

NOTES ON THE UNCRPD 3 - Article 4 General Obligations of Parties to the Convention, and Article 5 Equality and Non-discrimination

Article 4 General Obligations of Parties to the Convention

Five obligations are outlined in Article 4. They are:

1. To ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability.
2. To take measures to the maximum of available resources to progressively realise these rights and freedoms. Note that some measures within the Convention are immediately applicable under international law.
3. In implementing the Convention, to consult with people with disability, including children, through their representative organisations.
4. To preserve any existing arrangements that give better protections and rights to people with disability, and not reduce anything because of the Convention.
5. The Convention is to apply to all parts of each state, without limitation or exception.

The bulk of the Article deals with the first of these obligations, the realisation of human rights and freedoms for people with disability. It requires Governments to take the following actions:

- Legislate to implement the rights of people with disability;
- Abolish existing laws and practices that discriminate;
- Extend protection and promotion of rights to all policies and programs;
- Not do things that are inconsistent with the Convention;
- Take measures to eliminate discrimination in non-government areas;
- Undertake research into universal design of goods, services, equipment and facilities and promote universal design principles in setting guidelines and standards;
- Undertake or promote research into the use of technology, at affordable cost, to improve the lives of people with disability.
- Provide accessible information to people with disability;
- Promote the training of staff and assistants in the rights outlined in the Convention.

Article 5 Equality and non-discrimination

Article 5 states that all persons are equal under the law, and are entitled to equal protection and equal benefit under the law.

Governments are therefore obliged to prohibit discrimination, and guarantee that persons with disability have effective legal protection against discrimination.

Governments are to take steps to ensure reasonable accommodation is provided, in order to promote equality and eliminate discrimination. “Reasonable accommodation” means making changes so that a person with disability can do something on an equal basis with others without disability, without putting an undue burden on, for example, an employer or a service provider. An example in Sydney is State Rail providing ramps and assistance in getting on and off suburban trains, in lieu of rebuilding every station to allow unassisted wheelchair access to trains.

The last part of Article 5 states that: “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”. This refers to what we know as “positive discrimination”.

For example, an employer may wish to promote the employment of people with disability and employ a qualified candidate with disability rather than an equally qualified candidate without disability. They may also create a position specifically for employees with disability. Neither of these actions would amount to discrimination under the Convention, so long as they are temporary policies to address existing inequality.

Note 4 will cover Articles 6 – 9.