SUBMISSION FROM THE
DISABILITY PROMOTION & ADVOCACY ASSOCIATION
5 JANUARY 2009

The Disability Promotion & Advocacy Association wishes to thank the Telecommunication Regulator for the opportunity to make this submission on the proposed *Telecommunications and Radiocommunications Regulation Act 2009 - An Act to establish a new regulatory framework for telecommunications, radiocommunications and for related purposes.*

Recognizing our lack of technical and legal expertise to provide specific comments on these aspects of the proposed Bill, we nevertheless wish to submit some general principles that we hope will assist you further in developing the draft Bill that will ensure that access for and by persons with disabilities are incorporated. In doing so, we wish to make our first recommendation as follows:

RECOMMENDATION NO. 1: That the word '*accessible*' be included in s41(c) to read: "… in a plain, simple and accessible format".

Generally speaking, almost all persons with disabilities in Vanuatu do not have access to internet and are in fact excluded from ICT use. While this state of affairs requires improvements in other areas such as access to education which will take time to overcome, we believe that in the initial phase of setting up this regulatory framework for internet governance, future consideration for the inclusion of persons with disability and their right to information and communication should be included in the proposed Bill.

Support for our submission and recommendations stems from the fact that the Parliament of Vanuatu has ratified the Convention on the Rights of Persons with Disabilities on 23 April 2008 plus Government's commitment to the Biwako Millennium Framework for Action towards the Asian and Pacific Decade of Persons with Disabilities 2003-2012 (BMF) endorsed in 2003 by the whole Forum countries. It is from these two documents and commitments that we wish to direct your attention to as follows.

Article 1 of the Convention on the Rights of Persons with Disabilities states Government's responsibilities to promote, protect and ensure all persons with disabilities full and equal enjoyment of all human rights which are hindered by various barriers. Such barriers include the inability to access internet and inaccessible formats as noted for inclusion in s18 as recommended above. Article 2 of the Convention therefore provides definitions to guide how we interpret the Convention. We therefore wish to direct your attention to the definition on accessible information and communication technology:

> "*Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including* ***accessible information and communication technology***."

Further, the other definitions worth bringing to your attention are as follows:

"**Language**" includes spoken and signed languages and other forms of non spoken languages;

"**Discrimination on the basis of disability**" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"**Reasonable accommodation**" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"**Universal design**" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

The general principles of the Convention we wish to convey to you are contained in Article 3 of the Convention as follows:

> *(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
> *(b) Non-discrimination;*
> *(c) Full and effective participation and inclusion in society;*
> *(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
> *(e) Equality of opportunity;*
> *(f) Accessibility;*
> *(g) Equality between men and women;*
> *(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

It is the obligation of the Government and its agencies under Article 4 of the Convention to ensure that there is no discrimination on the basis of disability. In

particular we direct your attention to two provisions under Article 4 where Government is obligated:

4 (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

4(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.

As the proposed Bill includes terminologies such as 'telecommunications facilities', we believe that s4 (f) of the Convention leaves no room for doubt the compatibility between the meaning of facilities in the Convention and in the proposed Bill. Thus, under the Biwako Millennium Framework, Priority No. 6, the right to information and communication should include, but not limited to access by a person with disability to:

i. Computer hardware / software and related accessory devices purchased and used by state agencies or purchased and owned by private agencies for public use;
ii. Public communication facilities;
iii. Broadcasting systems, including community radio, video content and digital television;
iv. Telecommunication system, including telephone service;
v. The internet, including web, multimedia content, internet telephony and software used to create web content;
vi. Other consumer electronic / communication devices, including mobile communication devices;
vii. Interactive transaction machines, including kiosk machines;
viii. Serviced provided through electronic information systems;
ix. Instructional materials, including textbooks, teacher's edition and electronic learning environments;
x. Spoken language through sigh language interpretation an vice versa;
xi. Any print materials, through all means, such as computer screen readers, Braille, other augmentative and alternative methods, and
xii. Any future ICT intended for public use.

Article 9 of the Disability Convention specifically addressed Accessibility. The relevant provisions for our purpose here are contained under the follows subsections:

9 (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

9 (c) To provide training for stakeholders on accessibility issues facing persons with disabilities;

(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

9 (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

9 (g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

9 (h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

In addition, several subsections under Article 21 on *Freedom of expression and opinion, and access to information* in the Disability Convention obligates Government to:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities.

As this proposed Bill will be a first for Vanuatu, we are acutely aware that access to internet as well as services listed above by the majority of the population in Vanuatu let alone by persons with disabilities is very limited, we believe that this proposed Bill provides that opportunity for you to ensure that the interoperability of the products and services with assistive technologies for use by persons with disabilities as ‘end users’ must be a requirement of telecommunication providers and to be provided for in the proposed Bill.

To this effect, we understand that a number of international meetings to develop standards for accessible to ICT by and for persons with disabilities have been held, including the Tokyo Declaration on the Asia-Pacific Renaissance through ICT in the Twenty-first Century in 2000 and the World Summit on the Information Society in 2003 and 2005. We also understand that organizations such as the International Telecommunication Union, the International Organization for Standardization, the World Trade Organization, the World Wide Web Consortium, Motion Picture Engineering Group which are responsible for international ICT standards have incorporate accessibility standards for persons with disabilities in their international ICT standards. Therefore, we wish to submit that that these standards be used as guides by Vanuatu in developing legislative framework to ensure that persons with disabilities have access to telecommunication.

Therefore, we submit the following recommendation for your consideration:

RECOMMENDATION NO. 2: **That the draft Telecommunication Bill incorporate provisions of the Convention on the Rights of Persons with Disabilities and the Biwako Millennium Framework to ensure access to telecommunication by persons with disabilities.**

We fully support the inclusion under s 18 in Part 4 on Universal Access Policy where:

(1) The Minister shall develop, and the Council of Ministers shall approve, a policy for universal access to telecommunications services.

(2) The Minister shall consult with the Regulator, and may hold consultations with interested parties, when developing the UAP.

We wish to submit the following recommendation:

RECOMMENDATION NO. 3: **That the word '*may*' in s18 (2) be deleted**.

This recommendation is made in light of the fact that it may be contrary to the general principles under the Disability Convention, such as General Principles in Articles:

3 (*c*) re *Full and effective participation and inclusion in society*; 3 (*e*) re *Equality of opportunity* and 3 (*f*) re *Accessibility*;

And in particular, we direct you to Article 4(3) which states that:

> *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.*

We consider that the term '***may***' as weak and therefore does not obligate the Minister to actively engage with and consult with interested groups such as persons with disabilities or their representative organizations who are ultimately the 'end users' of a telecommunication service. We believe that by deleting this word will ensure that the Minister must consult with 'end users' such as persons with disabilities.

It is our believe that any action taken now to incorporate the few suggestions made in this submission is in line with Article 9(h) of the Disability Convention and will ensure that needs of persons with disabilities are also considered. We also believe that the incorporation of the recommendations made in this submission will clearly show Government's obligations under the Disability Convention.

Thank you.

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