

**QUEENSLAND ADVOCACY INC**

**QAI FUND LUNCHEON, BRISBANE, 19 JUNE 2007**

**DISABILITY LAW – THINKING GLOBALLY, ACTING LOCALLY**

**The Hon Justice Michael Kirby AC CMG**

Your Excellency, Mr Attorney, my judicial colleagues, and dear friends. I have a bit of a disability myself in that I am a bit deaf. I therefore want to speak up loud and clear because this is an occasion for clear speaking and loud speaking. I want to tell you about the power of one. The power of a few people to change the world.

**THINKING GLOBALLY**

In 1975 the international community agreed on a declaration on the rights of the disabled. That was all very well. It was of some use because it contained some general statements but they were non-binding. However, it really went nowhere. Then in 1981 the International Year of Disabled Persons took place. In the following year the Ambassador to United Nations for Italy moved in the General Assembly for the commencement of the preparation of a universal Convention on Disabled Person's Rights. This proposal didn't take off. There was no real enthusiasm for it at the time. Yet the Ambassador for Italy didn't give up. He was one of those people who had a bee in his bonnet. He was determined to do something about it. So he kept at it. But nothing really happened. He moved the motion again and nothing occurred. Then

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subsequently the Ambassador for Sweden took up the suggestion. He sought to get the General Assembly interested in an International Convention, but that also led nowhere. Then, finally, the Ambassador for Mexico took up the challenge in the year 2000. He was encouraged to do that because of his profound disappointment that the millennial goals that were agreed to by the United Nations in the year 2000 didn't include any specific provisions to deal with the rights of disabled persons.

The motions were presented to the General Assembly. The Ambassador for Mexico was not a person to give up the endeavour. The net result of this is was the establishment of an ad hoc Committee for the purpose of drafting an International Convention on the Rights of Disabled Persons.

At first the Government of Australia was not very enthusiastic for this convention. In fact, it considered that it wasn't really necessary; that all the human rights and principles were already there in the international instruments, the International Covenant on Civil and Political Rights, the International Covenant on Social and Economic Rights, the Convention on the Child and so on. The Australian Government's position was that this was another international instrument. We don't really need it. That view didn't succeed in the international community. Instead it came to the view that it was time to prepare an international instrument on of the rights of the disabled. Even if it was complementing the rights already in existence, it would provide a focus for those countries which had neglected this issue. It would be a stimulus to new, global action.

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So the ad hoc Committee was established. It began its project of work to develop such a convention. The convention took quite a long time to prepare. The ad hoc Committee was formed in 2001. It didn't reach its final meetings until 2006. Meantime, the Australian Government came to the view that, if we were to have a convention, we should simply be having a discussion in the ad hoc Committee of whether, on balance, we really needed a convention at all. That, notwithstanding, was defeated within the Committee. The Committee said, "There is a clear message from the United Nation's General Assembly. We do need the convention. We should proceed to prepare the convention and prepare a draft of it." And prepare it they did.

The Australian Government's position then changed for a third time to a proposal that what was needed was not a separate convention with all the provisions in it, but an optional protocol which would permit people to focus the treaty bodies that were already established under the other international instruments, upon particular aspects of those other instruments relevant to disability.

That proposal didn't succeed either. Therefore, in the end, the ad hoc Committee worked towards the preparation of the Convention. I am glad to say that having gone through all these hoops, the Australian Government's support for the preparation of the Convention changed. Australia was one of the 80 countries which on the day that the Convention was opened for signature, signed the Convention. Signing the Convention, of course, doesn't mean you ratify it. Yet it's the first step towards the process of a commitment to acceptance of the provisions in the new

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international instrument.

So far, in its early days, only one country has actually ratified this new Convention. That is Jamaica. Under the terms of the Convention it requires 20 nations to ratify it for it to come into force. As well as the Convention, the United Nations' General Assembly accepted the need for an optional protocol to give a facility of individual complaint to persons who could make a complaint, if their country was a party to the Convention and it was not living up to its word. There is such a protocol, as you probably know, in connection with International Covenant on Civil and Political Rights. That optional protocol has been a useful provision to permit people to take Australia and other nations to the Human Rights Committee of the United Nations for the purpose of saying "You are not living up to your obligations". It has resulted in some important Committee decisions. Sometimes they have stimulated changes to Australia's laws and practices.

We therefore now have these two international instruments. Of course, they are not yet in force. They haven't yet been ratified with sufficient number to become part of international law. However, I would suggest to you that the fact that on the very first day 80 countries signed as a preliminary step the Convention on disabled persons rights, that that is an indication that there's quite a big head of steam behind endorsement of the principles of this international statement of basic principles. A new international era has begun.

The expectation in most important quarters is that by the end of

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2007 the probability will be that there will be sufficient ratifications to bring this convention into force. Time will tell.

I open with this survey because it's very important in our country, and indeed in the world, for us to think of the issue that has brought us together today as an issue that is relevant to our entire species. It is something that is relevant to human-beings and human dignity everywhere. It is relevant to an effective response on the part of the whole world to the issues of disability. In the end, Australia will probably muddle its way to correct responses to the issues that bring us together through its democratic process. But that isn't true of most countries of the world. It isn't always true in the short-term for our country. Therefore, these international instruments help us to think globally and to act locally. And that is the way ahead.

It's very interesting to study the report of the Office of the High Commissioner for Human Rights about the preparation of this Convention. The Office of the High Commissioner for Human Rights makes the point that this Convention is the real break-through. Most important human rights instrument that have been adopted in the 20th century were prepared by government experts acting together. This is an instrument which has been prepared with a tremendous input, quite uniquely so, of the communities and NGO's that are concerned about disability. It wasn't simply the representatives of the Nation States, with their governmental officers trying to come up with something which would be acceptable to them. It was the Nation States and their officers with delegations (including the Australian delegation) which included representatives who

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could speak for, and with knowledge of the communities involved. Those communities sitting around the table with the drafters profoundly influenced the shape and content of the Convention that eventually emerged.

I have been told by Graham Innes, much respected member of the Australian Human Rights and Equal Opportunity Commission, that one of the reasons for the quite amazing and rapid success in this international instrument was the excellent official who took over the chairmanship of the ad hoc Committee, Mr Mackay, the Ambassador for New Zealand to the United Nations. He became an excellent chair who pulled all the groups together. He tamed their enthusiasm. He caught their energy. In an amazingly short time the Committee prepared both the draft Convention and the draft optional protocol.

The important point to be made, if you look at the Convention, is that it is a break away from the past idea that the issue of disability is a matter to be addressed in terms of pity or of charity. Instead, it asserts that issues of disability are to be dealt with from the point of view of rights and the demand for rights and the assertion of the need for protection and for fulfilment in the enjoyment of fundamental human rights of all human beings affected by disability.

The United Nations' material is very adamant in stressing that actually no new rights have been accorded by the Convention. The convention has been designed to pull the previously existing rights into a framework which will be give focus to policy implementation in the international community. We are therefore very fortunate to be at this

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moment. It's very important for you and for me to look at the issues that are of concern to us in Australia and in Queensland. But we shall now do so in the context of the fact that this Convention is something which is on the table of the whole international community. This is largely so because of the energy, dynamism and insistence of civil society organisations which stand up for people with rights. They had learnt from Winton Churchill's motto: never give up!

### ACTING LOCALLY

We can all recall that this was the way progress has been made in our country in terms of our ultimate removal of the blot of the White Australian principle. It's the way in which change was achieved, and is still being achieved, on behalf of the Aboriginal people. It certainly was the way the change was achieved for women, for women's rights. It's the way that change is being achieved, albeit rather slowly in injustice and discrimination in respect of sexuality. Change is achieved because people get fed up and stand up and say, "We are not asking for charity or pity. We are insisting on our equal rights, as human-beings and as citizens."

I was given a copy of the Disabled Justice Report which has been prepared. I must congratulate those who prepared it. Some of them are here today. It is a most comprehensive document. I was really impressed with the detail. It's a document of intense detail, not just of platitudinous generalities.

Perhaps one thing that needs to be considered is the issue of

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priorities. There are a large number of suggestions and recommendations in the report that propose the establishment of particular offices and office holders. We know that, in the current age, the creation of new qangos and new organisations with their staff and bureaucracy is sometimes regarded as a bridge too far for hard-strapped Governments and Parliaments.

On the other hand, there's a great wealth of material in the document which speaks to particular communities. It is material that speaks to me as a Judge. Material that speaks to Police. Material that speaks to officials. I think one of the strengths of the report is that it has a very good foundation in statistical information, as the Honourable Geoffrey Davies said at the beginning. It is a report with a lot of rather shocking statistics. It's not just left to generalities. There's the detail of the disproportions and imbalances that exist in our communities, both in Queensland and in the rest of Australia.

Perhaps the most powerful section of the report is at the end. At the very back of the report where there are the stories of the persons with disability who are affected by injustices and by indifference and silence and loneliness within the legal system. Those stories are completely candid. Some tell the story of an offender and is still in prison without any real support except for an advocate who speaks for him.

There are stories of people who are victims of crime. As has been said, discrimination falls very heavily upon the disabled community. No one could read that part of the report without being affected. I defy anyone to read these stories and to remain complacent.

That brings me to my last thought and it's this: How did we change the policies and laws of our country? How did we begin the process of changing them in respect of other groups earlier? If we can study that and learn from that, we can perhaps learn lessons that will be useful in the field of disability.

When I was at primary school, I attending the North Strathfield Public School on Concord Road in Sydney. It is still there. I often go back there. I sit in my little classroom and think of Miss Pontifex and Mr Casimir and all those wonderful teachers at that stage of my life. At that school there was no one I knew who was specifically disabled. It was just after the Second World War. There were some students who came from the local Home. It was called "The Home". Basically it was an orphanage. They came to school and many of them had no shoes. This is 1946 I am talking about. For them, the free departmental bottle of milk, left in the sun with cream on the top, was the most important early meal of the day. This was real disadvantage. But also within the school was a very young Asian Australian boy. His name was Bobby Chong. In our class it was often a fight to the death between Bobby Chong and me - not physically, but intellectually.

I would go home at the end of the week and my mother would say, "How many crowns did you get on your forehead this week, Michael?" (When we did very well at school we got a crown on our forehead in those days.) I would say, "I did very well, mum." "Where did you come?" I would say, "Second." The question would be, "Who came first?" "Bobby

Chong." Bobby Chong later went to New Zealand. He graduated and he became a Professor of Bio-technology. We had a reunion the other day at the Chinese restaurant opposite the North Strathfield Public School. We got to talking about what was it like in 1946 to be a young Australian-Asian boy in a school of Anglo Celts. He began to cry and to tell me what it was like to be in that situation. This was something which, at the time, I was greatly indifferent to. I had no feelings of animosity to him because he was Bobby. He was my friend. But I didn't walk his journey. I didn't know his pain. I didn't realise what he was going through.

Now, how have we changed that in Australia? We have changed it by political leadership, by intellectual leadership, by church leadership, by NGO leadership and ultimately by legal change. Above all, we have changed it because we all began to know Asian Australians. We began to know them as human-beings. You can't hate people that you know. The same process has begun to occur in respect to Aboriginal Australians and, for some people, with respect to sexual minorities, homosexual people. Simply getting to know people. You can't hate them so readily. You can't disparage them. You can't dislike them. Because you have broken the barrier of a stereotype. You have got to know them as a friend and as a human-being. You come to realise that discrimination laws and policies are intolerable. They begin to offend you. You demand change.

There's a young man in this city, William Beanland. Some of you may know him. He comes to court every time the High Court is sitting. He knows every case that's before us. He follows each and every one of them on the internet. He rings me up in Sydney every Saturday morning at 8

o'clock in my chambers. He knows he can get me there. There's no way I can avoid him. He starts asking me about the cases. He suffers from cerebral palsy. He's as sharp as a tack. He comes to our sittings. I always see him and encourage his interest. He's been very well looked after by the Marist Brothers School in Brisbane. By his life, he is going to make a real difference. So I said to him yesterday when he came to me, "What's the most important thing to say at this lunch, William?" He said, "Well, you could talk about the funding and the need for more funding and the comparison of Queensland with other States where the funding is better in other States than Queensland." I said, "No, no, I can't say that in the presence of the Attorney-General. I mustn't even go there. That would be a very sensitive and very political sort of thing." He said, "All right, well, tell them that the most important thing is education. So that people understand the world from our viewpoint. That people can perceive the world from the way we see it, from the injustices that make us angry, the inequalities that make us distressed as citizens that things are not equal in the way that we are treated."

It seems to me that that is a message the United Nations, for the whole world, has endeavoured to secure on the new Conventions on the Rights of Disabled Persons. I do hope that our government, which welcomed the completion of the project and signed the instrument, will be foremost in endorsing the instrument by the processes that we follow in Australia. When the election is safely out of the way I hope that we will put our name and our commitment to this instrument, both for ourselves but more importantly for the whole world. I hope that in Queensland the wisdom of the report that has been prepared by Queensland Advocacy will

be taken up. I hope that there will be no absentees from the table because this is something that concerns us all. I hope that all of us as human-beings and as individuals and as citizens, (which is our important capacity, as Australian citizens), will be heedful to what William Beanland said. 'Try to see the world through our eyes.'

That's what I say to people about gays. Try to see the world and its injustices. It isn't easy. If you haven't walked in that path, you can't always see it. But it's important to try and share that perspective with other people, simply because of the human dignity and respect of each other, which is the essential feature of our human existence.

This is therefore a very exciting time in the area of disability. I confess to you, it's not an area that I have known a great deal about. I have been like the boys in the class with Bobby Chong. I have not seen. I have not understood. Yet now I have opened my eyes. I have seen the future. There are many things that can be done. I believe that the report that is being considered at this session will be a good pathway for the future. Try to think of some priorities and the practical way in which you can help governments with great pressures on them to deal with the issues in sequence. We should all think globally, act locally and never forget the human dimension. So that is why I have told you of the global convention. It is why I commend the practical report of Queensland Advocacy which should help us, without delay, to act locally in Queensland and also throughout Australia.

## CONCLUSION

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Before I sit down, may I congratulate Minter Ellison and the other legal firms and individuals who have sponsored and supported this the occasion and who have worked on the report?

All of them deserve our congratulations. They don't just do it for the people with disabilities. They do it for the quality of civilisation in Australia. For all of us – no exceptions. As a citizen, I am very grateful.

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