



AUSTRALIAN FEDERATION OF DEAF SOCIETIES

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Productivity Commission
LB2 Collins Street East
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Dear Sir/Madam

Review of the Disability Discrimination Act 1992 Draft Report

I am writing to provide you with the following submission in relation to the draft report on the Review of the Disability Discrimination Act 1992.

I have provided comments against several draft findings, recommendations and requests for further information. Brief case studies have also been used to highlight issues, the provision of sign language interpreting services in particular.

As the major providers of Australian Sign Language (Auslan) interpreting services in Australia, Deaf Societies are concerned about the current inadequate funding of interpreting services for people who are Deaf and the implications of this situation on Deaf consumers. We believe that Auslan interpreting services are vital if discrimination in the provision of goods and services, as well as employment, is to be addressed.

I would be pleased to provide you with any further details in relation to this submission and can be contacted on (02) 9550 2029.

Yours sincerely

Joe Sabolcec
Executive Officer
29 March 2004

The following comments relate to the draft findings and requests for further information as they appear in the draft report on the Review of the Disability Discrimination Act 1992, circulated Friday 31 October 2003.

Draft finding 5.1

The number of complaints under the DDA and participants' views indicate that disability discrimination in employment remains a significant issue. Overall, the Act appears to have been least effective in reducing discrimination in employment.

Deaf Societies provide a range of employment-related services to the Deaf community and it is our experience that discrimination in employment has indeed continued to be a significant area of concern. As can be seen in Table 1 below, only 40% of people who were Deaf and indicated that they used Auslan in the 2001 Census were employed. AFDS believes that underemployment and limited access to employment outside the casual employment sector are also a major issue.

Table 1: Hours of employment for people who are Deaf and use Auslan. (2001 Census of Population and Housing. Supplied by the Department of Family and Community Services.)

	Auslan	Sign Lang, nec	Sign Languages, nfd	Total	%
14 hours and under	281	28	107	416	8
15 hours and over	1139	93	449	1681	32
Not stated	61	0	17	78	1
Not applicable	1811	194	1124	3129	59
				5304	100%

We have identified a number of barriers to full employment which are discussed below.

1. Access to education and training

Deaf people are accessing education and training opportunities in increasing numbers, this participation having been greatly assisted by the various measures introduced to support students with a disability. For Deaf students support includes the provision of notetakers and Auslan interpreters. Over zealous cost-reduction strategies by universities and Colleges of TAFE are resulting, however, in such services either being withdrawn or requiring an increasing level of justification on the part of the student. As with individuals in any community, Deaf people will vary in their level of assertiveness and so many students will not receive the support services to which they are entitled.

Even when an Auslan interpreter or a notetaker is provided, it is rare for a student to be provided with both services in spite of the fact that it is simply not possible to watch an interpreter and take detailed notes simultaneously. Students are therefore forced into choosing between participation in class activities via an Auslan interpreter, or receiving a written summary of discussions from a notetaker at the completion of the class. They are thus disadvantaged in comparison to their hearing peers and as a result they are less well equipped to compete for employment.

As outlined in our earlier submission, this problem is compounded by the fact Deaf students are less likely to raise such issues or lodge a formal complaint against the service provider making systemic change even less likely to occur.

2. Employer awareness of Deafness and reasonable adjustment.

In spite of their hearing loss and preference for communication in Auslan, Deaf people are still able to use a range of strategies for communicating with fellow workers and clients. Communication can also be greatly assisted if Deaf employees are provided with access to everyday technological adaptations such as the free national TTY relay service, email, fax or SMS.

Awareness of such options is limited however, and communication with a Deaf or hearing impaired employee is therefore generally perceived to be difficult or problematic. The fact that a Deaf person may not be able to use a telephone, for example, would usually result in a job application being rejected as a Deaf applicant would be perceived to be unable to meet the communication criteria automatically required of most positions.

Furthermore, and supporting of the view expressed by the Australian Association of the Deaf on this issue (p80), job applicants are generally given little or no justification for the decisions made at this stage of the selection process. As a result, Deaf applicants are also powerless to lodge a formal complaint against an employer.

3. Auslan interpreting as a specific reasonable adjustment

Although Deaf people will have a range of communication skills and strategies, situations such as job interviews obviously require a superior level of interpersonal communication. Many Deaf job applicants would therefore request an Auslan interpreter for job interviews in order to ensure they are able to participate fully and present themselves to the best of their abilities.

As was outlined in our earlier submission to the Review, Auslan interpreting services are generally provided on a fee for service basis as most Deaf Societies do not receive funding to provide a free interpreting service. Even where Deaf Societies do receive funding from the relevant state government under the Commonwealth States and Territories Disability Agreement (CSTDA), the level of funding is generally inadequate to meet even basic levels of demand and employment related appointments must compete for priority with medical, dental and legal appointments.

Until the issue of funding is resolved, this means that where possible, Deaf Societies must seek a fee of approximately \$160 for a minimum two hour interpreting appointment. Some employers understand their obligation and agree to pay for an accredited Auslan interpreter. This is generally true of Commonwealth and state public sector organisations and a clear result of equal employment opportunity requirements and practices.

Even in the government sector, increased focus on cost cutting does result in the need for some level of negotiation.

Case Study 1. An administrator in a large government department called the state Deaf Society to book an Auslan interpreter for a job interview. On being told the fee, the administrator advised they had to refer the matter to a senior manager for approval. The manager at first baulked at the cost but agreed once reminded of their obligation to applicants with a disability.

Although the interpreter was provided in this instance, this case study unfortunately demonstrates the negative financial associations that are made with a Deaf applicant before an interview has even been conducted.

Similarly, due to the shortage of appropriately qualified Auslan interpreters, booking an interpreter may require 1-2 weeks notice. Current HR practices, where as little as 1-3 days notice may be given for a job interview, therefore make it much less likely that a Deaf applicants will be interviewed. This again creates frustration and may leave a lasting negative impression.

It has also been the experience of Deaf Societies that private sector organisations, especially small businesses, are even less willing to cover interpreting costs for job interviews.

Case Study 2. A small business called a Deaf Society to request an interpreter in order to interview a young Deaf woman for a position. On being advised of the interpreting fee, the person making the booking advised they were unable to meet this cost and would interview the person by email.

Clearly no other job seeker would be expected to accept a 'solution' as outlined above for a job interview. Similarly, pre-interview discussions between a Deaf applicant and the contact officer for a position would also almost certainly only be in electronic/written form as few employers would cover the cost of an interpreter.

In spite of the above, many Deaf people are successful and do obtain employment although they are still rarely provided with Auslan interpreters for work workplace activities such as orientation, training courses or meetings due to the costs involved. (This will be covered in detail below.) This clearly reduces the ability of a Deaf employee to be full involved in their workplace, and to maintain or improve work related skills. Not having equal access to information relating to first aid, evacuation procedures and other OH&S related training could also have serious safety consequences for the Deaf employee and potential legal consequences for the employer.

In the United Kingdom, a program similar to the FACS Workplace Modification Program provides assistance to private sector organisations with the costs associated with sign language interpreting. Unfortunately the FACS Workplace Modification Scheme does not. In fact, Auslan interpreting is specifically excluded under the guidelines:

- "5. Purposes for which Assistance is NOT available
- 5.1 Workplace Modification Assistance is not available for:
- 5.1.1. non-disability specific modifications or equipment
- 5.1.2. educating co-workers (e.g. interpreters to facilitate communication between a worker and other staff); or
- 5.1.3 domestic modifications."

(p. 6, The Workplace Modifications Scheme, Revised Guidelines, Family and Community Services, February 2001)

Although confusingly referred to as 'educating co-workers' in the guidelines, direct contact with the FACS Workplace Modification Unit has confirmed that assistance with Auslan interpreting is not within the scope of the Scheme in its current form.

It is perhaps for these reasons that Deaf employment is disproportionately concentrated in the public sector. (A recent, as yet unpublished survey of the Deaf community commissioned by the Commonwealth Department of Family

and Community Services found that more than 30% of people who responded to a survey were employed in public sector. This report is expected to be published shortly.) On a more positive note, this concentration of employment also demonstrates that the equal employment practices of the public sector do have a beneficial effect although most employees would almost certainly be found in lower, administrative positions.

4. Employment services and employment service funding arrangements

Barriers to employment also result from the current, inadequate arrangements between FACS and the Department of Employment and Work Relations and the employment agencies they fund. Deaf Societies are aware of specialist disability employment agencies and Job Network services refusing to pay for Auslan interpreters for Deaf clients or providing an interpreter only if the client is assertive and persistent.

Case Study 3. An employment service refused to pay for an interpreter for a job interview for a Deaf client. Being unaware of their rights, the Deaf client did not press the issue and instead the client's mother was used as a notetaker during the job interview.

Again, other clients would not be expected to accept such a compromise. These potential breaches of the Disability Discrimination Act appear to result from the fact that case based and block funding for employment agencies fails to adequately account for the interpreting costs associated with Deaf clients. As a result, Deaf clients generally continue to use the specialist employment services offered by Deaf Societies (in those states where they are available) as they know their need for an Auslan interpreter will be respected. Whilst this may seem a suitable arrangement, it unfortunately leaves Deaf Societies burdened with costs for which they have also not been adequately funded. This situation also limits the options available to Deaf job seekers and provides little incentive for other employment agencies to become more accessible to Deaf clients.

Draft finding 5.2

Identification of students with disabilities and access to disability programs in mainstream schools have grown substantially since the DDA was enacted. Although it is difficult to distinguish the effects of the Act from the effects of government policies of integration in education, the Act appears to have had some effect in improving educational opportunities for school students with disabilities.

It is our view that the needs and education opportunities of Deaf students in mainstream schools have not generally improved. For students who are Deaf and use Auslan as their primary means of communication, access to teaching staff who are equally fluent in Auslan is of fundamental importance. Unfortunately state government regulations do not make this a requirement and hence primary and secondary schools rarely provide teaching staff who able to communicate effectively with their students. This results in poor classroom communication, frustration for all parties and severely restricted educational outcomes. Ironically, if a student does survive these educational hurdles and they proceed to a College of TAFE or the university system, they are then provided with the right to request an accredited Auslan interpreter.

Draft recommendation 6.1

The Attorney General should commission an inquiry into access to justice for people with disabilities, with a particular focus on practical strategies for protecting their rights in the criminal justice system.

AFDS strongly supports the call for an inquiry into access to justice. Although all state governments have accepted responsibility for the provision of Auslan interpreters in the criminal justice system, we do not believe that people who are Deaf receive equal access. There is currently a general and very severe shortage of accredited Auslan interpreters and an even greater concern about the number of interpreters adequately skilled to work in such a specialised and complex environment. With limited development opportunities to assist other interpreters to undertake work at this level, the situation will not improve, dramatically limiting access for people who are Deaf.

Draft finding 7.1

In general, community awareness of disability issues and attitudes towards people with disabilities appear to have improved in the past decade. Scope for further improvement remains, however, both in certain areas of activity, such as employment, and in relation to particular disabilities, such as mental illness.

Whilst AFDS would agree that general community awareness of disability issues has improved, as already discussed under Draft Finding 5.1, the lack of awareness of disability issues and reasonable adjustment options by employers does indeed continue to be a major barrier that must be addressed. It is with this aim that most Deaf Societies provide Deafness awareness training and Auslan classes for the workplace even though the lack of funding for such programs means that Deaf Societies are only able to do so on a fee for service basis. As a result, those workplaces most in need of such training are least able to take up such opportunities and therefore remain unaware of the practical steps that could be taken to remove barriers to employment.

The Australian Capital Territory government has recognised this issue by providing the ACT Deafness Resource Centre (ACTDRC) with \$9,000 in annual funding specifically for the purpose of providing Deafness awareness training to organisations employing Deaf workers. Although ACTDRC have reported positive results from employers using this program, this remains the only example of such funding in Australia.

Request for information

The Productivity Commission seeks information on the costs and benefits to organizations of complying with the provisions of the DDA and disability standards. The Commission would welcome information on the nature of these costs and benefits, and on their magnitude.

If we consider an employment situation in the first instance, the crucial workplace 'modification' for a Deaf employee is the provision of an Auslan interpreter to facilitate communication. Although it is obviously difficult to generalise across all workplaces and employment situations, Table 2 provides a breakdown of the minimum hours of interpreting required for the recruitment of a Deaf employee.

Table 2: Auslan interpreting required for recruitment.

Activity	Hrs
Pre-application discussion with Contact Officer	2
Job interview	2
Offer of employment meeting	2
On the job orientation and induction (1 day)	8
Review of employment at 3 months	2
subtotal	16

It should be noted that although a pre-employment discussion with the Contact Officer for a position may take less than 30 minutes, an interpreting booking agency or individual freelance interpreter would usually require a minimum two hour booking given that travel to and from the appointment must also be taken into account.

With most booking agencies charging \$160 for the minimum two hour appointment, the above recruitment exercise would cost an employer \$1280. Even if the Deaf applicant is not the successful candidate, an employer would still be responsible for the cost of the job interview (approximately \$160).

The interpreting costs associated with an existing, ongoing employee are shown in Table 3.

Table 3: Annual Auslan interpreting required for a typical employee.

Activity	Hrs
Monthly staff meetings	24
Performance reviews (6 and 12 months)	4
OH&S training (1 day)	8
Other training and development courses (2 days)	16
subtotal	52

It must again be stressed that the number of hours of interpreting will vary with the nature of the workplace and the position occupied but as an indication of cost, the above 52 hours of interpreting would represent a minimum cost to the employer of \$4,160 per annum. These costs could rise further depending on the number, nature and length of the training used in the above example. Current OHS guidelines for Auslan interpreters may also require that two Auslan interpreters are employed for a full day training course thus doubling these costs.

Although minor in comparison, it should also be assumed that an employer would make a one off purchase of a TTY for a Deaf employee at an approximate cost of \$1000. This would allow a Deaf employee to use the free National Relay Service and contact other workers or clients by telephone.

Other business or service provision scenarios are more difficult to generalise. The key point remains, however, that even a 15 minute consultation with a doctor, for example, would draw a booking fee of \$160 which is considerably higher than the rebate to the medical practise under bulkbilling. Such small businesses are therefore generally unable to accept the costs associated with Auslan interpreting and would claim unjustifiable hardship.

Deaf people therefore do not have equal access to a range of employment opportunities or to a range of goods and services as a result of the cost of providing an Auslan interpreter. In Tasmania and Western Australia, access is only made possible through a state government subsidy of the interpreting service provided by the state Deaf Society. In all other states, where no Commonwealth or State subsidy is provided, a free interpreting service is either no longer available or is restricted. This issue is currently being considered by the Commonwealth Department of Family and Community Services following the completion of a research project looking into the supply, demand and funding of Auslan interpreting services. No commitment in relation to funding has yet been made however.

Draft finding 8.1

Available evidence suggests that the costs of complying with the DDA and disability standards vary widely across organizations. For many organizations, these costs could be quite small.

Given the examples outlined above, it is clear that the costs associated with Auslan interpreting for any single organisation could in fact be considerable and, unlike the costs associated with the purchase of an adaptive device such as a TTY or any other modification, these costs are ongoing. Small to medium sized organizations would find the above particularly challenging.

Ironically, as in the case of employment where a workplace may have more than one Deaf employee, some of the costs outlined above may be reduced. Training and development, for example, could be organised so that all Deaf employees attend the same activity.

Draft finding 11.3

People with a disability can face significant barriers to using the DDA complaints process, which can reduce its effectiveness. Barriers include:

- **the financial and non-financial costs of making a complaint**
- **the complexity and potential formality of the process**
- **the evidentiary burden on complainants**
- **the fear of victimisation if a complaint is made (which can be greater in institutions and smaller communities)**
- **the inequality of resources and legal assistance between complainants and respondents.**

As outlined in our earlier submission, AFDS believes that such barriers do indeed prohibit complaints by people who are Deaf under the DDA.

It is also our experience, following a complaint recently lodged against a Commonwealth agency in relation to Auslan interpreting, that the complexities involved in the delivery of government services create a particular challenge in relation to identification of the respondent and the solution to the discriminatory practice. In this particular case, it was almost unanimously agreed that 'something' had to be done by 'someone' although no one could quite agree on who that 'someone' would be.

Request for information

The Productivity Commission seeks views on how the costs of adjustments should be shared between governments, organizations and consumers. The Commission would welcome comment on the adequacy of existing government funding schemes for such adjustments, and the advantages and disadvantages of extending particular arrangements such as portable grants.

As the majority of small to medium sized service providers and employers currently do not accept responsibility for the costs associated with Auslan interpreting, it is our view that government has a clear role in ensuring that Deaf people have equal access to goods and services and employment related opportunities. While organizations may be seen to have some responsibility in ensuring Deaf employees or clients are provided with an Auslan interpreter, as already outlined, such costs create a significant negative association with the Deaf individual, creating a barrier to recruitment or to the provision of services to Deaf clients.

A direct subsidy to the organisation under a scheme similar to the Workplace Modification Scheme would appear to be one option for the provision of such assistance and this system appears to work effectively in the United Kingdom.

Alternatively, the Deaf Societies of Tasmania and Western Australia receive funding from their respective state governments under the CSTDA to subsidise the provision of a free interpreting service for those appointments where a fee cannot generally be charged. The ACT government has a similar arrangement with ACTDRC as already mentioned. AFDS has called upon the Commonwealth government to show leadership on this issue and provide nationally consistent funding. We understand that this issue is currently being considered by the Minister for Family and Community Services.

It is also the view of Deaf Societies that a Deaf person should not personally be expected to bear an additional cost (such as a fee for interpreting) in order to access a service which other members of the community are able to access without such a cost. This view is supported by the higher incidence of unemployment and underemployment in the Deaf community. Furthermore, given that employers and service providers are reticent or claim they are unable to meet their obligations in providing an interpreter, AFDS feels that it is inappropriate and unrealistic to expect Deaf individuals to contribute towards such costs.
