

Introduction and Executive Summary

March 2008

YMCA Australia welcomes the opportunity to submit a response to the *Consultation on the Possible Ratification of the United Nations Convention on the Rights of Persons with Disabilities – National Interest Analysis*.

The YMCA is a community based not-for-profit organisation that delivers programs and services to help build strong people, strong families and strong communities across Australia. We work in partnership with government, other not-for-profit groups and partners to provide programs and services to more than 500,000 Australians every week.

YMCA's Mission is to work together, from a base of Christian values, to provide opportunities for all people to grow in body, mind and spirit. This includes valuing the dignity and intrinsic worth of all people regardless of age, gender, ethnicity, belief or other difference. We also value equality of opportunity and justice for all people.

YMCA Australia has over 7500 staff and 2700 volunteers working across approximately 500 YMCA sites, with representation in every State and Territory. Our staff and volunteers deliver professionally designed programs to thousands of Australians every day in health and fitness, recreation, accommodation, child care, camping, youth and family services. This also includes people living with disability. During 2006-07, YMCA provided generalist and specialist services and programs to over 83,000 persons with disabilities and/or special needs. 127 Australian YMCA sites deliver a range of programs and services accessed by people living with disability.

YMCA Australia believes that a greater emphasis on social inclusion, equality and non-discrimination for all people living with disability will play a significant part in shaping future social and public policy affecting the daily lives of all Australians.

YMCA Australia is entirely supportive of the need for the Australian Government to ratify the United Nations Convention on the Rights of Persons with Disabilities (hereafter referred to as the CRPD or the Convention) and its Optional Protocol. Ratification will ensure Australia continues to play a leading role in the development of robust legislation, supportive policies and targeted resources to guarantee that people living with disability have the opportunity to participate fully in their chosen pathways in the Australian community.

The following submission is a documentation of the collective expertise in the disability rights and services field within YMCA Australia and our responses have been formulated in consultation with leaders in the disability services sector throughout the YMCA Movement. In developing this submission we have chosen to structure our response in accordance with questions set out in the *Australian Federation of Disability Organisations Discussion Paper (2008)*¹.

¹ People With A Disability Australia Inc. (2008), *Impacts in Australia of Ratification of the United Nations Convention on the Rights of Persons with Disabilities: Background Paper for Roundtables for Australian Disabled Peoples' Organisations*, Phillip French Disability Studies and Research Institute.

1. Should Australia ratify the CRPD?

The development of the CRPD is of great significance and is an essential element in the suite of international treaties and conventions by which Australia is bound. While entering into the process of ratification is important for Australia as a good global citizen, it is a mechanism by which Australia can show leadership within the UN Treaty system and also within our immediate geo-political region.

Australia's long involvement in the authorship of the Convention has demonstrated our continued commitment to recognising and upholding the fundamental human rights of persons living with disability. The next natural step, by ratifying the CRPD, is to formally demonstrate our level of commitment to the rights and obligations contained in the Convention and cement our engagement with the international community on the issue of disability rights. As the first international convention specifically focusing on the rights of persons with disability, the CRPD has the potential to further enhance and protect the rights of more than 650 million people worldwide. YMCA Australia is mindful that Australian Bureau of Statistics (ABS) data indicates that around 1 in 5 Australians are affected by some form of disability.

Ratification will also enable our nomination for election to the Committee on the Rights of Persons with Disabilities once the CRPD comes into force. This will commit Australia to an active and ongoing role in monitoring the implementation of the Convention by States Parties, including ourselves.

At the local level, Australia's ratification of the CRPD demonstrates an ongoing commitment on the part of Government to promoting, implementing and monitoring policy and practice in relation to measures which ensure that the rights of persons with disability are optimised in every sphere of social, cultural, economic, public and political life. Individuals, agencies, community groups and service providers who work with and for persons with disability will be strengthened in their efforts by both the symbolic and practical outcomes of ratification.

2. Should Australia sign and ratify the Optional Protocol to the CRPD?

As a key monitoring and compliance instrument, including the mechanism for complaint, signature and ratification of the Optional Protocol will demonstrate Australia's willingness to be bound by our obligations as a State Party to the Convention. While it is a separate instrument, the Optional Protocol fortifies both the intent and operation of the Convention, ensuring that measures taken by States Parties in ratifying the CRPD reach beyond that which is merely symbolic.

Signature and ratification of the Optional Protocol (together with the Convention) is not only a process that will provide a guarantee that Australian Commonwealth laws, regulations and practice are consistent with the CRPD, but will also provide a pathway for greater consistency between Australian States and Territories.

Statements made by the previous Government that signature and ratification of the Optional Protocol would not be considered² until the UN Treaty System is reformed, are of concern to YMCA Australia and the broader disability services and human rights sectors. While discussions about broader United Nations reform have been taking place for some time, this should have not prevent the current Australian Government from fully engaging with what is a substantive element and process in the realisation of the rights of persons with disabilities.

The position of YMCA Australia is that while the Optional Protocol should be signed and ratified at the earliest possible juncture, the process of ratification of the Convention should be a separate process and not be delayed or undermined due to any deliberations which may eventuate regarding the Optional Protocol.

3. Are Australian laws consistent with CRPD rights?

While it is widely acknowledged that Australian laws and regulations are broadly consistent with the rights and obligations contained in the CRPD and in some aspects exceed the minimum standards outlined by the CRPD, it is also accepted that much more is yet to be achieved towards the full realisation of these rights.

This may require the Australian Government to identify deficiencies in Commonwealth law or inconsistencies between various elements of State and Territory legislation that may act as a barrier to achieving optimal standards of compliance and the full realisation of CRPD rights utilising the maximum resources at the Government's disposal. *Recognition that improvements are still needed should not present an obstacle to ratification.*

YMCA Australia has a broad knowledge of the legislation, regulation and statute most relevant to this consultation, particularly that which pertains to our program and service delivery areas. As an organisation, we are not suitably qualified to provide comprehensive analysis or comment on the intricacies of Australian disability law. We will, however, comment on the manner in which current legislation and regulation impacts on the experiences of our clients and delivery of our programs, reflecting on changes or enhancements that may be required to implement the CRPD.

Beginning from an ideological position, it is clear the structure and intent of the CRPD is 'disability-centric' which may be a reflection of the high degree of involvement by persons with disabilities in the development of the Convention and the rights contained therein. By locating the fundamental elements of the Convention within the lived experience of persons with disabilities, the CRPD places the onus of responsibility on society to alleviate or remove barriers encountered by people living with disability. The Disability Discrimination Act (1992) (DDA), in contrast, only comes into effect when a complaint of discrimination is made, placing the onus of responsibility on the person with disability. The DDA outlines the manner in which providers of goods and services

² Address by Former Attorney-General the Hon Philip Ruddock MP to the Human Rights and Equal Opportunity Commission *Workshop on Promoting the Ratification and Implementation of the Convention on the Rights of Persons with Disabilities in Australia, 27-28 June, 2007.*

may be required to enhance accessibility, and while this is positive, the DDA is seen to be a more reactive instrument rather than a proactive or progressive mechanism in recognising the rights of persons with disabilities.

In relation to the DDA, concerns have been raised by those delivering YMCA programs that the expectations and legal obligations imposed on providers of goods and services are viewed as being ‘voluntary’ in nature, rather than mandatory, resulting in continued structural inequality. Perceptions on the part of those working in the disability services sector suggest that the broader community and providers of general goods and services do not consider themselves to be obligated under the DDA and do not take their compliance with the Act seriously. While widespread discrimination against people living with disability continues to occur, mechanisms currently in place to prevent and address issues of discrimination appears to have restricted and limited powers in terms of enforcement and compliance. With many cases of discrimination remaining unreported or under-reported, those individuals who do lodge complaints with State-based statutory bodies or Commonwealth bodies such as the Human Rights and Equal Opportunity Commission (HREOC) are in a position of very little power and complaints are not seen through to their conclusion or resolution.

In order to reflect the nature and intent of the CRPD, consideration should be given to the development and introduction of an over-arching piece of legislation which encompasses the essential elements of the DDA and the Disability Services Act (1986) in a more robust, progressive and proactively inclusive manner. Any new or additional domestic legal instruments would also require a greater level of recognition of the unequal power relationship between persons with disabilities and the legal system, ensuring that appropriate levels of support are provided to individuals as they interface with legal mechanisms to address issues of discrimination.

4. What will be the economic impacts of Australia ratifying the CRPD?

Given that ratifying the CRPD sets out a process by which the Australian Government will make a commitment to the progressive realisation of the rights and obligations contained in the Convention, the long-term economic benefits for individuals and the broader Australian community could be highly significant.

Implementation of the CRPD rights to their fullest, in particular Article 27 will undoubtedly see an increase in workforce participation by persons with disabilities. In 2003, the workforce participation rate for persons with disabilities was 53.2% compared with 80.6% for those without disability³. The broader economic benefits of this will occur not only on an individual level through greater levels of meaningful employment, but will also be reflected in a rise in consumer activity.

³ Human Rights and Equal Opportunity Commission (2006), *National Inquiry into Employment and Disability, Issues Paper 1: Employment and Disability – The Statistics*

Of most relevance to YMCA programs and services are considerations which need to be given in relation to potential costs associated with additional education and training of staff and volunteers. This may be required as a result of compliance measures, service delivery standards and accessibility issues that may eventuate following ratification of the Convention and signature and ratification of its Optional Protocol. YMCA Australia does not anticipate that these costs would prevent or prohibit any of our service and program areas from meeting necessary requirements associated with Australia's ratification of the Convention.

5. What will be the environmental impacts of Australia ratifying the CRPD?

In relation to the built environment, public spaces and facilities in which the YMCA operates, the Convention has particular implications regarding accessibility issues. In so far as financial costs associated with any additional enhancements to the built and constructed environment, YMCA Australia would not anticipate that these would pose a barrier to meeting necessary requirements associated with Australia's ratification of the Convention.

In a general sense, ratification of the Convention will further enhance acknowledgement within the broader Australian community of a continued need to ensure that our built environment is suitable to meet the growing needs of persons living with disability.

6. What will be the social and cultural impacts of Australia ratifying the CRPD?

While the rights and obligations contained in the CRPD do not directly encompass the rights-based needs of parents, family members and carers of people with disability the social implications for those that directly support people with disability will be far reaching. In ratifying the Convention, the Australian Government will commit to working towards the full realisation of these rights, which will not only bring significant benefits such as decreased social isolation and greater levels of participation for those with disability, but will also bring these benefits to those that are primary care-givers.

In broader terms, ratification and the implementation of measures to bring about the full realisation of the CRPD rights and obligations will require a whole of government approach incorporating community education campaigns, public awareness raising and the introduction of systemic processes within the Australian Public Service to ensure that CRPD rights have meaningful and practical application. This will result in broad social advancements which the YMCA hopes will include heightened awareness in the broader Australian community about issues affecting persons with disability, a broad recognition and acceptance of the rights of disabled persons and the increased capacity of mainstream services providers and government agencies to respond effectively and appropriately to the needs and rights of people living with disability.

In addition to enhancing the capacity and opportunity of people living with disability to participate in all forms of cultural life, the CRPD also highlights the importance of the diverse cultural and linguistic identities of persons with disabilities and acknowledges the right of disabled persons to have these cultures recognised and accepted by the broader community. By ratifying the Convention and undertaking measures to enhance levels of broader community education, awareness and acceptance about the unique cultural needs and rights of disabled persons, the Australian Government can play a leadership role in stimulating a cultural shift in the way that disability is perceived and responded to by the broader community.

7. What is required to effectively implement the CRPD and Optional Protocol within Australia?

As highlighted earlier in this submission, there is recognition that Australian laws and regulations are broadly consistent with the rights contained in the CRPD. A risk, however lies in a lack of acknowledgement that there are significant discrepancies between the lived experiences of persons with disability and the rights that are supported by existing Australian law. While many elements of Australian law and practice exceed CRPD rights in some areas, a failure to recognise the gaps in 'lived experience' may lead the Australian Government to form the view that it does not need to implement any further legislative or regulatory changes to meet its obligations under the Convention.

To effectively implement the rights and obligations of the CRPD, broader community education about the Convention, its history, intent and practical implications will be required to ensure that all sections of the Australian community have an awareness of the rights of disabled persons and that Australia has formally agreed, on an international level, to uphold these rights. This will ensure that the public, private and non-government sectors possess a greater level of understanding of what is expected and required in terms of standards and accessibility to goods and services under the Convention.

Most importantly the effective implementation of the CRPD will require continuing commitment from all levels of government to involving the disability sector and persons living with disability in the development of monitoring and implementation mechanisms.

8. What national monitoring arrangements are required in relation to CRPD rights and implementation efforts?

Existing disability rights services such as the *National Disability Advocacy Program* and *Disability Discrimination Legal Services* are perceived by many working in the disability sector as being inefficient and extremely poorly resourced. The majority of States and Territories only have one or two full-time disability discrimination practitioners. Costs associated with private legal services are prohibitive for most persons living with disability and lengthy waiting lists for pro-bono or community-based services, where they are available, mean that legal

cases are not pursued, withdrawn or do not reach an effective and timely resolution. To ensure these existing mechanisms have the capacity to meet the implementation demands that may be required following ratification of the CRPD, strong consideration needs to be given towards adequately resourcing these services through continued Government funding commitments.

Current mechanisms such as the development of Disability Action Plans and Disability Standards in certain areas (as outlined in the *Disability Discrimination Act*) are, in a broad sense insufficient to implement the CRPD rights. A concern raised by YMCA's disability programs and services is that current monitoring processes linked to the Disability Standards are cumbersome and do not occur in a timely manner due to poor resourcing and lack of substantial funding in this area. For these existing mechanisms to work at their optimal level and be an effective tool in the implementation and monitoring of measures to meet the rights and obligation of the Convention, further consideration on the part of the Australian Government and relevant agencies needs to be given to alternative resourcing and funding arrangements in a meaningful and sustained manner.

While the role of HREOC in relation to ensuring the monitoring and implementation of the *Disability Discrimination Act (1992)* is well regarded, many working in the field of disability rights express a level of frustration at the apparent lack of enforcement powers on the part of HREOC and ineffective monitoring of private industry with regard to compliance with Disability Standards and the DDA. As a part of the ratification and implementation process of the CRPD, the Australian Government is encouraged to review the powers provided to HREOC under the Human Rights and Equal Opportunity Commission Act and explore ways in which these powers may be enhanced to match Australia's requirements in meeting the rights and obligations contained in the CRPD.

In addition to broadening the role and powers of HREOC in monitoring the national implementation of measures associated with the ratification of the CRPD, YMCA Australia holds a strong view that persons affected by or living with disability must be engaged and actively involved in the monitoring processes, which may include the formation of a national advisory council to oversee the implementation and monitoring of the CRPD.

9. Do you think Australia's ratification of the CRPD ought to be accompanied by any policy instrument(s) that clarify or modify CRPD obligations?

YMCA Australia is in support of and endorses agreements made by the coalition of disability rights and advisory bodies that met as a part of the HREOC workshop on ratification in June 2007⁴, such that declarations, a policy instrument or modification to CRPD obligations would be sought in relation to:

⁴ See Report of the Human Rights and Equal Opportunity Commission *Workshop on Promoting the Ratification and Implementation of the Convention on the Rights of Persons with Disabilities in Australia, 27-28 June, 2007*; and People With A Disability Australia Inc. (2008), *Impacts in Australia of Ratification of the United Nations Convention on the Rights of Persons with Disabilities*:

- Article 1 – a statement of interpretation to clarify that Australia will interpret ‘person with disability’ as a broad and inclusive term in accordance with the definition contained in the *Disability Discrimination Act*.
- Article 5 – a statement of interpretation to clarify that Australia will interpret the ‘disproportionate and undue burden’ test as equivalent to the ‘unjustifiable hardship test’ that already exists in Australian law.
- Article 12 – a statement of interpretation to clarify that Australia will interpret this article as permitting substitute decision-making as a last resort in appropriate circumstances.
- Article 17 – a statement of interpretation to clarify that Australia will interpret this article as permitting compulsory treatment as a last resort in appropriate circumstances.
- Article 21(c) – a statement clarifying that Australia does not consider itself limited to ‘urging’ private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities, but may in fact, *require* them to do so.
- A general statement of interpretation to the effect that any references to persons who are ‘deaf’ will be interpreted as including, where applicable, persons who are hearing impaired, and any references to persons who are ‘blind’ will be interpreted as including, where applicable, persons who are vision impaired.



Summary of Recommendations and Conclusion:

With regard to deliberations on the possible ratification of the CRPD and its Optional Protocol, YMCA Australia recommends that the Australian Government:

- a) take immediate steps toward ratifying the Convention, with a view to ratifying on December 3 2008 to mark the International Day of Persons with Disabilities;
- b) take immediate steps to sign and ratify the Optional Protocol of the CRPD;
- c) enhance the monitoring and compliance measures set out in existing Australian law, particularly that which relates to the *Disability Discrimination Act (1992)*;
- d) initiate a comprehensive national program of community, public and private sector education and awareness-raising regarding the rights and obligations of the CRPD and the process of ratification by the Australian Government;
- e) implement a whole of government strategy to ensure that all Government departments and agencies promote and adhere to the rights and obligations of the Convention;
- f) provide enhanced resourcing and funding arrangements in relation to the National Disability Advocacy Program and, in particular, Disability Discrimination Legal Services;
- g) conduct a review of HREOC's powers in relation to the *Disability Discrimination Act (1992)* and take immediate steps to ensure these powers match the requirements of the CRPD; and
- h) seek to introduce the policy instruments set out in Section 9 of this submission.

YMCA Australia is encouraged by the ongoing efforts of the Australian Government, both in its willingness to consult with the community sector, and in promoting and upholding the rights of persons living with disability. We welcome the opportunity to provide input into discussions regarding Australia's ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Please do not hesitate to contact us if you would like to discuss any aspect of this submission.