

# Submission to Productivity Commission Review of Disability Discrimination Act 1992

By Patricia Malowney

## Introduction

After commencing literature searches and other research into the effectiveness of the Disability Discrimination Act 1992 and the impact which it has had on people with a disability (PWD) – and indeed the wider community, I decided that as a person with a disability, my own experience would be far more valuable to the Commission as primary evidence – rather than a rehash of other peoples work.

Discrimination on the grounds of disability is an issue of which I have had some knowledge not only as a person with a disability, but also as a person who has worked as an Equal Employment Opportunity Officer, as an advocate for people with a disability and who has provided training as to Victoria Police employees, TAFE students and industry in relation to disability discrimination, human rights, sexual harassment and other forms of discrimination. I therefore believe that I have a unique insight into the workings of the Disability Discrimination Act 1992 – where it is working and how it may be improved.

So many things have changed since I left school – when I joined a bank in 1971, women were not allowed to be married and continue to work – they could not be bank tellers and even when doing the same work as a male employee, they received 70% of their wages. The same can be said of those who have a disability – today it is accepted that a person with a disability will go to university if they have the capacity to do so – that a person can become a teacher if they are in a wheelchair – that travel, the ability to enjoy a cup of coffee or go to see a film is a normal part of life which should be open to all, regardless of ability.

The days of hiding people with a disability have gone, but we still have some way to go to ensure that indirect discrimination does not impinge on the ability of people with a disability to not only participate fully, but to contribute to society.

I propose that we take a proactive approach and start promoting the abolition of disability discrimination as a way of providing economic benefit to the rest of the community.

## Background

I contracted Polio in 1954 at the age of 4 months and have no memory of life without a disability. My earliest memory of the need to speak out was when my mother went to enrol me in school and was told that there was no room. When she asked whether this was because I had a disability, she was told that a place would be found for my older brother and me. This was at a time when the school I attended had over 600 pupils, with more than 60 to a class – and no other children with a disability attended – in fact, if you think back to those days – we really didn't see people with a disability. I wore a calliper on my left leg and was unable to take part in all of the activities in the schoolyard, but was not treated differently to anyone else in the school. Those who had a disability or needed extra assistance were relegated to special schools – unless they had a mother like mine who demanded equality long before it was an accepted practice.

The second of 10 children, I knew no one else who had a disability and did not consider myself to be disabled. I participated as best I could in all the activities which were available, including Brownies and Girl Guides, with some modifications being made to accommodate my disability (eg. walking along a straight line instead of skipping). I was known in the community and accepted by my community.

I attended mainstream schools throughout my education and it was not until just before I left school that I realised that I could face discrimination due to my disability. I wanted to teach – however, as I had a disability, I was discouraged from taking this path as it was not considered prudent because of the standing which would be required. I left school at 16 and was told that I no longer needed callipers, or further treatment, that the weakness would not get worse, and to get on with my life. Ironically, I joined a bank and stood for the next 4 years. I then went to work in an Aboriginal Community in the Northern Territory as a Radio Operator – and was there for Cyclone Tracy and as such was able to assist in the delivery of information South before regular communications were re established.

After a year I returned to Melbourne and began employment in a book distribution centre, doing manual labour and saved enough to travel overseas – being different to everyone else who was going to England, I went to America and Canada for 5 months. On my return, I commenced work in the Victorian Railways – after some resistance as they were hesitant to take on a person with a disability in anything manual and I had applied for a position as a waiting person on a train. However, after some negotiation I was accepted as a stock control clerical assistant – as a female, I was not able to become a clerk – unbelievable as it sounds now.

After some years with railways, and having married, I returned to school so that I could become a clerk – even though my managers had less education than me, I still could not become a clerk without upgrading my education. After completing one year at the Council of Adult Education, I applied to Latrobe University for a place in the School of Social Sciences, and after 9 years working full time and studying part time, I completed a Bachelor of Arts, majoring in Anthropology and Legal Studies. By this time I had joined Victoria Police as a Research Officer in the Research and Development Department and was able to utilise my skills in the areas of policy development and legislation interpretation.

I was asked to join the Victoria Police Equal Employment Opportunity Unit as a policy writer, and also became the first Victoria Police Disability Liaison Officer. These roles enabled me to interact with police employees at all levels, and enabled me to assist those with a disability employed by Victoria Police, and those seeking employment with Victoria Police. Through training I conducted at the Police Academy and through the development of policy, I believe that I was also instrumental in assisting people with a disability in the community

During this period, I was also asked to develop and deliver the Human Rights component of the Certificate of Justice course at Wantirna TAFE (now Swinburne University). I also developed my own consultancy to deliver equity and diversity training to private industry.

My health began to fail in about 1990, with the onset of Post Polio Syndrome. I began to have more and more falls, and my fatigue levels became a problem. As Post Polio Syndrome was little understood at that time, I just worked harder. My mistake. By 1999 I realised that I had a real problem and sought assistance from Polio Services. I was able to continue by going back into callipers and taking up crutches to stop me from falling down so often. I also obtained an electric scooter to get to and from work. However, I was eventually forced to retire due to ill health, despite a supportive workplace and considerable time off work. Not only was my physical fatigue becoming a problem, but I also suffer from brain fatigue (a common polio phenomenon), which reduces my ability to think quickly.

I now undertake an advocacy role with the Eastern Polio Support Group Inc, as well as editing their newsletter, conduct research on behalf of members and lobby Government agencies on their behalf. I also participate in the development of a number of disability action plans at a municipal level and am the Disability representative on the Tram 109 Community Consultative Committee. I am able to participate fully because of the support of my carer, my husband. When I am not doing voluntary work, I try to travel with trips to South Australia, NSW, Queensland, ACT and Country Victoria as well as an overseas trip to Sri Lanka since I retired in 2001. My life is full, but – I am able to do as much as I do because I have support from my family and friends, and I am able to stand up for myself – except when I am tired.

The situation for has vastly improved from the time when I was a child, where it is no longer common for parents to say “don’t look” in a misguided attempt to shield PWD from insensitive children resulting in a fear of the different. Now children know that PWD are a normal part of the community, children who are PWD are in mainstream schools when able, and there is not the fear that was associated with disability – perhaps due in part to the spread of immunisation which has reduced the fear in parents of their children catching a disease which may lead to disability.

## Issues

The level of disability within the community has been previously documented within the Draft report, and there is no need to repeat the information, but rather to use the information to lobby for more services for PWD, and to market the elimination of discrimination as in the community’s interest. The areas of concern to PWD are complaints, Victimisation, accommodation, and access & egress to premises (including parking).

## Complaints

Complaints are difficult for anyone to make but more so for PWD. The reasons for this may be explained by the manner in which disability has been treated in the past. Until 30 to 40 years ago, PWD were hidden away, and taught not to make waves. Many were institutionalised and many have found it difficult to make the transition to accepting that they have the same rights as others in the community. From my own experience, acceptance by others in the community meant allowing others to take advantage, in the form of jokes or teasing, often with the PWD making the comments before others did. It is therefore hard to change a lifetime of habit.

There is a reluctance to make complaints, because of the fear of being different, a fear of not fitting, a fear of losing their employment and a major fear of victimisation.

## Victimisation

Victimisation can take many forms, and it is an insidious tool used by the unscrupulous to stop complaints, but also to force resignations, abandonment of housing and a withdrawal from the community. It can mean reducing hours, not undertaking required equipment repairs, rescheduling appointments, providing demeaning work, or sending a person to Coventry. Victimisation will only be removed when vicarious liability provisions and penalties are marketed in the same way as tobacco or domestic violence, with actual case studies highlighted. The majority of the community would be horrified to find out what happens to PWD when they try to assert their rights.

## Accommodation

The development of Standards for accommodation is essential to the provision of equity to people with a disability. Accommodation is of major concern, not only that there is a considerable lack of public housing, but that with an aging population, the demand can only increase. This does only require improvement in the public sector, but there are requirements for the needs those with a disability to be met in the private sector.

The city of Manningham in Victoria recently launched their accessibility policy which moves towards ensuring that the needs of people with a disability are met, by including a requirement for at least one accessible unit in every block of 4 or more units built. While this is a small step, and does not go nearly far enough, the development of accommodation disability standards will assist. My belief, developed through experience and through discussions with others with a disability, is that the standards should involve all types of accommodation, including holiday accommodation, and should be promoted as a positive in the community.

It should be noted that accessible accommodation could be accessed by all whereas non-accessible accommodation is limited to non-disabled people. That accommodation is accessible does not mean that it will be unattractive, or unwanted by non-PWD. Modern materials and styling can make such accommodation attractive to all.

Holiday accommodation should also be included in the standards, as travel should be an integral part of life for PWD, just as it is for others in the community. Many PWD have had the experience of contacting a hotel or unit manager to enquire about accessible accommodation, and having been assured that it is available, have found on arrival that there may be a ramp, but no handrails, showers over baths, and doorways which will not allow access for a wheelchair, or rooms which are so small that wheelchair access is restricted.

The development of standards alone however, does not ensure compliance. As the disability representative on a consultative committee regarding equitable tram access, there is much resistance from the community, particularly traders, who do not see the benefits of allowing freer access by PWD. The acceptance of any standards would need to be marketed, with an emphasis on the benefits, such as increased patronage to holiday accommodation, increased capacity to sell units and homes, as well as the benefits to the community. The attractiveness of universally accessible accommodation also needs to be emphasised.

## Access & Egress

There is an assumption in the community that most buildings are accessible and therefore everything is fine, but all buildings should be accessible, thereby increasing inclusiveness, and also employment opportunities. Having regard to reasonableness of undertaking modifications, a number of buildings which are inaccessible, may only require the addition of a ramp or modification of a step. A small issue for some, but annoying when

trying to undertake everyday tasks. The benefits of accessibility should be marketed to promote the benefits of allowing all to shop or dine or stay or attend.

Parking has become a major issue to many PWD due to the lack of accessible parking in most areas. The problem has been exacerbated due to the number of people who are inappropriately issued with disabled parking permits. The issue is not the ability to park close to an entrance, but rather the ability to get in and out of a vehicle. Many PWD can tell of experiences where they have had to go home because they could not find a parking place, or have had to seek assistance when someone has parked too close to their vehicle if they do park in a "normal" place.

## **Conclusion**

There have been vast improvements to the lives of people with a disability since the introduction of the Disability Discrimination Act 1992. However, there is more that needs to be done. The majority of the community are not aware of the Act, or of why it is required. With an aging population, the number of PWD is increasing, there will be further calls on a shrinking facilities. Accommodation standards are required, but need to be marketed and promoted as beneficial to the community. Disability awareness training, run by PWD and including the vicarious liability and victimisation provisions of the Act, should be promoted as a way of reducing the incidence of discrimination, assistance should be given to ensure that support is provided to any person making a complaint.

Thank you for allowing me this opportunity.