RIGHTS OF PEOPLE WITH DISABILITY

What are rights of people with disability?

The Convention on the Rights of Persons with Disabilities (CRPD) recognises the barriers that people with a disability may face in realising their rights. The rights under all human rights treaties apply to everyone, including people with disability. However, the CRPD applies human rights specifically to the context of people with disability.

Where do the rights of people with disability come from?

Australia is a party to seven core international human rights treaties. The rights of people with disability are contained in the Convention on the Rights of Persons with Disabilities (CRPD). Some of the more significant rights that are particular to people with disability are extracted in the section ‘Articles from relevant Conventions’ and are discussed below. These include articles 4(3), 5, 9(1), 19, 26(1) and 33.

See also article 23 of the Convention on the Rights of the Child (CRC).

When do I need to consider the rights of people with disability?

You will need to consider the particular rights accorded to people with disability when you are working on legislation, a policy or a program that:

- relates to access to:
  - buildings, roads, transport and public facilities like schools, housing, hospitals, clinics and workplaces
  - information, communications and other services, including electronic services like the Internet and emergency services
  - public services such as education and healthcare, public institutions such as the justice system and courts and other public activities such as voting and advocacy
  - employment
  - an adequate standard of living, including adequate food, clothing and housing
  - in-home, residential and other community support services, or
  - mobility aids, assistive devices and technologies designed for people with disabilities.

- sets standards and guidelines for access to facilities and services to ensure that private businesses that provide facilities or services to the public take into account access for people with disability, or

- relates to capacity to make decisions or legal rights and recognition before the law.
This list should not be regarded as exhaustive.

**What is the scope of the rights people with disability?**

*Definition of disability*

The CRPD does not contain a comprehensive definition of disability, but provides that:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The *Disability Discrimination Act 1992* defines ‘disability’ as:

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

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

*Full realisation of all human rights and fundamental freedoms*

The CRPD requires countries to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of their disability. In particular, countries are required to:
• adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention
• take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disability
• take into account the protection and promotion of the human rights of persons with disability in all policies and programs
• refrain from engaging in any act or practice that is inconsistent with the Convention and to ensure that public authorities and institutions act in conformity with the Convention, and
• take appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise.

Reasonable accommodation

There is a general obligation in the CRPD to provide ‘reasonable accommodation’ to ensure people with disability can enjoy their rights on an equal basis with others. ‘Reasonable accommodation’ means providing necessary and appropriate modifications and adjustments, which do not impose a disproportionate or undue burden, where needed in a particular case.

Consultation and involvement

There is also an obligation to closely consult with and actively involve people with disability in the development and implementation of legislation and policies to implement the CRPD and in other decision-making processes concerning issues relating to people with disability.

Live independently and take part in all aspects of life

Article 9 of the CRPD requires that people with disability have the right to live independently and take part in all aspects of life. To achieve this, countries must take appropriate steps to give people with disability access, in the same way others have access, to things, places, transport, information and services that are open to the public. This requires that countries take appropriate measures to remove any obstacles and barriers that people with disability face in having access to these things. Countries should ensure that people with disability have equal access to buildings, roads, transport and public facilities like schools, housing, hospitals, clinics and workplaces, and also ensure that people with disability have equal access to information, communications and other services, including electronic services like the Internet and emergency services, public services such as education and healthcare, public institutions such as the justice system and courts and other public activities such as voting and advocacy. Countries are also to take appropriate steps to set standards and guidelines for access to facilities and services that are open to the public, to make sure that private businesses that provide facilities or services to the public take into account access for people with disability, and to provide training for people involved with access for people with disability.
Equal protection and equal benefit of the law

Article 5 of the CRPD reaffirms that people with disability are entitled to the equal protection and equal benefit of the law. Similarly, article 12 commits countries to ensuring that people with disability can exercise legal capacity in all aspects of their life and receive appropriate support to do this if required.

Live, take part and be included in the community

To ensure that people with disability have the same right as others to live, take part and be included in the community, article 19 of the CRPD requires countries to take appropriate steps to ensure that people with disability have the opportunity to choose where they live and who they live with, have access to in-home, residential and other community support services to help them be included in the community and prevent them from being isolated, and to ensure that they have equal access to community services and facilities that are available to the public.

Habilitation and rehabilitation

Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services. Countries are also to encourage ongoing training for staff working in habilitation (meaning the process of helping people with disability develop skills and fully take part in the community) and rehabilitation services and the use of assistive devices and technologies designed for people with disability in the context of habilitation and rehabilitation.

National Disability Strategy

Article 33 requires countries to establish and designate a framework to promote, protect and monitor implementation of the CRPD. The National Disability Strategy is the mechanism to ensure that the principles underpinning the Convention are incorporated into policies and programs affecting people with disability, their families and carers.

Women and children with disability

The CRPD requires countries to recognise the particular situation of women and children with disability. Countries are to take measures to ensure the full and equal enjoyment by women them of all rights and freedoms and to ensure the full development, advancement and empowerment of women. Countries are required to ensure that, in all actions concerning children with disability, the best interests of the child are a primary consideration, and to ensure that children with disability have the right to express their views freely on all matters affecting them, and to give their views due weight in accordance with their age and maturity.

Interpretive declaration

Australia has made an interpretive declaration in relation to its obligations under the CRPD, in the following terms:
Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia’s health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples contains provisions relevant to the rights of Indigenous people with disability. The Declaration does not create legally binding obligations, but informs the way governments engage with and protect the rights of Indigenous people.

Can the rights of people with disability be limited?

Derogation

Unlike the International Covenant on Civil and Political Rights (ICCPR), there is no provision in the CRPD under which countries may derogate from their obligations in time of public emergency.

Appropriate measures

Some of the obligations in the CRPD require countries to take ‘appropriate’ measures, suggesting a degree of discretion in implementing the obligation. However, references to appropriate measures should not be understood as allowing limitations to the obligations. Rather, they allow countries the discretion to decide what form the measures should take. For instance, appropriate measures might involve the implementation of the obligation in legislation, but a measure falling short of legislation might be an appropriate measure, provided that the alternative measure faithfully implements the obligation.

As stated above, the obligation to provide ‘reasonable accommodation’ to allow people with disability to enjoy their rights on an equal basis with others does not extend to measures that impose disproportionate or undue burden.

Progressive realisation

In relation to economic, social and cultural rights, the CRPD provides in article 4(2) that ‘each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realisation of (economic, social and cultural) rights.’

This formulation is drawn from that in the International Covenant on Economic Social and Cultural Rights (ICESCR), and allows countries to take into account available resources in determining how an obligation is to be implemented. Similarly, the reference to progressive realisation (also drawn from
ICESCR) recognises the economic consequences for countries in implementing economic, social and cultural rights, and that these consequences will differ from country to country.

**Which domestic laws relate to the rights of people with disability?**

The Disability Discrimination Act is intended to eliminate, as far as possible, discrimination against people on the grounds of disability in a number of areas, including work, accommodation, education, access to premises and the provision of goods, facilities, services, the disposal of land, and the administration of Commonwealth laws and programs. The Act is also intended to ensure, as far as practicable, that people with disability have the same rights to equality before the law as the rest of the community.

Under the Disability Discrimination Act, the Attorney-General may make Disability Standards to specify rights and responsibilities about equal access and opportunity for people with disability, in more detail and with more certainty than the Act itself provides. The standards give more information about what needs to be done to ensure people with disability are not discriminated against. Standards may be made in relation to matters such as work, accommodation, education, access to premises and the provision of goods and services. Standards have been made under the Act in relation to:

- access to premises, which provide minimum national standards for accessibility requirements to ensure dignified access to, and use of, buildings for people with disability
- transport, which establish minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises, and
- education, which set out the right to comparable access, services and facilities, and the right to participate in education and training without discrimination for students with disabilities.

There is also legislation in each State and Territory which prohibits discrimination on the basis of disability.

The *Disability Services Act 1986* is intended to assist people with disability to receive services necessary to enable them to work towards full participation as members of the community, to promote services provided to people with disability that assist them to integrate in the community and to assist people with disability to achieve positive outcomes, such as increased independence and employment opportunities.

**What other rights and freedoms relate to the rights of people with disability?**

Many of the provisions in the CRPD are drawn from other human rights instruments, notably civil and political rights from the ICCPR and economic, social and cultural rights from ICESCR. The content of these rights in those instruments would be relevant in interpreting their content under CRPD.
Articles from relevant Conventions

**Convention on the Rights of Persons with Disabilities**

Article 4(3)

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

Article 5

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 9(1)

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

Article 19

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

Article 26 (1)

States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.
### Article 33

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

See also: CRC article 23

**Where can I read more about the rights of persons with disabilities?**

- United Nations, Office of the High Commissioner for Human Rights, Human Rights Bodies (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- UN Committee on the Rights of Persons with Disabilities
- Attorney-General’s Department - Convention on the Rights of Persons with Disabilities
- Australia’s initial report under the Convention on the Rights of Persons with Disabilities
- Department of Families, Housing, Community Services and Indigenous Affairs – People with a Disability
- Australian Government National Disability Strategy
- Department of Infrastructure and Transport: Transport for People with Disabilities
- Government website accessibility requirements (WCAG 2.0)
- Australian Human Rights Commission – Disability rights
- Disability Discrimination Act 1992
- Disability Services Act 1986

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