

Committee Secretary

Senate Legal and Constitutional Affairs Committee

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Canberra ACT 2600

Australia

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Phone number:

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Dear Sir/Madam

I am a visually impaired person who is currently studying Social Science majoring in Human Resources at the University of New South Wales, is subscribed to vip-I, answd-I, Oz advocacy, UNSW Students with disabilities collective and BCA-employment email lists for a number of years and had studied legal studies in high school. In the process of consolidating Commonwealth anti-discrimination, I commend the need to maintain many items from previous. However in moving forward I have a number of concerns. My concerns include which category in which websites and the internet fall under, the broadness of exceptions to unlawful discrimination, the lack of a clear definition of "inherent requirements at work" and the need to change attitudes, the lack of constitutional protection, the list of exemptions, and the limits to complaint by groups.

My first concern relates to whether accessibility to website and to the internet is covered by this proposed legislation. I am unable to find references to “internet” or “website” in the draft apart from referring to “other treaties”. If the objects of the legislation to settle disputes away from courts and if the accessibility of the internet and websites be regulated by disability standards is the goal, my concern is that the need to define website/internet as either “place”, “public place”, “public life” and “publication” and instead of a clear category in which the accessibility of websites/internet in the legislation, would create additional disputes which may end up in the courts. I suggest to you that the definitions to “place”, “public place”, “public life” and “publication” clearly include “websites” and “the internet”.

The list of exceptions to unlawful discrimination creates concern. In general the notion of “conduct to serve good faith legitimate aims” seems to be too broad. Whilst this broad notion is limited by a list of criteria to take into account, there is a question whether the application would result in restriction to participation and access to public life, as well as an increase in legal disputes. If the focus is on measures and reasonable adjustments that would provide an equivalent participation/access, then society would have to be educated in the implementation so that there is less harm in using those exceptions.

The draft lacks a clear definition of what is an “inherent requirements of work”. Without this clear definition in the legislation or in other legislative instruments, such legal challenges may be possible to obtain that definition. Once a clear definition is inserted, employers should be educated and supported in making reasonable adjustments in the process of changing attitudes. A failure to change employers’ attitudes towards persons with attributes stated in the draft who fail to meet inherent requirements of work on the basis of their attributes in particular disability will continue to be discriminated regardless what is written in the legislation or other legislative instruments.

In the absence of a constitution statement relating to anti-discrimination or human rights in section 51 of the Australian Constitution, such a concern is pertinent to this draft. Without an anti-discrimination/human rights statement in the constitution, this draft legislation when enacted can be watered down or overridden by future amendments or through enactment of other legislation. My suggestion is that there should be moves towards the insertion of the statement “Conciliation and arbitration for the prevention and settlement of discrimination disputes extending beyond the limits of any one State” in the Australian constitution be made.

There are lots of exemptions in this draft. Why should there be exemptions made in the areas of the Migration Act, insurance, superannuation and the provision of credit exists? People will continue to be prevented from migrating to Australia on the basis of disability due to failing the health requirements. People with pre-existing health conditions which have relations to disability will continue to be excluded from insurance. The list of exemptions in the above areas risk undermining the notion of providing participation and access to public life. I

suggest that such exemptions be replaced with statements of universal access attach with reasonable adjustments.

I welcome the notion that industrial associations could make complaints on behalf of a group of individuals. However there are groups in society who do not belong to such industrial associations. Such systemic issues of discrimination will pose huge burdens for one individual to fight. I suggest that advocacy groups be given the same provisions as industrial associations.

I hope you can take up my suggestions in making this piece of legislation better.

Yours faithfully

Matthew Gee Kwun Chan