

**Inquiry into the Disability Discrimination and Other  
Human Rights Amendment Bill 2008  
Australian Deafblind Council Submission**

Contact:

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## Introduction

The Australian Deafblind Council (ADBC) was set up following the National Deafblind Conference in Melbourne in 1993. It was established to meet the need for a national deafblindness network and representative council working with and for people who are deafblind and their support networks, including professional organizations.

ADBC seeks to improve conditions for people who are deafblind across Australia and encourage their self organization and self determination by:

- disseminating information
- providing a forum for collaboration and debate,
- co-operating with government bodies and organizations, and
- advocating for better lives for people who are deafblind

The *Future In Our Hands* Report (Prain, 2005), estimates that there are approximately 4,000 people who are deafblind in Australia, when deafblindness is defined as per ADBC's definition:

*Deafblindness is described as a unique and isolating sensory disability resulting from the combination of both a hearing and vision loss or impairment which significantly affects communication, socialization, mobility and daily living*

The Australian DeafBlind Council (ADBC) is supportive of the government's efforts to implement the recommendations from the 2004 Productivity Commission Report into the *Disability Discrimination Act 1992* (Cth) (DDA). For people who are deafblind the achievement of substantive equality in everyday life is of critical

importance and the DDA provides some options for ensuring that this occurs both on an individual and a systemic level.

In particular, ADBC is pleased that the government has decided to:

*Enshrine recognition of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) into law*

The UN CRPD is a critical step forward in promoting the basic human rights for all people with disabilities. To have local recognition in local law allows all Australians with disabilities to expect, and to seek, services and attitudes which meet their needs.

*Clarify that a predisposition to genetically acquired disability falls under the DDA.*

Genetically acquired deafblindness – through Usher's Syndrome – is one of the more common ways for people to become deafblind. People who have Usher's are born deaf or hearing impaired and lose their vision later in life. Usher's Syndrome can, and does, affect multiple siblings in a family, and can affect multiple generations. The changes to the DDA will help protect families affected by genetic illnesses such as Usher's from discrimination.

*Clarifying and broadening the definition of assistance animals*

People who are deafblind may require an assistance animal which combines, or goes beyond, the traditional roles of a guide dog or a hearing dog. For example, a person who needs guidance and assistance hearing sounds around the home may obtain a cross-trained guide dog, which will have different behaviours to a traditional

guide dog and may not be as readily recognised as a result.

Although ADBC encourages the right to request that an owner produces evidence of training and qualification for an assistance animal, we stress that any request which is made should be done through appropriate and accessible communication. Many people who are deafblind use highly specialised sign language, or communicate via speech and hearing with great difficulty. Under these circumstances, merely requesting the relevant information and asking follow up questions may pose an insurmountable barrier if done incorrectly.

### *Clarifying the definition of unjustifiable hardship and the burden of proof for unjustifiable hardship claims*

For people with disabilities in general, proving that the adjustments they require will not impose unjustifiable hardship is a difficult task. People who are deafblind can face especially high hurdles when it comes to gathering and processing information from the world around them.

Asking a person who is deafblind to carry the burden of proof for any part of a disability discrimination complaint is likely to place that person in a disadvantageous position, even with the assistance of an advocate, because of the need to communicate specific and complex information, sometimes in another language. Placing the burden of proof for unjustifiable hardship upon the respondent allows people with a range of disabilities greater freedom to make disability discrimination complaints.

### *Definition of Direct Discrimination*

Under the proposed changes, the definition of direct discrimination would include a comparator, meaning that

discrimination occurs only if a person without a disability placed in the same situation would not be disadvantaged. This clause makes direct discrimination cases difficult for a person who is deafblind to pursue because of the complexity of deafblindness. For example, a person who is deafblind may have an intellectual disability and no verbal communication methods. While it is very easy for such a person – or their associates and carers – to be discriminated against in terms of housing, education or provision of goods and services, it is very difficult to imagine a person without a disability reliant on the high level of care someone with such severe disabilities might require.

ADBC strongly recommends that the definition of direct discrimination rely only on a measure of disadvantage, not a comparison between people who are able bodied and those who are disabled.

### *Indirect Discrimination*

The draft legislation cites several changes to the definition of indirect discrimination. ADBC is pleased to see that the government is dropping the proportionality test in favour of something focused on disadvantage. We do, however, note that the criteria that a person with a disability should be unable or unlikely to comply with a requirement for it be indirect discrimination remains. This is problematic, because sometimes disadvantage occurs when a person can still comply.

For example, a person with deafblindness is disadvantaged if they are only able to attend a meeting with their bank manager when a family member interprets because the bank has no policy on paying for interpreters. The person who is deafblind is technically able to manage,

but at a cost to their privacy and their family member's time.

ADBC is particularly keen to see this requirement scrapped in the new definition of the DDA, and for the definition of indirect discrimination to focus more clearly on whether or not the person – or people with that disability – would be disadvantaged.

### *Other Concerns*

ADBC is concerned that people who are deafblind may be exposed to indirect, systemic discrimination on a regular basis. Anecdotal evidence supports this notion; people who are deafblind frequently have problems accessing public transport, employment and education because of a lack of awareness or appropriate resources. ADBC strongly recommends that the government give the Australian Human Rights Commission (AHRC) the ability to initiate complaints where systemic issues exist.