

Appendix A: Consolidated list of recommendations

Recommendation 1: Blind Citizens Australia supports Recommendations 7 and 8 of the Australian Human Rights Commission (the Commission's) submission (December 2011) which recommends consideration of a unified test for discrimination and use of a detriment test, in place of a comparator test.

Recommendation 2: Blind Citizens Australia supports the inclusion of a "characteristics extension" clause which covers imputed assumptions about a person's disability (such as assumptions about the capacity of a blind parent to ensure that their child is safe) which may lead to discriminatory conduct.

Recommendation 3: Blind Citizens Australia recommends that a reverse burden of proof (ie. onus on the Respondent to prove that discrimination has not occurred) should be considered once a prima facie case of discrimination has been demonstrated.

Recommendation 4: Blind Citizens Australia supports the continued recognition of special measures and supports its extension to other protected attributes.

Recommendation 5: Blind Citizens Australia recommends clarification of the current definition of reasonable adjustments to ensure clarity for all parties. Guidelines should also be developed about the process to provide reasonable adjustments including clear parameters about assessment and approval of the needs for adjustments, timeliness and flexibility in the use of adjustments (ie. removal of unnecessary restrictions).

Recommendation 6: As part of the development of the consolidated Act, Blind Citizens Australia recommends the development of education campaigns outlining practical strategies to comply with the Act. Blind Citizens Australia also recommends the development of resources and guidelines which support and provide guidance to employers about how to comply with new requirements.

Recommendation 7: Blind Citizens Australia recommends the extension of positive duties to organisations in receipt of funding from public sector organisations.

Recommendation 8: Blind Citizens Australia supports Recommendation 18 by the Commission which recommends that harassment on the basis of any protected attributes should be unlawful in an area of public life covered by the legislation.

Recommendation 9: Blind Citizens Australia supports the recommendation to extend coverage of the associate provision to other protected attributes.

Recommendation 10: Blind Citizens Australia recommends the inclusion of a clause which specifies that associates with disability who support a child with or without disability are entitled, under the consolidated Act, to reasonable adjustments to accommodate their disability and facilitate their child's learning.

Recommendation 11: Blind Citizens Australia supports Recommendation 22 in the Commission's submission which recommends coverage of intersectional discrimination, specifically that the proposed law apply to discrimination based on one or more protected attributes or a combination of protected attributes. We also support Recommendation 25 that coverage of the Act should apply to any area of public life.

Recommendation 12: Blind Citizens Australia recommends that proposed consolidated Act include protection of voluntary workers.

Recommendation 13: Blind Citizens Australia recommends that a specific reference to discrimination in sport be included in the consolidated Act, as per Recommendation 29 by the Commission. Blind Citizens Australia also recommends the development of an educative campaign and resources which outline the requirements and support the inclusion of people with disability in mainstream sport and recreation.

Recommendation 14: Blind Citizens Australia recommends the specific inclusion of access to voting and jury service as protected areas of public life in the consolidated Act.

Recommendation 15: Blind Citizens Australia recommends

- a) the consolidated Act clearly outlines the purpose of temporary exemptions (ie that the exemption is temporary and only for a short period of time) and the process for considering a temporary application, with specific reference to consultation with the public and groups representing people with disability or other appropriate protected attributes**
- b) the creation of guidelines regarding the application of temporary exemptions including the requirement for an applicant to outline (via a registered Action Plan) what actions will be undertaken during and after the period of exemption to meet compliance with their legal obligations**
- c) the Commission be granted enforcement powers to monitor the status of temporary exemptions and progress by the applicant in meeting the aims of the consolidated Act.**

Recommendation 16: Blind Citizens Australia recommends that the Attorney General's department

- a) review the recommendations of the Joint Standing Committee when developing any migration provisions in the consolidated Act, with the view of removing the current exception**
- b) provide avenues for applicants with disability to challenge an unreasonable refusal of an application, where disability appears to have been a significant consideration.**

Recommendation 17: Blind Citizens Australia recommends that the Australian Government develop public campaigns, in collaboration with the Australian Human Rights Commission, to promote each individual Disability Standard as legal requirements under the new consolidated Act.

Recommendation 18: Blind Citizens Australia recommends that the Commission be granted the powers to enforce compliance to the requirements of Disability Standards.

Recommendation 19: Blind Citizens Australia recommends that the Attorney General's department, as part of the development of a consolidated Act, investigate the development of a new draft Disability Standard for Employment which specifically addresses: reasonable adjustments in employment; inherent requirements (including 'desirable' criteria which may be discriminatory such as the request for a drivers licence for predominantly office based roles); recruitment and advertising of positions; promotion and career advancement; occupational health and safety; vicarious liability, protection of associates and standards for harassment and victimisation.

Recommendation 20: Blind Citizens Australia recommends that the consolidated Act consider the inclusion of accessible purchasing and procurement as a legal requirement for the public and private sectors. These requirements could be modelled on Section 508 of the US Rehabilitation Act.

Recommendation 21: Blind Citizens Australia recommends that the provision of goods, services and information via technological means (such as the internet, smart phones, technologically enabled household products etc) must comply with accessibility standards and be specifically referenced in the consolidated Act.

Recommendation 22: If the development of co-regulated guidelines is approved, Blind Citizens Australia recommends stringent requirements for

- a) effective consultation with people with protected attributes – in the case of people with disability, consultation and information must be accessible, with technical information communicated in a manner that can be understood by people with all types of disability**
- b) compliance with the requirements of the consolidated Act and relevant standards**
- c) enforceability, including a transparent complaints mechanism**

Recommendation 23: Blind Citizens Australia recommends

- a) simplification of the complaints process, including how complaints can be made and received**
- b) the review of the conciliation process to determine whether this is the most effective mechanism to resolve complaints, particularly in addressing the power imbalance which often exists between complaints and respondents and to minimise coercion to settle a case prematurely**
- c) the introduction of a compulsory requirement that respondents be compelled by the Commission to attend conciliation or suitable dispute resolution mechanism**
- d) the introduction of penalties for non-attendance and non compliance of agreed outcomes**

- e) that respondents be required to formally respond and make 'good faith' attempts to resolve claims by a complainant of disability discrimination, harassment or treatment which is prohibited, within a set timeframe

Recommendation 24: Blind Citizens Australia supports the recommendation of the introduction of a no-cost jurisdiction for discrimination complaints, with judges given the discretionary power to award costs against corporate respondents in the event that a complainant is successful in proving unlawful discrimination (as proposed in the Discrimination Law Experts' Group submission, December 2011).

Recommendation 25: Blind Citizens Australia recommends increased clarification in the consolidated Act, or in supporting guidelines, about what can reasonably constitute unjustifiable hardship, both for complainants and respondents.

Recommendation 26: Blind Citizens Australia recommends that

- a) the Commission be given the powers to undertake preventative work to minimise discrimination, including the provision of assistance and advice to enable organisations to meet positive duties
- b) the Commission's inquiry powers and functions under the AHRC Act should apply to all areas of public life and attributes that will be covered in the consolidated Act
- c) the provision of increased resources to enable the Commission to undertake an audit and enforcement function
- d) powers and resources are granted to the Commission to investigate systemic discrimination which is of the public interest
- e) the Commission be granted the power to take matters of individual or systemic discrimination to court following receipt of an individual complaint, public submission or approach by an organisation representing the interest of people with a protected attribute
- f) the Commission be granted the power to appear in legal proceedings in relation to discrimination of a person/s with protected attributes
- g) continuation of special purpose commissioners who are required to report how progress to eliminate discrimination is being achieved, either yearly or biennially.

Recommendation 27: Blind Citizens Australia recommends clear guidance in the development of a consolidated Act regarding its applicability and relationship with other State, Territory and Federal laws, including clarity that the consolidated Act takes precedence or is of equal standing with the requirements of other Acts.

Recommendation 28: Blind Citizens Australia supports Recommendation 53 by the Commission that a consolidated Act should have the same extent of application to State and Territory governments as the current DDA and that this should cover all protected attributes.