



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

13 June 2008

Dear Committee Secretary

Consultation on the Possible Ratification of 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 Ratification of the United Nations Convention on the Rights of Persons with Disabilities (the Convention). 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 NSWDDLC 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.

As detailed in our submission to the National Interest Analysis (and attached at Appendix 2), both NACLC and NSW DDLC strongly support the ratification of the Convention. We request that the Australian Government ratify the Convention without reservations as a matter of urgency. An important benefit of early ratification is the potential it allows for Australia to be represented on the Committee on the Rights of Persons with Disabilities. Given this country's crucial and active role in the drafting process Australia has the ability to offer valuable expertise and experience for the Committee. We believe Australia's legal framework, as it currently exists, presents no barriers to ratification occurring as soon as possible.

As a member of the Australian Taskforce on Ratification, 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 ratification of the Convention on the Rights of Persons with Disability.

NACLC and NSW DDLC also look forward to participating in consultation regarding the ratification of the Optional Protocol to the Convention. Ratification of the Optional Protocol will demonstrate Australia's commitment to the international human rights system and treaty monitoring.

Comments on Specific Matters Arising out of the National Interest Analysis

1. Implementation of the Convention- Scope for Progressive Realisation of the Convention

National Audit of existing laws, policies and programs

The Convention provides a framework for already existing Australian laws and policies under the *Disability Discrimination Act* 1992 (Cth) and the *Disability Services Act* 1986 (Cth). However, in accordance with art 4(1)(b) of the Convention, implementation provides an opportunity for a national review of laws, policies and programs relating to the rights of people with disability to ensure that the provisions of the Convention are reflected in services and practices which have a real impact on the daily lives of people with disability.

The review should seek to develop a practical, rights based approach to laws and services relating to people with disability. In relation to discrimination law in particular, this may include a review of the individual complaints based regulatory model. True achievement of equality under the Convention would mean that already disadvantaged individual complainants were not left with the financial and emotional strain of enforcing their rights under discrimination law through Courts and Tribunals.

Achievement of equality for people with disability will also require a review of existing Disability Rights Services and Disability Discrimination Legal Services. These services may more effectively protect the rights of people with disability under the Convention through an integrated and coordinated approach. This is especially important given that people with disability often experience the cumulative effects of more than one form of violation against their rights. Services which are able to provide a variety of services such as legal, support and advocacy assistance are better able to ensure all the rights of people with disability are protected. It goes without saying that such services will not meet their goals unless they are adequately funded.

National monitoring- Broaden the Powers of the Human Rights and Equal Opportunity Commission

In order to achieve true equality, human rights institutions will play an essential role and as such it is important that they are adequately equipped to protect and promote the rights of people with disability. This mandate provides an opportunity to review current structures with the view to broadening of the scope and powers of the Human Rights and Equal Opportunity Commission (HREOC), for example to initiate proceedings into CRPD

violations, issue guidelines and standards for compliance and intervene in proceedings concerning CRPD violations so that it reports on the government's compliance with the Convention. It will require sufficient human and financial resources to enable it to effectively monitor compliance and implementation of the rights under the Convention.

2. Policy Instruments

Australia's ratification of the Convention should be accompanied by a statement of interpretation and a declaration to clarify how the Convention obligations will be applied in the Australian context.

Article 12

In our view, the correct interpretation of the Convention provides that substitute decision-making may take place, but only as a last resort in appropriate circumstances. This both is clear from a plain reading of Article 12.1 and the safeguards enunciated in Articles 12.3-12.5, and from the discussions around the development of this Article at various UN Ad Hoc Committee Meetings. An interpretative declaration should note this interpretation.

Article 17

We submit that a declaration should be made at the point of ratification which interprets Article 17 as permitting compulsory treatment as a last resort and subject to stringent safeguards. This interpretation recognises that compulsory treatment is permissible in international law, in particular under the ICCPR.

Article 17 is based on Articles 9(1) and 10(1) of the ICCPR and accordingly, such protections are subject to the derogations permitted in Article 4 of the ICCPR. In addition, General Comment Number 8 indicates that Article 9 of the ICCPR is not restricted to criminal justice circumstances and extends to the deprivation of liberty in respect of, for example, mental illness. Article 9 of the ICCPR states that no one shall be deprived of their liberty "except on such grounds and in accordance with such procedure as are established by law". Article 17, if it is to import the right to integrity, must also import this exception, for as to do otherwise would be to create new international law. To make this clear, an interpretative declaration is necessary, which notes this interpretation and clearly proscribes when and how such deprivations of liberty can be imposed, when they are imposed by reason of disability.

This interpretation is also consistent with jurisprudence of the European Court of Human Rights is that involuntary treatment does not violate human rights so long as it is a

‘therapeutic necessity’, with the court needing to be ‘convincingly satisfied’ that there is such a necessity.¹

An interpretative declaration explicitly acknowledges the gravity of forced treatment or interventions as they do interfere with integrity (as does deprivation of liberty in Article 9 of the ICCPR) and provides procedural safeguards to ensure that people with disability are protected to the maximum extent possible from the exercise of State coercion.

3. Australian Government Speech Accompanying Ratification – Acknowledgement of Indigenous Persons as a Specific Population Group Requiring Attention

NSW DDLC and NACLC strongly recommend that such a declaration be made. The evidence for the double disadvantage faced by this population group is overwhelming.

In 2005, the proportion of the Indigenous population 15 years and over reporting a disability or long term health condition was 37 per cent (or roughly 102,900 people).² Historically, much of the focus on Indigenous people with disability has been from a health perspective. While this focus on health is essential, particularly in terms of determining primary health interventions, this perspective has come at the cost of failing to recognise the social aspects of Indigenous people with disability. This has meant that the barriers that discriminate against Indigenous people with disability remain firmly entrenched and that their general well being has not improved in any meaningful way.³

Indigenous people with disability remain significantly under-represented on a population basis in beneficial social programs, including health, community and disability services, due to a number of policy and structural failures. These failures include services that are poorly targeted and located, as well as culturally insensitive or inappropriate services.

A public expression of this government’s commitment to this population group will pave the way for the development of more effective social inclusion strategies for this population group.

¹See, eg, *Herczegfalvy v Austria* [1992] ECHR 10533/83. See also *R (on the application of N) v Dr M and others* [2002] EWCA 1789; *Hutchison Reid v United Kingdom* [2003] ECHR 50272/99.

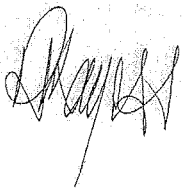
² Commonwealth Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2005* (2005) [3.6]. This measure of disability did not specifically include people with a psychological disability.

³ Aboriginal Disability Network of New South Wales Incorporated, *‘Telling It Like It Is’: A Report of Community Consultations Conducted Throughout NSW During 2004/2005 with Aboriginal People with Disability and Their Associates* (2007) 2.

Yours Sincerely,

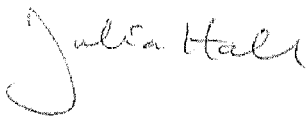
Joanna Shulman

Principal Solicitor, DDLC

A handwritten signature in black ink, appearing to read "Rosemary Kayess". The signature is cursive and somewhat stylized, with a long vertical stroke at the end.

Rosemary Kayess,

Chairperson, DDLC

A handwritten signature in black ink, appearing to read "Julia Hall". The signature is cursive and elegant, with a large initial "J".

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.