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9th January, 2009

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee members,

Thank you for the opportunity to comment on this important issue, the Inquiry into the Disability Discrimination Act and Other Human Rights Legislation - Amendment Bill 2008.

Physical Disability Australia (formerly Physical Disability Council of Australia Ltd - PDCA) is the national disability peak organisation, funded by the Australian Government through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). As a national peak we represent the interest and views of the largest sector of disability in Australia - people with physical disability.

We attach our submission to this consultation.

Further information can be obtained from the above contact or the writer.

Yours sincerely



Sue Egan
Executive Officer.

Physical Disability Australia Ltd

Submission

to

The Inquiry into the Disability Discrimination Act and Other Human Rights Legislation – Amendment Bill 2008.

Physical Disability Australia's values are based on the the personal experience of disability, a powerful belief in the capacities of people with physical disabilities and a determination to effect and initiate change through monitoring, proactivity and creativity. This submission therefore, is guided by these principles.

1. People with physical disability in Australia.

According to the Australian Bureau in 2003, the statistics of physical disability includes the following categories and numbers across Australia:

Australian Bureau of Statistics							
cat. no. 4430.0.55.001 Disability, Ageing and Carers, Australia: Disability and Long Term Health Conditions							
Table 2: ALL PERSONS, State of Residence by All Long Term Health Conditions and Whether Has a Disability							
Long Term Health Conditions	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Australia(a)
	'000	'000	'000	'000	'000	'000	'000
DISABILITY							
Physical conditions							
Cancer/lymphomas/leukaemias	41.0	32.3	28.3	15.4	14.5	2.6	135.6
Endocrine/nutritional/metabolic disorder	226.2	192.8	150.6	69.5	68.1	15.4	732.6
Diseases of the nervous system(b)	154.0	161.6	125.4	54.9	58.4	18.9	581.7
Diseases of the eye and adnexa	85.5	60.6	67.7	19.1	27.2	5.9	270.2
Diseases of the ear and mastoid proce:	324.1	276.3	224.1	101.4	107.4	27.7	1074.1
Diseases of the circulatory system	446.6	366.4	271.0	114.0	108.1	39.4	1363.7
Diseases of the respiratory system	184.9	172.9	142.6	72.7	74.3	20.5	680.8
Diseases of the digestive system	71.6	68.8	60.5	27.9	24.6	9.7	266.9
Musculo-skeletal disorders(c)	641.8	546.3	455.9	203.4	219.1	65.7	2163.7
Congenital/perinatal disorders(d)	26.8	26.1	23.8	9.0	9.8	3.3	102.1
Injury/poisoning/other external causes(t)	231.2	207.3	208.9	74.1	84.2	24.1	845.3
Other physical conditions(f)	200.3	193.2	151.9	69.6	69.7	16.2	713.5
All physical conditions(g)	1113.4	942.1	782.7	339.0	368.5	106.0	3710.4

People with physical disability are people first and foremost and we are large

in number across the World. We are people who have a physical disability and we also live in Australia within the rich colourful tapestry of society. A society that embraces difference and welcomes change.

However as people with disabilities, we are often made to feel as if we do not belong or are not welcome in our society. That our differences are unacceptable! We do not exclude those without disability, in fact many of us marry those without disability, many of us are friends with and/or related to people without disability. Many of us live with or near those without disability, and some of us live alone or in shared accommodation.

As people we are big and small, we are male and female, we are adults, children and young people. We are single, and married, we have children, we have families, or we live alone. We have friends and acquaintances, just like others in society without a disability.

We work or study or volunteer. We shop and our spending contributes to society's good. In fact the Social Capital of people with disability is never included in any research, yet statistics show that Volunteering for instance, contributes a significant amount to the Australian economy, yet it is rarely recognised that many people with disability, volunteer their time freely in order to effect change in the lives of those who have a disability.

As people with a disability we vote (even though Electoral venues are not always accessible), we attend public performances and we pay the same amount as those without disability to do so. We go on holidays (or try to) and our contributions to the Hospitality sector are the same as those without disability. Yet, we do not receive equal service or hospitality, because we are often expected to enter a hotel or a restaurant by the back or side door, and tolerate inadequate rooms or facilities or services that do not accommodate our needs. Why is this?

We pay the same money as those without disability therefore we should be entitled to enter premises through the front door in the same way as all other Australians? It would seem that many in the business world think we should not be allowed to be included in our society and do not provide access to their premises as this would place too great a financial burden on the business. We at Physical Disability Australia do not understand or accept that placing a monetary figure on social inclusion is acceptable in 2009 and therefore placing a limit on the life experiences of almost 21% of the population?

Regardless of individual differences, it can be said that people with physical disability:

1. Regularly experience discrimination within the community in some form and consistently fail to have these issues addressed at the Human Rights

Commission through the current complaints mechanism;

2. Have great difficulty gaining access to public and private buildings because of physical barriers such as steps, steepness of site and lack of parking, services on upper floors, inappropriate lifting devices such as platform lifts, inappropriate signage;
3. Face far greater costs than other people because of their disability (such as equipment, modifications to vehicles, household appliances and housing, home maintenance, transport, personal, medical and health care costs, heating and cooling, as well as necessary foods and generally managing a household);
4. For the most part, we cannot access public transport at all levels of a journey and are reliant on taxis, with varying levels of subsidy throughout Australia, or on private vehicles;
5. Face significant discrimination in finding a job and obtaining promotional opportunities, despite the supposed avenues for redress through disability discrimination legislation;
6. Have on average, lower incomes than their age/education peers due to greater difficulties in getting employment and in achieving promotion
7. Have fluctuating income if the impairment is associated with medical conditions leading to episodic periods of hospitalisation and/or absence from work. (Such people include people with spinal cord injury, multiple sclerosis, muscular dystrophy, motor neurone disease, cerebral palsy, polio etc).
8. Lack access to affordable, secure and appropriately designed housing, which is a critical issue for people with a physical disability. Lack of access to such housing has a major impact on our capacity to participate fully in the life of the community and to live as independently as possible within our own households;
9. Lack the support to live independently in our own homes of choice;
10. Fail to receive equipment which is essential to our survival and inclusion in society, because of lack of funds, long waiting lists;
11. Tolerate experts telling us what we need, when we need it and how much they will pay for our life inclusion!

2. Legislation:

Physical Disability Australia's position regarding legislation is represented by the following statements:

Legislation is needed to protect those most vulnerable from discrimination and harm, and to ensure that all dealings, including rights and responsibilities to those with a disability, are upheld.

- *Legislation should be monitored to ensure its purpose is upheld.*
- *Legislation should be written to ensure inclusion not separateness.*
- *Legislation should be reviewed regularly in consultation with people with disability.*

It is the right of all people with disabilities to be consulted in the development and review of all relevant legislation.

Physical Disability Australia is disturbed to see that disability related complaints have risen in the disability section of the Human Rights Commission and in fact disability discrimination in the final year indicated on this table, 1/1/01 - 31/12/01 represents almost half of all complaints received that year. This information is demonstrated in the table below from the Human Rights Commission website as follows:

http://www.hreoc.gov.au/complaints_information/publications/five_years_on.html#toc2_2

Table 1.

	Racial Discrimination Act (RDA)	Sex Discrimination Act (SDA)	Disability Discrimination Act (DDA)	Age Discrimination Act (ADA)	TOTAL
1/1/98 - 31/12/98	640***	221	352	-	1213
1/1/99 - 31/12/99	270	244	447	-	961
1/1/01 - 31/12/01	265	412	486	-	1163
1/1/02 - 31/12/02	190	368	474		1032
1/1/03 - 31/12/03	175	353	493		1021
1/1/04 - 31/12/04	152	341	503	40	1036

Many complaints relate to access to premises, employment, education and goods and services, and rather than decreasing with time under this legislation, complaints continue on a regular basis. This information can be accessed at:

http://www.hreoc.gov.au/disability_rights/

3. Addressing the issues in this consultation:

The proposed key amendments to the Act:

- 1. make explicit that refusal to make reasonable adjustments for people with disability may also amount to discrimination;**

Physical Disability Australia supports any amendment that addresses the refusal to make reasonable adjustments for people with disability. We believe that refusal to address this issue is further discrimination against a person or persons with a disability and should be seen as such and therefore reason/s for further action.

We believe that a more specific definition of reasonable adjustment is needed so that there is a clear set of guidelines to inform potential complainants and those being complained against as well as those seeking to provide such adjustments. This information could be used in the complaints process if necessary.

- 2. make the defence of unjustifiable hardship available in relation to all unlawful discrimination on the ground of disability, except harassment and victimization;**

Physical Disability Australia believes that unjustifiable hardship can often be seen as a 'loophole' for those wishing to avoid legal responsibilities. We therefore suggest that by developing clear guidelines (as mentioned in Item 1) this would assist in clarifying this often confusing issue.

We support unjustifiable hardship in relation to all discrimination on the basis of disability, provided it is not used as an excuse to avoid compliance with the DDA itself.

- 3. clarify matters to be considered when determining unjustifiable hardship;**

Physical Disability Australia supports any clarification of unjustifiable hardship, for complainants as well as those complained against.

We are concerned however, that many people with cognitive disability may not understand this issue, and we therefore request that a clear Plain English explanation be developed for non legal persons, and for persons with cognitive disability.

- 4. clarify that the onus of proving unjustifiable hardship falls on the person claiming it;**

Physical Disability Australia supports the clarification of all matters relating to unjustifiable hardship and that the onus of proving unjustifiable hardship falls on the person claiming it and not for the complainant to disprove it.

The onus should always be on the person/organisation complained against to prove they did not discriminate or can not rectify a matter due to unjustifiable hardship and NOT fall back on the person making the complaint.

5. make clear that the definition of disability includes genetic predisposition to a disability and behaviour that is a symptom or manifestation of a disability;

Physical Disability Australia welcomes a clearer definition of disability that includes genetic predisposition to a disability and/or behaviour that is a symptom or manifestation of a disability.

6. replace the 'proportionality test' in the definition of indirect discrimination with the requirement to prove that the condition or requirement imposed has the effect of disadvantaging people with the disability of the aggrieved person;

Physical Disability Australia supports the replacement of the **proportionality test** with the requirement to prove that the condition or requirement imposed has the effect of disadvantaging people with the disability of the aggrieved person.

7. shift the onus of proving the reasonableness of a requirement or condition in the context of indirect discrimination from the person with disability to the respondent, and

Physical Disability Australia welcomes any change that removes the onus of proving the reasonableness or condition in the context of indirect discrimination from the person with a disability.

8. extend the power to make standards under the Act.

Physical Disability Australia welcomes any move to extend powers to make Standards under the DDA.

9. to assist people with assistance animals and service providers by recognising animals accredited either under a State and Territory law or by a relevant organisation, and by clarifying each party's obligations.

Physical Disability Australia agrees that clarification of obligations and recognition of assistance animals accredited under State or Territory Laws is an important issue and must be clarified under the Law to avoid continued discrimination.

10. consolidate the provisions in the Act relating to carers, assistants and aids, and addresses the issues raised by the Full Federal Court in *Forest* [2008] by clarifying that discrimination on the basis that a person possesses or is accompanied by a carer, assistant or aid, is discrimination on the basis of disability.

Physical Disability Australia agrees that this is an important aspect of the meaning of the DDA and one that must be clarified in order to eliminate discrimination on the basis that a person is accompanied by a carer, assistant, aid or assistance animal.

11. proposed amendments to the *Human Rights and Equal Opportunity Commission Act 1986*. This implements the Government's decision to change the name of the Human Rights and Equal Opportunity Commission to the Australian Human Rights Commission.

Physical Disability Australia supports the name change of the Human Rights and Equal Opportunity Commission to the Australian Human Rights Commission.

12. include the extension of the period within which a person can take a terminated complaint to the Federal or Federal Magistrates Court from 28 days to 60 days, and a number of amendments to improve the efficiency of the complaints handling process, such as allowing the President of the Commission to finalise a complaint where the complainant expresses no intention to pursue the matter.

Physical Disability Australia supports the extension of the period within which a person can take a terminated complaint to the Federal or Federal Magistrates Court from 28 days to 60 days as well as a number of amendments to improve the efficiency of the complaints handling process, such as allowing the President of the Commission to finalise a complaint where a complainant expresses no intention to pursue the matter.

We stress however, that the process of taking complaints to the Federal or Federal Magistrates Court is still onerous for people with disabilities, and therefore will not be taken up as an option to pursue a case of discrimination unless the financial outcomes are known and/or can be addressed separately.

Thank you for the opportunity to put our views forward to this consultation.

Further information can be obtained from the writer below if necessary.

Sue Egan
Executive Officer
January 2009