

SUBMISSION TO THE PRODUCTIVITY COMMISSION ON INQUIRY INTO THE DISABILITY DISCRIMINATION ACT

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I would like to make comments to the Commission on the application of the Disability Discrimination Act (DDA) based on the experiences I have noted concerning my sister, my daughter and stories from acquaintances about their disabled children.

To understand my situation I should point out that

- My 35 year old sister has angelman syndrome
- My five year daughter has cerebral palsy- spastic diplegia.

I have only addressed some of the points from the disability discrimination act inquiry issues paper even though to me several of the points are repeated in subject matter.

POINT 2.2 PROBLEMS THAT THE DDA SEEKS TO ADDRESS

We invite you to comment generally on the nature of the problems that the DDA should address.

The DDA legislated better living conditions for many people with a disability but this hasn't been backed up with sufficient dollars to make it actually happen by either the federal or state governments.

As i see it blatant discrimination is minimal but covert/incidental discrimination is still rampant and needs to be addressed. My definition of covert/incidental discrimination is that discrimination that 99% of the community doesn't realise what they are doing. Eg "we had a girl at this school that had M/S and we all got on well". This from a school that still has several sets of stairs that are the only way to move between the various levels of the school - unless one uses the external paths which are unprotected from the elements.

Discrimination is a social ill and should have nothing to do with economics. I believe that it should be an offence against the DDA to offer settlements of any kind to any discrimination complaint that involves compulsory non disclosure of the actions of the offending party.

Assessments of any kind that require people with a disability to meet multiple disability criteria before support is given should not be used. A person with a specific disability may need specific support due to that one disability. It is not right that such a person should be required to meet several criteria to be eligible for support, however most assessments involve the need to meet several criteria before support is provided despite the fact that the one criteria may "earn" the support.

POINT 2.3 EFFECTIVENESS IN ACHIEVING OBJECTIVES

How should the effectiveness of the DDA in eliminating discrimination be measured?

To simply use the number of complaints to the HREOC I believe is to miss a significant proportion probable valid discrimination complaints. (see point 2.7)

What other influences on promoting recognition and acceptance of the rights of people with disabilities should be taken into account? How should they be measured?

The HREOCs stance of conciliation is welcomed as a humane approach to remove the process from the legal system and promote community acceptance adoption and more importantly absorption of disability factors rather than the legal option. It is unfortunate that as a realist in the current cultural climate I feel the the legal process needs to be retained.

POINT 2.6 REGULATIONS STANDARDS AND OTHER INSTRUMENTS

How can the process for developing disability standards be improved?

Standards should always have an "out" to allow for the individual who doesnt neatly fit into the box.

Should the DDA be amended to allow disability standards to include independent monitoring and enforcement arrangements?

The DDA should be amended to **require** disability standards to include independent monitoring and enforcement arrangements. Given the ongoing nature of change in the community over time organisations restructure to meet the resultant challenges. This potentially leads to reduction in monitoring and ultimately non application of the arrangements.

Monitoring should be done by elected/appointed consumers of the standards as again change impetus can lead to most organisations including government agencies becoming the "fox in charge of the chickens".

POINT 2.6

Should there be a formal link between action plans and exemptions?

Yes!

Further voluntary action plans should have a set life only sufficient to enable the organisation to adopt to the full requirements of the DDA.

From a competition point of view to have unique organisations being able to avoid community obligations for the longer term is anti competitive.

Could industry self-regulation play a greater role in managing disability discrimination?

This is unlikely given my experience of the current culture in the wider community and even this document recognises the fact that not all commonwealth agencies comply with all recommendations.

Organisations are required by their owners to get the best bang for their buck. Full compliance with the DDA is not cheap and though the outcomes can be justified as economical for the community as a whole, individual organisations chief finance officers usually don't like the idea that they are the only ones paying the bill.

POINT 2.7 COMPLAINTS

What affects the willingness or ability of people with disabilities to make complaints to HREOC, and to proceed to the Federal Court?

The first port of call after an act of discrimination is often the hierarchy of the offending organisation. Experience indicates that the 1st act of the organisation complained against is to call in the company solicitors who will bluff bluster and threaten to get the complainant off the scent. This is often to the extent that the complainant becomes scared/concerned as to the legal costs and or ridicule such that the complaint is dropped. Also acceptance of offers of non disclosure settlement can mask a greater problem and enable the organisation to plead "we've never had a case against us".

Is there sufficient publicity for complaints and outcomes?

No!

Government agencies and corporations should be required to publish successful complaints and outcomes in their annual report whilst keeping complainants' identity confidential such that shareholders and the public become aware of the dealing of the organisation.

POINT 2.8 HREOC'S EDUCATION PUBLIC POLICY AND INQUIRY ROLES

Has HREOC's contribution to public policy in relation to disability discrimination been effective? How could its effectiveness be improved?

The implementation of the DDA a decade ago resulted in good written policy documentation and that is still close to best practice. Regretably following that implementation there has been little follow up such that although good written policies exist they are not applied and there is no effective monitoring of the policy at least in some sectors of the NT.

As indicated earlier independent monitoring processes should be applied.

Are there any impediments to the use of the inquiry process? How could the process be improved?

I became aware of this inquiry accidentally. A matter of such importance should be brought to the attention of as many consumers as possible. My football clubs constitution for instance requires all members be advised of significant happenings. A letter to people with a disability advising of the inquiry sent through Centrelink would be appropriate.

POINT 3.2

How has the term 'unjustifiable hardship' been interpreted in education?

Again using the NT as an example claim of insufficient funds is the standard accompanied by the claim that "that level of support is what is available to quadriplegic students and quadriplegia is not an issue here"

What are the costs of 'reasonable adjustments' in education? Who currently bears these costs? Who should bear them, and why?

Much of the cost is sheeted to schools and P&C's. This should not be cost to the school to enable the school system to function as normally as possible. Neither should it be a cost to the education department (or private school funding body) else other emerging priorities for the department adversely effect the budget available. Possibly a special department of disability should administer the funds appropriated from Government at whatever level.

How do different definitions of disability for different purposes influence the effectiveness of the DDA in relation to education?

There appears to be significant difference in the application of disability in education across the nation.

As I understand it were one inclined to do so one must fight and argue to have a child with a disability admitted to a "special" school in Tasmania. On the otherhand in the metropolitan areas of the NT one often needs to fight and argue to have a child with disability admitted to a mainstream school.(other than disabilities such as ADD)

What lessons can be learnt from the process to date of developing the education disability standards?

During the development of the current standards draft copies of the standards being considered were difficult to obtain even though they took literally years to progress. Such an important document/process should be available to the public to enable valuable discussion by the community.

POINT 3.3 EDUCATION

Has the accessibility of public transport improved since the DDA was introduced? What more remains to be done?

I simply make the point that approximately 1 in five people have a disability yet the city council standards are 1 in 120 car parks in a shopping mall. Even given that not all disabled people need a car parking facilities there is a major gap between these two figures.

POINT 3.4 ACCESS TO PUBLIC PREMISES

Has the DDA improved access to public premises so far?

Whilst I note good ablution facilities in areas like major shopping centres older buildings are a problem. As a point; on a recent trip Darwin to Sydney by car/caravan only 1 out of 18 caravan parks had ablution/shower facilities suited to use by persons with a physical disability.

It is probable that a chicken and the egg effect is applicable here. Studies indicate that persons with a disability are over represented in the lower income brackets and car/caravan could be considered the most economical mode of long distance travel and or accomodation that delivers transport at the destination. Yet the laws of supply and demand are not evident here

POINT 3.7 COMMONWEALTH GOVERNMENT LAWS AND PROGRAMS

Should there be any 'reasonableness' test applied to access to Commonwealth laws and programs?

Whilst it may be impractical to allow every disability discrimination claim the reasonableness test level should be set quite high especially where cost is applicable.

Firstly as indicated in the paper it would set a good example for the rest of the community. Further addressing the first instance would be in line with community adoption of inclusion as the disability friendly facility would be available when the next person with a disability came along. Alternately the denial of facility would always be there for each individual situation. Examples exist where putting it off denies the facility for future users.

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