
Human Rights and Equal Opportunity Commission

**Workshop on Promoting the Ratification and
Implementation of the United Nations
*Convention on the Rights of Persons with
Disabilities* in Australia**

Background Papers

May 2007

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1. Purpose of the workshop and the background papers

This section explains the purpose and objectives of the two-day workshop being hosted by the Human Rights and Equal Opportunity Commission (HREOC) on Promoting the Ratification and Implementation of the United Nations *Convention on the Rights of Persons with Disabilities* in Australia. It also discusses the purpose of this background paper and how you can prepare for the workshop.

Purpose and objectives

These background papers have been compiled to assist you to prepare for the Human Rights and Equal Opportunity Commission's Workshop on Promoting the Ratification and Implementation of the United Nations *Convention on the Rights of Persons with Disabilities* (the Convention) in Australia.

The broad purpose of the workshop is to build the capacity of Australian disabled persons' organisations¹ and disability advisory groups to:

- identify strategies to achieve ratification by the Australian Government of the Convention, and signature and ratification of its associated Optional Protocol;
- identify ways in which the disability community can participate in the consultative processes that will lead up to the Australian Government's formal decisions on ratification;
- identify strategies and resources necessary to promote domestic implementation of the Convention once it is ratified by the Australian Government, and it comes into force.

The workshop organisers aim to achieve this purpose by:

- providing you with an overview of the development of the Convention and its Optional Protocol and a short introduction to the contents of both documents;
- providing you with detailed information about the pre-ratification processes that will be undertaken by the Australian Government over the coming months, and the manner in which disabled persons' organisations and others may contribute to and influence these processes;
- providing you with an understanding of the relationship between the Convention and Optional Protocol and Australian law, and the steps required for the Convention and Optional Protocol to have legal effect in Australia;
- explaining key concepts and terms necessary for an accurate understanding of the legal effect and implications of the Convention and Optional Protocol;

¹ The term 'disabled persons' organisations' has been used because of its common usage in Convention-related discussions at the international level, where it refers to representative organisations of and for persons with disabilities.

- alerting you to key resources and initiatives both within Australia and internationally that can be drawn upon to support efforts to secure the Australian Government's ratification and implementation of the Convention.

Part of the workshop will be set aside for participants to identify and discuss the relevance of the Convention as a whole, or its specific provisions, to their own systems advocacy priorities and concerns.

The workshop is being structured to also provide an opportunity for the development or consolidation of networks and collaborations between disabled persons' organisations, disability advisory councils, human rights agencies, and other civil society organisations in efforts to secure the ratification and domestic implementation of the Convention. Ideally, we hope the workshop stimulates the formation of an organised civil society network or alliance focused on securing the ratification and domestic implementation of the Convention.

It is also intended that the workshop will facilitate the emergence of a strong and broad-based leadership group that can mobilise the broader disability, human rights and civil society groups in efforts to secure the ratification and domestic implementation of the Convention and Optional Protocol.

However, while the workshop is designed to lay the foundations upon which these structures can be built, realisation of these objectives is very much dependent upon the willingness of participating organisations and individuals to make the most of this opportunity.

Your participation

The formulation of the Convention and its Optional Protocol is a monumental achievement with long-term implications. The benefits of the Convention will be realised progressively over many years to come. However, both the opportunity of and the responsibility for ensuring that the Convention comes into force, is incorporated into Australian law, and has a beneficial effect for all Australians with disability as quickly as possible, falls to the current generation of disability and human rights organisations and activists.

Of course, the Convention does not deal with every disability rights issue in an optimal way or, on some issues, even at all. We also recognise that the time and resources that organisations and individuals devote to the task of securing ratification and implementation of the Convention must be balanced with other time and resource demands. The Convention is certainly no instant remedy to all of the rights problems faced by persons with disability and their associates in Australia, or anywhere else. Nevertheless, it would be a very serious mistake to underestimate its importance, or its potential, for achieving fundamental structural change.

Your organisation has been invited by HREOC to participate in this Workshop because of your organisation's key position of influence in the Australian political and policy environment either at the national, state or territory level, or both. In nominating you, your organisation was asked to identify a representative who would be capable of contributing in a substantial and ongoing way to efforts to secure ratification of the Convention and its Optional Protocol by the Australian Government, and in due course, to efforts to secure its domestic implementation.

Of course, HREOC is very aware that some participating organisations and their representatives have been substantially involved in the development of the Convention, and are already well advanced in their efforts to secure ratification and domestic implementation. In recognition of this, there will be an opportunity for participating organisations to share information about specific initiatives. For those organisations already actively involved in these issues, we hope the workshop will provide the opportunity to plan strategically and collaboratively for the further development and consolidation of this work.

You will be interested to know that since this workshop was announced a number of other organisations and individuals have indicated a strong interest in attending. Regrettably, it has not been possible to accommodate these requests, although the level of interest they demonstrate is highly valued by HREOC, and presents very positive opportunities for future work and collaborations that might stem from this event. In this respect, there appears to be considerable interest and energy that can be harnessed in a co-ordinated campaign strategy to secure ratification and implementation of the Convention.

This high level of interest also serves to highlight the importance of your effective participation in achieving the goals of this event by contributing to the development of and pursuit of an effective strategy for securing ratification and implementation of the Convention.

A key aspect of your effective participation is adequate preparation for the event. These background materials have been developed to assist you with your preparation.

To a very significant extent, the workshop is designed on the assumption that all participants will have a solid working knowledge of the contents of this briefing paper.

As you prepare for the workshop, it is also important to note the following:

- The workshop is intended to include discussions about future collaborations between organisations and individuals directed at securing ratification and implementation of the Convention. It is therefore highly desirable that you are fully briefed by your organisation before the workshop on your organisation's willingness and capacity to contribute to such initiatives, so that you can participate in these discussions in a meaningful way.
- The workshop is not intended as an exploration of the substantive content of the Convention. We expect participants to have a sound knowledge of the terms of the Convention as a basis for their participation in the workshop. Similarly, the event will not focus on the particular strengths and weaknesses of the Convention. While some specific points may be relevant to the issues under discussion at the workshop, these larger questions are not going to be reviewed at the workshop. To achieve the purpose of the workshop, we must accept the Convention has now been finalised, and its present scope is a fact of life. Our focus must be on ratification and implementation.

To try and ensure participants are as prepared as possible you will be contacted over the next couple of weeks by one of the workshop organisers to discuss your preparation for the workshop.

The following questions might assist in preparing for the workshop and pre-workshop discussions:

1. Is there anything in the Background Paper you would like to clarify prior to the workshop?
2. Is the organisation you are representing currently involved in any discussions or initiatives related to the Convention?
3. What resources do think the sector will need to establish an effective campaign for ratification and implementation?
4. There will be a session at the workshop on what organisations have done so far and what they have planned for the future in relation to Convention and Optional Protocol ratification, implementation and monitoring. Does your organisation have any current strategies that you wish to report on in this session and how would you see these fitting into a broader cross-sectoral strategy?

2. The Convention and Optional Protocol – background and scope

This section provides an overview of the development of the Convention and its Optional Protocol and explains the Convention's effect, scope and structure. It also provides a short overview of the contents of the Convention and its Optional Protocol. You should read this section in conjunction with Appendix 3, which provides an overview of the process for a convention being made and explains key terms.

Introduction

On 13 December 2006, the United Nations General Assembly adopted the *Convention on the Rights of Persons with Disabilities* (the Convention). The Convention is the first major human rights treaty of the 21st century, and was negotiated in less than five years: a record time for an agreement of this type.

On the 30 March 2007, the Convention was made available to member nations of the United Nations (referred to as 'states') for their signature.² On that day it received the highest opening number of signatories of any other human rights convention in history. Australia was among the countries to sign the Convention on that day. Ninety-five countries had signed by 1 June 2007 and one country—Jamaica—had ratified. Fifty-two countries had signed the Optional Protocol. Australia has not yet signed the Optional Protocol.

What is loosely referred to as the Convention is, in fact, two documents:

- the *Convention on the Rights of Persons with Disabilities*, which contains the substantive human rights provisions (referred to as 'articles') as well as provisions that set up its operational framework; and
- the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, which is a more limited document that sets up an individual complaints procedure.

States can become a party to the Convention³ without having to become a party to its Optional Protocol. At this stage Australia has signed the Convention, but not the Optional Protocol.

The act of signing a convention is an indication of *an intention* to become a party to that convention. Although a state that signs a convention must not act in a way that is contrary to the purpose of that convention, the act of signing does not itself oblige the state to implement that convention in their country. This obligation comes into effect when a state ratifies or accedes to the convention.⁴

² The term used for this process is that the 'Convention was opened for signature'.

³ A state becoming a party to a convention means that state agrees to comply with the obligations set out in that convention.

⁴ The terms 'ratify' and 'accede' both refer to a country formally accepting the obligations of a convention. Ratification refers to the acceptance of obligations by countries that were party to the negotiations that produced the treaty; in the case of the *Convention on the Rights of Persons with Disabilities* and its Optional Protocol, all current members of the United Nations General Assembly. Accession refers to the acceptance of convention obligations by any countries that were not included in the negotiations. As such, Australia can ratify the Convention and Optional Protocol.

The Convention states that it will come into force internationally on the 30th day after the 20th instrument of ratification or accession is deposited with the United Nations. That is, say the 20th state to ratify the Convention does so on 1 March 2008, the Convention comes into force on 31 March 2008. The Convention coming into force means that it comes into force for all of those countries that have ratified the Convention.

The Optional Protocol will come into force internationally on the 30th day after the 10th instrument of ratification or accession is deposited with the United Nations, as long as the Convention is already in force. This means that, say the Convention is in force from 31 March 2008 and the 10th country to lodge its ratification of the Optional Protocol does so on 1 October 2010, the Optional Protocol comes into effect for that country and the other nine countries that have ratified on 31 October 2010.

Once the Convention and Optional Protocol are in force internationally, a later ratification or accession by a country means that the Convention comes into force for that country on the 30th day after the date of its ratification or accession. That is, say the Convention is in force from 31 March 2008 and a country lodges its ratification or accession on 1 July 2009, the Convention comes into force for that country on 31 July 2009.

To date, only one country has deposited an instrument of ratification of the Convention with the United Nations. No country has yet deposited an instrument of ratification in relation to the Optional Protocol. This is largely because, for most countries, an act of ratification or accession to an international treaty obliges the country to implement a range of processes that take time to complete. Many countries already have these processes underway however, and it is expected that by the end of 2007 the Convention, and possibly also its Optional Protocol, will reach the necessary threshold of ratifications to come into force.

Short history of the development of the Convention and Optional Protocol

Key events

- 1981 International year of Disabled Persons.
- 1982 Italy sponsored unsuccessful call for the United Nations to develop an international convention dealing with human rights for persons with disabilities.
- 1982 United Nations General Assembly adopted the *World Program of Action Concerning Disabled Persons* (3 December).
- 1987 Italy again sponsored unsuccessful call for the United Nations to develop an international convention dealing with human rights for persons with disabilities.
- 1989 Sweden sponsored unsuccessful call for the United Nations to develop an international convention dealing with human rights for persons with disabilities.
- 1992 United Nations General Assembly adopted the *Standard Rules for the Equalisation of Opportunities for Persons with Disabilities*.
- 2000 United Nations formulated the *Millennium Development Goals* that aim to end extreme poverty globally by 2015 but failed to identify persons with disability as a specific target group.
- 2001 Mexico led a campaign for the United Nations to develop an international convention dealing with human rights for persons with disabilities.
- 2001 United Nations General Assembly adopted by consensus a resolution to develop a human rights instrument in relation to persons with disability (December) and established the Ad Hoc Committee.
- 2002 First Session of the Ad Hoc Committee held in July-August with debate over whether the role of the Committee is to develop a convention or report back to the United Nations on the need for a human rights instrument.
- 2003 Second Session of the Ad Hoc Committee held in June reaches consensus on the role being to develop a convention and establishes the Working Group to develop the draft text.
- 2004 Third Session of the Ad Hoc Committee held in May-June and appoints facilitators to convene discussions around key sections of the proposed convention and draft articles.
- 2004 Fourth Session of the Ad Hoc Committee held in August-September.
- 2005 Fifth Session of the Ad Hoc Committee held in January-February.
- 2005 Six Session of the Ad Hoc Committee held in August and resulted in the production of the Chair's Draft Text, setting out those aspects on which consensus had been effectively reached and identifying areas still under debate.
- 2006 Seventh Session of the Ad Hoc Committee held in January-February at which the Chair's Draft Text is the subject of negotiations and Chair proposes international monitoring framework. This work is consolidated into the revised 'Chairperson's Draft Text'.
- 2006 First meeting of the Eighth Session of the Ad Hoc Committee held in August at which agreement is reached on all of the convention provisions and then referred to technical committee for final drafting.
- 2006 Second meeting of the Eighth Session of the Ad Hoc Committee held in December at which the final draft of the convention text was agreed and referred it to the United Nations General Assembly.

- 2006 The United Nations General Assembly adopted the *Convention on the Rights of Persons with Disabilities* (13 December).
- 2007 The *Convention on the Rights of Persons with Disabilities* opened for signature (30 March). Australian Government signs the Convention on that day.

Commentary on the development process

In 1982, Italy sponsored the first efforts to persuade the United Nations General Assembly to adopt a human rights convention dealing with persons with disability. This push resulted in the main from the International Year of Disabled Persons in 1981. Although unsuccessful, this attempt did lead to the development by the United Nations of the *World Program of Action Concerning Disabled Persons*, which was adopted by the General Assembly on 3 December 1982 (the date that is now set aside to celebrate International Day of Persons with Disabilities).

In 1987 and 1989, two further attempts were made to persuade the United Nations General Assembly to develop a human rights convention dealing with persons with disability. These were initiated by Italy and Sweden respectively. These attempts, although unsuccessful, ultimately led to the United Nations developing the *Standard Rules for the Equalisation of Opportunities for Persons with Disabilities*, which were adopted by the General Assembly in 1992.

In 2001, the Government of Mexico spearheaded another campaign to secure a mandate from the General Assembly to develop a human rights convention in relation to persons with disability. This campaign was framed in terms of social development and used as its backdrop the *Millennium Development Goals* (MDGs) formulated by the United Nations in 2000. The MDGs aim, among other things, to halve global extreme poverty by 2015. Persons with disability were not identified as a specific target group for action in the MDGs, even though this group is significantly over-represented among the world's so-called 'poorest of the poor'. The thrust of the Mexican campaign was that, in light of this omission, a specific human rights instrument was required to ensure that persons with disability were not left behind in global development efforts.

This framing of the human rights agenda for persons with disability in terms of social development resulted in a groundswell of support from many of the world's developing and transitional economies, and even from countries that have not traditionally demonstrated a strong commitment to human rights. When the issue was raised for debate at the 56th Session of the General Assembly in December 2001, a resolution to develop a human rights instrument in relation to persons with disability was adopted by consensus, without a vote being necessary. It appears that early in this debate the Australian delegation had intended to vote against such a resolution on the basis that the rights of persons with disability were adequately reflected in existing human rights instruments. However, as the debate developed, Australia joined the consensus that an international instrument was needed.

In the same resolution, the General Assembly established an Ad Hoc Committee to take the issue forward.⁵ The Ad Hoc Committee operated on an opt-in basis, allowing any member state with an interest to participate. The Committee elected a 'Bureau' of five

⁵ The term 'Ad Hoc' simply means a specific purpose, time-limited committee to distinguish it from the many standing committees that operate under the General Assembly.

officials from UN country delegations (one from each United Nations region⁶), including a chairperson, to manage Committee meetings. The Economic and Social Council of the United Nations (not, interestingly, the High Commission for Human Rights) acted as the Committee's secretariat.

The Ad Hoc Committee met in eight two- to three-week sessions between its establishment in December 2001 and the adoption of the Convention and its Optional Protocol in December 2006.

In the first session of the Ad Hoc Committee (July/August 2002) tensions emerged between participating delegations as to the nature of the mandate given to the Committee by the General Assembly. Some delegations took the view that the mandate reflected a decision by the General Assembly that a convention dealing with the human rights of persons with disability was to be developed, and that it was the role of the Ad Hoc Committee to develop the text for such a convention. Other delegations took the view that the Committee's mandate was to consider and advise the General Assembly *on whether or not* an international human rights instrument in this area was required, and if so, to consider and advise what kind of international instrument would be appropriate. The Australian Government delegation tended to the latter view, proposing that a new convention was not required in this area, and that the issues would be better dealt with in a new Optional Protocol to the *International Covenant on Civil and Political Rights*.

This tension was resolved by consensus by the end of the Second Session of the Ad Hoc Committee (June 2003) in favour of the development of a thematic convention on the human rights of persons with disability. The Australian Government delegation continued to prefer its proposal for an Optional Protocol to the ICCPR, which (it argued) would have equivalent effect to a convention. Despite this preference, the Australian Government delegation was nevertheless prepared to participate in the consensus.

At the Second Session, the Ad Hoc Committee also established a sub-committee called the 'Working Group' to develop an initial draft text for the convention. Governments, international agencies, and civil society were invited to submit proposals to the Working Group for matters to be included in the convention. A particularly influential contribution to the Working Group was the so-called 'Bangkok Draft' for a convention, which was developed by an Expert Working Group of state and civil society representatives in meetings convened by the United Nations Economic and Social Council for Asia and the Pacific (UNESCAP). A number of Australians participated in these meetings and were closely involved in the drafting of this proposed text.

The Working Group was made up of 27 UN member state representatives, 12 representatives of disabled persons' organisations, and one representative of human rights commissions. The Working Group met for a two-week session in January 2004 and developed a draft text for the substantive (or human rights-related) elements of the convention, divided into draft 'articles'. Some limited operational and implementation provisions were also included in this draft. This document is known as the 'Working Group Draft Text'.

⁶ The UN has five regions: Western Europe and Others (including Australia), Caribbean and Latin America, Asia Pacific, Africa, Eastern Europe

In October 2003, the Australian Government positively embraced the development of the convention. In the remaining sessions of the Ad Hoc Committee Australia took an active role and offered numerous constructive proposals on a wide variety of issues.

The Third (May/June 2004), Fourth (August/September 2004), Fifth (January/February 2005), and Sixth (August 2005) Sessions of the Ad Hoc Committee focused on an extensive First and Second 'Reading' of the Working Group Draft Text. State delegations and non-government observers advocated many counter and additional proposals for text. The Australian Government delegation actively participated in these discussions.

At the Third Session, the Bureau designated 'Facilitators' to convene informal discussions between State delegations in relation to specific articles. The role of each Facilitator was to develop an informal consensus-based text based on the commentary and text proposals made during the First and Second readings. Australia facilitated discussions and was responsible for developing the draft text for what has become article 24: Education.

At the end of the Sixth Session, the Chairman of the Committee produced a 'Chair's Draft Text' of the convention, which set out the text that had been developed through consensus up to that point, and noted the outstanding issues to be resolved. The Chair's Draft Text was the subject of further negotiations at the Seventh Session of the Committee (January/February 2006). The text of most of the human rights articles was effectively settled at this session, leaving only a small number of controversial issues still subject to discussion.

In the course of the Seventh Session, the Chair also released a draft proposal for the convention's implementation and enforcement provisions (sometimes also referred to as the international monitoring framework). However, time only allowed for a very limited discussion of this proposal. This proposal was incorporated into a consolidated draft text for the convention issued at the end of the Seventh Session known as the 'Chairperson's Draft Text'.

For many state delegations, including Australia, the proposed international monitoring framework was one of the most challenging areas of negotiation. The controversy arose from a number of issues, including proposed articles on international co-operation and an individual complaints procedure. From the Australian Government's perspective the principal concern was with the proposal to establish a new treaty body and separate monitoring framework for the convention. For some years the Australian Government has been pursuing a policy of treaty-body reform within the United Nations. The basic goal of this policy is the 'streamlining' (or reduction) of human rights monitoring bodies and processes. It viewed the proposed convention monitoring proposals as a further proliferation of such bodies and processes.

In the lead up to the Eighth Session, the Mexican delegation led informal discussions between states about the proposed implementation and enforcement arrangements for the convention.

At the first sitting of the Eighth Session (August 2006) the remaining issues concerning the convention's human right articles were resolved, as were the implementation and enforcement provisions. A key event was the Committee's decision to put an individual complaints procedure into a separate 'optional protocol' to the convention, rather than

into the convention proper. A consensus also developed that broader treaty-body reform efforts ought not to delay the entry into force of the convention, nor should they result in an inferior implementation and enforcement regime being established under the convention. It was observed that future treaty-body reform, should it proceed, would provide the opportunity to amend, as necessary, the relevant provisions of the convention in the same way as would be required for other human rights treaties. The Australian Government did not oppose this consensus.

At the end of the first sitting of the Eighth Session, the Ad Hoc Committee adopted the draft texts for the Convention and Optional Protocol, subject to a technical review being undertaken by a 'Drafting Committee' convened by the Liechtenstein delegation. The purpose of this technical review was to ensure uniformity of terminology throughout the convention text and to harmonise the six official United Nations language versions of the Convention and Optional Protocol. This technical review was completed between September and November 2006.

In December 2006, the Ad Hoc Committee had a second sitting of the Eighth Session to formally adopt the proposed text for the Convention and Optional Protocol (incorporating minor amendments proposed by the technical review). It then referred these documents to the General Assembly for adoption. Having completed its work the Ad Hoc Committee was disbanded.

Participation of persons with disability

The development of the Convention has involved the highest level of participation by representatives of civil society of any human rights convention, or indeed any other United Nations process, in history. This participation was overwhelmingly that of persons with disability and their representative organisations. This high level of participation was achieved in a number of different ways:

- Under the General Assembly mandate to develop the convention each of the five regional bodies of the United Nations was charged with the responsibility of consulting as widely as possible with persons with disability in their region. In the Asia and Pacific Region, UNESCAP established an Expert Thematic Working Group on Disability and Human Rights Concerns, which met periodically as the convention developed. Many disabled persons' organisations and independent experts with disability participated in these meetings, in many cases with financial assistance from ESCAP. As already noted, this Working Group developed a number of important text contributions to the Ad Hoc Committee's deliberations, as well as strategically preparing and co-ordinating participation from this region. A number of Australians and Australian disabled persons' and human rights organisations participated in the ESCAP Working Group.
- Under the same General Assembly mandate, all governments were urged to consult widely on a domestic level with persons with disability about the proposed convention. As the convention was developed, the Australian Government funded two large-scale public consultation processes about the proposed text. It also conducted more limited consultations with key national disabled persons' and human rights organisations in preparation for each session of the Ad Hoc Committee.
- The Ad Hoc Committee urged all governments to include experts with disability within their delegations to the Ad Hoc Committee. The Australian Government included a joint expert representative of the Australian Federation of Disability

Organisations and the National Disability Advisory Council in its delegation. It also included a representative of the Human Rights and Equal Opportunity Commission, who is an expert with disability.

- The General Assembly established a Voluntary Fund and encouraged states to contribute to support disabled persons' organisations and government delegations from developing and transitional economies to attend and participate in the Ad Hoc Committee's deliberations.
- The General Assembly adopted rules of procedure for the Ad Hoc Committee that not only gave automatic accreditation to non-government organisations that held observer status with the United Nations Economic and Social Council, but also enabled the Ad Hoc Committee to accredit other disabled persons' organisations to participate as observers. The accreditation requirements enabled broad-based participation by disabled peoples' organisations.
- The Ad Hoc Committee adopted rules of procedure that allowed for a very high level of participation by accredited civil society organisations. Most sessions of the Committee were conducted in open sessions that could be observed by civil society representatives and, at all formal sessions of the Committee, civil society organisations were permitted to intervene in the debate. Apart from this, civil society organisations had virtually unlimited opportunities to meet informally with state delegations to put their views.
- The Working Group established by the Ad Hoc Committee included, as equal participating members, 12 representatives of disabled peoples' organisations, who were self-selected by disabled peoples' organisations. This arrangement is virtually unprecedented in United Nations processes of this nature.
- Civil society organisations and others were able to organise a wide range of so-called 'side-events' to Ad Hoc Committee meetings, which often involved or were attended by state delegates. These side-events typically focused on key issues under debate in the Committee—for example, gender issues, and international co-operation—and provided the opportunity for disabled peoples' organisations and independent experts with disability to explain and advocate their positions on these issues in detail.

This high level of participation by disabled peoples' organisations is reflected not only in the quality of the text of the Convention in many areas, but also in the emphasis placed by the Convention on the ongoing participation of persons with disability, and their representative organisations, in policy and program development, and in implementation and monitoring at the domestic and international levels. Both HREOC, participating as a member of the Australian Government Delegation, and Australian NGOs played a prominent and influential role throughout the convention-development process.

Type and scope of the Convention

The Convention is a 'thematic' human rights convention in that it sets out the human rights of a specific population group: persons with disability. In this respect it is similar to other thematic human rights conventions such as the *Convention on the Rights of the Child*. Thematic human rights conventions differ from the covenants that constitute the

*International Bill of Rights*⁷, which apply to every person, including persons with disability.

The General Assembly mandate under which the Convention was developed called for proposals for a 'comprehensive and integral international convention'. These words featured in the working title until the final stages of negotiation. It was not until the Eighth Session that the Ad Hoc Committee adopted the simpler title, *Convention on the Rights of Persons with Disabilities*.

The initial working title for the Convention incorporated important meanings. The word 'comprehensive' signified an instruction to the drafting committee to take a holistic approach to the formulation of the convention incorporating social development, human rights and non-discrimination elements. This has resulted in a 'hybrid'⁸ convention, closer in nature to the *Convention on the Rights of the Child*, than to the earlier equality-based thematic conventions. The word 'integral' signified an intention for the Convention to become a core constituent of international human rights law, rather than a subsidiary to existing law.

Nevertheless, many delegations, including the Australian Government delegation, stressed in the early debates that this new convention was not to develop new human rights. Nor was it to reduce (or 'derogate from') existing human rights. It was simply to elaborate and apply existing human rights to the circumstances of persons with disability. This position is still reflected in the United Nations' official communications concerning the Convention.

Despite this history, it seems clear that the Convention has modified, transformed and added to traditional human rights concepts in key respects. The Convention does, in fact, contain entirely new formulations of human rights: for example, Article 9 'Accessibility', which appears both as a stand-alone article and as a cross-cutting principle underpinning the Convention as a whole, and Article 20 'Personal mobility'. Although these articles might be said to spring from the principle of non-discrimination and the right to liberty of the person respectively, their formulation clearly transcends any previously existing human right.

The Convention also incorporates detailed disability-specific interpretations of existing human rights, which transform what were formerly essentially protections against interference with rights into positive state obligations: for example, Article 21 'Freedom of expression and opinion and access to information' extends the protection against state interference with personal opinion and expression into the positive state obligation to provide public information in accessible formats and to recognise sign languages, Braille, and augmentative and alternative communication.

While the broad scope of the Convention should be the cause of great optimism and anticipation for the enhanced recognition and respect of the human rights of persons with disability, it also generates sensitivities that may need to be managed strategically. For example, the Australian Government has a current policy of not ratifying an

⁷ The International Bill of Rights is made up of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*.

⁸ In that it blends different types of human rights.

international treaty⁹ or convention until such time as it complies with the terms of the treaty.

Structure of the Convention¹⁰

Although it is not formally divided into sections, the Convention is made up of a number of clusters of articles, which it may be helpful to understand:

- Preamble;
- Interpretive articles;
- General obligation articles;
- Specific obligation articles;
- Implementation and monitoring articles;
- Operational articles.

Preamble

The **Preamble** sets out the international concerns that led to the development of the Convention, and places the Convention in the context of other disability and human rights initiatives taken by the international community. It highlights key issues necessary for a proper understanding of disability and human rights concerns. Unlike the other parts of the Convention, the **Preamble** does not contain binding legal obligations. However, it plays an important role in the interpretation of the convention.

Interpretive articles

Articles 1 and 2 of the Convention are **interpretive articles**, which set out the general purpose of the convention, describe the class of persons to whom the convention applies, and define key terms used in the Convention.

General obligation articles

Articles 3 to 9 of the Convention set out **general obligations**. They contain principles and measures to be applied in all aspects of the implementation of the Convention. This includes, for example, the obligation to incorporate the terms of the convention into national laws, policies and programs, and to repeal national laws that are inconsistent with the convention.

Specific obligation articles

Articles 10 to 30 of the Convention set out **specific obligations**. These articles detail the specific human rights and fundamental freedoms recognised in the Convention.

Implementation and monitoring articles

Articles 31 to 40 of the Convention are **implementation and monitoring articles**. They set out what is required for implementation and monitoring of the Convention at both the national and international levels. For example, at the national level this includes the establishment of focal points and mechanisms to co-ordinate cross-sectoral implementation measures. At the international level it includes the establishment of a new treaty body to monitor implementation of the Convention, and to receive complaints about violations of Convention rights.

⁹ 'Treaty' is another term used for an international agreement or 'convention'.

¹⁰ Preparation of this section has drawn upon Disabled Peoples' International's *International Convention on the Rights of Persons with Disabilities: Ratification Toolkit* 2007, which is acknowledged with appreciation.

Operational articles

Articles 41 to 50 of the Convention are ***operational (or machinery) articles***. They set out the basic arrangements for the administration of the Convention within the United Nations system, including the process by which states become a party to the Convention, the pre-conditions for the Convention coming into force, and the official languages of the Convention.

The Optional Protocol

The ***Optional Protocol*** is a separate document to the Convention that incorporates a procedure allowing individuals and groups of individuals to make complaints to the treaty body after they have exhausted domestic remedies.¹¹

Short-form versions of the Convention and Optional Protocol are included as Appendices 1 and 2 to these background papers.

Types of rights included

As noted above the Convention protects different types of rights:

- civil and political rights (so-called ‘First Generation’ rights);
- economic, social and cultural rights (so-called ‘Second-Generation’ rights); and
- rights to development (so-called ‘Third Generation’ rights).

Civil and political rights are sometimes called ‘negative rights’ because they operate to protect against state or other interference with the liberty of the individual. For example, traditionally, the right to life has been expressed principally as an obligation on states not to arbitrarily deprive a person of life, and to prevent others from doing so.

On the other hand, social, economic and cultural rights are sometimes called ‘positive obligations’ because they require states to take active steps to avoid the violation of a human right. For example, the right to health requires states to take action to ensure that persons have access to the highest attainable physical and mental health.

Civil and political rights, and economic, social and cultural rights are, traditionally, subject to different standards of compliance:

- Civil and political rights are ‘immediately realisable’, which means that states have an immediate obligation to respect and ensure these rights for all persons.
- Economic, social and cultural rights are subject to ‘progressive realisation’. The standard of progressive realisation does not require a state to fully comply with the requirements of the right, provided it is working towards the realisation of this right as expeditiously and effectively as possible, using the maximum resources at its disposal. States still have an obligation to satisfy ‘minimum essential levels’ of the right, and to avoid deliberately regressive measures.

Traditionally, economic, social and cultural rights have been viewed as ‘non-justiciable’; meaning that their open-ended nature prevents independent adjudication of state compliance. However, this view has progressively eroded, as have other aspects of the

¹¹ The requirement to ‘exhaust domestic remedies’ before a complaint or ‘communication’ can be lodged with the relevant treaty body is a standard requirement in international human rights conventions.

traditional distinction between first- and second-generation rights. Importantly, the Optional Protocol to the Convention permits complaints, and adjudication by the Committee on the Rights of Persons with Disabilities, in relation to all rights recognised by the Convention.

Nevertheless, the traditional distinction between those rights that are immediately realisable and those that are subject to progressive realisation has important ongoing implications for assessing state compliance with the Convention.

3. The Convention and Optional Protocol - Ratification & domestic implementation

This section provides an overview of the relationship between international and Australian law. It also provides an overview of the processes that will lead to the Australian Government's formal decisions on ratification of the Convention and the Optional Protocol.

Introduction

Like all other international treaties, the Convention and its Optional Protocol are only legally binding on those countries that ratify or accede to them. Until Australia ratifies the Convention and the Optional Protocol they will have no effect on Australian law.

Australia signed the Convention on 30 March 2007. The act of signature does not impose any legal obligation to implement the Convention. It is an indication of an intention to ratify in the future. However, as a signatory to the Convention, Australia **must not** act contrary to the fundamental purpose of the Convention.

Australia has an established process for reaching a decision on whether or not to ratify or accede to international conventions or treaties and because Australia is a Federation of States this process necessarily involves both the Federal and State governments.

Australia is a signatory to and has ratified the following major international human rights treaties: the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic Social and Cultural Rights* (ICESCR), the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the *Convention on the Rights of the Child* (CROC) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). It has also signed and ratified the First Optional Protocol to the ICCPR, which provides for an individual complaints mechanism to the United Nations. Australia has not signed and ratified the equivalent Optional Protocol to CEDAW.

Australian federalism and its implications

Australia is a federation of six states, and it also has three self-governing territories.¹² Governmental powers are shared between a central 'Australian' commonwealth or federal government and nine state and territory governments. The basis of the power-sharing arrangement between the states and commonwealth governments is set out in the Australian *Constitution*, and with respect to the territories is set out in Commonwealth legislation. These provisions have been interpreted and elaborated in various decisions of the High Court of Australia since Federation on 1 January 1901.

Broadly speaking, the Australian *Constitution* lists the Federal Government's powers; that is, the areas over which it can exercise power are specifically identified and described (these are referred to as the 'heads of power'). The listed powers are power that can only be exercised by the Federal Government. In contrast, the powers of the Australian states (and under commonwealth legislation its territories) are 'plenary' or

¹² States: New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia. Self-Governing Territories: Australian Capital Territory, Norfolk Island, Northern Territory.

open-ended in nature; basically, the states and territories have all the powers necessary for 'peace, order, and good government' other than the powers that are exclusively held by the Federal Government. An example of an area that is not listed in the heads of power of the Commonwealth is education and, as such, this is an area in which state or territory governments have the power to make laws.

Under the *Constitution*, the Federal Government has power to enter into international agreements and obligations. This is a power held exclusively by the Federal Government; state and territory governments have no power or authority to do this. This is referred to as the 'external affairs' power, and it is set out in section 51(xxxix) of the *Constitution*.

Importantly, where the Federal Government has entered into a relevant international agreement or obligation it is able to pass laws to implement those obligations even if they are areas that are not otherwise listed in its 'heads of power' and that are traditionally the province of state government law making. In this way, the external affairs power has resulted in a significant expansion of Federal Government law making power since Federation. So, using the example of education, if the Federal Government enters an international agreement that deals with rights in primary education, it can then, using the external affairs power, pass federal laws dealing with primary education even though this is not specifically listed in the heads of power in the *Constitution*.

Where there is a conflict between a law enacted by the Federal Parliament and a law enacted by a state parliament, the state law is invalid to the extent of its inconsistency with the Commonwealth law, provided that the Federal Government relied properly on a 'head of power' in the *Constitution* to enact the law in the first place.¹³

The essential implications of this arrangement for the Convention are:

- The Australian Government has the exclusive right to ratify the Convention and its Optional Protocol. If (and when) it does this, the whole of Australia is bound by the obligations, including, indirectly, the state and territory governments.
- The Convention contains many different provisions that deal with various aspects of life, some of which are generally within the legislative power of the Federal Government, others of which are within the legislative power of state or territory governments.
- When it ratifies the Convention, and the Convention enters into force, the Australian Government will acquire the power to legislate in relation to any matter contained in the Convention, even if this is currently an area of state or territory power.
- Where there is inconsistency between the Convention and an existing state law, the Australian Government will have power to legislate to override the state law. (In order to ensure compliance with the Convention, the Australian Government would have an obligation to legislate in this way unless the state repealed the law.)

¹³ This issue does not arise in relation to the territories, as the source of their power is legislative rather than constitutional. The Federal Government can amend these laws by ordinary parliamentary process.

- If and when the Australian Government ratifies the Optional Protocol and it comes into force, individuals will be able to make complaints alleging violation of Convention rights by the Australian and state and territory governments. Even if the complaint is made about the actions or laws of a state or territory government, the Australian Government is responsible of ensuring compliance with the Convention and responding to the complaint process.

International obligations and Australian law

International law is binding on Australia in its relationship with the community of nations. However, this does not mean that an international obligation entered into by the Australian Government automatically becomes part of Australian law. For that to occur, with very limited exceptions, the Australian Parliament must pass laws to specifically incorporate the obligation.¹⁴

In this respect, it is important to note that Australia does not currently have a national Bill or Charter of Human Rights that incorporates the *International Bill of Rights*, nor has it passed comprehensive laws to implement the other international human rights treaties to which it is signatory, although aspects of some treaties have certainly been incorporated. For example, the *Sex Discrimination Act 1984* (Cth) incorporates significant aspects of the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Race Discrimination Act 1975* (Cth) incorporates significant aspects of the *International Convention on the Elimination of All Forms of Racial Discrimination*.

In the disability area, both the *Disability Discrimination Act 1992* (Cth) and the *Disability Services Act 1986* (Cth) incorporate significant aspects of the non-binding *Declaration on the Rights of Mentally Retarded Persons* (1971) and *Declaration on the Rights of the Disabled* (1975) to which Australia is signatory.

Article 4 of the Convention requires states that ratify the Convention—these states are referred to as ‘States Party to the Convention’—to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. This includes an obligation to modify or abolish existing law, regulations, customs and practices that constitute discrimination against persons with disability. It is important to appreciate that this obligation is potentially sensitive and volatile in a federal system in which powers are shared, and often jealously guarded, between levels of government.

It is also important to note that, to date, the Australian Government has approached the development of the Convention with the view that Australian laws and institutional arrangements already comply with the terms of the Convention, at least broadly speaking. In this respect, particular reliance has been placed on measures such as the *Disability Discrimination Act 1992* (Cth), the *Disability Services Act 1986* (Cth), the Human Rights and Equal Opportunity Commission, the Commonwealth Disability Strategy, and disability peak body and advisory structures.

As a result, it is quite possible that the Australian Government may ratify to the Convention with the view that it needs to do nothing more to give effect to the Convention.

¹⁴ Courts may look to Australia’s international obligations to assist in statutory interpretation, where ambiguity exists: *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

Reservations, understandings and declarations

When a state enters into an international agreement such as the Convention it is allowed to do so with some limits or particular interpretations:

- It may lodge a 'reservation' in relation to particular obligations. A reservation limits or avoids the obligation; that is, it modifies the legal effect of the treaty with respect to that state party. Reservations can only be lodged at the time of ratification, and can be withdrawn at any time. Reservations that are incompatible with the object or purpose of the Convention are not permitted. Other States party to the treaty can object to the reservation.
- It may lodge a 'statement of interpretation' or 'statement of understanding' in relation to a particular element or obligation. These statements set out the state's understanding of the meaning of the element. The statement does not modify the legal effect of the treaty, but provided the interpretation or understanding is plausible, it will influence the way in which the state's compliance with the treaty is assessed by the international monitoring body.
- It may lodge a 'declaration' or 'statement' about how it intends to implement an obligation. Again, such a declaration or statement does not modify the legal effect of the treaty, but provided the implementation measure is reasonably based on the obligation, it will influence the manner in which the state's compliance with the treaty is to be assessed by the international monitoring body.

As well as these mechanisms, all states are allowed some latitude in the interpretation and application of an international obligation so as to ensure that the obligation can be accommodated with its particular cultural environment and traditions. This is sometimes referred to as the 'margin of appreciation'.

Human rights activists tend to view reservations, statements of interpretation, and declarations negatively, and indeed, they can result in human rights obligations being undermined. However, it is important to appreciate that they are essentially neutral mechanisms that are equally capable of being used for a positive purpose as they are for a negative one.

For example, the Convention has incorporated as a defence to the obligation of non-discrimination on the ground of disability the concept of 'disproportionate or undue burden'. This is potentially a less stringent defence than the 'unjustifiable hardship' test that currently applies under Australian law. It might therefore be a positive step for Australia to lodge a statement of interpretation to the effect that it will interpret 'disproportionate or undue burden' as having the same meaning as 'unjustifiable hardship'.

Similarly, Australia has, as a matter of course with respect to previous treaties, entered a reservation relating to its status as a federation, as this structure of government has a different impact from that which exists in the United Kingdom, for example, where there is a single national government. This reservation should not be seen negatively.

Australia's pre-ratification consultative and deliberative processes

When the Australian Government signs a multilateral or international treaty (an agreement with more than one country), a 'National Impact Analysis' (NIA) must be prepared. The NIA is prepared from contributions from all Commonwealth agencies with responsibilities that could be affected by the treaty. These contributions report on the implications of the treaty in relation to the agency's functions. State and territory governments are also consulted in the development of the NIA. These contributions must then be 'cleared' (that is, assessed) by the Office of International Law in the Federal Attorney-General's Department, and the Treaties Secretariat in the Federal Department of Foreign Affairs and Trade.

A Regulation Impact Statement (RIS) may also be required if the treaty could affect business regulation or restrict competition. At this stage, it appears the Australian Government is yet to make a decision on whether a RIS is required in relation to the Convention.

The treaty, NIA and RIS (if undertaken) are then tabled in both houses of Federal Parliament, and referred to the Joint Standing Committee on Treaties (JSCOT). JSCOT examines and reports to Parliament on the treaty (usually within a 15 or 20 sitting-day period as required by the reference), and can make recommendations. JSCOT may call for public submissions, and conduct public hearings as part of its examination of the treaty. Usually, no action is taken to ratify or accede to a treaty until JSCOT reports to Parliament.

JSCOT recommendations may require a formal Government response, which is also tabled in both houses of Parliament. The Executive¹⁵ is then likely to decide if it will ratify or accede to the treaty, and if so, if it will make any reservations, understandings, or declarations.

If the Australian Government decides to proceed to ratify or accede to the treaty, the Minister for Foreign Affairs signs the instrument of ratification or accession and, in the case of the Convention, this instrument is then deposited with the Secretary General to the United Nations through Australian Mission to the United Nations in New York. The instrument of ratification will include any reservations, understandings or declarations made by the Australian Government.

The essential implications of these processes in respect of the Convention are:

- Before the Convention and Optional Protocol are ratified there will be a detailed examination of their implications for Australian governments. This has the potential to positively or negatively impact on the Australian Government's decision on ratification of the Convention and Optional Protocol.
- This examination is likely to include a number of major public consultation processes to which disabled persons and human rights organisations may contribute.

¹⁵ The Executive is one of the three branches of the Federal Government. The other two are the legislature (parliament) and the judiciary (the courts). The Executive includes the Prime Minister, other government Ministers, Government Departments and Agencies.

- The coming months provide a critical window of opportunity in which to influence key decision makers within both the Federal and state and territory governments in relation to the stance they will take on the ratification of the Convention and Optional Protocol.
- Those interest groups that seek the Australian Government's ratification of the Convention and Optional Protocol need to understand the risks and opportunities inherent in these processes, and to act strategically to secure the best possible result.

Appendix 1: Convention on the Rights of Persons with Disabilities: A short guide to articles¹⁶

The following synopsis of the articles of the Convention is designed to assist you to navigate your way through the Convention, as well as provide an overview of its scope and content. It is not a detailed summary of the Convention, and you should not rely on it as a formal description of the legal effect of the Convention articles. It is notable that the Convention is the only human rights convention to incorporate headings for its articles. These headings also give a broad indication of the contents of the article and are included in bold.

The rights and obligations summarised below only apply to states that have ratified or acceded to the Convention, and only become operative when the Convention enters into force.

Preamble: Explains why the Convention is needed, highlights key issues to be taken into account in the interpretation and application of the Convention, and provides an overview of the history of international disability and human rights developments that led up to the Convention.

Article 1: Purpose: Describes the purpose of the Convention, outlines the three dimensions of state obligation: to *promote*, *protect* and *ensure* human rights and fundamental freedoms; and describes the class of persons to whom the Convention applies.

Article 2: Definitions: Explains the meaning of the following terms that are used in more than one place in the Convention: 'language'; 'communication'; 'discrimination on the basis of disability'; 'reasonable accommodation'; and 'universal design'.

Article 3: General principles: Describes eight fundamental principles to be applied in all aspects of the implementation of the Convention.

Article 4: General obligations: Describes the broad-based actions that states must take to comply with the Convention both on becoming a party, and over the longer term. Again, these actions apply to all human rights and fundamental freedoms recognised by the Convention.

Article 5: Equality and non-discrimination: Guarantees that persons with disability are equal before the law and are entitled to equal protection of the law; prohibits discrimination on the ground of disability and requires states to ensure effective protection against such discrimination; requires states to ensure the provision of reasonable accommodation; excepts positive measures from the prohibition on discrimination. Again, these obligations apply to all other human rights and fundamental freedoms recognised by the Convention.

¹⁶ Preparation of this section has drawn upon Disabled Peoples' International's *International Convention on the Rights of Persons with Disabilities: Ratification Toolkit* 2007, and the Landmine Survivors Network's *Disability Rights Convention: Ratification Campaign Handbook*, both are acknowledged with appreciation.

- Article 6: Women with disabilities:** Requires states to recognise that women with disability are subject to multiple and aggravated forms of human rights violation; requires states to take specific positive measures to ensure that their human rights and fundamental freedoms are realised. Again, these obligations apply to all other human rights and fundamental freedoms recognised by the Convention.
- Article 7: Children with disabilities:** Requires states to ensure that children with disability enjoy all human rights and fundamental freedoms on an equal basis to other children; requires states to ensure that in all actions concerning children with disability, the best interests of the child are a primary consideration; requires states to recognise the evolving capacity and right of children with disability to express their views on matters that affect them.
- Article 8: Awareness raising:** Requires states to foster respect for the rights and dignity of persons with disability; combat stereotypes, prejudice and harmful practices affecting persons with disability; and, promote awareness of the capability and contribution of persons with disability.
- Article 9: Accessibility:** Requires states to ensure that the physical environment, transportation systems, information and communications systems, and other public facilities and services are accessible to all persons with disability on an equal basis with others.
- Article 10: Right to life:** Requires states to recognise that every human being has an inherent right to life; requires states to take all necessary measures to ensure persons with disability enjoy this right on an equal basis with others.
- Article 11: Situations of risk and humanitarian emergencies:** Requires states to take all necessary measures to ensure the protection and safety of persons with disability in situations of risk, including situations of armed conflict, humanitarian emergencies, and natural disasters.
- Article 12: Equal recognition before the law:** Requires states to recognise that persons with disability have legal personality; requires states to take appropriate measures, if needed, to ensure persons with disability can exercise legal capacity; requires any such arrangements to be subject to effective safeguards to prevent abuse.
- Article 13: Access to justice:** Requires states to ensure effective access to justice for persons with disability; requires appropriate procedural and age-related adjustments to the legal process and training for those involved in the administration of justice; applies to persons with disability in all aspects of their interaction with the justice system.
- Article 14: Liberty and security of the person:** Requires states to ensure that persons with disability are not unlawfully or arbitrarily deprived of their liberty; requires states to ensure the personal safety of persons with disability; provides that disability shall in no case justify a deprivation of liberty.

- Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment:** Requires states to ensure that persons with disability are not subject to torture or to cruel, inhuman or degrading treatment or punishment; requires states to ensure that persons with disability are not subject to medical or scientific experimentation without their consent.
- Article 16: Freedom from exploitation, violence and abuse:** Requires states to ensure that persons with disability are not subject to any form of exploitation, violence or abuse; requires states to protect women, children and older persons with disability from gender and age aggravated exploitation, violence and abuse; requires states to institute measures to ensure the detection, investigation and prosecution of exploitation, abuse and neglect of persons with disability and to promote the physical and psychological recovery and social reintegration of victims.
- Article 17: Protecting the integrity of the person:** Requires states to ensure respect for the physical and mental integrity of persons with disability.
- Article 18: Liberty of movement and nationality:** Requires states to ensure that persons with disability have liberty of movement and the freedom to choose their residence and nationality on an equal basis with others.
- Article 19: Living independently and being included in the community:** Requires states to recognise that persons with disability have a right to live in the community, with choices equal to others; requires states to ensure that persons with disability have access to specialist and generic services necessary to support living and inclusion in the community, and to prevent their isolation or segregation from the community.
- Article 20: Personal mobility:** Requires states to take effective measures to ensure that persons with disability enjoy the greatest possible personal mobility and independence; requires states to ensure that mobility aids, devices, assistive technologies and forms of live assistance and intermediaries necessary for personal mobility are of good quality and are available at an affordable cost.
- Article 21: Freedom of expression and opinion, and access to information:** Requires states to ensure that persons with disability can exercise the right to freedom of expression and opinion including by providing public information in accessible formats and via appropriate technologies, and by accepting or facilitating the use of sign languages, Braille and other augmentative and alternative communication.
- Article 22: Respect for privacy:** Requires states to ensure that persons with disability are not subject to arbitrary or unlawful interference with their privacy, or to unlawful attacks on their reputation.
- Article 23: Respect for home and the family:** Requires states to eliminate discrimination against persons with disability in all matters relating to marriage, family, parenthood and relationships; requires states to ensure that children with disability grow up in a family environment, and that

children or parents with disability are not arbitrarily or unnecessarily separated.

Article 24: Education: Requires states to recognise the right of persons with disability to inclusive education and life-long learning that will enable them to realise their potential; requires states to institute effective measures to ensure that persons with disability are able to realise this right, including through the provision of reasonable accommodation; individualised support; and facilitating the learning of Braille, sign language and other means and formats for communication.

Article 25: Health: Requires states to recognise that persons with disability have the right to the highest attainable standard of health; requires states to ensure that persons with disability have access to the full range of generic health care services and programs, as well as to any necessary specialised health services; requires states to prohibit discrimination on the ground of disability in the provision of health and life insurance.

Article 26: Habilitation and rehabilitation: Requires states to take effective measures to enable persons with disability to attain and maintain maximum independence; full physical, mental, social and vocational ability; and, full inclusion and participation in all aspects of life; requires states to promote appropriate initial and ongoing training for staff of habilitation and rehabilitation services; requires states to promote the availability and use of assistive devices and technologies for habilitation and rehabilitation.

Article 27: Work and employment: Requires states to recognise the right of persons with disability to work in freely chosen or accepted employment in a labour market and work environment that is open, accessible and inclusive; requires states to safeguard and promote realisation of this right by measures such as prohibiting discrimination on the ground of disability in all aspects of employment; ensuring access to general technical and vocational education; providing assistance with job seeking, career development, and business development; and, by employing persons with disability in the public sector.

Article 28: Adequate standard of living and social protection: Requires states to recognise the right of persons with disability to an adequate standard of living for themselves and for their families, including adequate food, clothing and housing; requires states to recognise the right of persons with disability and their families to continuous improvement of living conditions and to social protection.

Article 29: Participation in political and public life: Requires states to guarantee political rights to persons with disability and to ensure that these rights are enjoyed on an equal basis with others. These rights include the right of participation in political and public life; the right to vote by secret ballot; the right to participate in non-government organisations concerned with public and political life; and, the right to form and join representative organisations of persons with disability.

- Article 30: Participation in cultural life, recreation, leisure and sport:** Requires states to take effective measures to ensure that persons with disability are able to access cultural materials in accessible formats; enjoy access to television, film, theatre and other cultural activities; develop and utilise their creative, artistic and intellectual potential; enjoy recognition and support of their specific cultural and linguistic identity; and, are able to participate recreational, leisure and sporting activities on an equal basis with others.
- Article 31: Statistics and data collection:** Requires states to collect statistical and research data that will enable them to formulate, implement, monitor and evaluate policies and programs to give effect to the Convention. Data collection must be subject to human rights and other ethical safeguards.
- Article 32: International cooperation:** Requires states to recognise the importance of, and support, international cooperation by governments, international and regional organisations, and civil society in efforts to implement the Convention.
- Article 33: National implementation and monitoring:** Requires states to designate focal points and co-ordination mechanisms within government to facilitate cross-sectoral Convention implementation. Requires states to designate or establish independent monitoring mechanisms to oversee implementation of the Convention.
- Article 34: Committee on the Rights of Persons with Disabilities:** Establishes a treaty body to monitor implementation of the Convention called the 'Committee on the Rights of Persons with Disabilities' (the Committee). The Committee is to be initially made up of 12 experts with an ultimate maximum of 18 members. Committee members serve in a personal capacity for a four-year term and are eligible for re-election once. The article also sets out the nomination and election procedure for committee members, and arrangements for their payment and logistic support.
- Article 35: Reports by States Parties:** Provides that states must submit a comprehensive initial report to the Committee on measures taken to implement the Convention within two years after the entry into force of the Convention. Thereafter update reports are to be submitted to the Committee every four years, or whenever the Committee so requests.
- Article 36: Consideration of reports:** Provides that the Committee is to consider state reports, and may make suggestions and recommendations to the state. States may provide information in response to any suggestions and recommendations. The Committee may also request further information from the state. Where the state party has failed to submit a report, the Committee may examine implementation of the Convention by the state using other reliable information.
- Article 37: Co-operation between States Parties and the Committee:** Provides that each state must co-operate with the Committee and assist its members to fulfil their mandate. The Committee must assist states to enhance their capacity to implement the Convention.

Article 38: Relationship of the Committee with other bodies: Provides that the specialist agencies of the United Nations are entitled to be represented in discussions concerning Convention implementation measures that fall within their mandate. The Committee may also invite these specialist agencies to provide expert advice. The Committee is also empowered to consult with other treaty bodies to ensure consistency in reporting guidelines and recommendations, and to avoid duplication.

Article 39: Report of the Committee: Provides that the Committee is to report to the General Assembly and Economic and Social Council on its activities every two years, and in doing so may make suggestions and general recommendations.

Article 40: Conference of States Parties: Provides that states shall meet regularly in order to consider issues concerning the implementation of the Convention. The first conference of states is to be convened no later than six months after the Convention enters into force.

Article 41: Depositary: Provides that the Secretary General of the United Nations is the person with whom signature and ratification or accession documents for the Convention are to be lodged.

Article 42: Signature: Provides that the Convention shall open for signature as of 30 March 2007.

Article 43: Consent to be bound: Provides that the Convention is subject to ratification by signatory states, and is open for accession by states that have not signed.

Article 44: Regional integration organisations: Defines the term 'regional integration organisation' and establishes their competence and voting powers in relation to the Convention. (An example of a regional integration organisation is the European Union.)

Article 45: Entry into force: Provides that the Convention will come into force on the 30th day after the deposit of the 20th instrument of ratification or accession. That is, if the 20th country to ratify the Convention does so on 1 March 2008, the Convention comes into force on 31 March 2008.

Provides that once the Convention is in force it comes into force in relation to a country that later accedes to it on the 30th day after the date of the country's accession. That is, if the Convention is in force from 31 March 2008 and a country lodges its ratification or accession on 1 July 2008, the Convention comes into force for that country on 31 July 2008.

Article 46: Reservations: Provides that reservations that are incompatible with the object and purpose of the Convention are not permitted. It also provides that reservations may be withdrawn at any time.

Article 47: Amendments: Sets out the procedure for the amendment of the Convention.

Article 48: Denunciation: Provides that a state may denounce (withdraw from) the Convention by providing written notification to the United Nations Secretary General. The denunciation comes into effect one year after the date of receipt of the notification.

Article 49: Accessible format: Provides that the text of the Convention will be made available in accessible formats.

Article 50: Authentic texts: Provides that that the official Arabic, English, French, Russian and Spanish texts of the Convention are equally authentic.

Appendix 2: Optional Protocol to the Convention on the Rights of Persons with Disabilities: A short guide to articles

The following short synopsis of the articles of the Optional Protocol is designed to assist you to navigate your way through the Protocol, as well as provide an overview of its scope and content. It is not a detailed summary of the Protocol, and you should not rely on it as a formal description of the legal effect of its articles.

The rights and obligations summarised below only apply to states that have ratified or acceded to the Optional Protocol, and only become operative when the Optional Protocol enters into force.

Article 1: Provides that the state recognises the competence of the Committee on the Rights of Persons with Disabilities (the Committee) to receive and consider complaints—referred to as ‘communications’—from individuals or groups of individuals who claim to be victims of violation by a state party of the provisions of the Convention. The Committee cannot receive communications about a state not a party to the Protocol, even if that state is a party to the Convention.

Article 2: Sets out the basis upon which the Committee will consider a communication inadmissible. This includes situations where the communication is anonymous; where domestic remedies have not reasonably been exhausted; and, where the alleged violation occurred prior to the entry into force of the Protocol in relation to the state.

Article 3: Requires the Committee to bring any communication it receives to the attention of the relevant state. The state then has six months to respond to the communication.

Article 4: Empowers the Committee to request a state to take interim measures to avoid irreparable damage to the victims of the alleged violation following receipt of the communication but before its determination.

Article 5: Provides that the Committee shall examine communications in closed session. After this examination, the Committee is required to forward its suggestions and recommendations, if any, to the relevant state and the complainant.

Article 6: Provides that the Committee has the power to conduct an inquiry into alleged grave or systematic violations by a state of rights provided by the Convention. Such an inquiry will, as far as possible, be conducted in co-operation with the state.

Article 7: Provides that the Committee may invite a state that has been subject of an inquiry conducted under article 6 of the Protocol to include in its report under article 35 of the Convention details of any measures taken to address the findings of the Committee. The Committee is also empowered, after six

months, to request a specific report from the state on the measures it has taken to address the Committee's findings.

Article 8: Provides that a state may at the time of signature or ratification make a declaration that it does not recognise the competence of the Committee provided in articles 6 and 7.

Article 9: Provides that the Secretary General of the United Nations is the authority with whom signatories and ratifications for the Protocol are to be lodged.

Article 10: Provides that the Protocol shall be open for signature as of 30 March 2007.

Article 11: Provides that the Protocol can only be ratified or acceded to by states that have ratified or acceded to the Convention.

Article 12: Defines the term 'regional integration organisation' and establishes their competence and voting powers in relation to the Protocol. (An example of a regional integration organisation is the European Union.)

Article 13: Designates that subject to the entry into force of the Convention, the Protocol shall enter into force on the 30th day after the deposit of the 10th instrument of ratification or accession.

This means that, say the Convention is in force from 31 March 2008 and the 10th country to lodge its ratification of the Optional Protocol does so on 1 October 2010, the Optional Protocol comes into effect for that country and the other nine countries that have ratified on 31 October 2010.

Article 14: Provides that reservations that are incompatible with the object and purpose of the Protocol are not permitted; provides that reservations may be withdrawn at any time.

Article 15: Sets out the procedure for the amendment of the Protocol.

Article 16: Provides that a State Party may denounce (withdraw from) the Protocol by providing written notification to the United Nations Secretary General. The denunciation comes into effect one year after the date of receipt of the notification.

Article 17: Provides that the text of the Protocol is to be made available in accessible formats.

Article 18: Provides that the official Arabic, English, French, Russian and Spanish texts of the Protocol are equally authentic.

Appendix 3: How is a new UN Convention created?

This section outlines the process for development and implementation of a UN Convention. It also provides a brief overview and an explanation of many of the terms that are commonly used in these processes.¹⁷

The evolution of a UN convention from hopes and ideals to legally binding law is a lengthy process that begins and ends with the advocacy of people who care about the issue. Each stage of development can take many months or even many years to accomplish:

Advocated by groups concerned about an issue. Usually working in coalition, advocates lobby UN representatives to bring the issue before the General Assembly.

Recommended by a resolution of the UN General Assembly¹⁸ for consideration and establishment of a committee/working group to draft a text of the convention.

Drafted by working groups. Working groups consist of government representatives of UN member states, as well as representatives of non-governmental organisations (NGOs) and intergovernmental organisations (IGOs), such as the World Health Organization (WHO) and the International Labour Organization (ILO). Every article of the draft text is then debated until consensus is reached on its content. In this way a final draft is achieved for submission to the General Assembly.

Adopted by vote of the UN General Assembly. The *Convention on the Rights of Persons with Disabilities* was adopted on 13 December 2006.

Signed by UN member states. When member states sign the convention, they are indicating that they have begun the process required by their government for ratification. In signing, they also are agreeing to refrain from acts that would be contrary to the objectives of the convention.

Ratified by UN member states. When a member state ratifies a convention, it signifies its intention to comply with the specific provisions and obligations of the document. It takes on the responsibility to see that its national laws are in agreement with the convention. There is a process by which states can ratify a convention, but indicate their reservations about specific articles with which they disagree.

Entered into force. A convention goes into effect when a certain number of member states have ratified it. For example, the *Convention on the Rights of*

¹⁷ This section is largely copied from Landmine Survivors Network's *Disability Rights Convention: Ratification Campaign Handbook*, with only minor amendments. The Network's publication and permission to use it is acknowledged with appreciation.

¹⁸ The General Assembly of the UN is the body of all of the member states. As noted previously, the term 'state' is used to refer to countries or nations that are members of the UN, as distinct from a 'state' of Australia, which is a component part of the Australian Federation. Australia is a member state of the UN; Victoria, NSW, WA, SA, Queensland and Tasmania are not.

Persons with Disabilities will come into force for the countries that have ratified it one month after 20 ratifications have been deposited.

Monitored and advocated. The governments of each of the states that have ratified the convention must report regularly to the administrative body created by the convention on how the convention is being implemented in their country. Concerned activists educate the public and monitor government implementation of the convention. Non-government organisations can provide a 'shadow report' to the administrative body on their view of the performance of a state in achieving compliance with the convention. This is done in response to a report from the government of the state to the administrative body. This final stage of monitoring and advocacy continues indefinitely.

Appendix 4: Additional resources

This section provides you with information about other materials that may further assist you in your preparation for the workshop.

Australian Government Department of Foreign Affairs and Trade (2005)

Signed, Sealed and Delivered: Treaties and Treaty Making: An Officials Handbook, Treaties Secretariat, Department of Foreign Affairs and Trade, Canberra, 6th Edition, available at:

http://www.dfat.gov.au/treaties/treaties_handbook.pdf

Disabled Peoples' International (2007)

International Convention on the Rights of Persons with Disabilities: Ratification Toolkit, Disabled Peoples' International, Winnipeg, Canada, available at: www.icrpd.net

Disabled Peoples' International (2007)

International Convention on the Rights of Persons with Disabilities: Implementation Toolkit, Disabled Peoples' International, Winnipeg, Canada, available at: www.icrpd.net

Landmine Survivors Network (2007)

Disability Rights Convention: Ratification Campaign Handbook, Landmine Survivors Network, Geneva, available at:

http://www.landminesurvivors.org/what_rights_ratification.php

Public Interest Advocacy Centre (2003)

Working the System: A Guide for Citizens, Consumers and Communities, Sydney, 2nd edition, available at:

http://www.piac.asn.au/publications/pubs/wts2nd_20030414.html

United Nations (2006)

Convention on the Rights of Persons with Disabilities, available at:

<http://www.ohchr.org/english/law/disabilities-convention.htm>

United Nations (2006)

Optional Protocol to the Convention on the Rights of Persons with Disabilities, available at: <http://www.ohchr.org/english/law/disabilities-op.htm>

Further information about the development of the Convention and other disability-related activities of the United Nations can be found on the United Nations Enable Website at: <http://www.un.org/esa/socdev/enable/sitemap.htm>