
Submission to Productivity Commission Review of Disability Discrimination Act

The following submission is lodged on behalf of **Disability Rights Victoria**, a consortium of four Victorian disability advocacy organisations. They are:

- ✍ **Victorian Rural Advocacy Network** - an incorporated peak body for regional advocacy groups in rural Victoria. Member organisations are regionally based and separately incorporated organisations working in regional or sub-regional areas.
- ✍ **Disability Resources Centre** - an independent, statewide, cross disability, multi issue advocacy organisation based in Melbourne.
- ✍ **Action for Community Living** - an independent cross disability, multi-issue state-wide organisation of people with disabilities that is primarily involved in systemic advocacy. Action for Community Living is also the auspice body for
 - VICNORD – a state-wide systemic advocacy group that targets issues affecting access to Recreation, Sport, Tourism and the Arts.
 - “Getting Heard, Getting Change” – a project that is seeking to strengthen the political voice of Victorians with Disabilities.
- ✍ **Physical Disability Council Victoria (PDCV)** - is the Victorian state affiliate of Physical Disability Council of Australia.

Our Submission

1. Exemptions under the DDA.

- 1.1. Concerns about the exemption of the Immigration Act from the DDA and its impact on people with disabilities or families with a member who has a disability and who wish to migrate to Australia have been raised with us on a number of occasions. We believe that this is in contradiction to the spirit of the act and in denial of the human rights of people with disabilities.

2. Links with CSTDA arrangements and funding of disability services.

- 2.1. While the terms of reference for the review indicate that the Disability Services Act is not part of the review, it is clear to our organisations that, where there continues to be a standoff between State and Commonwealth governments around addressing the most conservative estimates (see reports by Australian Institute of Health and Welfare commissioned by Commonwealth Governments) of critical “unmet needs” for disability support services, there will be little capacity for many people with disabilities to even engage in the process of trying to address

significant levels of discrimination they face in the community on a day to day basis. Until we have an entitlement based system for funding all people who are assessed as being eligible for disability support – ie NO WAITING LISTS – then it is unlikely that many people will be resourced to make effective use of the DDA.

3. Effectiveness of the DDA

3.1. Complaints based nature of the legislation

3.1.1. Effectiveness of the legislation to eliminate discrimination places onus on an individual to challenge the system. This is difficult unless the individual is confident, persistent and well resourced.

Organisations that are the source of the discrimination are usually better resourced and equipped to obtain a favourable outcome.

3.1.2. Conciliation of a claim of discrimination and the confidentiality arrangements attached to such out of court settlements ensure that precedents are not set that support systemic change.

3.1.3. Where cases have been successful, the capacity to use these cases has helped influence changes without having to make a formal complaint.

3.2. Lack of effective sanctions for breaches of the DDA

3.2.1. Lack of effective sanctions and fines for breaches of the act has created a situation where there is limited incentive for proactive risk management – larger organisations can afford to wait for a complaint to be made.

3.2.2. Enforcement of conciliated agreements is weak and often not followed through. There is no real capacity within the process to force compliance within agreed timelines.

3.3. The predominant focus of the actions taken under the DDA seem to be focussed on more concrete aspects of discrimination such as disability access issues relating to the built environment.

3.4. While it is clear that the DDA has raised the profile of disability discrimination issues in Australia, it fails to articulate a wider framework of rights.

4. Competition and Economic Effects

4.1. The capacity to genuinely provide non-discriminatory employment practices and cultures is one of the keys to providing access for people with disabilities to the labour market. Obvious benefits that would follow from such an investment would include reduced dependency on government welfare funding and an increased return from payment of taxes. Not all people with disabilities will benefit from the open labour

market but support to full participation in a range of other socially and culturally productive activities generates better health and reduced demand for health services.

- 4.2. Lack of effectively administered building and planning processes at the local level has meant that many new buildings including public funded projects, do not comply with access requirements of the DDA and existing building codes and standards. Private housing, in particular, has no requirements to comply with basic physical access design specifications. Modification and post-fitting of accessibility requirements is much more expensive than getting it right the first time around. In Victoria, the privatisation of the building and permit processes has led to little or no monitoring of approved permits by Local Government authorities to ensure that buildings comply with relevant codes and standards when being built.
- 4.3. Private sector has not recognised the market potential of ensuring non-discriminatory practices in terms of the purchasing impact of consumers with a disability and their families. Many small business set up in strip shopping centres are avoided by people with a disability because they do not provide the same level of access and amenity for shoppers with mobility impairments as do the suburban shopping complexes. Studies undertaken around the tourism market potential if people with disabilities needs are catered for suggest that many services are restricting their market share by not catering to a more inclusive target population. Compliance is seen as economically disadvantageous rather than providing an economic potential. This argument doesn't suggest that free market forces are always going to work to the advantage of people with disabilities, but rather suggests that both incentives and sanctions are necessary.

5. DDA and other legislation.

5.1. Rights v. discrimination

The lack of a Bill of Rights that spells out a broader view of what the rights of people with disabilities in Australia leave the DDA to carry a burden of expectation for which it was not designed.

5.2. Commonwealth and State Discrimination Legislation

For anyone considering how to proceed with a discrimination complaint in Victoria they have to weigh up the pros and cons of using one or the other. For many, the Equal Opportunity legislation provides a more accessible and expedient way of pursuing a complaint. While concerns about the compliance with rulings and capacity to enforce them also apply with the state legislation, the process is, on the surface, less intimidating and threatening than a process that can end in the Federal Court and award costs against the person making the complaint. However, there is confusion about which legislation is the most appropriate or effective.

6. Regulations, Standards and other Instruments

6.1. Standards

- 6.1.1. There is risk that the process of creating standards becomes a contest between the interests of people with disabilities and the interests of business and government and the outcome is a set of standards that compromise specific rights defined in the legislation.
- 6.1.2. On the other hand, the process of setting up the Education Standards seemed to have created a strong reaction from education providers, public and private, when it would appear that if they had complied with the DDA, the standards would not have created such strong opposition. Reliance on standards that end up as negotiated compromises between the two opposing interests, threatens to further weaken the legislation. On the other hand, the legislation on its own has clearly failed to create the level of compliance and investment in systemic change that was hoped when it was introduced. Lack of sanctions and poverty in the detail seem to have undermined compliance with the legislation.

6.2. Voluntary Action Plans

- 6.2.1. Positive benefits are most evident in public sector where implementation process has done more to raise awareness about the DDA and its intent than any other process. Unfortunately, poorly designed disability action plans that do not commit resources for implementation, give specific timelines and establish mechanisms for accountability and review are all too common and just window dressing. There is an example of one Disability Action Plan that had failed to identify who was responsible for implementation. When the Action Plan came up for its review 2 to 3 years later, nothing had been achieved because the plan had not specified who was responsible for implementation.
- 6.2.2. Negative aspects of this process include the way in which complaints can be dismissed if a provider has an action plan in place. There is widespread concern among people with disabilities that this is used as a ploy to protect against successful discrimination complaints, while making little real endeavour to implement the action plan. It can appear to merely be a risk management strategy
- 6.2.3. Further, disability action plans can only deal with the most obvious and concrete aspects of discrimination and do not effectively address more deeply embedded discriminatory attitudes and practices.

7. Complaints

- 7.1. Placing the burden of proof on the person making the complaint creates a challenge that is beyond the capacity of many to follow through. Proving that discrimination has occurred and jumping the hurdles of mediation and conciliation and then possibly a legal process is an intimidating prospect that prevents many claims being made. While some more confident complainants or those who have been able to obtain good advocacy or legal support have achieved some important outcomes, the numbers of those who start and don't follow through because of lack of support, knowledge or skills, etc are an unknown quantity, but the shared discourse among many people we support suggests that these experiences have created a defeatist mindset about the potential of the legislation to deal the frequent experiences of discrimination they face.
- 7.2. Access to resources to take up a complaint are limited leading to rationing, and priority setting by the only advocacy service that specialises in the supporting complaints through the DDA. The stretch placed on disability advocacy services means that many do not have access to such support and the intensity and extended nature of the process further strains the capacity to support more than a few individuals.
- 7.3. Fighting "unjustifiable hardship" requires research and financial acumen that is not normally available to small disability advocacy services let alone an individual who takes action without this level of support. More support for people registering a complaint to respond to cases where this defence is put is needed. Guidelines or definitions for determining "unjustifiable hardship" seem to be non-existent or vague.
- 7.4. The chance that a complaint could end up in the Federal Court with the chance that costs are awarded against the person making the complaint seem to force people to pursue other solutions.

8. Education and Other Strategies

8.1. Systemic Advocacy

While the mere threat of taking DDA action can help to shift a provider to take action it is often a long and intensive process and requires a commitment to resourcing people with disabilities and their organisations to take up the community education and development roles within local community settings. A preference for funding individual advocacy over funding for systemic advocacy in the disability sector through both Commonwealth and State disability funding reduces the capacity for proactive change strategies that encourage compliance with the spirit and the intent of the DDA. While systemic advocacy can lead to more positive change processes and use activism as a tool in the political process, it needs to be backed up with more resourcing and a stronger DDA

8.2. Community Development

The Victorian State Government has committed funding to “building inclusive communities” as a key part of the State Disability Plan. This has the potential to make a valuable contribution to making the DDA a more effective vehicle for social change and a better framework for changing attitudes and the culture in local communities.

8.3. Community Education

While community education is often the panacea for all those who seek to avoid the confrontational processes of the legal approaches it is also usually an ineffective strategy unless it is linked with forms of direct action and involvement in the political processes. Discrimination is a daily experience for many people with disabilities and deciding when to fight and when to let it slide is a regular challenge. Proactive and systemic approaches that support people with disabilities to develop more collaborative processes need to be developed to empower those who seek to address discrimination through the DDA.
