

# **Response to Review of the Disability Discrimination Act 1992**

## **Draft Report**

### **Action for Community Living Inc.**

Action for Community Living (“ACL”) is an advocacy organisation federally funded under the Commonwealth Disability Services Act. Our primary focus is advocating for systemic change in relation to support services for people with disabilities. This is undertaken in the recognition that it is the inadequacy of support services that prevent vast numbers of people with disabilities from equally participating in Australian society.

Action for Community Living is a consumer-controlled organisation and advocates on behalf of people with disabilities, including people with psychiatric, intellectual, acquired brain injury, physical and sensory disabilities.

This is our response to the First Draft Report by the Productivity Commission on the Review of the Disability Discrimination Act 1992

## **THE EFFECTIVENESS OF THE DDA**

It does appear that the Disability Discrimination Act (“DDA”) has been effective in the elimination of disability discrimination, more so in some areas than others.

### Employment

This report has recognised that the DDA has been to some extent ineffectual in eliminating disability discrimination in all areas of employment.

This Report has not even mentioned let alone addressed the exemption of workers within sheltered employment, which thus allows discrimination to occur within these types of employment. In this present climate, where people with disabilities are finding it difficult to find employment some are being pushed back into these types of places where discrimination is permitted. An Audit Report undertaken by KPMG on Sheltered Workshops has alerted this to.

### Education

There may have been an increase in the number of students with disabilities in mainstream schools but this does not indicate that the provision of appropriate disability supports has improved. This does not indicate the “subtle discrimination that occurs when principals refer students with disabilities “to the school down the road which provides better services for students in your situation”.

## Access to Premises

Accessibility to public transport has increased due to the DDA. However, once again, this is a long and tedious process. The timeline to make all public transport accessible is very lenient on service providers and very disappointing to people with disabilities.

## **THE EFFECTIVENESS OF THE DDA FOR DIFFERENT GROUPS**

People with communication, cognitive and intellectual impairments are less likely to use the DDA for reasons of dependence on their services and carers. Another factor could be the unspoken belief that they are unlikely to succeed in taking action under the DDA because of their perception that they won't be listened to or taken seriously. People with very high support needs are often categorised as needing "special care or support arrangements and discrimination is not seen as being a relevant issue.

The definition of disability is broad, however, at present, it does not include people with chronic fatigue syndrome or conditions that place "physical, mental, or intellectual limitations" on the person.

## **EQUALITY BEFORE THE LAW**

ACL is rather concerned that the current Australian Human Rights Commission Bill (currently before Parliament) amends the function of the renamed Human Rights Commissioner to obtain the leave of the Minister to intervene in court proceedings under the HREOC Act

Although this proposed amendment is outside the terms of this inquiry, ACL wants to register its concern that this proposal would undermine the new Human Rights Commission's independence, especially in situations where the government is involved.

## **INSTITUTIONAL ACCOMMODATION / DE-INSTITUTIONALISATION**

ACL supports and reinforces comments made by the Productivity Commission around institutional accommodation and de-institutionalisation.

“The process of de-institutionalisation needs to be supported by access to quality disability services.” (P. 121)

It is disappointing that the Productivity Commission has accepted “there are limitations as to the use of the DDA to challenge government decisions about provisions of services” without investigating how it might be used.

Furthermore, it is rather disappointing that the Commission has pointed out that “disability advocates can use more effective mechanisms than the DDA to deal with

standards for disability services. Alternative mechanisms include internal complaints mechanisms for disability services and State and territory bodies such as ombudsman and public advocates” p. 118

Often these internal and other mechanisms are time consuming and it seems to be an undermining assumption that such people should be grateful for the services they receive and that people in “institutional care” do not have the need nor right to any legal rights as such.

It is disappointing that the Productivity Commission has accepted “there is limited scope to apply the DDA in this area” rather than looking at ways to extend this “limited scope”

## **AN ACCOMMODATION STANDARD**

The Productivity Commission seeks further comment on the desirability of developing an accommodation disability standard, and the forms of accommodation such a standard should cover ( for example private rental accommodation; supported accommodation and institutional accommodation

ACL believes that rental accommodation is not adequately covered by access to services and this area should be looked in thoroughly. People with disabilities are also denied proper tenancy rights where they live in government owned and funded group homes. Further investigation is needed in this area to establish proper tenancy rights for people with disabilities and remove the potential disability discrimination in this area.

ACL has also been strongly supportive of the campaign for standards to be introduced in the area of private and public housing that ensure that all new housing stock is built to be accessible or easily adaptable for access. Denial of access to private housing significantly limits access to a significant dimension of social and cultural life...visiting friends and family in their own homes. Discrimination in this area is currently not being addressed, yet is an area of significant economic waste in expensive refitting homes for people with disabilities and those who are ageing and wish to “age in place”.

It is also ACL’s view that there should not be standards for institutional living arrangements...the standard should be that people with disabilities should not have to live in institutions.

## **JUSTICE AND CIVIC PARTICIPATION**

The Criminal Justice System - It is recognised that people with disabilities receive less favourable treatment because of disability within the criminal justice system

ACL agrees with Draft Recommendation 6.1 that the Attorney General should commission an inquiry into access to justice for people with disabilities with a particular focus on particular strategies for protecting their rights in the criminal justice system.

## **Civil Justice System**

### **Civic participation**

There are two areas, which have particular relevance to equality before the law. These are; Voting and Jury Duty;

### **Voting**

ACL agrees with Draft Recommendation 6.2 that the Australian Government should amend the Electoral Act 1918 to ensure that polling places are both accessible (both physically and in provision of independent assistance to ensure the right to vote of people with disabilities.

ACL believe it is vital for people with disabilities to be able to exercise their right to vote in a way that does not jeopardise their right to independence and privacy.

## **PROFESSIONAL DEVELOPMENT**

ACL agrees that the Human Right and Equal Opportunity Commission should be more proactive in raising awareness of the Disability Discrimination Act among professional associations and educators.

Although there is a rise in awareness of the legal obligations under the DDA by big corporations, that “they need to do something about this”, there should be more promotion and education about enforcement of these obligations - that they are obliged to eliminate disability discrimination where possible.

## **COMPETITION AND ECONOMIC EFFECTS OF THE DDA**

As stated the Competition Principles Agreement requires that legislation should not restrict legislation, unless the benefits to society of that restriction, outweigh the costs, and the objectives of that legislation can only be achieved by restricting competition.

ACL is pleased with the finding that the DDA appears to have relatively limited impact on competition, and, that, in the absence of further information on costs, the DDA seems likely to meet the “net benefits” test of the CPA.

ACL believes that any mechanism that removes barriers that restrict people with disabilities from full participation in the community should be encouraged to the fullest and perhaps given an advantage over other competing legislation and legal obligations.

## **OBJECTS AND DEFINITIONS**

ACL agrees with the Commission's finding that the DDA should not inadvertently exclude people with disabilities because their circumstances are not included in the definition of disability or because the wording is ambiguous.

ACL agrees that the definition of disability should be amended to ensure that there is no doubt that it includes genetic conditions and conditions that have medically recognised symptoms but have not necessarily been diagnosed, such as chronic fatigue syndrome.

ACL believes that the definition of disability should not be solely based on medical knowledge nor need medical updates to define disability.

ACL agrees with draft recommendation 9.2 that the definition of direct discrimination should be amended to;

- Clarify what constitutes circumstances that are “not materially different” for comparison purposes
- Make failure to provide “not materially different” for comparison purposes
- Make failure to provide “different accommodation or services” required by a person with a disability “less favourable treatment”

We further agree with the recommendations that will clarify what constitutes indirect discrimination.

## **INSURANCE AND SUPERANNUATION**

ACL agrees with Draft Recommendation that the DDA should be amended to clarify what are “other relevant factors “ for the purposes of insurance and superannuation exemption (s.46). Other relevant factors should not include:

- Stereotypical assumptions about disability that are not supported by reasonable evidence
- Unfounded assumptions about risks related to disability

## **BROAD OPTIONS FOR REFORM**

ACL agrees that the advantages of a stand-alone Disability Discrimination Act 1992 far outweigh the advantages of a federal omnibus anti-discrimination Act.

It appears that the attempt to negotiate a national framework for one DDA Act would cause too much disruption and problems to overcome.

However, ACL agrees that both national and state laws should work effectively together. ACL agrees with the proposition that clarification of the relationship between State and Federal laws is needed and improved and agrees with all the recommendations put forward to make this happen.

ACL is pleased that the Productivity Commission seeks views on how the costs of adjustments should be shared between governments, organisations 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

ACL welcomes investigation of the issues in the whole area of employment for people with disabilities including, funding arrangements, schemes and responsibilities of all stakeholders in this area. At present ACL believe that people with high support are not being given a fair deal in this area and believe this whole area needs a thorough review.

We would like to see HREOC take a proactive role in bringing together Government, Community and Business representatives with people with disabilities and their advocacy organisations to develop appropriate causes of action for legislation to develop an effective implementation of the DDA.

While the development of various Standards Projects under the DDA is one approach, we would like to see a more effective ongoing mechanism for ensuring effective application of the intent expressed in the DDA at all levels of Australian Society

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