



Submission to:

**Inquiry into the Disability Discrimination Act
conducted by the Productivity Commission**

Australian Association of the Deaf (AAD) is pleased to have the opportunity to make this submission to the Inquiry.

AAD represents Deaf people who use Auslan (Australian Sign Language). We have no reliable statistics, but a study undertaken more than a decade ago found some 16,000 Deaf people who use Auslan every day (and another 16,000 hearing people who also use it everyday). We believe the numbers are higher but as happens so often when it comes to disability, reliable statistics are very hard to find.

For Deaf people, the overarching issue is linguistic human rights. If Deaf people do not have access to their language, Auslan, then all other human rights are contravened. In going about their daily lives, the major issues are:

1. Education
2. Employment
3. Recognition of Auslan, and Interpreting
4. Access to information

Issues such as access to services, access to buildings, transport etc where they impact on Deaf people invariably involve some form of access to information.

1. Education

Education is probably the single most important issue for Deaf people. It is also the single most difficult issue on which to advocate and effect change.

Generations of Deaf children have been and continue to be “educated” in a system controlled by people who are not deaf and who focus on deafness as a defect that needs to be “fixed” so that the deaf child can “fit in”; after all, as we hear over and over from the anti-signing “experts”, “we all live in a hearing world”. The system attempts to educate deaf children using a language (English) that they do not know fluently and cannot fully access; a system that excludes Auslan, and if it uses signing at all insists on using a form of sign (signed English) contrived by hearing people

because it is easier for them to learn this code for English than it is to learn a new language (Auslan). And these generations of Deaf children have emerged with poor language skills (in both English and Auslan), poor education, poor general knowledge, poor self-esteem and so on and so forth.

AAD advocates that children who are severely and profoundly deaf should be educated bilingually in Auslan and English, using Auslan as the language of instruction because this is the language that is fully accessible to them, and English as a second language. Some states are now making some bilingual education programs available. This is an improvement, a step in the right direction, but there remain many problems including how to educate hearing parents on the importance of Auslan even for children who have a cochlear implant.

AAD has supported the development of the DDA Standards on Education and is pleased at the most recent news that the Commonwealth government intends to table the Standards in Parliament. Although the Education Standards support the need for such things as the use of Interpreters in education for deaf students, in some ways the Standards can be seen to work against our ideal of a bilingual education for deaf students, because this type of program is not the usual type of program that non-deaf students have access to. In the current crusade by educators towards “inclusive” education, it is possible to interpret the ideal of a bilingual education in such a way as to incorporate it into a mainstream school as is being done at Toowong State School in Brisbane, but this type of creative thinking among educators is the exception to the rule and is continually threatened by (a) arguments that it is financially more costly than other models of education and (b) its “radicalness” for the thinking of the “masses”.

We do not in any way wish to argue against the DDA – we do need a DDA, and we cannot stress this enough. In terms of education, the DDA in its current form is of great value to deaf people in particular in post-school education programs. But for early intervention and school programs we believe that because of the way in which it is has been drafted, ie as basically an argument for making what is available for non-people with disabilities also accessible for people with disabilities, the DDA can overshadow and be limiting for other much needed arguments for programs which are outside the common square. We would be happier if the DDA made more explicit provision for the need in some cases for specialist programs for people with disabilities. We believe most strongly that until deaf children are educated bilingually in Auslan and English, their fundamental linguistic human rights will continue to be trampled upon.

We therefore are of the view that the DDA does not go far enough. Australia needs additional legislation that spells out the human rights of people with disabilities. The majority of non-people with disabilities have not shown themselves capable of working such things out for themselves, they need to be spelled out clearly for them.

Recommendation:

That the DDA be supplemented by legislation that spells out the human rights of people with disabilities or that the DDA itself be amended to ensure that the human rights of people with disabilities are spelt out in the Act.

2. Employment

Employment is probably the second most important issue for Deaf people. It is also probably the second most difficult issue on which to advocate and effect change. We say second because education is the key to appropriate and satisfying employment.

By and large, Deaf people as a rule prefer to work. The current perception from government that people with disabilities need to be encouraged into the workforce is inaccurate and unfair at least to Deaf people, and is in fact an insult to these people who work hard to find suitable employment in the face of great difficulty, incipient prejudice and hidden discrimination.

Relatively few Deaf people receive a Disability Support Pension. Unemployment is a problem for the Deaf community, but an even larger problem is under-employment. This is not so much because Deaf people lack skills or the ability or desire to work, but rather because of the misperceptions held about them by employers and the general community.

While Equal Employment Opportunity principles and laws have been around for some time and the DDA is meant to address discrimination in employment, it is our observation that neither of these instruments has been effective. The main reason for this is because the onus is on the Deaf person to prove discrimination yet discrimination in employment is so difficult to prove, and because of a belief among employees that using these instruments to argue their case in the end works against them because it brands them as “trouble makers”.

We are of the view that the problem of misperceptions about Deaf people (and other people with disabilities, but we wish to speak only of Deaf people, which is our area of expertise) is endemic even in the government’s own programs designed to address employment issues. In particular in relation to the “Australians Working Together” package, we have had this to say to government in our response to the package, and we wish to say it again to the Inquiry in response to the question (page 30 of the Inquiry Issues Paper) “How have the eligibility criteria for the Disability Support Pension and employment support services affected incentives for people with disabilities to participate in the labour force?”:

We are concerned about the general assumptions which seem to underpin the entire package. The package refers to such aims, philosophies, requirements as:

“People can find it difficult to leave the welfare system because there are few financial incentives and other supports to do so.” (page 6)

“...the Government will spend more on additional support and incentives, encouraging people on income support to stay connected to the economic and social life of Australia.” (page 7)

“...incentives to take up short term casual work will also be offered...” (page 7)

“We will require more people on income support to improve their own situation by undertaking a range of activities, such as part time work, study or community work.” (page 7)

These statements indicate an underlying assumption that unemployed people do not want to work, or are not prepared to help themselves without being pushed to do so. While we do not wish to assert that nobody abuses the system, we are concerned that people who genuinely wish to work are being unfairly tarred with a brush that applies only to some. And further, that they are being required to undertake activities to “prove” they are not abusing the system – activities which are not necessarily in their best interests and do not necessarily help them.

For the majority of Deaf people who are unemployed, the problem is often not that they need to help themselves – improve their skills, experience etc – but that employers are unfairly biased against them. For example, many Deaf people do have excellent qualifications and skills and yet fail to get jobs for which they are qualified because employers make assumptions based on their deafness, such as that communication will be “too hard”, that they “can’t use the telephone”, that engaging Sign Language Interpreters is “too expensive”, or that they are a safety risk.

But discrimination in employment is very hard to prove. Employers of course do not actually say that these are the reasons the person did not get the job. They need only say that “another person was better qualified” and under State and Federal legislation, which was designed to eliminate these practices, the Deaf person has nothing on which to appeal.

In addition with the vast number of employers using recruitment agencies, they are able to hide behind an additional smokescreen to escape being called to account under these laws.

A system that requires Deaf people to “help themselves” based on the assumptions outlined above, adds insult to injury.

It is our view that the Australians Working Together (AWT) package, and the DDA both suffer from the same flaw: AWT “blames” the disabled person for their predicament, and the DDA puts the onus of proof of discrimination onto the disabled person. The fundamental problem, as we have said time and time again, is not that the Deaf person cannot or will not work; the problem is that employers will not give them a job. Until government recognizes and accepts this and designs effective programs to address this fundamental problem it is not going to go away and people with disabilities are going to continue to be dependent on the welfare system whether it be via a Disability Support Pension or an unemployment benefit or some other assistance such as being assigned public housing because they are under-employed low income earners.

We believe that extensive employer education programs aimed at showing employers that employing people with disabilities makes (among other things) sound economic sense are absolutely vital as a first step. Programs such as the Prime Minister’s

Employer of the Year Awards are all very well, but they reinforce the idea that giving a disabled person a job is a “do-gooder” activity rather than one that has sound economic and social benefits.

Recommendation:

That HREOC be realistically resourced to undertake extensive educational programs for employers; and that people with disabilities themselves be included in the design and delivery of these education programs.

3. Recognition of Auslan, and Interpreting

Auslan is the language that is used by the Deaf community. The Deaf community in many ways is like an ethnic community in Australia – its members belong to both the Deaf and the wider communities. Sign language is also seen as the main distinguishing feature that defines a Deaf community. A major role of AAD is to enhance the status of sign language in Australian society. As the World Federation of the Deaf (of which AAD is a full member) asserts:

If Sign Language is rejected, the situation of Deaf people is weak and unequal.

Sign language covers all areas in a Deaf person’s everyday life. It impacts areas where language is an essential tool, ranging from family life through to media and telecommunications and including education, employment and community access. It is a continual source of disappointment to Deaf people in Australia that Auslan is not seen as an appropriate language in which to provide community services. As an example, SBS Television provides TV programs in a variety of community languages but not in Auslan.

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities makes specific reference to how sign language is an inherent part of service provision:

...consideration should be given to the use of sign language in the education of deaf children, in their families and communities. Sign language interpretation services should also be provided to facilitate the communication between deaf persons and others.

Interpreting between Auslan and English is an essential aspect in the life of the Deaf community and enables Deaf people to participate equally in the wider community. Often it is the Deaf person’s principal means by which they access the wider community in which they live. AAD views the provision of training programs in sign language interpreting as vital to enable a satisfactory level of access to interpreting services.

Although interpreting services are available, Deaf people continue to be disadvantaged for a number of reasons, including:

- Prohibitive cost of this service. Sign language interpreting is provided by charities or independent providers, who have to cover their costs. There is currently no co-ordinated system for providing funding for these services. In

NSW it costs around \$165 for a minimum two hour service. Many people understandably refuse to pay this level of fee, eg employers who wish to discuss employment with a Deaf person; or a doctor in private practice who would only need the interpreter for ten minutes and whose fee is less than that of the interpreter's.

- Weakness of current legislation that does not explicitly state that equal access for Deaf people means adequate sign language interpreting provision.

The Commonwealth government is currently undertaking a scoping study into the extent of Auslan interpreting supply and demand and we await the outcome of this study. We are somewhat skeptical that it will address all of the issues that need to be addressed, but it is a beginning. We are of the view that the DDA itself and the DDA Standards need to explicitly state the vital role of interpreting in eliminating discrimination.

Recommendation:

That the DDA and DDA Standards include clear explanations of the vital role of Auslan and Auslan/English interpreting in eliminating discrimination against Deaf people.

4. Access to Information

This is the area where AAD has been most active and most successful in using the DDA as a tool for systemic advocacy for the rights of Deaf people.

a) Telecommunications

Since its establishment in 1986, AAD has had a very active and committed subcommittee on telecommunications access. We spent ten years of lobbying before we succeeded in convincing the Commonwealth Government to provide the funding for a National Relay Service (NRS) to help make the telephone system accessible, and to provide TTYs for people on low incomes. The NRS was established in 1995.

In that year too, AAD joined a complaint under the DDA, the Scott vs Telstra case, which resulted in Telstra having to provide TTYs to deaf people. At first this took the form of a voucher to enable deaf people to purchase a TTY. In 1998 Telstra decided on a different system and, as we said they should always have done, now provide TTYs on the same basis as telephone handsets are provided to everyone else.

These two achievements were important steps forward, not only for Deaf people but also for hearing impaired people (who do not use Auslan and so do not form part of our constituency) and for people with a speech impairment.

More recently we have supported a complaint by a Deaf person against a mobile phone company, and had input into a HREOC research report into mobile phones.

In the past two years AAD has conducted a Deaf Telecommunications Access and Networking Project which has undertaken extensive consultations with the Deaf community on issues that affect them. Information about these issues can be found in the discussion papers published on AAD's website, www.aad.org.au.

b) Captioning

We have also been very active in the area of captioning and currently have a representative on three HREOC working groups – on captioning on free to air television, on pay TV, and in cinemas. We have become involved in two of these cases not by initiating or joining complaints ourselves but by keeping an eye on cases in the system and identifying those that are of strategic importance and on which we could have input.

An example of this was the Byrne vs Hoyts Cinemas case. In this case, Byrne, a hearing impaired man in Perth made a complaint against his local Hoyts Cinema. When HREOC called a public enquiry, AAD sent in a submission and became involved in the negotiating process. The result was much larger than one local cinema and for the past 2 years Deaf and hearing impaired people have been able to see a limited number of captioned movies in CBD cinemas in all capital cities. However, although meetings with the industry continue under the guiding arm of HREOC the process of trying to improve and expand on this early success has stalled. It is beginning to seem that a fresh complaint will need to be made if we are to prod the industry into moving further on the current limited access. This is disappointing and is another example that highlights the essential flaw in the DDA – ie that being a complaints based system it requires people with disabilities to work extraordinarily hard to chip away at every little brick in the extensive discriminatory walls we face.

In the third case, pay TV, our Board considered the progress that was being made with captioning and the climate surrounding it – ie we were aware, from these and other lobbying activities, that the pay TV industry were aware they would most probably be next in line for some pressure to provide captioning. So our Board decided the time was ripe for something to be done in this area. One of our Board members elected to initiate a complaint with a request that AAD be her representative.

c) Telephone banking

AAD also had input into an industry standard on telephone banking that was developed by the Australian Bankers Association (ABA), at the request of the ABA, which we understand was advised by HREOC to approach us.

In all of these cases, while the DDA has been a useful tool in our efforts to advocate in a systematic way for the rights of Deaf people and we have had some success, it has been our experience that negotiating with industry representatives under the adversarial complaints based system of the DDA is more difficult and time consuming than is necessary. In these situations, what the community wants is actually very clear and simple, for example in the case of captions on TV, they simply want to be able to watch TV programs with captions and have equal access to the same programs that their hearing family members and friends have. What can be more clear and simple than that? But around the negotiating table with lawyers and technical experts this simple situation becomes extraordinarily complicated and tied up in legal and technical jargon and skullduggery. It is very difficult for community representatives and for the ordinary man or woman on the street to have the knowledge and expertise to argue with that level of professionalism. Is it really fair to expect this of people with disabilities and their advocates?

We are also of the view that because the DDA is complaints based and therefore adversarial, and because it has the “unjustifiable hardship” clause, everything is then examined by industry in terms of how much it is going to cost them. We have, for example found it very difficult to get them to see that the Deaf community is not essentially just a cost to them, it is a market, and that by meeting the needs of this market they in the end make money from it.

With respect to telecommunications issue, we wish to refer to comments already made by HREOC in their submissions, particularly the point about the need for standards and processes on communications accessibility, for example specifications. AAD would support this approach and we believe it would be more effective than the current process of having to file a complaint.

Recommendation:

That consideration be given to redrafting the DDA to become rights based rather than complaints based.

That standards for communications accessibility be developed.

DDA Standards

AAD sits on the DDA Standards Project Steering Committee which is financed by the Attorney General’s Department. We have been disappointed with the progress on the development of Standards. It is our view that all Standards should have long since been available, yet to date only one Standard has made it to Parliament. We are also of the view that the process of developing Standards needs to be clarified and made transparent. Even though we have a seat on the Project steering committee, we still have not seen any document that sets out the procedures from the Attorney General for the process of developing a DDA Standard. Other problems we see with this situation are:

- Consumers do not have enough input into the development of Standards; the consultation process is confusing and complicated; and there are too few consumer representatives on committees that develop the Standards.
- Industry, service providers and government have a disproportionate influence on the development of Standards; at its most simple, this can be clearly seen upon examining the membership of individual Standards development committees.
- When input from consumers is included in the development of Standards, it is in the form of the labour of volunteers and poorly resourced community organisations. Government is not providing adequate resources to enable consumers to have appropriate, adequate and meaningful input.

Recommendation:

That government provide the required resources to develop the remaining DDA Standards in a clear and orderly process including time lines with clear avenues for input from all who wish to do so, including consumers.

Concluding remarks

At AAD there is a general feeling that we have been successful in the use we have so far made of the DDA. We have learnt a great deal from our activities. We have not always got exactly what we wanted but we have made progress in the right direction and have built alliances and co-operative negotiating partnerships.

We also feel that HREOC has been extremely helpful in the manner in which they have worked with us – in helping us to identify what we need to do and in understanding how to use the DDA more effectively.

We appreciate that the DDA exists and we believe that because of the DDA, Australia is a better place for people with disabilities to live than it used to be. However, we do see flaws in the DDA and much room for improvement, as outlined in this submission. We hope that as a result of the Productivity Commission's Inquiry the gains of the past ten year will be retained and expanded further.

We thank you for the opportunity to make this submission and look forward to receiving the Inquiry's draft report.