

1. This paper is a contribution by the Government of Australia to the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, established by General Assembly Resolution 56/168.
2. Australia believes that a draft convention should affirm the pursuit of a just and inclusive society. In the pursuit of this vision, States should recognise that people with disabilities already have rights equal with other members of their society, and should be enabled to exercise their rights or be accorded these rights.

AUSTRALIA'S APPROACH TO A DRAFT CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

3. The rights guaranteed by the six major human rights treaties clearly apply to people with disabilities. Those treaties are:
 - International Covenant on Civil and Political Rights;
 - International Covenant on Economic, Social and Cultural Rights;
 - Convention Against Torture;
 - Convention on the Rights of the Child;
 - International Convention on the Elimination of all Forms of Racial Discrimination; and
 - Convention on the Elimination of Discrimination Against Women.

These treaties set out a comprehensive framework for the protection of human rights which applies to all individuals.

4. Australia has already stated its preference that the option of a new instrument in the form of a protocol or annex to one of the existing human rights treaties be considered, rather than a free-standing new convention. Australia is concerned that, at a time of limited resources, a new instrument, onerous reporting requirements and possible supervisory body will add to the demands on an already overburdened United Nations and on States' capacities to work on the efficient and practical application of existing instruments. However, Australia is committed to remaining constructively engaged in work currently being undertaken in the UN to develop a draft convention on the rights of persons with disabilities.
5. Any new convention, specific to people with disabilities, should not duplicate the rights guaranteed by the existing international human rights treaties. Rather, any new convention should focus on ensuring that people with disabilities can effectively access and exercise the rights they are guaranteed under existing human rights treaties. For example, issues such as access to the built environment, access to appropriate means of communication and obligations to make reasonable accommodation would need to be addressed in any new convention. Guaranteeing the means for people with a disability to exercise their rights will ensure the full and effective realisation of the human rights guaranteed to all under the six existing human rights treaties.

6. Any new obligations created to allow people with disabilities to fully access and realise their human rights should be the subject of progressive implementation. Overly prescriptive obligations, which do not give States some flexibility in implementation, may cause fewer States to ratify any new convention. It would be preferable for any new convention to have a broad base of support amongst States.
7. In Australia's view, the development of any new convention on the human rights of people with disabilities should not overshadow efforts to ensure that disability discrimination issues are fully addressed within the existing UN international human rights system. Under the six core human rights treaties, the respective committees and States should be encouraged, where appropriate, to consider and report on steps taken to address discrimination against people with disabilities. Existing non-binding instruments, such as the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, should continue to guide States in developing policies for people with disabilities.

MAJOR CONCEPTS

8. Australia recognises that a wide range of documents have been drafted by States, non-government organisations and individuals to inform discussions on a draft convention. Some documents, such as the *Bangkok Draft: Proposed Elements of a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights of Persons with Disabilities, October 2003* and the *Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities – Working paper by Mexico* (A/AC.265/WP.1 Ad Hoc Committee Meeting 29 July – 9 August 2003), have been more readily available for discussion and analysis during preparation of contributions to the Ad Hoc Committee. Australia looks forward to seeing the full range of drafts that will be available to the Ad Hoc Committee through the Working Group.
9. Three of the major issues Australia believes need to be addressed in a draft convention are discrimination and reasonable accommodation, definition of disability and accessibility.

Discrimination and reasonable accommodation

10. Australia recognises that there are different approaches to the concept of discrimination in existing international instruments and in current discourse. As a result, finding the appropriate definition for discrimination in a new convention to protect and promote the rights of people with disabilities is a complex task.
11. The non-discrimination provisions in existing international human rights instruments apply equally to people with disabilities. Rather than re-defining discrimination, Australia believes that the focus of the non-discrimination provisions in the draft convention should be on the obligation to provide access for people with disabilities to their existing human rights.
12. Australia recognises that discrimination on the ground of disability is different from other types of discrimination. Disability is a function of the relationship between the individual and the physical and social environment. Its effects are various and, as a result, the elimination of discrimination against people with disabilities is not furthered by equal treatment that ignores their individual circumstances. Australia believes that the elimination of discrimination on the ground of disability requires not only that people with disabilities be given equal treatment but also that positive steps be taken to provide equal opportunity to people with disabilities, where appropriate.

13. Australia believes that discrimination against people with disabilities includes treating, or proposing to treat, a person with a disability less favourably than a person without a disability, in circumstances that are not materially different. This may be by failing to provide reasonable accommodation to assist or promote access to services and full participation in society, by failing to eliminate barriers which impair access for people with disabilities or by establishing new barriers.
14. In addition, discrimination includes any act which, although not explicitly based on disability, has a disproportionate impact on people with disabilities or people with particular disability.
15. The concept of **reasonable accommodation** is an essential part of the definition of discrimination in the context of disability. Reasonable accommodation means the introduction of appropriate measures to enable people with disabilities to enjoy the fundamental human rights and freedoms in the existing six international human rights treaties.
16. Australia believes that a draft convention should recognise the pivotal role of families, carers and others in close relationship to people with disabilities. In this regard, Australia believes that a draft convention should provide that less favourable treatment of an associate of a person with a disability because of that other person's disability or because of the association would also constitute discrimination.
17. Australia also acknowledges the heightened vulnerability of people subject to discrimination on the basis of disability in conjunction with one or more other characteristics, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, caste, sexuality or other status.

Disability

18. Australia recognises that there are a range of models and ways that disability has been defined. The definition used in Australian domestic legislation¹ may contribute to the discussion and is as follows:

“disability”, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or*
- (b) total or partial loss of a part of the body; or*
- (c) the presence in the body of organisms causing disease or illness; or*
- (d) the presence in the body of organisms capable of causing disease or illness; or*
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or*
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or*
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;*

and includes a disability that presently exists; previously existed but no longer exists; may exist in the future; or is imputed to a person.

¹Disability Discrimination Act 1992, s4

Accessibility

19. Australia believes that accessibility is the key to achieving non-discrimination and equality for people with disabilities because it removes barriers and promotes full participation and inclusion in society. It therefore enables people with disabilities to exercise their rights under the existing six international human rights instruments.
20. Accessibility is important to promote access for people with disabilities to:
 - the physical environment;
 - public transport;
 - information, communication and assistive technologies, including, for example, telecommunications, electronic banking and the mass media;
 - societal structures; and
 - decision-making and policy-making processes.
21. Australia supports the broad approach to accessibility that is contained in the *Bangkok Draft*, but believes the proposed articles relating to accessibility to be overly prescriptive in parts.
22. Australia proposes the following draft provisions for consideration:
 - (1) *States Parties recognise the right of persons with disabilities to access the built environment and shall take appropriate progressive measures to ensure their freedom, independence and full participation in all aspects of community life, especially in relation to access to:*
 - (a) *public buildings, roads and facilities for public use;*
 - (b) *public transport facilities and services;*
 - (c) *public housing and facilities, or those built or renovated with public funds;*
 - (d) *public services, particularly health and education services;*
 - (e) *employment and workplaces; and*
 - (f) *information and communication services and assistive technologies.*
 - (2) *States Parties should encourage the research, development and promotion of new technologies to assist in the promotion of persons with disabilities in all aspects of life.*
 - (3) *States parties should also encourage the private sector to take accessibility into consideration when building or renovating housing or facilities and when providing health and education services.*
23. Australia would also support the recognition in a draft convention of the right of all people with disabilities to mobility. This could include ensuring that the built environment is

designed or adapted to facilitate the mobility of persons with disabilities with the greatest possible independence.

24. Australia notes article 17 of the *Bangkok Draft* which addresses mobility issues.
25. Australia also believes that accessible communication is a key element to attaining the full participation and inclusion in society of people with disabilities. Australia believes that a draft convention should recognise that freedom of expression includes the right to communicate in a variety of formats, including receiving information and services in alternative formats from government, public authorities and other institutions or others providing essential services.

GENERAL LIMITATIONS

26. Australia believes that any draft convention would need to allow some flexibility for States to determine their own policies consistent with any convention, including by balancing competing interests in the community and directing financial resources appropriately.
27. In particular, any draft convention should include specific safeguards to ensure that the integrity of States' migration programs are not affected in any way by forcing removal or waiver of health requirements and by frustrating the removal of non-citizens. Australia has stringent health criteria for people seeking to enter Australia, particularly on a permanent basis. These criteria are intended to minimise any negative impact of migration on the health system and the Australian community.
28. Australia also believes that it is essential to recognise that the provision of reasonable accommodation should not cause unjustifiable hardship and that the nature of the benefit or detriment must be balanced against the expenditure required.

MONITORING AND COMPLIANCE MECHANISMS

Monitoring

29. Under the major human rights treaties, States are currently required to submit periodic reports to the committees established under each of those treaties. In practical terms, this means that a State may have to provide six reports to six different committees. Each committee has its own procedures and requirements to be met in the preparation of the reports.
30. The Secretary-General of the United Nations, Mr Kofi Annan, has noted the strain this system places on the State parties and United Nations itself. In his September 2002 report, *Strengthening the United Nations: An Agenda for Further Change (A/57/387)*, Mr Annan commented that:

“...the current state of disparate human rights committees – each focusing on important but discrete issues – imposes difficult reporting demands on treaty signatories.”

He also cited a conclusion drawn by an independent expert in 1997:

“Non-reporting has reached chronic proportions...States...either do not report at all, or report long after the due date.”

In the September 2003 follow-up report to the 2002 report, the Secretary-General reiterated his call for measures to address the issue of non-reporting and called for the better harmonisation of reporting guidelines between treaty bodies. All treaty bodies have been urged to adopt specific follow-up procedures to encourage the timely submission of reports and to address the backlog issue.

31. In recognition of this concern, Australia submits that the reporting requirements in the draft convention should seek to minimise the workload on the States and United Nations system. For this reason, Australia has supported the development of any new instrument as an optional protocol or annex to one of the existing core human rights treaties. This would allow for the use of an existing committee.
32. Even in the case of a new convention, existing committees should be used to deal with any reporting requirements, for example more detailed reporting on disability in existing reports. Alternatively, one committee could be designated to monitor all reporting requirements under a new convention for people with disabilities. Reporting should be consistent with “best practice” rules with reporting procedures such as those being investigated by the Office of the High Commissioner for Human Rights.

Complaints

33. As the convention should affirm the application of existing human rights to people with disabilities, existing optional complaint mechanisms should be utilised in preference to the establishment of a duplicate system.

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