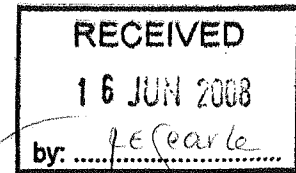


Submission 10

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Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600
Via email: jsct@aph.gov.au

16 June 2008

Dear Secretary

Australian Lawyers for Human Rights (ALHR) is pleased to make a submission on the Treaty text: Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, plus the NIA and Consultation on Persons with Disabilities.

ALHR supports the full implementation of the UN Convention on Disabilities into Australian domestic law. We would urge that the Committee recommend to the Government to expedite that process so that Australia can be in a position to provide input into the selection of the treaty body.

On 30 March 2007 ALHR stated in a media release (**attached**) in relation to the Convention:

The Convention is a watershed in the recognition of the rights of people with disabilities. People with Disabilities are among the most marginalized groups in society and existing human rights mechanisms do not adequately consider or protect their rights.

The making of the Convention signals a shift in the way people with disabilities are being viewed throughout the world. They are now seen as citizens with equal rights and the Convention provides clear guidance on how those rights are to be made real for people with disabilities.

The Convention is informed by the real life experiences of people with disabilities in housing, access to all aspects of the community, mobility, education, health, employment, participation in public life, discrimination and equality.

ALHR supports the March 2008 report of the Australian Coalition for the Ratification of the UN Convention on the Rights of Persons with Disabilities including their *Report on Consultations with Australian representative organisations, disability advisory councils, and the disability legal services network on the impact of ratification of the Convention* (http://doc.afdo.org.au/UN/AFDO_CRPD_Roundtable_Rpt%202008%20Mar.doc).

ALHR is also a supporting organisation for the following April 2008 report which deals with disability rights: *Freedom Respect, Equality Dignity: Action* – NGO Report to UN regarding Economic, Social and Cultural Rights in Australia by the National Association of Community Legal Centres, the Human Rights Law Resource Centre and Kingsford Legal Centre. (<http://www.hrirc.org.au/files/MP9JMGYX55/Final.pdf>)

ALHR also made several submissions in support of the Convention to the 2020 Summit, which are elaborated in our comments below.

Who we are

Australian Lawyers for Human Rights Inc (ALHR) was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).

ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1,300 people, with active National, State and Territory committees.

Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

ALHR is a member of the Australian Forum of Human Rights Organisations. It is a member of the Commonwealth Attorney General's NGO Forum on Human Rights, and the Department for Foreign Affairs Human Rights NGO Consultations.

Issues addressed by ALHR include anti-terrorism laws, refugee and migration issues, proposed reforms of the Human Rights and Equal Opportunity Commission, amendments to anti-discrimination laws, and Australia's National Human Rights Action Plan.

To help lawyers use human rights remedies in their daily legal work, ALHR runs seminars on the use of international human rights standards in daily legal practice, in areas such as family law, tenancy, anti-discrimination, crime, corporations, land and environment, and employment. We have recently commissioned a training package that we hope to roll out to articled clerks and APS graduate intakes.

ALHR Comments on the Disability Convention Text and NIA

There is a strong need for the rights of Australians with a disability to be better protected. At least one in five people in Australia has a disability. Historically people with disabilities have been conceived and problematized through the medical welfare model which has resulted in isolation and disempowerment. The Disability Convention proposes a social justice human rights model which focuses on removing barriers which have prevented people with disabilities from full inclusion into society. Rather than providing people with disabilities assistance to overcome

barriers, the attitudinal paradigm shift contained in this convention seeks to remove the barriers themselves.

Discrimination in all its forms is a disempowering and unnecessary manifestation which the Australian Government has attempted to combat domestically and internationally. Domestically all Australian jurisdictions are covered by anti-discrimination legislation which protects vulnerable groups. Internationally Australia has ratified conventions to protect many vulnerable groups. For example women are protected by Convention on the Elimination of All Forms of Discrimination against Women (1983] ATS 9 (entered into force for Australia 27 August 1983), racial minority groups are protected by the International Convention on the Elimination of All Forms of Racial Discrimination [1975] ATS 40 (entered into force for Australia 30 October 1975) and children are protected by the Convention on the Rights of the Child [1991] ATS 4 (entered into force for Australia 16 January 1991). Australia has facilitated the reduction of discriminatory barriers through conventions as the Convention against Discrimination in Education [1966] ATS 20 (entered into force for Australia 1 march 1967) and ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation [1974] ATS 12 (entered into force for Australia 15 June 1974). While Australia has a long history of protecting the rights of people with disabilities domestically, until recently Australia has not had the opportunity to demonstrate its commitment to protecting the rights of people with disabilities. The CRPD provides Australia with the opportunity to demonstrate its commitment to protecting the rights of people with disabilities.

Examples of why Convention is needed

The following are some key examples of where the implementation of the principles contained in the Convention could make a difference. Other examples raised at the recent Attorney-General's and DFAT Human Rights NGO Consultations included the forcible sterilisation of young women with disabilities; the lack of a permanent post for the Disability Discrimination Commissioner at HREOC (as opposed to the long-term acting position); equity in pension bonuses and support for people with a disability; and the need for an increased focus on disability in Australia's development assistance administered by AusAID.

Access to creativity

Equal access to, and participation in, artistic and cultural life is recognised in international law as a human right,¹ including for people with disabilities.

ALHR urges the Government to continue working towards accessibility of performance and exhibition spaces by people with disabilities and thereby facilitating their participating in the creation or appreciation of art. This should include access to and within heritage sites the implementation of international best-practice guidelines for the design of accessible websites.

Access to Web-based resources

¹ International Covenant on Economic, Social and Cultural Rights, Article 15

People with a visual impairment still do not have easy access to print material unlike their Canadian and USA counterparts. In Canada and the USA people with vision impairments can access electronic copies of print material with a click of a button; In Australia those same books take hours to scan. As a consequence vision impaired people in Australia are at a massive disadvantage which could be redressed tomorrow if the Government provided funding.

Education - Purvis case

Reform of education should ensure that children with significant intellectual impairments and especially those with associated behavioural issues are not allowed to slip through the cracks. Out of the box approaches to education must be developed to ensure that children are not totally excluded from education and the ability to socialise with their peers. Due to the decision of *Purvis v New South Wales* (2003) 217 CLR 92, discrimination laws do not presently protect students who are excluded from schools due to behavioural issues, even where those behavioural issues stem from significant economic or family hardship or from disabilities such as ADHD etc. Exclusion from schools not only means these children will not be able to attain the skills necessary to play a meaningful part of our economy in the future, they will be prevented from attaining the social skills necessary to be involved in Australian society for the term of their lives. Alternative solutions and additional funding is vital in preventing this from occurring.

Right to work

People with disabilities are confronted by barriers which limit their ability of their right to work. When in Opposition, the Australian Labor Party stated in their election manifesto that 'social disadvantage in Australia is still apparent and enduring'.² Labor noted that '[w]orkforce participation is a foundation of social inclusion; it creates opportunities for financial independence and personal fulfilment.'³ In order to meet their policy objective, Labor 'believes that people with a disability or mental illness who want to work should be encouraged.'⁴ Labor identified discrimination as a major problem for people in this group:

many find that they encounter a range of barriers that make it harder to gain and keep work. These barriers can be very diverse, including resistance from employers in hiring people with a disability, difficulty accessing appropriate transport, the costs associated with managing a disability, and the unpredictable nature of some disabilities and illnesses. ... Labor recognises that helping people with a disability or mental illness gain and retain work requires more than changes to welfare rules; it requires a coordinated national effort to tackle the many reasons why people with a disability find participation difficult.⁴

The Australian Labor Party has promoted inclusion as a focus of their social policy and the **Disability Convention** provides a powerful vehicle through which this policy can be promoted.

Disability and the Migration Act

² Julia Gillard MP and Senator Penny Wong, *An Australian Social Inclusion Agenda* (2007).

³ *Ibid.*, 2.

⁴ *Ibid.*

The current health requirements in the Migration Act may not meet the non-discrimination and equal treatment obligations under the Disabilities Convention. Health requirements are permissible in principle, if they are properly framed, but the current test in the Act is too wide and health requirements over a certain dollar amount are subject to Ministerial discretion.

The need for speedy ratification of the Convention

As the Convention entered into force on 3 May 2008, the first meeting of the States parties to the Convention must be held by early November 2008. At this meeting the States parties will elect the first members of the new independent expert body, the Committee on the Rights of Persons with Disabilities. If Australia wishes to participate in that meeting and election, it must have deposited its instrument of ratification at least a month before the meeting.

However, much earlier ratification is desirable if the Australian government wishes to have the option of nominating an Australian expert for election to the Committee at that meeting of States parties. This is because the United Nations Secretary-General will circulate a call for nominations some months before the meeting.

Accordingly, ratification of the Convention by Australia within the next month would be desirable.

Optional Protocol to the Convention on the Rights of Persons with Disabilities

At the same time as it adopted the Convention, the General Assembly adopted as part of the overall package an Optional Protocol to the Convention. That Optional Protocol is similar to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (to which Australia is not yet a party), and contains both an individual complaints procedure and an inquiry procedure. The individual complaint procedure is similar to those which Australia has already accepted under the Optional Protocol to the ICCPR, the CERD Convention and the Torture Convention, while the inquiry procedure is similar to that under the Torture Convention, which Australia has accepted.

The government has commenced discussions with the States about becoming party to the various Optional Protocols. The Committee may wish to recommend to the government that it bring the question of the ratification of the Optional Protocol to the Convention to the

Role of the Australian government in relation to reservations to the Convention

Although the Convention permits States parties to the Convention to enter reservations limiting the scope of the obligations they accept under the treaty, the experience under other human rights treaties suggests that there is a danger 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). We recommend that the Committee urge the government to scrutinise carefully reservations entered by other States parties and to object to any reservations that appears incompatible with the object and purpose of the treaty, in order to preserve the integrity of the treaty and thereby enhance the protection of the rights of persons with disabilities.

Resources

ALHR also **attaches** a useful selection of recent Australian academic commentary on the Convention Text for the Committee's perusal.

Recommendation

That the Committee recommend for the urgent implementation of the Convention so that Australia can participate in the first meeting of the States parties to the Convention in November 2008 and, if the government considers it appropriate, to nominate an Australian national in the first election of members of the expert body, the Committee on the Rights of Persons with Disabilities, that will take place at that meeting.

We would welcome the opportunity to discuss this recommendation and concerns with the Committee and to elaborate further on the detail. ALHR's disability rights spokesperson is Paul Harpur from the Queensland University of Technology.

Yours sincerely,



Susan Harris Rimmer
President
Australian Lawyers for Human Rights



Paul David Harpur
Disability Rights Spokesperson
Australian Lawyers for Human Rights