

**Inquiry into the Disability Discrimination and Other Human Rights  
Legislation Amendment Bill 2008**

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From:  
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To:

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## **Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008**

Thank you for giving me the opportunity to make this submission on behalf of Spinal Cord Injuries Australia.

### **Background**

Spinal Cord Injuries Australia is Australia's leading Charity supporting people catastrophically injured with a spinal cord injury and similar conditions. Our organisation, currently in its 40<sup>th</sup> year, has a long history of providing services to our members and being a voice for their concerns both socially and to Government.

For the purpose of making this submission Spinal Cord Injuries Australia will primarily focus on legislative changes that are targeted towards people with a Disability and not pass detailed comment on those that affect the elderly.

### **Comment**

Spinal Cord Injuries Australia would like to congratulate the Federal government not only on its honest adoption of the United Nations Convention on the rights of persons with a disability but in recognising the positive essence of this convention. This is something sadly lacking within the British governments ongoing ratification issues.

As with all new pieces or substantial amendments to existing legislation many of the changes will need to be proven in court. There are instances where competing legislation will make for interesting cases, in particular with OH&S legislation and section 17 subsection 6 (2).

It is positive to see the onus placed on the discriminator to provide argument that their activities were not discriminatory according to this act. Within the disability community many instances of discrimination occur, both direct and indirect on an annual basis. These issues are not always reported owing to the emphasis of proof being previously placed on the person with a disability. This is often too hard for one person to prove against a large company or government department for example.

The recognition of the rights of carers is another positive area as often discrimination owing to the work they do or the person they work for can be felt or be aimed at them.

A further area of positive interest is in the tightening up of 'Unjustifiable hardship'. It has been felt for some time by our organisation that claims under this title are really a way of alluding responsibilities under the DDA. Claims of unjustifiable hardship should never be looked upon as absolute and should always be linked to an action plan to rectify the situation over time.

There are many improvements that people with a disability should be able to see in their lives owing to the proposed amendments such as easier Air travel (although the issue of taking 2 wheelchairs on internal flights may still exist).

In essence with the proposed changes below Spinal Cord Injuries Australia supports the positive work of this inquiry.

## **Issues**

### **The usage of non prescriptive equipment (Scooters)**

#### **9 Carers, Assistant, Assistance animal and disability definitions (3)**

Under the proposed amendments to the act there appears to be a conflict between prescriptive and no prescriptive aids. Prescribed aids, such as wheelchairs, are used as a measure for the Disability Standards for accessible public transport (DSAPT) for example and have assisted in the creation of a wheelchair footprint to be used by all modes of transport.

Under the proposed changes the definition of a disability aid is so broad that scooters fit into it. A scooter is widely recognised to be a mode of transport rather than an aid to be transported in. However with a broad definition it can fit into the DDA and thus leave transport providers who are currently working under the schedule as laid out under the DSAPT open for complaint by Scooter users unable to access certain modes of transport.

Anecdotally we have heard from NSW Railcorp employees and NSW Taxi drivers that Scooter use is increasing on their networks. Wheelchair accessible taxis are being booked by Scooter users who are also requesting assistance to embark and disembark from Trains. As a scooter is a mode of transport it does not have restraining points and this places a risk of injury onto the scooter user. It also raises the risk of litigation against the transport operator if the DDA is seen to be supporting these devices.

Under this section of the proposed amendments we believe that there should be clarification on this issue to ensure that a line is drawn between a prescribed physical aid wheelchair and purchased mode of transport scooter. If this is not possible then the implications for Transport will be costly.

### **Employment practices and potential conflicts with Welfare reform**

#### **21A Exception – inherent requirements**

This is an area where the DDA can make such a difference to so many people with a disability who wish to not only work but also gain promotions in the workplace. We perceive there being a bit of an issue around welfare to work legislation that doesn't actively support promotion. It can place indirect financial penalties on workers with disabilities seeking greater employment opportunities.

This would take the form of a decrease in pension payments and a loss of concession card leading to an increase in housing payments and other associated financial issues. Balancing the cost of a disability and maintaining income is one of the great changes of living in the community

with a disability. Many are scared of ending up in hospitals or care homes as they are the traditional fall back positions.

This could potentially be classified as discriminatory as the same opportunities are not, and cannot be, afforded a person with a disability as would their able-bodied counterparts.

It is our recommendation that there is an overhaul of the welfare legislation with the aim of supporting and encouraging people with disabilities, where capable, to work longer than 15 hours per week. Further to this there should also be benchmarking of the costs of a disability so that a fair income is recognised that can be measured against a national standard of living.

Engaging in this support will free workers with disabilities to play a greater role in Australian businesses and the workplace. It also has the benefit of being true to the DDA's essence and ensuring that at point of promotion an equal playing field exists.

## **The role of the Human Rights and Equal opportunities commission**

### **Part 6 – Functions of the Australian Human Rights Commission.**

In reviewing or amending the role of the Australian Human Rights Commission (AHRC) one long standing issue arises. The AHRC is perceived to only support people with disabilities on an individual case basis.

Long has been the argument that the AHRC should act as rights police with the power to both identify and tackle systemic issues. This was raised in a number of submissions to the recent DSAPT review by the Allen Consulting Group.

If we look at regulation overseas in theory people in Australia should have better rights under the DDA than those in the UK who only have a code of practice. By having the DDA as legislation it should have the power to prosecute those that need prosecuting and assist those that need assistance yet why is the UK's code of practice more effective? The answer is that the UK's code of Practice provides a case through the regular legal process whereas Australia's DDA seeks to work as part of the law and yet never quite achieves the outcomes it should.

With a properly supported AHRC with the right to investigate and prosecute clear breaches of the DDA independently of an individual complaint we may start to see some positive outcomes.

## **The use of assistance animals**

### **76, 54A Assistance Animals (6)**

We are very pleased to see the great work that has gone into supporting assistance animal users however we feel it a little harsh if the person using an animal does not have the correct paperwork to hand and cannot prove on the spot that their animal is a properly trained assistance animal to be open

to exclusion.

What would be a better suggestion would be to give the person the benefit of the doubt and if required to request them to remember the correct equipment (Assistance dog indicator coat) and paperwork the next time they travel or access a building.

It should be remembered that at all times a person with a disability is a person with a disability with rights enshrined under the DDA. As this is the case we feel that the emphasis in this amendment to the DDA is on the animal not on the person with a disability. This focus is wrong and contrary to the essence of the act.

### **Recommendations Summary**

1. That there be a clear definition of what aids are covered or what are exempted. Our proposal is to ensure that at all times prescribed and non mode of transport aids are first represented by the DDA.
2. Welfare to work needs to be overhauled to ensure that the same prospects are afforded a person with a disability as a non disabled person. An assessment of the fundamental finances of an individual need to be explored and the permitted hours of working examined.
3. Further strengthen the role of the AHRC to be a police of the DDA. This will ensure that issues can be dealt with outside of the individual sphere.
4. In this instance of working with assistance animals at all times the fundamental rights of the person with a disability should be upheld. In cases where an assistance animal's paperwork is forgotten these rights still need to be upheld.

Again, thank you for providing the opportunity to make a submission to the Senate Inquiry into the Disability Discrimination Act.

Yours sincerely,

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