



Australian Human Rights and Antidiscrimination Bill 2012

**AFDO SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE
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Stephen Gianni

National Policy Officer

AFDO

247 Flinders Lane

Melbourne VIC 3000

About the Australian Federation of Disability Organisations (AFDO)

The Australian Federation of Disability Organisations (AFDO) has been established as a primary national voice to Government that fully represents the interests of all people with disability across Australia.

The mission of AFDO is to champion the rights of people with disability in Australia and help them participate fully in Australian life.

Introduction

People with disability in Australia remain marginalized and perform poorly against all measures of social inclusion

There are recommendations made by AFDO in our earlier submission that have been addressed or at least partially addressed. Linking the Legislation to the United Nations Convention on the Rights of Persons with Disability and the definition of discrimination are both to be applauded.

However, there are some fundamental areas related to discrimination in the area of disability that should be further strengthened in this legislation.

Broadly they include;

1. Access to Anti-discrimination law and processes
2. Cost of using the Law
3. Vilification
4. Codes of compliance, standards and disability action plans
5. The review
6. Reasonable Adjustments

The AFDO position

1. Access to Anti-discrimination law and processes

AFDO believes that the nature of a person's disability can sometimes in itself be the barrier to access. This must be compensated for in the way this legislation works. For example, a person who has anxiety disorder may be forced by the length and complexity of a process to withdraw with no outcome possible even if their complaint is justified. A person who is deaf may never think of accessing the legislation if they have no understanding of how it can change the way people behave towards them or that the behavior that they are experiencing is unlawful.

The difficulties individuals with disability experience in firstly lodging a complaint and then going through the process related to its resolution are sometimes onerous.

The accumulated learnings or public interest aspects of such single cases or accumulated cases are also an important lever for societal change. They should be promoted and used strategically.

Class actions, representative actions and or actions taken in the public interest are fundamental ways of seeking change for "classes" of people in Australia. It is important that the act protect and enhance such cases when taken by or on behalf of people with disability.

- 1.1) *AFDO recommends that specialist disability legal centers (network already exists) be funded to improve the support offered to individuals who are experiencing discrimination. The support should involve assistance in preparing the application and its lodgment.*
- 1.2) *AFDO recommends that organizations that see a public interest outcome in a class action or representative action be allowed/encouraged to join the process. Funding of such public interest matters should be possible via the fund in Recommendation 2.2*

2. Cost of using the Law

Under no circumstances should costs be awarded against a complainant in a disability discrimination matter.

People with disability are afraid of making complaints that may see them with a cost burden at its conclusion even if the only costs to be covered by the person are their own. Pro bono work by legal firms in this area should not be the only avenue open to a person who has experienced discrimination. The legislation should provide for an increase of funding to legal aid that establishes a fund that can be applied for support and representation of people with disabilities.

2.1) AFDO recommends that there be no awarding of costs against a complainant in a disability discrimination matter.

2.2) AFDO recommends that a Commonwealth Human Rights Fund be established through Legal Aid for the use of people with disability to apply to for support and lodging of discrimination complaints. The fund should support complaints of both an individual and systemic (public interest) nature.

3. Vilification

People with disability are some of the most vulnerable in our society. AFDO is concerned that people with disability be protected from discrimination that leads to hatred. The legislation must offer people with disability protection from being vilified in offensive and harassing ways.

3.1) AFDO recommends that the Legislation protect all attributes from vilification.

4. Codes of compliance, standards and disability action plans.

This element of the legislation needs to be strengthened with regard to the processes used to develop the “Codes”. People with disability and or other attributes covered in the legislation should be included in an extensive

consultation process. The legislation must lay out the process with regard to the consultation to be undertaken by the Australian Human Rights Commission (AHRC).

Additionally it is important to state that the use of “standards” and Disability Action Plans (DAP) has not been effective in causing change with regard to discrimination of people with disability in Australia. The public transport standard has targets that are not being (nor have been) met. DAP’s are more often than not a feel good measure for organizations to be seen to have a statement about their relationship to people with disability and the disability issue generally. The AHRC must do more in the areas of standards and DAP’s with regard to the meeting of targets and penalties if and when they are not met.

4.1) AFDO recommends that the AHRC be required to have a “body” comprising a range of organizations from each of the attributes. When a code is being developed then a panel of advisors from “The body” should be constituted. The Disability attribute should be represented on “The body” by AFDO and its member Disabled Person Organizations.

4.2) AFDO recommends that the AHRC be charged with the responsibility of monitoring compliance with Disability Standards and Disability Action Plans. If the monitoring indicates that targets are not being met, prescribed penalties should be applied automatically.

5. Exemptions

There should be no permanent or temporary exemptions under the new law. If temporary exemptions are to be part of the law, there should be clear instructions on when and how exemptions are awarded, and what penalties will be applied for non-compliance with the terms of the exemption.

The circumstances that lead to exemptions (if allowed) change over time. For example the insurance industry exemption with regard to people with HIV is no longer relevant, but still stands. The longevity of people with HIV has changed dramatically with the development of medications and people

applying for insurance coverage should now be treated on their merits regardless of their HIV status.

The review allowed for in the legislation related to exemptions (after three years) is too narrow. The effectiveness of the legislation should be tested, including exemptions, attributes included and not included, and the broader impacts of the anti-discrimination act consolidation. The review should be of effectiveness in general, and of the objects of the act.

It is also important that exemptions pending decision by the AHRC be consulted on by them prior to approval. AFDO and other representative organisations of people with disability should be a first point of call with respect to those related to disability. If approved exemptions should be listed on the AHRC website and maintained as a register of exemptions.

5.1) AFDO recommends that there be no exemptions allowed for in the legislation. If this is rejected the following recommendations (5.2 - 5.3 - 5.4) make up AFDO's minimum requirements.

5.2) AFDO recommends that all exemptions provided for have a sunset clause. All exemptions must be reviewed no later than three years after their notice.

5.3) AFDO recommends that the review allowed for in the legislation be broadened to include a review of overall effectiveness of the legislation and not just exemptions.

5.4) AFDO recommends that exemptions be consulted on while pending with AFDO and then when approved listed on a AHRC register.

6. Reasonable Adjustments

The notion of reasonable adjustments has in its positioning in the new legislation been weakened. People with disability have benefited from this concept in the DDA and it should be named explicitly and not be implied.

6.1) AFDO recommends that “reasonable adjustments” for people with disability and or all attributes be named explicitly in sec 19

Conclusion

AFDO supports the consolidation of the anti-discrimination laws. It provides efficiencies and improvements in definition of discrimination. However, the capacity of people with disability to access the law must be considered and improved.

AFDO believes that its recommendations should be considered to make the legislation “real” for people with disability. The legislation will assist in improving the place of people with disability in Australia. _____

Finally AFDO asks that it be given the opportunity to present its case for these recommendations to the Senate Committee when it begins its hearings in 2013.