



**Submission made by Julia Farr
Association**

**The protection and promotion of the
human rights of people living with
disability**

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1.0 PURPOSE

This submission is in response to the Australian Government's National Human Rights Consultation. Its purpose is to suggest ways to the Australian Government in which the human rights of Australian people living with disability¹ can be better protected and promoted.

In preparing this submission we have accessed the experience and expertise of Mr Ross Brereton, former Human Rights Commissioner in New Zealand, himself a person living with disability continuing to work in a number of roles of national influence in New Zealand.

2.0 INTRODUCTION

The Julia Farr Association (JFA) and its predecessor organisations have been involved with the disability community for 130 years. The organisation holds that the following values should inform policy development in this area:

- Personal authority – where people living with disability have and exercise control over the decisions in their lives;
- Social inclusion – where people living with disability are included as active citizens in the life of the wider community;
- Capacity-building – where people living with disability, through access to experiences and support, are growing their capacity to enjoy active lives of choice. This also includes the wider community growing its capacity to be inclusive and supportive of people living with disability.

An incorporated association, JFA is not a service provider, nor an advocacy agency, has no political affiliations, and is not Government-funded. As such, we feel we are in a good position to offer comment and analysis without vested interest.

JFA, through enquiry and networking in the disability community and the wider community, seeks to foster innovation, share useful information, and identify and promote policy and practice that may be helpful in improving the life chances for people living with disability.

JFA believe that the Australian Government's National Human Rights Consultation is timely in the current environment. There is a strong push for all Australians to actively participate, both economically and socially, in society through the Social Inclusion Agenda², and there is a national commitment to "ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with

¹ Note that throughout this document we use the term people living with disability, and we acknowledge and support the benefits that family members can also gain from the arrangements we argue for.

² Australian Government 2008, *Social inclusion principles for Australia*, viewed 23 April 2009, <<http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf>>.

disabilities”³ through the ratification of the UN Convention on the Rights of Persons with Disabilities by Australia in July 2008. This consultation provides the opportunity to assess ways in which the human rights of people living with disability can be further protected and promoted.

3.0 WHICH HUMAN RIGHTS (INCLUDING CORRESPONDING RESPONSIBILITIES) SHOULD BE PROTECTED AND PROMOTED?

The UN Convention on the Rights of Persons with Disabilities (hereinafter referred as ‘UN Disability Convention’) underpins the human rights and responsibilities which should be protected and promoted for people living with disability as it “clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights”⁴. It is these rights that now need to be better protected and promoted in Australia, particularly given the historic and current experiences of the Australia disability community.

The rights highlighted in the UN Disability Convention include for example the right to:

- Have equal access to transport, information, physical surroundings and public services and facilities in metropolitan and rural locations;
- Live independently and be included in the community;
- Participate fully in all aspects of life⁵.

People living with disability are subject to marginalisation, disadvantage and increased risk of social exclusion because of “barriers in their participation in society and lower standards of living”⁶. They also can experience multiple disadvantages in terms of their age, gender, ethnicity or sexual orientation⁷. It is because of this that the human rights identified in the UN Disability Convention are crucial as they enable people living with disability to be in control of how they want to live their lives through ensuring “their active participation in political, economic, social, and cultural life in a way that is respectful and accommodating of their difference”⁸.

³ United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, viewed 3 February 2009, p. 4, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

⁴ United Nations Enable n.d., *Convention on the rights of persons with disabilities*, viewed 23 April 2009, p. 1, <<http://www.un.org/disabilities/default.asp?navid=12&pid=150>>.

⁵ United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, viewed 3 February 2009, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

⁶ United Nations Enable n.d., *Backgrounder: Disability treaty closes a gap in protecting human rights*, viewed 3 February 2009, p. 1, <<http://www.un.org/disabilities/default.asp?id=476>>.

⁷ Brereton, R 2009 (former NZ Human Rights Commissioner), ‘Briefing notes to Julia Farr Association about Submission to the National Human Rights Consultation’, 11 June, JFA internal document.

⁸ Office of the United Nations High Commissioner for Human Rights n.d., *Introduction*, viewed 4 March 2009, p. 1, <<http://www2.ohchr.org/english/issues/disability/intro.htm>>.

The UN Disability Convention also ensures that the countries that have ratified the agreement such as Australia are obliged to undertake the development and implementation of legislation, policies and services that secure the rights identified in the convention⁵. Therefore it is the responsibility of the Australia Government to facilitate changes in these areas.

4.0 ARE THESE HUMAN RIGHTS CURRENTLY SUFFICIENTLY PROTECTED AND PROMOTED?

It is acknowledged that legislation and systems currently exist in Australia that are intended to offer protection of the human rights of people living with disability; however, such protection is limited. The Commonwealth Disability Discrimination Act (DDA) 1992 protects people living with disability from being discriminated against on the basis of their disability in areas such as employment, education and access to public places and facilities. However, the protection of these “rights are limited by exemptions through the Act that only apply to disabled people” leaving them open to interpretation by service providers⁹. The DDA also does not cover other rights that fall outside the area of anti-discrimination such as, the right of people living with disability to have their needs met. Currently there is no promotion or protection of this right and no legislation that provides “people with disability an enforceable right to receive the support, assistance and other services they need”¹⁰. In addition to this there is no requirement that the rights of people living with disability be taken into account when introducing laws and policies in domains that have direct impact on their lives such as, housing, health and employment¹¹.

From consultation with the disability community in South Australia¹² it can be said that the current levels of protection and promotion of human rights in Australia are not protecting people with disability from situations where their human rights are being violated due to the barriers they face in their day-to-day lives. Below is a summary of some of the experiences people have had which demonstrate their rights not being met.

4.1 Right to have equal access

- *The lack of access to primary healthcare*
 - *Access to the local GP is not easy due to factors such as narrow entry to the facility, steps, ramps that are too steep, heavy entry door which*

⁹ Brereton, R 2009 (former NZ Human Rights Commissioner), ‘Briefing notes to Julia Farr Association about Submission to the National Human Rights Consultation’, 11 June, p. 2, JFA internal document.

¹⁰ Australian Human Rights Commission 2009, *Human rights and people with disability*, viewed 23 April 2009, p. 2, <http://www.humanrights.gov.au/letstalkaboutrights/downloads/HRA_disability.pdf>.

¹¹ Ibid.

¹² JFA qualitative research with people across the South Australia disability community has included feedback from over 400 people who attended our *Loop* Conference in 2007 and 2008, input from the *tell us* survey, where over 780 people provided information about their experiences living with disability, and feedback from surveys conducted about people’s experiences using access cabs and accessing services from their local GP.

is difficult to open, toilet facilities being too small for people using a wheelchair and not being able to get onto the examination table¹².

The inability of people living with disability to physically access their local GP is a breach of their human rights as identified in the UN Disability Convention which highlights that people living with disability should have equal access to services and facilities in the community as others⁵.

- *The lack of accessible public transport*
 - *52.5% of people experienced delays in the time they were picked up by accessible taxis, with a high majority (67%) having to wait from between 30 minutes and two hours to be picked up¹³. In some cases people reported waiting up to three hours for their taxi to arrive, and with taxis not arriving on occasions¹⁴.*
 - *Having to book accessible taxis in advance with no guarantee of being picked up on time¹².*
 - *Not having enough wheelchair accessible buses available resulting in reduced opportunities to travel and actively participate in the community¹².*
 - *Being required to travel with a companion on airplanes, resulting in costs being doubled and reduced independence¹⁵.*

These experiences using public transport highlight the extent that people living with disability are being discriminated against and disadvantaged by a transport system that is not being responsive to their individual needs¹⁵.

In a society where the general public are not confined by such circumstances, due to having the freedom and flexibility to choose from the full range of public transport available, it can be argued that people living with a disability are experiencing a form of social apartheid by being excluded from using public transport due to inaccessibility. Such diminished choice is contrary to the United Nations Convention on the Rights of Persons with Disabilities, ratified by Australia in 2008, and should therefore be specifically addressed to eliminate the discrimination.

¹³ Julia Farr Association 2009. 'Access cab experiences in South Australia – Draft preliminary report', Julia Farr Association, Unley, South Australia.

¹⁴ Julia Farr Association 2008, 'tell us survey – Draft preliminary report', Julia Farr Association, Unley, South Australia.

¹⁵ Julia Farr Association 2009, 'Submission made by Julia Farr Association. Investment in public passenger transport infrastructure and services', <www.juliafarr.org.au>.

4.2 Right to live independently and be included in the community

- *Over 20% (Survey A)¹⁶ and 43% (Survey B) of Tell Us Survey respondents stated they did not choose where they lived¹⁴.*

The right of people living with disability to have choice and control about where they live is reinforced by the UN Disability Convention under article 19, where it states that people living with disability are to “have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement”¹⁷.

Not being afforded the right to choose where to live in the community can create a situation where people living with disability are not able to maintain and develop the natural links they have with their family, friends and the wider community¹⁸.

4.3 Right to participate fully in all aspects of life

- *People reported that “they don’t speak up because of a fear they will be punished in some way”¹⁹.*

The existence of a disability support system that does not provide supportive mechanisms for people to speak up without fear of retribution is a breach of people’s right “to seek, receive and impart information and ideas on an equal basis with others...”²⁰ as identified in article 21 of the UN Disability Convention.

- *Over 24% (Survey A) and 45% (Survey B) of Tell Us Survey respondents stated they did not choose who provided them with personal support¹⁴.*
- *Of the Tell Us Survey respondents who received support, only 43.44% (Survey A) and 42.42% (Survey B) respondents stated that they had the opportunity to say what they wanted before receiving support¹⁴.*

When support is required there is the expectation that this help is provided resulting in our needs being met²¹. As demonstrated by the research

¹⁶ NOTE: The tell us survey comprised of Survey A (completed by people living with disability) and Survey B (completed by a family member or carer on behalf of a person living with disability).

¹⁷ United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, viewed 3 February 2009, p. 13, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

¹⁸ Fidock, A & Williams, R 2008, *Tell us survey report. Disability funding – where should it go?*, Julia Farr Association, Unley, South Australia.

¹⁹ Williams, R 2008, *Why is it so hard to speak up and be heard? Views from the Loop conference 2007*, Julia Farr Association, Unley, South Australia, p. 7.

²⁰ United Nations n.d., *Convention on the rights of persons with disabilities and optional protocol*, viewed 3 February 2009, p. 14, <<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

²¹ Fidock, A & Williams 2009, *Tell us survey report 2. Having choice and control (yet to be published)*, Julia Farr Association, Unley, South Australia.

findings highlighted above, this is not occurring. The importance of people living with disability receiving the supports they require is supported by article 19 of the UN Disability Convention which states that people living with disability should have equal access to community services and facilities that are responsive to their individual needs⁵.

From the examples we have given above, we believe it is reasonable to conclude that the human rights of people living with disability, as identified by the UN Disability Convention and ratified by the Australian Government, are not sufficiently protected and promoted.

5.0 HOW COULD AUSTRALIA BETTER PROTECT AND PROMOTE HUMAN RIGHTS?

As the above experiences and accounts highlight, more is required to ensure the full protection and promotion of the human rights of people living with disability. The current laws and systems in place only provide people living with disability with limited protection of their human rights. More comprehensive coverage is urgently needed. Accordingly, we make the following three recommendations for how Australia could better protect and promote human rights for people living with disability.

5.1 Recommendations

R1 Introduction of a National Human Rights Act

Australia is “the only democracy in the world that does not, at a national level, have specific legislated protections of our human rights”²². The introduction of a legally binding national Human Rights Act would not only bring Australia into line with other countries, but it would ensure that an overarching piece of legislation exists to guide the promotion and protection of all our human rights. Importantly the introduction of this legislation is a priority as it will further “strengthen present anti discrimination legislation and the potential impact of international human rights covenants and conventions”²³.

The rights and responsibilities identified in the UN Disability Convention need to be included in a Human Rights Act to provide the protection and promotion of the human rights of people living with disability that are not currently or adequately covered constitutionally, legislatively or through

²² Szoke, Dr H 2009, *Recognizing resilience and rights*. Values and Public Policy. Fairness, Diversity and Social Change. Centre for Public Policy Conference, 26 February 2009. viewed 23 April 2009, p. 1, < <http://www.humanrightscommission.vic.gov.au/pdf/090226.doc>>.

²³ Brereton, R 2009 (former NZ Human Rights Commissioner), ‘Briefing notes to Julia Farr Association about Submission to the National Human Rights Consultation’, 11 June, p. 4, JFA internal document.

common law. This focus would also enable Australia to demonstrate how it is meeting its obligations highlighted in this convention.

In order for a Human Rights Act to create change and offer greater protection to people living with disability nationwide, it needs to:

- Provide “guidelines for the development of a National Human Rights Action Plan for the promotion and protection of human rights”²⁴. A National Human Rights Action Plan would provide strategies, measures and review mechanisms for ensuring that the rights of all citizens are integrated into public policy and service provision;
- Ensure that parliament, through transparent processes, considers the rights of people living with disability and demonstrates how these rights will be protected when introducing legislation. This also includes the need to ensure that all current legislation is reviewed on the basis of how the human rights of people living with disability are protected and promoted;
- Ensure that public authorities and services respect the rights of people living with disability when making decisions and providing services. For example, the Victorian Charter of Human Rights “impose on public authorities a positive duty to comply with the rights contained in the Charter – and to do so in every facet of the work of government”²⁵;
- Ensure people living with disability are actively consulted and involved in the development and implementation of any legislation and policies that impact on their lives;
- Ensure people living with disability are provided with accessible remedies to exercise their rights, such as:
 - Increasing the capacity of the Human Rights Commission to assist in resolving human rights complaints beyond its current role of responding to complaints that fall under existing federal legislation;
 - Providing sufficient advocacy support and services to empower people living with disability to use these remedies²⁶.

These inclusions to a national Human Rights Act would provide people living with disability with greater supports and recourse to exercise their rights and

²⁴ Ibid, p. 4.

²⁵ Szoke, Dr H 2009, *Recognizing resilience and rights*. Values and Public Policy. Fairness, Diversity and Social Change. Centre for Public Policy Conference, 26 February 2009. viewed 23 April 2009, p. 1, <<http://www.humanrightscommission.vic.gov.au/pdf/090226.doc>>.

²⁶ Lynch, P & Knowles, P 2009, *The national human rights consultation. Engaging in the debate*, viewed 23 April 2009, <http://www.hrlrc.org.au/files/HJMZRQ63E9/HRLRC_The_National_Human_Rights_Consultation_Engaging_in_the_Debate.pdf>.

have a say about how they want to live their lives. They would also provide the platform for establishing consistency across all levels of government and public provision through highlighting how to promote human rights when implementing acts, policies and services to people living with disability and the wider community.

Evidence from the UK suggests that since the introduction of their Human Rights Act in 1988 people living with disability have been afforded with greater power to exercise their rights and resolve issues at the grass roots level resulting in positive outcomes²⁷. Experiences in New Zealand also highlight that since the introduction of their Human Rights Amendment Act 2001 and its disputes resolution process, which incorporates the anti-discrimination standards of their 1990 Bill of Rights Act, people living with disability “have been able to challenge a number of systemic government policies”²⁸.

It has also been found that the UK Human Rights Act has improved the accountability of the UK government through ensuring that government policies and practice comply with human rights⁷. This Act has also “led to a shift away from inflexible or blanket policies towards those which are capable of adjustment to recognise the circumstances and characteristics of individuals”²⁹.

The Julia Farr Association believes that the introduction of a national Human Rights Act, which is crafted in a way that genuinely changes the behaviour and attitudes that authorities and the wider community have towards protecting and promoting human rights, and includes the specific suggestions highlighted in this submission, should take precedence over changes to existing legislation. A national overarching Human Rights Act will:

- Ensure that the rights of people living with disability are more fully protected and promoted, which currently does not occur with existing legislation;
- Ensure that accountability measures are in place to strengthen existing legislation such as the Commonwealth Disability Discrimination Act 1992.

²⁷ British Institute of Human Rights 2008, *The human rights act – Changing lives*, Second Edition, viewed 24 April 2009, <http://www.bihhr.org.uk/sites/default/files/BIHR%20Changing%20Lives%20FINAL_0.pdf>.

²⁸ Brereton, R 2009 (former NZ Human Rights Commissioner), ‘Briefing notes to Julia Farr Association about Submission to the National Human Rights Consultation’, 11 June, p. 5, JFA internal document.

²⁹ Department for Constitutional Affairs 2006, *Review of the implementation of the human rights act*, viewed 13 May 2009, p. 4, <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf>.

R2 Public awareness and education

In making the following recommendation about public awareness, we must emphasise that such a recommendation is supplementary to the main recommendation regarding legislation. To only opt for an awareness program, without corresponding legislation, will not significantly change the issues for people living with disability.

The current “lack of public awareness and understanding is a primary barrier to the protection of disabled people’s human rights and to their effective participation in all aspects of society”³⁰. Therefore there needs to be a strong focus on raising awareness within the community about how a national Human Rights Act can affect change and the importance of people living with disability having their human rights respected. This can occur through:

- Running a national public awareness and education campaign about human rights and a national Human Rights Act “which demonstrates that human rights do not necessarily require direct recourse to the law and that human rights are relevant and beneficial to a wide range of people, situations and circumstances”³¹;
- Providing education programs targeting people living with disability and others in the community who are marginalised to increase their awareness of their rights and empower them to exercise these rights;
- Providing direct training to public authorities and public services to ensure that they recognise and respect human rights when making decisions and take into account the individual needs of people living with disability and others considered vulnerable in society^{27 32}. In order for such training to be successful people living with disability need to lead the training as this can have “a powerful effect on attitudes that is long-lasting”³³.

³⁰ Brereton, R 2009 (former NZ Human Rights Commissioner), ‘Briefing notes to Julia Farr Association about Submission to the National Human Rights Consultation’, 11 June, p. 5, JFA internal document.

³¹ British Institute of Human Rights 2008, *The human rights act – Changing lives*, Second Edition, viewed 24 April 2009, p. 26, <http://www.bihhr.org.uk/sites/default/files/BIHR%20Changing%20Lives%20FINAL_0.pdf>.

³² Ryan, S 2009, *Law to bring level playing field. A human rights act would be an important step towards a fair go for all Australians*, article written on 19 January in the Sydney Morning Herald, viewed 4 March 2009, <<http://www.smh.com.au>>.

³³ Disability Rights Commission n.d., *Promoting a culture of equality and human rights. Creating an alternative future. Recommendations for action*, viewed 14 May 2009, p. 1, <http://drc.uat.rroom.net/DisabilityDebate/recommendations/promoting_a_culture_of_equa/recommendations_for_action.aspx>.

R3 The provision of adequate funding and resources from government

To promote a change in culture in Australia that recognises and respects the human rights of all its citizens, sufficient resources and funding are required to implement a national Human Rights Act and provide public education and training about human rights.

Adequate resources and support mechanisms also need to be made available to assist people living with disability to exercise their rights and be in control of how they want to live their lives.

6.0 Conclusion

JFA asserts that the above recommendations – covering new human rights legislation, together with associated awareness-raising and resourcing – be considered as part of the Australian Government’s Human Rights National Consultation, as their implementation will provide people living with disability with increased opportunities to exercise their rights, have fuller control over their lives, and achieve greater participation as valued members of society. Accordingly, such implementation will also help remove the totally unacceptable discrimination and marginalisation currently experienced by many people living with disability; it is a matter of right that this needs to change.

Thank you for the opportunity to make this submission. We also welcome the opportunity to have further input to this consultation process, and can meet with you at your earliest convenience. Our independence, our information resources, and our ongoing dialogue with the disability community, mean we can assist you to create legislative and policy changes that are respectful and responsive to the human rights of people living with disability.

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