

Julie Dennett

Committee Secretary

Senate Standing Committees on Legal and Constitutional Affairs

Inquiry into the Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

Dear Ms Dennett

Thank you for inviting submissions to the inquiry into the Exposure Draft of Human Rights and Anti-Discrimination Bill 2012.

While the disability community's views have been well canvassed in a number of submissions, including the submission from People with Disability Australia, I feel called to make a short personal submission to the inquiry having worked on disability discrimination issues for a number of years.

2012 marks the 20th birthday of the Disability Discrimination Act (DDA) passed in 1992.

I admire the work of its powerful advocates – especially Graeme Innes who has used every tool at his disposal to push for change.

However on balance, I believe that Australia has not been well served by the DDA and the Parliament should now take the opportunity of a consolidated bill to build a stronger, more effective instrument that works to remedy barriers which the DDA has been unable to shift.

The last sitting week of Parliament saw a considerable milestone with the tabling of the National Disability Insurance Scheme Legislation.

Support money alone will not create an accessible community and we need to ask whether the framework can match the coming Scheme in ambition to create true inclusion and access.

Despite having the DDA on the books for two decades, most of the urban landscape, especially outside of the capital cities in Australia, remains inaccessible to people with any kind of significant disability.

Thousands of premises, shops, places and spaces contain small fixable issues like steps in blissful disregard to the DDA.

Inclusion for people with a disability is a failed national project and evidence is all around us. In the period the Act has been in force employment rates continued to be poor for people with disability, even during boom times. Social participation is also trending low whether playing sport, volunteering or even going to a library. SDAC 2009 found that over 37,000 people with disability don't leave their homes.

To give a vivid example as a person with a disability who uses a wheelchair I have driven through *whole towns* where the *only* premises that I could visit was the TAB.

This is a form of discrimination that we would never tolerate on the basis of race, gender or other personal characteristics. It is unacceptable.

Many people with disabilities I know have made a decision to stop using the DDA while it exposes them to a one-sided adversarial contest.

The designers of the DDA seemed to imagine that on top of everything else Australians with disabilities are prepared to be mired in endless litigation with employers, airlines, shops, restaurants, schools and civic buildings that we interact with on a regular basis.

And even if we were, the current process stacks the cards in favour of those who discriminate. There is a complaint, then a mediation process where pressure is on to fold lest the case go to court.

Defendants have a generous armoury of defences— notably that accommodations will result in unjustifiable hardship. A nebulous, moveable concept that was arguably even further weighted against complainants as a result of the Jetstar decision.

The DDA's mechanisms are half-hearted due to the lack of compliance power. The Commonwealth Disability Strategy was meant to deliver action plans across Commonwealth agencies, yet never really stepped up. Proof can be seen in steady decline of employment of people with disability in the Australian Public Service (APS).

The DDA Standards Process, meant to be an engine for change, has been slow and unambitious delivering transport standards which exempt, of all things, school buses and have timelines which step all the way out to 2032. Incorporating Access Standards into the Building Code took over a decade. The Standards are in a perpetual state of review, like the disability services system prior to the NDIS, as if we know it's broken, but don't know what to do.

I note the draft Bill does make some improvements. It reverses the onus of proof. Once a complainant establishes evidence of a protected attribute and detrimental treatment, the onus will then shift to the respondent who must establish that their conduct was not for a discriminatory reason.

Yet these do not go far enough at all. We need a discrimination law backed by robust mechanisms like the Americans with Disabilities Act with an implementation authority capable of enforcing regulations, standards and driving continuous industry improvement. The mechanisms need to move from complaints handling to compliance with quality.

Over time we will need another shift from providing access due to compliance to demand. Businesses need to see people with disabilities as consumers of importance and value, especially as a peaking wave of retiring baby boomers acquire disability.

Access and inclusion are good sense and a right. Yet somehow the DDA manages to achieve neither of these mindsets. It creates a limbo which doesn't force change outright or have sufficient 'muscle' to allow people to accept access as a given and move beyond rules and compliance to good service.

Finally, I note that in his second reading speech introducing the Disability Discrimination Act on 19 August 1992, the then Parliamentary Secretary to the Attorney-General, Mr Peter Duncan, noted that the Bill gave domestic effect to the Government's obligations under international instruments including the United Nations Declaration on the Rights of Disabled Persons.

Mr Duncan cited the Declaration and emphasised it's aspiration that "disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible".

Twenty years later and by any reasonable measure the DDA has not delivered these inherent rights, despite good intentions.

In addition, we have *new* obligations stemming from our ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2008 and there is an urgent, timely need to audit and update the DDA to ensure it complies with CRPD obligations.

I therefore hope that the Inquiry will look favorably on submissions which advocate for enforcement power; provisions for representative complaints and a cost free jurisdiction.

Above all we need to ensure a new Act complies with international obligations and addresses the continuing inequality experienced by people with disabilities throughout Australia.

Regards

*[Sent by email]*

Craig Wallace

18 December 2012

*(This is a personal submission, however the need for a better discrimination framework is a theme across all my work. I am the President of People with Disability Australia and the past Chair of a number of groups working on access issues such as the ACT Access and Planning Advisory Committee, which developed the first Territory wide access and mobility guidelines in 2003. I also work for Nican which is a national service providing information about community participation opportunities around Australia)*