GUIDE DOGS ASSOCIATION
OF SA AND NT INC

7 January 2004

Disability Discrimination Act Inquiry
Productivity Commission
LB2, Collins Street East
MELBOURNE VICTORIA 8003

The Guide Dogs Association of SA&NT Inc encloses a comment on the Productivity Commission Review of the Disability Discrimination Act Draft Report for your consideration.

Our comments focus generally on people with sensory disabilities, that is people who are blind, vision impaired, deaf, hearing impaired or deafblind.

Significant vision and/or hearing loss are among the most common disabilities in Australia. Information in our world is presented largely in ways which a east best, difficult to access for people with sensory disabilities. Many have poor literacy and communication skill because their early education did not meet their real needs. This is of course not true for all people with sensory disabilities, but it is true of enough that a significant number find themselves as adults without a clear understanding of how systems work, what their rights are and with inadequate knowledge, sills or supports to communicate their needs.

1 was disappointed to learn that the public hearing in Adelaide had been cancelled due to lack of registrations. May 1 suggest that had a time been offered for the hearing this may have assisted people with their diary commitments. In any event, 1 was offered the opportunity to participate in a teleconference, however was unable to take up the offer.

Yours sincerely

Helen McLean
Chief Executive Officer

Comment on the Productivity Commission Review of the Disability Discrimination Act Draft Report

GuIDE DOGS ASSOCIATION
OF SA AND NT INC

Prepared for the Adelaide Public Hearing
January 2004.

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Introductory Remarks:

There is no doubt that the presence of an actual piece of legislation specifically to resist discrimination against people with disabilities is a vital tool, much valued by many people with disabilities.

It is not so certain however, that it has been at all effective in creating systemic change, or that it has truly assisted the 'most' disadvantaged members of the disability community. This includes people from every disability category who for a range of educational, social, support, communication, mobility and other reasons are largely disenfranchised from general community services and supports, particularly those that are legal, formal and structured.

As such, the Disability Discrimination Act 1992 (DDA) itself is frequently inaccessible for many people with disabilities, and the Draft Report seems to do little to alter this situation.

Certainly the DDA seems to have been of most use to those who are articulate and/or courageous, and often any success they may have had, has had little impact on those who are less advantaged.

This response will make mention of this 'most' disadvantaged group, but will focus generally on people with sensory disabilities, that is people who are:

- Blind
- Vision impaired
- Deaf
- Hearing impaired, or
- Deafblind.

Some relevant social impacts of sensory disability:

It is important here to quickly highlight some of the issues confronting people with sensory disabilities in Australia.

Significant vision and/or hearing loss are among the most common disabilities in Australia. Impacts can vary from almost none to catastrophic, depending on age of onset, education, language proficiency, literacy, finances, presence of other issues/disabilities, etc.

Information in our world is presented largely in ways which are, at best, difficult to access for people with sensory disabilities. Many have poor literacy and communication skills because their early education did not meet their real needs. This is, of course, not true for all people with sensory disabilities. But it is true of enough that a significant number find themselves as adults without a clear understanding of how systems work, what their rights are and with inadequate knowledge, skills or supports to communicate their needs.

As such, sensory disabilities serve to separate people from their families, communities and services.

Given this, many are dependent on others to know what exists, what their rights are, and how to access these.

Import and Impact of the DDA for people with sensory disabilities:

There is no doubt that many people with sensory disabilities, that are aware of the DDA, consider it an important Act. This is despite the fact that most have not used it and many would not be aware of how it could assist them personally. This does not alter the fact that many people are at least aware of “that equal" or "that disability" legislation that is designed to protect their rights.

Many of this group would likely make better and fuller use of the DDA were there appropriate and adequate supports, less financial barriers and more proactive promotions.

As such, the comment in the Draft Report that "The *Disability Discrimination Act 1992* appears to have been more effective for people with mobility and sensory impairments than those with a mental illness, intellectual disability, acquired brain injury, multiple chemical sensitivity or chronic fatigue syndrome" suggests that it has been more effective than it really has.

Certainly some with a sensory disability have benefited via the creation of a national TTY relay service, increased television captioning provision, or the provision of some materials in alternate formats, etc, but still many people with sensory disabilities have significant issues in terms of employment, education, access to community services, access to government service, access to community and private legal and medical supports because of direct and indirect discrimination.

In essence the systemic change that is necessary to create any real impact has not eventuated, and changes are adhoc based on individual people's ability to make and sustain complaints.

This is difficult enough for articulate, well educated people without a disability. It presents as impossible to many people who are poorly educated, inarticulate, isolated, and generally disenfranchised in the community.

As such the DDA has NOT been overly effective in reducing discrimination for people with sensory disabilities. If, indeed, it has been more effective for this group than others it is still not "better enough".

This Draft Report must consider and recommend enhancements and changes that allow and foster Human Rights and Equal Opportunity Commission (HREOC) initiated actions and much improved (accessible) education and state based support mechanisms to assist people to understand, initiate and sustain their own individual complaints.

Comment on the Draft Report:

- ### Effectiveness in employment:

We would agree that the DDA, in its current form is largely ineffective in terms of employment. We would also agree that the issue of cost and the distribution of this needs to be considered and responsibility clarified. However, we would not agree that consumers should be considered at all responsible for these costs, where they are over and above the costs ordinarily associated with a service, activity, or other issue associated with equality in employment.

It is also our view that individual complaints are insufficient impetus to change general employer misconceptions and stereotypes, especially given the above comments regarding the difficulty many with a sensory disability have in making and sustaining complaints. As such, the HREOC role in education and research, and their potential capacity to initiate actions, is vital and their capacity and power to do this effectively must be strengthened.

- Effectiveness in education:

We would agree that mainstream placement in schools has been more available since, but not because of, the DDA. State and federal education policies would appear to have had a significant influence on this. However, this does not always translate into better education for the individual person with a sensory disability, even though it may for many others.

One should expect to see complaints in this area continue, and adequate support to do so is required.

- Burden of proof:

We would agree that it is not appropriate to expect individual consumers to prove that an expectation of them "is not reasonable having regard to the circumstances of the case". Essentially it assumes a great deal more specialised knowledge and expertise than most consumers would possess. The burden, as such, should be on the respondent to prove that such a requirement or condition is 'reasonable".

- Unjustifiable Hardship:

It is not our view that the defence of unjustifiable hardship should be extended to include education and the administration of government laws and programs. The very real risk is that those with specific needs because of the complexity or 'difference' of their disability will be seen as too costly and complex. Given that this is the very group least able to raise and sustain a complaint, to expect them to resist an "unjustifiable hardship" defence it to make the barriers insurmountable.

At very least, all users of the "unjustifiable hardship" defence should be required to define and accept steps to become non-discriminatory over time, rather than the defence providing an escape from action.

- Migration:

We would agree that the DDA should indeed cover the Migration Act, but that this coverage should also prevent a person who has a disability or has a dependent family member or spouse with a disability, being refused immigration where that person would otherwise be eligible.

This exemption serves only to permit discrimination, even where all other criteria have been met, and frequently serves to condone stereotypes regarding the capacity of the individual.

Cost and other barriers to people with sensory disabilities:

Many of these issues have been highlighted earlier in this response. However, many of the major barriers to the DDA are around:

- Fear of legal systems and repercussions;
- Awareness and understanding of the DDA and legal systems;
- Individual capacity to mount and sustain a DDA complaint;
- Realistic perception of capacity to succeed/use the DDA; and
- Perceived, and real, risk of costs if case lost.

While we understand it is generally not likely that the DDA could include effective requirements around combating these barriers, it is possible that this Inquiry make clear recommendations on these topics.

- There is not a clear understanding among people with disabilities about the DDA, how to use it and what it could be used for.

- There are grossly inadequate information and support services to assist people to understand their rights and to assist them to make complaints.

- There is a persistent fear of losing services and of legal systems generally.

- There is a common concern that the DDA (and legal systems generally) are not structured to assist and often perpetuate discrimination.

A comprehensive and accessible information campaign with a long-term commitment to education and appropriate localised and individualised supports to people with disabilities is essential if these barriers are to be addressed.

• Office locations and local support:

While many complainants apparently felt that HREOC's location in Sydney was not a barrier, we wonder if the same would be true for those who did not complain or were not aware, that is those who did not pursue a complaint or were not aware they could.

We would strongly support the development of formalised linkages with state bodies to provide more accessible services to more people. Such linkages and arrangements must include promotion and appropriate support, rather than a simple information shopfront service.

• Awarding of costs:

It is true that the threat of costs being awarded against complainants can be, and has been used as, a major deterrent against pursuing a complaint. Whilst we understand the need for this capacity, especially for spurious or excessive complainants, it potentially prevents many legitimate complaints from progressing.

This sort of risk should not be present where the complaint appears legitimate and justified in the early stages, even if it is eventually lost. As such, conditions as outlined in section 2.4 of the earlier Disability Discrimination Legal service should be supported

- Effectiveness of individual complaints to create systemic change:

While legislation to deal with individual complaints, such as the DDA, is essential, it should not exist in isolation of concerted public information and promotion of the Act, its Objects and the outcomes of Hearings and Court Decisions. This, more than the individual complaints themselves, can assist to create systemic change.

- "Positive Duty" of businesses:

It seems appropriate that Employers are required to accept a positive duty to take ‘reasonable steps’ to identify and work towards removing barriers to employment of people with disabilities.

This would certainly reduce the frequency of "unjustifiable hardship" defences, and also provide an obligation upon employers to deal with issues that prevent them from considering all suitable qualified people.

Such an obligation should also be imposed upon services, funders, governments, etc to seek to reduce disability discrimination in all areas of the community.

- Funding of Legal Support:

It is clear that funding for disability discrimination legal supports and services is inadequate, as is the funding to enact changes within government services and government funded services.

As suggested earlier, it is not within the capacity of the DDA to impose funding requirements upon governments.

However, it is our view that it is within the scope of this Inquiry to clearly identify the nexus between funding and capacity to make and sustain legitimate complaints and to enact change, and to recommend ways of doing this.

Summary:

While the DDA is an essential piece of legislation for people with disabilities in Australia, it has not provided all that it could for this group or the community generally.

A number of barriers to its effective use exist either within the legislation itself or within the (lack of) Government programs designed to make the process useable for people with disabilities.

Additionally, lack of broad promotion of the Act and the outcomes and decisions from Hearings has meant that the Act is relatively unheard of outside of the disability industry and largely ignored by much of the community.