



23 January 2009

The Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

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

The Public Interest Advocacy Centre (PIAC) welcomes this opportunity to provide a brief submission to the Joint Standing Committee on Treaties (JSCOT) on Australia's accession to the *Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities* (the Convention).

PIAC supports Australia's accession to the Optional Protocol. The reasons for PIAC's support are set out in brief below.

The National Interest Analysis (NIA) identifies—correctly in PIAC's view—that ratifying the *Optional Protocol* will:

... render Australia more accountable for its Convention obligations ... further promote disability rights within Australia ... [and] present Australia as an international leader committed to protecting the rights of people with disability.¹

These are all significant and valid reasons to support ratification of the *Optional Protocol*.

Accession to the *Optional Protocol* will reinforce the Australian Government's commitment to an effective and respected international human rights framework and to being a good international citizen. It will strongly reinforce the international and domestic message that came through the Government's speedy ratification of the Convention. It will show that ratification was not simply an empty gesture, but rather one that the Australian Government is willing to be measured against in terms of individual rights and government compliance with its obligations to people with disability. This is an extremely positive message for people with disability in Australia and a strong message to the broader community about the importance of respecting the rights of people with disability and ensuring the removal of barriers to equality of opportunity in all aspects of Australian life.

A further and very important benefit of accession is that it will provide opportunities to improve Australian jurisprudence in respect of equality rights for people with disability through the development and application of international disability rights jurisprudence. It has the potential to do this both directly and indirectly.

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¹ *National Interest Analysis* [2008] ATNIA 31, ¶5, 2.

It will occur directly through determinations made on communications lodged by people with disability alleging a breach of the Convention by Australia. In that circumstance, the Disability Committee, being the body with authority to deal with the communication under Articles 1 to 5 of the *Optional Protocol*, would be able to consider whether or not Australian laws, policies and procedures are compliant with and are being interpreted and applied consistent with the Convention rights and State Party obligations. Where the Disability Committee determines they are not, their reasoning will provide important guidance on the challenged law or policy and how it can and should be modified to ensure Convention rights are protected and obligations are fulfilled.

The indirect effect would flow through reference to the Convention in interpreting rights under Australian laws in domestic settings, particularly anti-discrimination laws including the *Disability Discrimination Act 1992*. Interpretation at the domestic level by courts and tribunals being informed by Convention rights and developing jurisprudence increases the likelihood that disputes will be resolved at lower levels and, over time, is likely to reduce the number of communications made to the Disability Committee. The decisions of Australian courts and tribunals that utilise the Convention to assist in the interpretation of Australian legislation will create a body of jurisprudence that better recognises and protects the rights of people with disability.

As with all jurisprudence, this will be an important guide for future policy and legislative development as well as actions by both Australian governments and non-government entities.

Similarly, with the guidance developing from the Disability Committee through recommendations on communications, Australian governments can be more proactive in analysing existing laws, policies and practices to ensure they are amended to improve protection, promotion and fulfilment of the rights of people with disability under the Convention.

While individuals with disability with complaints of breaches of civil and political rights currently have the right to make a communication under the *First Optional Protocol to the International Covenant on Civil and Political Rights*, the consideration of such communications is by a panel of international human rights experts without specialist expertise in disability. The benefit of having people expert in disability considering a communication about of breach of rights related to disability cannot be overstated. Understanding the diversity of disability, the historic experience of people with disability, the way in which people with disability seek to have their circumstances understood and the way in which people with disability experience both their disability and their exclusion is vital to effectively considering whether or not conduct is in breach of Convention rights. Because of this, it is important that Australia seek to ensure the Disability Committee represent the diversity of experience of disability. (PIAC has previously supported the Australian Government's nomination of Professor Ron McCallum AO to the Disability Committee.)

Further, the Convention deals expressly with rights that are not dealt with under the *International Covenant on Civil and Political Rights*. For example, the Convention sets out the rights of people with disability in education and employment and as such a communication under the *Optional Protocol* is a much clearer, more direct and appropriate mechanisms for challenging action alleged to breach rights in these areas.

While the NIA is correct in observing that any recommendations of the Disability Committee are not legally binding, it is hoped that the Australian Government would establish a mechanism for properly considering those recommendations including consulting with the disability sector and the Australian Human Rights Commission on the appropriate response to the recommendations.

In respect of the procedures under Articles 6 and 7, PIAC notes the co-operative, developmental approach reflected in these Articles that enable States Parties to work with the Committee to resolve grave or systematic violations of Convention rights.

Again, thank you for the opportunity to provide these comments in support of Australia's accession to the *Optional Protocol*.

Yours sincerely

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