THE LAW SOCIETY OF NEW SOUTH WALES
youngLAWYERS

Human Rights Committee

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

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Human Rights Committee

February 2009

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

Dear Secretary,

Australia's Accession to the Optional Protocol to the Convention on the Rights of Persons with Disabilities

The Human Rights Committee of the NSW Young Lawyers is grateful for the opportunity to make a submission to the Joint Standing Committee on Treaties on the *Optional Protocol to the Convention on the Rights of Persons with Disabilities* **(Optional Protocol)**.[1]

NSW Young Lawyers is made up of law students and legal practitioners who are in their first 5 years of practice or under the age of 36. The Human Rights Committee **(HRC)** is concerned with a range of human rights issues in both Australia and abroad and aims to raise awareness and provide education to the legal profession and wider community on these issues.

If you have any questions in relation to the matters raised in this submission, please contact Carolina Riveros Soto, Co-Vice Chair of the NSW Young Lawyers Human Rights Committee (hrc.vicechair@younglawyers.com.au) or Louise Jardim, President of the NSW Young Lawyers (president@younglawyers.com.au).

Yours faithfully,

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[1] *Optional Protocol to the Convention on the Rights of Persons with Disabilities,* 13 December 2006 (entered into force 3 May, 2008)

1. BACKGROUND

1. The Australian Government was one of the first countries to ratify the *Convention on the Rights of Persons with Disabilities*[2] **(CRPD)** on 17 July 2008. The HRC warmly supported the ratification of the CRPD and now encourages the Australian Government to now consider acceding to the Optional Protocol.

2. The, then, High Commissioner for Human Rights, Ms Louise Arbour, described the CRPD as a:

   "50-article Convention (which) fights discrimination in relation to a wide range of rights that are often not accorded to persons with disabilities…these include rights to education, health, work, adequate living conditions, freedom of movement, freedom of exploitation and equal recognition before the law[3]*".*

3. The Optional Protocol was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106.

4. The Optional Protocol entered into force on 3 May 2008. Since that date, there have a number of States that have signed and ratified the Optional Protocol. In fact, there are currently 81 State signatories and 28 State parties.

5. The National Interest Analysis on the Optional Protocol **(NIA Optional Protocol)** was tabled in Parliament on 3 December 2008. It held, inter alia, that Australia's accession to the Optional Protocol would;

   "render Australia more accountable for its Convention obligations and further promote disability rights within Australia and present Australia as an international leader committed to protecting the rights of people with disability[4]*".*

6. In essence, the Optional Protocol gives a 'right of petition' to the Committee where human rights breaches continue to occur. Ms Louise Arbour described the Optional Protocol succinctly by describing it as:

7. Moreover, Ms Louise Arbour, described the Optional Protocol as one which,

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[2] *Convention on the Rights of Persons with Disabilities,* 13 December 2006, (entered into force 3 May 2008)

[3] Office of the United Nations High Commissioner for Human Rights, Speech of Ms Louise Arbour, 4 April 2008, "Arbour welcomes entry into force of ground-breaking convention on disabilities", http://www2.ohchr.org/english/issues/disability/speeches.htm

[4] The National Interest Analysis on the Optional Protocol at 5

"allows them (persons with disabilities) to petition an international expert body".

8. The HRC strongly emphasises that the Optional Protocol does NOT grant any new or additional rights over and above those outlined and recognised within the CRPD. In essence, the Optional Protocol allows for two procedures, which are:

    a) A communication procedure; and

    b) An inquiry procedure.

9. These procedures were and are in place in order to strengthen, support and promote the CRPD. The communication procedure allows individuals (of people acting on behalf of persons with disabilities) to submit a communication to the Committee on the Rights of Persons with Disabilities **(Disability Committee)** highlighting alleged violations of various human rights as enunciated within the CRPD.

10. The inquiry procedure will, in effect, allow the Disability Committee who has assessed and analysed the communications received to then make and initiate inquiries concerning the communications received. These inquiries, of course, will only take place once all domestic remedies have been exhausted.

11. The HRC reiterates that there are stringent requirements which must be met before the Disability Committee can initiate an inquiry. This means, therefore, that inquiries will only be assessed when an array of criterion is met.

12. Furthermore, with respect to the inquiry procedure, the Disability Committee will only initiate inquiries pointing to systematic and inherently serious violations of the CRPD by the State party.

13. In accordance with Article 6(5) of the Optional Protocol, the HRC reminds the Joint Standing Committee on Treaties that any inquiries conducted by the Disability Committee would only be done in cooperation with the State party and would be strictly confidential.

14. The HRC warmly supported the ratification of the CRPD and encourages the Australian Government to now consider acceding to the Optional Protocol.

2. AUSTRALIA'S ACCESSION TO THE OPTIONAL PROTOCOL

15. The HRC firmly supports the accession to the Optional Protocol as it will send a clear message to the international community that Australia is a leader in human rights jurisprudence and in the important practical implementation of human rights duties to its most vulnerable citizens.

16. People with disabilities are often more vulnerable than the broader community to a range of disadvantages, including disproportionate rates of homelessness, poverty, social exclusion, discrimination (both direct and indirect) and unemployment.

17. The HRC understands that there are a number of domestic (both State and Federal) that exist to protect persons with disabilities. Such legislative instruments include, but are not limited to,

    a) *Disability Discrimination Act 1992* (Cth)

    b) *Anti-Discrimination Act 1977* (NSW)

    c) *Disability Services Act 1986* (Cth)

    d) *Disability Services Act 1993* (NSW)

    These legislative provisions and their State and Territory counterparts across Australia are certainly pivotal instruments in terms of effectively protecting and promoting the rights of persons with disabilities.

18. Over and above Australian State and Federal legislative schemes, the HRC submits that Australia's ratification of the Optional Protocol would demonstrate its willingness and dedication to be accountable for the obligations as enshrined and enunciated within the CRPD on an international level.

19. Lastly, the HRC would like to stress that Australia is already party to a number of individual communication procedures. Some of these include:

    a) *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

    b) *The International Convention on the Elimination of All Forms of Racial Discrimination*

    c) *The International Covenant on Civil and Political Rights.*

20. The HRC submits, therefore, that by acceding to the Optional Protocol, the Australian Government would be equating the rights of persons with disabilities in the same manner as it considers other human rights.

3. CONCLUSION

21. The HRC unreservedly supports Australia's accession to the Optional Protocol.

22. The HRC strongly considers that it will complement and strengthen Australia's domestic legislative provisions currently in place which protect persons with disabilities.

23. The Optional Protocol will, undoubtedly, strengthen Australia's role within the international community and within the development of international human rights law jurisprudence. Particularly, as it affects persons with disabilities being able to petition systematic breaches of human rights to an expert body.

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