



Response to the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008

NDS welcomes the Australian Government's continued commitment to eliminating, as far as possible, discrimination against people on the grounds they have a disability. People with disability encounter barriers daily that limit their participation in economic and social life. Legislation is not the sole or even the main means of reducing these barriers, but it is a critical element in the active education and engagement of the broader community.

The proposed *Disability Discrimination and Other Human Rights Legislation Amendment Act 2008* largely provides for greater consistency and coherency in the application of definitions, requirements and powers. NDS broadly supports this initiative.

NDS welcomes the amendments that clarify 'reasonable adjustments' and the defence of unjustifiable hardship. The proposed definition of 'reasonable adjustment'—an adjustment that does not impose unjustifiable hardship on the person—is, as it should be, consistent with the definition of 'reasonable accommodation' in Article 2 of the UN Convention on the Rights of Persons with Disabilities. The clarification of matters to be considered when determining unjustifiable hardship and the inclusion of the statement that the onus of proof falls on the person claiming it are improvements to the legislation. It is also appropriate that the defence of unjustifiable hardship be available in all forms of unlawful discrimination on the ground of disability except harassment and victimisation.

NDS is pleased that the Bill proposes amendments to broaden the definition of disability to include genetic predisposition to a disability and to behaviour that is a symptom or manifestation of a disability. The greater focus on indirect disability discrimination is also warranted, in particular the extension of the definition to include proposed acts of indirect discrimination.

The 'proportionality' test of indirect discrimination contained in current legislation is complex and places an onerous burden of proof on the person with disability. Replacing this 'proportionality' test with a 'disadvantage' test—that the condition or requirement imposed by the discriminator has, or is likely to have, the effect of disadvantaging people with disability—is warranted. It moves the burden of proving

that the requirement or condition is reasonable, having regard to the circumstances of the case, to the person who requires, or proposes to require, the person with disability to comply with the requirement or condition.

The amendments that relate to assistance animals provide greater certainty, which is welcome. Related to this is clarification 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. The removal of any doubt on this issue is warranted.

NDS supports the adjustments proposed for Sections 45 and 47 which, while improving clarity, preserve the ability of organisations to pay wages that are 'determined by reference to the capacity of that person'. The importance of these sections should not be under-estimated, for the ability to pay wages on the basis of a person's assessed capacity is critical to the sustainable employment of some people with disability.

The *Disability Discrimination Act 1992* has provided important redress for people with disability who experience discrimination as they participate in community life. Some changes, however, are warranted to bring the Act in line with medical and service advances, and legal developments. The proposed amendments do this. The functions of the re-named Australian Human Rights Commission remain, importantly, unchanged.

December 2008

Contact: Dr Ken Baker
Chief Executive
National Disability Services
(02) 6283 3200
0409 606 240

About NATIONAL DISABILITY SERVICES

National Disability Services (NDS) is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its membership includes 630 not-for-profit organisations, located in all parts of Australia, which collectively support people with all forms of disability.