

20 December 2012.

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

email: legcon.sen@aph.gov.au

Dear Ms Dennett,

Submission to Senate Committee Inquiry Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

Thank you for the opportunity to make a submission into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012.

I acquired my disability before the introduction of the *Disability Discrimination Act (Cth)* 1992 (DDA) and unfortunately I was not able to rely on legislation to ensure that special measures were put in place so that I could complete my education and obtain qualifications that would enable me to gain employment. However since the introduction of the DDA, I have been able to complete my education by undertaking my studies as a mature age student. Therefore I can genuinely say that the DDA has significantly improved my life. Nevertheless that was 20 years ago and I believe that anti-discrimination is well overdue for an overhaul, particularly as it has not delivered all the changes that were envisaged. Additionally there are now new obligations stemming from Australia's ratification of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

I welcome the new Bill and believe, on the whole, it will address many of the weaknesses that have been identified in commonwealth anti-discrimination legislation.

I strongly support the consolidation of Commonwealth Anti-Discrimination laws. I believe it will not only improve the effectiveness of anti-discrimination legislation, but it will also address significant barriers created by unnecessary layers of complexity. Furthermore, I believe this single piece of legislation (as opposed to 5 separate national anti-discrimination Acts) will help foster a culture of equality.

I particularly welcome the introduction of a single definition of discrimination. I believe the concepts of direct and indirect discrimination used in the DDA were overly problematic and created an added barrier, particularly due to complexities associated with the comparator test. This test effectively prevented people with disability from obtaining legal recourse under the DDA even if they had a *prima facie* discrimination case. It caused many people with disability, their families and friends to believe that there is no such thing as equality in law.

I also commend the government for introducing legislation aimed at simplifying the process to make a discrimination complaint and I am particularly happy to see the inclusion of protections to address intersectional discrimination. This inclusion provides legal recognition of the reality that people with multiple protected attributes often face compounded discrimination.

I have always been concerned that the onus of proof rests with the complainant in discrimination matters. This I believe is not only overly problematic but again signifies that equality before the law does not exist. Consequently I strongly welcome provisions in this Bill that reverses the onus of proof.

This is an important year particularly for the disability sector with the National Disability Insurance Scheme (NDIS). The NDIS in many ways is very aspirational, and therefore I welcome the provision of special measures in the Bill. I believe this provision will help to promote positive action and help to enforce compliance within the larger social sector. It will promote substantive equality and help make inclusion more of a reality.

Despite strongly supporting the Bill, I have a few concerns that I hope can be addressed.

Reasonable adjustments

- a. I welcomed the amendments to the DDA in 2009 which addressed problems and barriers associated with Purvis¹ and created the obligation to make reasonable adjustments.
- b. I am concerned that the obligation to provide reasonable adjustments has been moved to the exceptions rather than left where it is now in the DDA - in the definition of discrimination.
- c. I feel this change makes the obligation implicit rather than explicit and thus weaker in effect. It could create the misleading impression that reasonable adjustments are relevant only at the stage of defending a claim, rather than being an essential element that must be considered when determining whether discrimination occurred.
- d. It is also concerning that the obligation to provide reasonable adjustments operates only in respect of disability in the Bill. I believe these results in inconsistency across grounds, and may incorrectly suggest that adjustments are not required in respect of other grounds.
- e. I recommend that the obligation to provide reasonable adjustments to persons with protected attributes is explicit rather than implicit.

Religious Exclusions

- a. I am concerned that the proposed legislative changes do not adequately address the exemptions that currently apply to religious organisations delivering community services.
- b. Religious organisations receiving government funding for the delivery of community services should not be exempt from anti-discrimination law in the employment of personnel at any level of these services.

¹ *Purvis v State of NSW [2003] HCA 62*

- c. I recognise and respect the Right to religious freedom. However, we do not support any exemptions from anti-discrimination for religious organisations receiving funding to provide services to the general community. Community services must be required to comply with anti-discrimination

Finally thank you again for the opportunity to make a submission into the inquiry.

I strongly urge the Committee to support the Bill and I look forward to its successful passage through parliament.

Yours Sincerely

Heidi Forrest