

Supplementary Submission to JSCOT CRPD Members

By Frank Hall-Bentick

Chairperson and Members of the Joint Standing Committee on Treaties, thank you for this opportunity provide this supplementary submission in support of my original submission to this Inquiry.

My name is Frank Hall-Bentick and I have a life long disability and over thirty years disability experience in employment and advocacy at the local, state, national and international levels as detailed in my attached bio.

I request your committee recommend to the Government that it withdraw the interpretations it made recently when it ratified the Convention on the Rights of Persons with Disability and for the Government to immediately ratify the Optional Protocol without interpretation.

These interpretations to continue to allow substituted decision making, compulsory treatment and the use of the cost of disability as discriminatory exclusion of migrants and refugees with disabilities. These interpretations are completely out of step with the expressed views of the International Disability Community and International Experts in Law (previously provided) and will be vigorously opposed.

The preamble of the Convention states in paragraphs

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person, and

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world.

In Article 3 - General principles - The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;

Article 4

General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

Article 12

Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Article 17

Protecting the integrity of the person

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

At the last UN Adhoc meeting in New York it was recorded in the DPI Disability Convention Daily Update: August 15, 2006 (Day Two) that the Chairperson Ambassador MacKay of New Zealand when re-introducing Article 12 (Equal Recognition before the Law) & Article 17 (Protecting the Integrity of the Person) noted that there was a consensus that the convention needs to reflect a "support model", reflecting a paradigm shift away from the assumption that people with disabilities in certain cases can be stripped of their legal capacity. Under this model, there is an assumption that everyone has legal capacity and that, where needed, support is provided, but along a continuum according to needs.

It is with profound disappointment I see that a number of Australian disability, human rights and legal organisations continue to promote substituted decision making and compulsory treatment under the guise that it will only be used as a last resort with safe guards. This immediately reminds me of the story of Aesop's Fable about the wolf in sheep's clothing in which the wolf appeared benign but inflicted terrible consequences on those who are vulnerable.

Recent figures in Victoria from the Mental Health Legal Centre tell us that in the year 2006/07 10,473 people were on involuntary legal status and figures from the Office of the Public Advocate tell us that in 2007 OPA provided guardianship for 1292 persons with a disability during the year (record number), an 18 per cent increase on previous year and the Victorian Civil and Administrative Tribunal VCAT made 264 new orders appointing private guardians. Therefore any claim, hope or wish that these interventions will only be used as a last resort does not stand up against the numbers of people being subjected to these interventions each year.

For some Australian disability, human rights and legal organisations to continue to support these interventions is paternalistic and completely denies the facts of numerous public inquiries, complaints and legal actions. Many of these organisations have participated in these Inquiries and have highlighted the violations to human rights being experienced daily when people are striped of their legal capacity. Further the International organisations of these Australian disability organisations are unanimously against these interventions. I have attached policy statements from Inclusion International, MindFreedom International and World Network of Users and Survivors of Psychiatry. Further while the Australian Federation of Disability Organisations national interest analysis earlier this year recommended these interventions, this was by no means unanimous. The Melbourne meeting comprising of disability representatives from Tasmania, South Australia, Western Australia and Victoria unanimously opposed these interventions.

At UN commemorative event on 12th May 2008 to celebrate the coming into force of the Convention, the Deputy High Commissioner for Human Rights stated "The Convention clearly elaborates what is required to guarantee the human rights of persons with

disabilities – and in doing so moves away from a focus on certain physical or mental conditions towards a celebration of people’s humanity, dignity and diversity. This plays out in every aspect of the Convention – in ensuring free and informed consent for medical treatment and in respecting legal capacity of persons with disabilities.....” Further the Chair of International Disability Alliance CRPD Forum stated “This Convention gives us a legal basis and it will be reflected in laws of all state parties that have ratified or will ratify this Convention. We have legal capacity and may act according to our own decisions.”

With regard to the Australian Government’s interpretation to continue to allow assumptions of the cost of disability to exclude migrants and refugees with disabilities this is totally inconsistent with the Convention. The Convention states Article 18

Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- (b)or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

At present discrimination against immigrants and refugees with disabilities continues to be exempt from the Disability Discrimination Act. The reason for this discriminatory exemption is not to subject these decisions to the test of “reasonable adjustment” which would fail when the needs of each individual is compared to the total expenditure of the Federal and States Health and disability systems. The AFDO disability NIA earlier to year unanimously opposed all actions that exclude migrants and refugees on the grounds of disability.

In summary the Convention is a paradigm change in rights and was developed and adopted to enact the human rights of people with disabilities, a major element is the removal of discrimination on the ground of disability. This is totally supported by the international disability community, the UN Office on Human Rights and all other UN Agencies. It is no longer acceptable for Governments to discriminate on the grounds of disability.

Finally I again request your committee recommend to the Government that it withdraws the interpretations it made when it ratified the Convention on the Rights of Persons with Disability and the Government immediately ratify the Optional Protocol without interpretation.

Thank you for your time.

Frank Hall-Bentick

Attachment 1 - Bio for Frank Hall-Bentick

Frank Hall-Bentick has a life long disability and through his outstanding efforts has contributed to improving human rights for people with a disability. He lives in Melbourne and has been involved in disability empowerment for the last thirty years. During this time he has been employed in the Equal Opportunity Unit of the Australian Public Service Board, as Coordinator of Disability Resources Centre and as a Disability Officer at Centrelink.

Since 1981 the International Year of Disabled Persons he has been at the forefront of disability rights in local, state, national, regional and world organizations, founding and leading many of these groups. For the last fifteen years he has worked closely with the United Nations in Bangkok as Resource Person and invited Expert. More recently he has been an active member of the International Disability Caucus and its work on the United Nations' Convention on the Rights of People with Disabilities in both Bangkok and New York.

During this time he has received a number of Awards including

1. 1992 – International Plaque awarded for distinguished and unstinting service in the cause People with Disabilities in the Asia Pacific Region,
2. 2001 - Rotary International "Shine on Awards, Certificate of Commendation" and
3. 2001 - Australian Centenary of Federation Award for long and outstanding service to disability organizations and People with Disabilities.

Currently Frank is;

International

1. Member, International Disability Convention Caucus;
2. World Councillor, Disabled Peoples' International;
3. Member, Asia Pacific Disability Forum;
4. Member, Pacific Disability Forum;

National

5. Treasurer & Board Member of the Australian Federation of Disability Organisations;
6. Treasurer, Disability Australia;
7. Member, Australian Disability Development Consortium;

Victoria

8. Chairperson & Board member of Disability Resources Centre,
9. Chairperson & Board Member, Disability Rights Victoria
10. Board Member, Leadership Plus;
11. Member of the Disability Advisory Council for Yarra City Council;
12. Member of the Ministerial Public Transport Advisory Committee;
13. Member of Victorian Equal Opportunity and Human Rights Commission Disability Reference Group;
13. Board Member of the Western Region Disability Network
14. Member of the Northern Region Disability Network

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