

TT on 3 December 2008

Basis of my understanding.

Human dignity, respect and worth are central to all declarations, conventions, protocols and resolutions of the United Nations General Assembly. The inclusive nature of these processes is once again the hallmark of the Convention on the Rights of People with Disabilities and hence any Protocol under the Convention. The Convention and Optional Protocol are consistent with the family of Conventions and Protocols and demonstrates once again a strong sense of human rights.

Reading the National Interest Analysis summary page, attachment for consultation and the Optional Protocol as a comprehensive package a lay person might make a submission on Australia's proposed participation. Inherent here is that accession to the Protocol is the next logical step following signing and ratifying of the Convention consistent with our Foreign Policy of active involvement in the United Nations, a tradition dating back to Doc Evatt in the 1940's. Accession to the Protocol would demonstrate Australia's commitment to human rights and the values of international law and therefore offer a clear indication of a commitment to continuous improvement in the equitable opportunities able to be exercised by people with any kind of disability.

The Protocol gives in effect a mechanism for accession to another branch of the United Nations systemic processes that provide a capacity for making a complaint to a specialist panel. The Disability Committee established offers further opportunities for at least persuasive arguments on Human Rights. This specialist committee is established under Article 34 of the Convention and allows for an independent external review once domestic remedies have been exhausted, whilst respecting the sovereignty of a state party. The review may offer observations, advice or recommendations.

As a question of access and equity I strongly support and agree with Australia's accession.

Basis for Consultation.

Consultation documentation articulated the need for respondents to refer to the following issues:

- the obligations imposed by the Optional Protocol,
- what, if anything, will need to be done to implement the Optional Protocol,
- the likely financial cost, if any, of implementing the Optional Protocol, and
- foreseeable economic, environmental, social and cultural effects of implementing the Optional Protocol.

Respondents to date appear to be representative organizations rather than individuals with disabilities or their carers, personal attorneys or advocates. Whilst the range of respondents was diverse and represents a groundswell of public opinion for confirming the need for continuous improvement in this policy area, some concerns might arise about the Federal compact in Australia and the imbalance where the Federal government (the party state) funds such directions but the various state governments provide services and delivery mechanisms.

Obligations.

Clause 14 of the provided position paper indicates that the purpose of the Optional Protocol is to assist State Parties to realise the commitment made under the Convention to promote, protect and ensure the full and equal enjoyment of human rights for people with disability. Clause 15 articulates the requirement of a State Party to recognize the competence of the Disability Committee to receive and consider communications (Article 1 of the Optional Protocol).

Article 2 articulates the need for the Disability Committee to consider issues of admissibility, substantiation, due process and exhaustion of domestic remedies before acceptance of a communication for investigation. Articles 3,4 and 5 establish that the Disability Committee will respond to a valid communication. A series of other Articles deal with recognition and amendment etc.

Implementation.

I am concerned that in the documentation, consultation has occurred with the Minister for Disabilities but not the Minister for Health in Queensland, where there is a clear divide of responsibilities in the context of persons with disabilities arising from their mental health. In the domain of mental health support (well-being) at non-government levels, responsibility is within the Disabilities portfolio but treatment issues and therefore questions of capacity fall within the Health portfolio. This may pose a dilemma in the context of human rights, particularly given the involuntary treatment processes within the Mental Health Act 2000. Perhaps the Queensland Government's whole of government approach has been assumed here. It would however be a shame if difficulties arose. I respectfully suggest that further consultation with the Queensland Government might be desirable.

I also wish to draw your attention to the current review of Guardianship laws by the Queensland Law Reform Commission. The work of the Commission also is focused on the Convention. A further consideration is perhaps how the Rudd Federal government will transition mental health towards prevention and early intervention, given their commitment to partnership with the states and re-organisation of the current imbalance of funding and service delivery. In a communication from Mr Nathan Smyth, Assistant Secretary of the Mental Health Reform Branch, he acknowledges my concern about Article 25 of the Convention and particularly the consistency of policy outcomes with same. Mr Smyth notes that the current review of the National Mental Health Standards for Mental Health Services emphasize desired outcomes for mental health consumers, carers and the wider community and reflect the rights, dignity and empowerment of individuals. Certainly I agree these standards set out expectations, but the evidence of the Senate Select Committee (2006) and the Mental Health Council of Australia (2002 and 2005) suggest this remains problematic. The culture of some service providers clearly must be improved if the standards are to indeed apply consistently the rights set out under Article 25. So I suggest it is good to start with an enhanced commitment to demonstrating human rights and freedom from discrimination arising from disability, whilst making a transition through continuous improvement.

Above all else implementing the Protocol should be accompanied by some realistic evaluation processes to check that the best of intentions by law makers and service providers is consistent with the hope, self-determination and other rights of those who have sought their help and support.

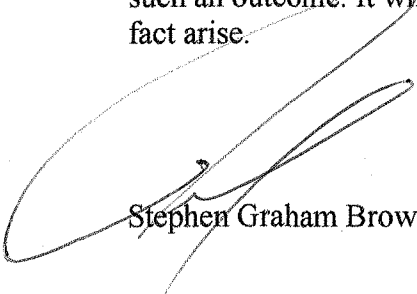
Financial Costs.

When changing the Culture, if not the legal and policy context of delivering services to those who in our society are the most vulnerable, one would imagine that the literature at the least shows a need to refocus funding and service delivery processes, whilst bringing the various service providers to the table to work out how things can be done better. The cost to an individual, their family and community when they are socially dislocated is both a human capital and social capital cost and may not yet have been effectively defined ,yet alone measured.

Economic, environmental, social and cultural effects of implementing the Optional Protocol.

As I indicated above when a person endures a disability they are at risk of being socially dislocated and this has an impact on our workforce, family relationships and other domains of society. It may be necessary to demonstrate our commitment to the Convention and the Optional Protocol by establishing mechanisms to ensure ongoing evaluations, reviews and the like of standards and outcomes to ensure human rights including freedom from discrimination on the basis of their disability or indeed belated access and equity questions.

In closing I accept and understand that only a small number of valid communications will reach the Disability Committee and cause observations or recommendations to be made. In a mature system the strengths and capacities of external review mechanisms will if effective in application ensure such an outcome. It will however be more consistent with human rights if these situations did not in fact arise.



Stephen Graham Brown.