



Senator Crossin
Chair of Senate Standing Committee on Legal and
Constitutional Affairs
C/- Peter Hallahan
Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

7 January 2009

Dear Senator Crossin,

**Reference: Review of the DDA and Human Rights: The
Continuing Issue of Personal Care**

I am writing to you in my capacity as President of the Australian Tertiary Education Network on Disability (ATEND). ATEND is the peak body for practitioners supporting students with disabilities in tertiary education in Australia.

ATEND applauds the Commonwealth's preparedness to initiate a review of the Disability Discrimination Act 1992 in order to make its protective provisions clearer. In particular ATEND welcomes the proposal that the refusal to make reasonable adjustments for people with disability can amount to discrimination. The clarification of the content and process of applying the principle of unjustifiable hardship is also a timely and valuable inclusion.

In articulating the issues related to reasonable adjustments and unjustifiable hardship ATEND hopes that many of the present concerns of our members will be addressed. In particular, ATEND's members (made up of state and territory representative bodies) have been aware of the dissatisfaction within Universities and TAFEs with regard to the amount and type of support available to people with disabilities who have personal (attendant) care needs.

Essentially only limited financial assistance has been made available to enable people with disabilities, requiring personal care support, to attend the courses of their choice. One of our member associations in Western Australia, (the Post Secondary Education Disability Network), has attempted to clarify and address the issues locally over several years. However it is evident that no one Department, Health or Disability Services Commission (DSC) would take responsibility for this assistance, nor in fact, would the Commonwealth.

Further, at the Western Australian TAFE level, time limited funding, for personal care supports has been available for hobby courses only (through the Post School Options' Alternative to Employment Program). No (direct) funding was available from DSC to pay for personal care at either University, or TAFE's Diploma and Certificate vocational courses. DSC's argument was based on the assertion that this is post-compulsory education which is deemed a Commonwealth responsibility. When the Commonwealth Department of Education Employment and Work Place Relations (formerly DEST) were asked to comment it was made very clear that personal care was not considered an area that a University could make an additional supports funding claim. As a consequence, and, if these people didn't have an independent means to fund their personal care costs, they were then left in a virtual 'no go' zone for tertiary (vocational or university) education. Subsequently, over the years, it has been left to the ingenuity of individual institutions (or their personnel) to 'manage' the personal care support with these students.

Mindful of the limited information available on this issue and in order to obtain clear data, ATEND conducted an Australia-wide survey in 2007. A synopsis of this report was presented at the recent Pathways 9 Conference in Melbourne during December 2008. A copy of this presentation 'What is the Matter with Personal Care?: A Survey of Australian Universities and TAFEs' is enclosed for your consideration.

It is well recognised that education is one means of addressing a number of social disadvantage issues. Presently there appears to be a lack of clear and consistent policy that recognises the right of people with disabilities to be funded for personal care in tertiary education. These students are compromised with regard to being able to study to their full capacity by the arbitrary application of Commonwealth and State policy. ATEND asserts that there is a discrimination issue at stake which affects some of the most vulnerable in our community.

While individuals may have limited success addressing this issue it is evident that systemic change is required. Unfortunately there continues to be impassive attitudes held by the bureaucracy towards this matter. ATEND has prepared a further brief outlining the personal care issue and the consideration of fundamental international human rights instruments (enclosed). ATEND is prepared to utilise this document to prepare and submit a complaint to the United Nations Special Rapporteur on the Right to Education.

Human rights emerge and develop over time. The members of ATEND support the statutory recognition of fundamental human rights. It is essential that Australia has a means whereby human rights can be democratically entrenched and exercised by the Australian people. ATEND endorses the need to develop a statement that recognises the diversity and equity between all people.

Sincerely,

Helen Makeham
President
ATEND
C/- Student Equity and Diversity
Murdoch University
South Street
MURDOCH WA 6150

Enclosures:

1. What is the Matter with Personal Care: A Survey of Australian Universities and TAFEs (2008)
2. Background Paper for ATEND's Submission to the United Nation's Special Rapporteur on the Right to Education (2008)