

Submitted by email : legcon.sen@aph.gov.au

12 January, 2008

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

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

Thank you for the opportunity to contribute to this consultation.

About the Disability Council of NSW

The Disability Council of NSW was established under the terms of Section 16 of the Community Welfare Act 1987 to advise Government in NSW on issues affecting people with disability and their families. We also give advice to the Australian Government on the effect of policy on people with disability living in NSW.

Council members are appointed by the NSW Governor on the recommendation of the Minister for Disability Services. Members are selected on the basis of their experience of disability and their understanding of issues, their knowledge of service delivery and their ability to reflect and advise on government policy. The majority of Council members are people with disability.

General Observations

The Disability Council of NSW supports and welcomes the proposed amendments to the *Disability Discrimination Act 1992*.

Our Council is of the view that the implementation of proposed amendments, such as the extension of the period within which a person can take a terminated complaint to the Federal Magistrates Court from 28 days to 60 days, and various proposed amendments to improve the efficiency of the complaints handling process, will significantly improve the process of identifying discrimination and compliance with the Act.

Council submits the following comments in relation to the proposed amendments.

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

Our Council agrees with the proposed amendment to make the definition of 'reasonable adjustment' unambiguous and definite in its meaning.

We are of the opinion that with a clearer definition of reasonable adjustments, as well as stipulating the possible ramifications for not meeting the reasonable adjustments requested by the person with disability, will subsequently empower people with disability within all aspects of their lives.

For example, a person with a disability in employment and/or seeking employment, with the proposed amendments adopted, is more inclined to disclose a disability to a potential employer as well as disability-related needs, including any modifications required to perform the inherent job responsibilities within their job description.

Additionally, our Council recommends that an ongoing education program be introduced to educate the public and employers with regard to the changes to the Act. For example, promotion of what the changes mean for an employer who has and or is in the process of recruiting a person with disability.

Furthermore, Council would like to ensure that people with disability have equal and full access to the revised *Disability Discrimination Act* and are aware of what the changes mean for them. Council would like the current practice of providing information in alternative formats, for example Braille and audio versions, to continue.

Overall Council is encouraged through this current consultation process that a range of accessible formats have been made available.

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

Council agrees with this amendment. The Australian Human Rights Commission's role is significant here when complaints are received to ensure that complete compliance of the legislation has occurred and that any denial of access to the basic right of reasonable adjustment has occurred in terms of the new legislation.

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

Council supports this amendment and the provision of information in relation to relevant circumstances which will be considered when determining unjustifiable hardship. The inclusion of relevant circumstances for consideration, which impact upon both the person responsible for the delivery of reasonable adjustments and the person with a disability is commended.

However, Council accepts that some adjustments may be expensive and may not be affordable and subsequently will be unable to be delivered or only be partially delivered. Given that the Act states that the potential detriment of a person with a disability must be considered when determining reasonable adjustments, Council is satisfied that discrimination will not occur.

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

In Council's opinion this is more than warranted and will ensure that the person claiming unjustifiable hardship will do so under genuine circumstances. The placing of this responsibility upon the person responsible for the delivery of reasonable adjustments will result in an improved situation for people with a disability which is free from discrimination and responsibility avoidance.

***Amendment 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***

Council agrees with the definition of disability being expanded to include genetic predisposition. This will address circumstances in which there was formerly doubt about what was considered as a disability.

***Amendment 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***

Council strongly agrees that the "proportionality test" be replaced. The suggested amendment takes into consideration the requirement being imposed and considers its potential impacts upon a person with a disability prior to implementation. This will allow, for example, for any reasonable adjustments to be made as needed in terms of legislation. This is a more positive approach than the 'proportionality test' with the result being an elimination of past discrimination.

***Amendment 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***

Council supports this change with the respondent being required to provide evidence which justifies denying exclusion of the person with a disability.

***Amendment 8 - extend the power to make standards under the Act***

Council supports extending the power to make standards under this Act in all areas covered by the Disability Discrimination Act.

Council also supports the Australian Human Rights Commission being provided with the power to uphold standards and to grant exemptions. This

approach will ensure equitable application of standards and addressing of non compliance of standards.

### Other matters

**1. *Clarify information and obligations in relation to assistance animals***

Council welcomes and applauds the stipulation of the obligations in relation to assistance animals which includes both accreditation and training requirements. The reference to hygiene and behaviour is critical when assistance animals are in public places such as restaurants.

**2. *Consolidate provisions relating to carers, assistants and aides and their relationship to discrimination on the basis of disability.***

Council welcomes the consolidation of carers, assistants and assistance animal and disability aids. It brings together the many forms of physical assistance under the one Section for easier reference.

The Council welcomes the definition of an assistance animal as being a dog or other animal which is supported with the essential accreditation, either an animal training organisation or a law of State / Territory.

The inclusion of a disability aid as a palliative or therapeutic device is also supported.

### Conclusion

In summary, our Council believes that the proposed amendments will eliminate much discrimination which is currently met by people with a disability. The amendments place responsibility on all relevant parties to work together to eliminate discrimination and achieve an equitable environment for everyone.

Should you require any further information with regard to this letter, please contact Ms Angela Hardman, Senior Policy Officer on 9211 2264.

Yours sincerely



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Chair  
Disability Council of NSW