints mechanisms and it is likely that Australia will similarly not be subject to a flood of complaints and investigations under the Optional Protocol. Threshold requirements must also be met before the Committee will initiate an inquiry including that country visits must be with consent.
14. Further, it is important to note that recommendations of the Treaty Body under either of these provisions are non-binding.² They do however provide an opportunity for constructive dialogue between the government and the UN. Under the previous government, many of the recommendations of the various treaty body committees were not publicised or acted on in any way. In fact, some were even denounced. Given this government's commitment to the promotion and protection of human rights, we recommend that in acceding to the Optional Protocol, the government also

¹ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

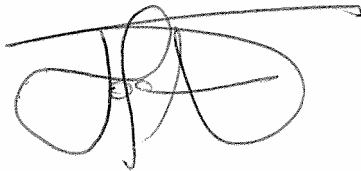
² See Draft General Comment 33 of the Human Rights Committee on States Parties' obligations under the First Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33/CRP.3, 25 August 2008.

consider establishing effective judicial and parliamentary mechanisms to implement, and monitor implementation of, the views of the Committee.

As a member of the UN CRPD Ratification Taskforce, we also strongly support the recommendations made in the Taskforce's Final Report on Consultations with Australian Representative Organisations governed by Persons with Disability, Disability Advisory Councils and the Disability Legal Services Network on the impact on the accession of the Optional Protocol on the Rights of Persons with Disability.

The UN CRPD Ratification Taskforce, People with Disability Australia, Kingsford Legal Centre and the Intellectual Disability Rights Service endorse this submission.

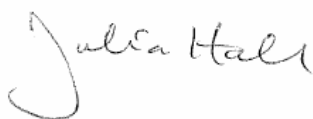
Yours Sincerely,

A handwritten signature in black ink, appearing to be 'J Shulman', with a long horizontal line extending to the right.

Joanna Shulman
Principal Solicitor, NSW DDLC

A handwritten signature in black ink, appearing to be 'Rosemary Kayess', written in a cursive style.

Rosemary Kayess,
Chairperson, NSW DDLC

A handwritten signature in black ink, appearing to be 'Julia Hall', written in a cursive style.

Julia Hall
Executive Director, NACLC

Appendix One

National Association of Community Legal Centres (NACLC)

The National Association of Community Legal Centres (NACLC) is the peak body representing the state and territory associations of community legal centres (CLCs) and 207 CLCs nationally.

CLCs are located throughout Australia in metropolitan, outer-metropolitan, regional, rural and remote Australia. CLCs are experts in “Community Law” – the law that affects our daily lives. They provide services to approximately 350,000 clients per year. They are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed.

While there is much diversity amongst CLCs, there is also much in common. One of those features is a commitment to justice for everyone. Each CLC pursues this end in ways particular and appropriate to the region in which it is located, and the community it serves.

Many CLCs provide legal advice, casework and advocacy around legal and social justice issues. They also conduct community legal education and participate in law reform where laws and/or procedures that hinder justice are identified.

The National Human Rights Network is a network of people who work in CLCs around Australia and have an interest in human rights. The work of the Network varies greatly and includes encouraging human rights work within the CLC sector and lobbying government on human rights issues.

NSW Disability Discrimination Legal Centre (NSW DDLC)

NSW DDLC was established in 1994 to help people with disability understand and protect their rights under disability discrimination law. We do this through the delivery of direct legal services to people with disability, delivery of community legal education and undertaking policy work. NSW DDLC aims for a society where people will be able to participate in all aspects of life through the:

- removal of barriers;
- elimination of discrimination;
- empowerment of people with disabilities;
- promotion of awareness; and
- the ability to exercise rights.

NSW DDLC’s objectives are:

- To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;
- To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;

- To ensure the effective participation of people with disabilities in the management and operation of the Centre;
- To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;
- To develop and be involved in appropriate networks; and
- To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.