



## Multicultural Disability Advocacy Association of NSW

PO Box 9381, HARRIS PARK NSW 2150  
40 Albion Street, Harris Park  
Telephone: (02) 9891 6400  
Toll Free: 1800 629 072  
TTY: (02) 9687 6325  
Facsimile: (02) 9635 5355  
E-mail: [mdaa@mdaa.org.au](mailto:mdaa@mdaa.org.au)  
ABN: 60 737 946 674

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

Dear Committee Members

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

The Multicultural Disability Advocacy Association of NSW (MDAA) is the peak advocacy organisation in New South Wales (NSW) for people from Non English Speaking Backgrounds (NESB) with disability, their families and carers. MDAA aims to promote, protect and secure the rights and interests of people from NESB with disability, their families and carers. MDAA is funded by the NSW and Commonwealth Governments to provide individual and systemic advocacy, advocacy development, industry development and training.

We welcome the opportunity to submit comments on the *Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008*.

#### *Accessibility of the Disability Discrimination Act*

MDAA welcomes the proposed amendments to *the Disability Discrimination Act (1992)* (DDA) which aim to strengthen measures that promote and protect the rights of people with disability. However, we have reservations re their effectiveness, as we are concerned at the current inaccessibility of information relating to the DDA to people from NESB with disability.

Through consultation with people from NESB with disability, their families and carers, MDAA is aware that the following barriers exist for people from NESB with disability in accessing the DDA:

- Limited knowledge and expertise in accessing information and/or services.
- Limited awareness of the scope of antidiscrimination legislation.
- Service providers lack the skills to effectively target/reach the NESB population.

- Limited availability of information in community languages and culturally sensitive education campaigns.
- A complex complaints process which requires knowledge of the English language, legal and bureaucratic systems.
- Fear that complaints will trigger acts of reprisal, (often compounded by pre-migration experiences and fear of governments, limited support networks and cultural perspectives re making complaints).
- Concerns re costs associated with making complaints, particularly as people from NESB with disability rank lower on the socioeconomic scale than their Anglo-Australian counterparts.

Regrettably, what was created to eliminate discrimination on the grounds of disability has not been equally effective in achieving its objectives for people of all cultural backgrounds. The Productivity Commission in their *2004 Review of the Disability Discrimination Act (1992)* stated that the DDA can be less effective for people from non-English speaking backgrounds. This lower effectiveness partly relates to barriers to using the complaints process (p.108).

MDAA believes that a targeted communication strategy is required to reach people from NESB with disability in order to increase awareness of the DDA.

#### *Exemption of the Migration Act (1958)*

Despite its official commitment to the *United Nations Convention on the Rights of Persons with Disability* (UNCRPD) through its ratification in July of 2008, Australia maintains discriminatory policies and practices by continuing to exempt decisions made under the *Migration Act (1958)* from the coverage of the DDA. It thereby contravenes Article 4(A), which requires State parties “to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the ... Convention”.

Article 4(b) of the convention obliges States “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities”. Article 5 of the UNCRPD, which addresses equality and non-discrimination and Article 30 which recognises the rights of people with disability to liberty of movement and nationality, are also contravened by this exemption.

In their 2004 Review, the Productivity Commission stated that “...if the Migration Act were not exempt, some of the criteria for assessing visa applicants might be found to be directly or indirectly discriminatory under the DDA” (p.343). Commenting on specific requirements, the report continued, “...if the Migration Act were not exempt from the DDA, these health requirements might conceivably be found to discriminate against some people with disabilities indirectly (by setting rules that they do not or cannot meet), or discriminate directly (by requiring additional tests or medical evidence that are not required of people without disabilities)”.

Discriminatory and inconsistent application of the health assessment requirements in determining eligibility under the *Migration Act (1958)* focuses on unwarranted assumptions about the potential economic costs of supporting a migrant or refugee with disability in the Australian community.

MDAA calls for reform in DDA by removing the exemption of *the Migration Act (1958)*. This would not only provide consistency in application of antidiscrimination legislation, but also reflect the principles of a socially inclusive society.

In closing, MDAA strongly urges the Committee to consider measures which can ensure that the DDA is accessible to people of all cultural backgrounds and produces equitable outcomes for marginalised population groups, including people from NESB with disability.

Please feel free to contact me for further information or clarification of issues raised in this submission.

Yours faithfully

Ms Diana Qian  
Executive Director