



Consolidation of Anti Discrimination Laws Consultation

AFDO SUBMISSION

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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.

The Disability Discrimination Act (DDA) and the UN Convention on the Rights of Persons with Disability (UN CRPD)

Generally speaking, the DDA protects against breaches of the human rights of people with disability, but does not have provisions for actively promoting rights and preventing discrimination from occurring. For example, the current laws prevent undue discrimination in the provision of public housing, but do not enforce taking active steps to ensure integration and accessibility in the first place. To a certain extent some of the Disability Standards encourage the promotion of rights, but their scope is limited to one industry or area of life each.

The UN CRPD may be seen as a tool for more proactive human rights work, as Article 4 – General Obligations outlines in saying that state parties should work:

c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

RECOMMENDATION: That the consolidated anti discrimination law allow for proactive promotion and protection of rights, not just retroactive responses to breaches.

There are some areas of public life which are not currently covered under the DDA, which are specifically protected under the UN CRPD. These come under two categories: rights where a person may not be protected from discrimination at all, and rights which may be covered inconsistently under State and Territory anti-discrimination laws. It is our belief that where State and Territory anti-discrimination laws do not consistently protect against disability discrimination there should be a way to resolve the issue under the Federal law.

- **Article 10 - Right to life:** While the UN CRPD protects the right to life for people with disability, it is unclear whether this is protected – for example, in cases where medical treatment is denied or delayed – under the Disability Discrimination Act.

Some medical and health decisions may fall to public officials administering Commonwealth laws or programs, who would currently be covered under Section 29 of the DDA. However, many health programs and all guardianship programs are run at a state and territory level, where anti discrimination laws and other relevant laws may or may not protect the right to life for people with disability by preventing discriminatory health practices.

For example, in Victoria the Office of the Senior Practitioner was created under the Disability Act 2009. The role of the Senior Practitioner is to monitor disability service providers engaging in restrictive practices or compulsory treatment, to develop best practice guidelines and standards, and to research and advise on issues in this area¹. Although every State and Territory would have laws governing restrictive practices and compulsory treatment, it appears that only NSW and Victoria have established rights-based mechanisms to monitor, promote and protect the rights of people experiencing restrictive treatment. Even so, in these States a person under restrictive treatment may – or may not – have access to anti-discrimination laws to challenge their treatment, and may or may not have the right to challenge their treatment under specific laws about restrictive treatment. Without one or more rights-based protections at a federal level, people under restrictive or compulsory treatment may well find themselves at a risk of losing their right to life.

- **Article 23 – Respect for home and the family:** What is normally considered a private aspect of life sometimes becomes public for people with disability when sterilization of girls and women with disability is forced, children with disability are relinquished by their families because of a lack of appropriate supports, or adults with disability have their children removed by the state because of a lack of

¹ Department of Human Services Victoria, 2011, *Office of the Senior Practitioner webpage*, available online at: <http://www.dhs.vic.gov.au/for-individuals/your-rights/offices-protecting-rights/office-of-the-senior-practitioner>

appropriate supports. Potentially, adults with disability may be turned down as adoptive or foster parents on the basis of disability alone.

Although other laws and systems are assigned to respond to these cases at an individual level – mostly family law and family courts which would again be covered under Section 29 of the DDA if they operate at a Commonwealth level – some family related laws and programs are based at a State or Territory level where coverage under anti-discrimination law may not be consistent. People with disability in states or territories without sufficient legal protection against these forms of discrimination should have the option of a federal challenge.

- **Article 18: Liberty of movement and nationality:** The Australian government has lodged an interpretive declaration under the UN CRPD stating that it should be able to refuse migrants on the basis of disability. However, the Joint Standing Committee on Migration has recommended that:

*... as part of its proposal to amalgamate Australian discrimination law, the Australian Government review the Disability Discrimination Act 1992 (Cth) with particular reference to the section 52 migration exemption, to determine its legal implications for migration administration and conduct expert consultations on its impact on people with a disability.*²

² Joint Standing Committee on Migration, 2010, *Enabling Australia Inquiry into the Migration Treatment of Disability*, available online at: <http://www.aph.gov.au/house/committee/mig/disability/prelims.htm>

During its inquiry, the Committee found a number of issues with the laws, regulations and guidelines relevant to disability and migration. From the perspective of people with disability, Australia's disability discrimination law should always allow for the right to challenge an unreasonable case of discrimination, so migration should be covered by the new law. It is also critical that any consolidated anti-discrimination law adequately addresses the need to ensure ongoing transparency in issues of migration.

- **Right to participate in civil and political life:** Although voting is covered by the DDA, other areas of civil and political life may not be, even though they are decidedly public. Running for political office, for instance, does not technically count as employment or as a good or service. Close examination is needed to determine whether simply expanding protections to volunteers would in fact cover all aspects of civil and political activity, such as attending political meetings or protests, or participating in jury duty.

It is worth noting that even some of the areas under this Article which are protected at present are still difficult to enforce. For example, accessible independent voting for people who are blind or vision impaired, people with cognitive, intellectual or psychosocial disability and people with physical disability is implemented inconsistently across the states and territories, and is mostly regarded as a voluntary obligation. Some laws remain in contradiction to the CRPD, citing that voters must be 'of sound mind' or

assisted by another person if they have physical difficulty voting. Again, even outside of the federal jurisdiction it is important to have federal protection.

- **Vilification:** The UN CRPD requires State Parties to protect against all forms of discrimination against people with disability. While vilification – promoting or causing humiliation or hatred of a person – is recognized and protected in some areas of the law, only Tasmania has legislated to protect people with disability from being vilified.

RECOMMENDATION: That conformity with the UN CRPD be considered critical to the consolidated anti-discrimination law. In particular, the law should cover:

- **Rights to non-discrimination in areas of life which may not be consistently covered at State and Territory level, but which are protected under the UN CRPD;**
- **Rights to non-discrimination at a federal level which are currently exempted from the DDA, including the right to migrate;**
- **Rights to freedom from harassment and vilification which are rarely, if ever, protected under current Australian law for people with disability.**

Definitions of Discrimination

The UN CRPD includes a single definition of discrimination which does not make distinctions between direct and indirect discrimination. The test is about whether a person's human rights are able to be 'recognised, enjoyed and exercised, on an equal basis with others'. A single definition of discrimination does not

lend itself to a comparator test where one looks at whether a real or imagined person in different circumstances would experience a similar outcome. Instead, it seems to fit most closely to a detriment test of disability discrimination which looks at how much an individual's rights have been infringed upon.

On a practical level, comparator tests cause great difficulty for people with disability. As the discussion paper notes, it can be unclear what a comparator will actually be: would it be another person with a similar disability, another person with a less restrictive disability or an able bodied person. The accumulated disadvantage associated with disability – including lower educational and employment outcomes, higher rates of poverty and social exclusion – are hard to build into a comparator system.

Under the UN CRPD, there is no distinction between direct and indirect discrimination. Article 2 – Definitions says:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

It should be noted that providing clarity about direct and indirect discrimination would aid everyone in the complaints process. To be consistent with the UN CRPD, these definitions need not be in the law itself, but could be provided in guidelines or addendums to assist complainants and respondents. However, any definitions of

direct and indirect discrimination should uphold the test in the UN CRPD and should not restrict it in any way. As per the Discrimination Law Expert Group December 2011 submission, if the concepts of direct and indirect discrimination are expressed in the law, they should not be mutually exclusive; that is, a case could contain elements of both.

The current DDA definition of indirect discrimination specifies that a complainant “does not or cannot comply” with requirements because of their attribute, such as disability. This would seem to further restrict the UN CRPD definition, where only specifying that the requirement is not reasonable does not seem to conflict with the CRPD. Additionally, proving that someone doesn’t or can’t comply with a condition on the basis of disability is not always easy: the impact of person’s disability can change greatly depending on the environment they find themselves in, the support they have from others or from specialized equipment, or simply the vagaries of their condition on any given day. To prove that it is unreasonable to expect a person with (a particular) disability to meet a certain requirement may be less difficult.

It is unclear from the discussion paper whether introducing a ‘legitimate and proportionate’ test – the requirement is a proportionate measure for a legitimate aim – would restrict the UN CRPD definition of discrimination. This would largely depend on whether such a ‘legitimate and proportionate’ test simply offers clarity about what is ‘reasonable’ or whether it is used in practice to impose further criteria on what can be called indirect discrimination.

Regardless of the legal definitions, it is critical that they are accompanied by further information about what is generally

considered to be direct and indirect discrimination, and what constitutes 'reasonable' restrictions when it comes to indirect discrimination. Making the law itself clear should not be considered a substitute for ongoing community outreach and education.

In particular it should be made clear that, for people with disability, it is not reasonable to impose restrictions which are about managing perceived risk by excluding people with disability from mainstream education, employment or accessing goods and services. At present Occupational Health and Safety laws are often cited as a 'reasonable' measure for denying a person with disability the right to access services, employment or education.

Under the UN CRPD:

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

Special Measures

Article 5 – Equality and non-discrimination outlines that:

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

This statement allows for affirmative action or 'best case solutions' where no other accessibility options are available, and protects against discrimination claims. In doing so, it provides a

further argument for a promotional function within anti-discrimination law. As the Discrimination Law Experts Group notes, any special provisions clause should specify that the group concerned – in this case, people with disability – has been consulted about positive discrimination measures and does not disagree with them. There should also be a non-compulsory way for businesses and employers to register any special measures so that they can be sure of their legality. Special measures should be designed to be short or medium term, allowing for a change in the issues associated with disadvantage over time.

RECOMMENDATION: There should be a single definition of discrimination under the consolidated anti discrimination law which is compatible with the UN CRPD definition and tests. This should be supplemented by explanations of direct and indirect discrimination.

RECOMMENDATION: That special measures to provide for positive discrimination and measures to assist particular groups in achieving equality should be allowed under the law.

Disability Standards and Co-Regulation

At present, the DDA contains three Standards: Access to Premises, Transport and Education. These Standards have served to provide some measure of certainty for people with disability in areas where technical specifications or clear directions are necessary. However, there are three key problems with the Standards at present:

- Lack of education about the Standards: While providing some clarity, the Standards still cause confusion, and in

some instances are not well known. Dedicated resources need to be provided to increase community awareness;

- References to other laws and regulations, such as Australian Standards, appear in the DDA Standards. Accessing the source material, however, is difficult for many people with disabilities, especially in the instances where it costs several hundred dollars a copy to do so;
- Reviews of the Standards are conducted every five years, but with the exception of the Access to Premises Standards, there are no measures in place to ensure that the reviews are timely and appropriate to the issues at hand. This has been a noticeable problem with the first review of the Transport Standards, which began in 2007 and ended in 2011, just six months before the start of a year in which the Standards are due to be reviewed again.

To date, there has been little work done on co-regulatory frameworks under the DDA. The only recent example is that of the Australian Rail Authority Code of Practice. For people with disability, the process of developing the Code was complicated by inaccessible information and thus difficulty consulting. Because the Code is so recent, it is difficult to know whether it will have a positive impact in both providing certainty while increasing accessibility. If co-regulation is to be introduced as part of the consolidated law, then provisions must be made for adequate consultation and review processes. Either way, those co-regulatory frameworks already in place should be monitored for their efficacy.

RECOMMENDATION: Standards should remain under a consolidated Act, but more needs to be done to build public awareness and accessibility. The need for stringent review processes should be reflected in the law.

Co-regulatory approaches should be treated with caution, and current models should be reviewed closely. The introduction of co-regulation should include clear requirements for consultation and review.

Burden of Proof

For many people with disability, proving that discrimination has occurred because of their protected attribute can be incredibly difficult. Some people with disability will falter because evidence, such as documentation, is in an inaccessible format or is too complex to follow, because the person has energy restrictions, difficulty interacting with others or concentration issues. For these reasons and many more, people with disability may find themselves simply unable to mount a case if they are asked to prove discrimination.

This is particularly the case with employment and education complaints, where a number of decision-making factors and internal processes may be taken into account by the respondent when deciding whether to admit a child to a school or hire a person for a job. These processes are generally not made public and it can be impossible for complainants to get the information they need to prove discrimination. Commercial-in-confidence and client confidentiality, while posing valid privacy issues, may be difficult legal areas for a complainant with disability to navigate in

order to gain as much information to support their case as is possible.

Areas of discrimination which involve a depth of technical or specialist knowledge – such as whether or not it is technically feasible to provide captions on a cinema screen, what is best educational practice for a child with intellectual disability or whether it is safe to have more than two people who use wheelchairs on a plane – are also incredibly difficult for people with disability and their advocates to prosecute.

AFDO believes that, as with workplace safety inspections in some jurisdictions, it should be up to the respondent to prove that they have not discriminated rather than asking the complainant to prove that they have. If the burden of proof is not fully shifted then any ‘staggered’ burden of proof system should:

- **Not** place the onus on a complainant to find information or evidence which is clearly at the respondent’s disposal. Such information or evidence should be provided by the respondent and the Commission should have the power to compel respondents to provide information;
- Give complainants accessible (i.e., not overly technical) information about why a respondent does not see their action as discriminatory, and/or the support to interpret the information;
- Offer complainants and respondents the right of reply to claims made by the other side, and provide for independent support for people with disability and their advocates to

achieve this in cases of unavoidable technical or expert detail.

RECOMMENDATION: To avoid the disadvantage often faced by people with disability lodging complaints on their own, the burden of proof in discrimination cases should not fall solely on the complainant, and should be weighted towards the respondent as much as possible. In particular, it should make respondents responsible for producing clear and accessible information about why they have not discriminated or why reasonable adjustments are not possible.

Protected Attributes

AFDO believes that in many ways the current definitions of disability under the DDA meet and exceed those provided for under the UN CRPD. However, the DDA does have some issues which could be addressed as part of this process.

Language in the DDA definition of disability refers to “disorders”, “malfunctions” and “disturbed behaviours”. While these descriptors may be technically accurate, they convey a negative perception of people with disability and their bodies. The law should use terms which are better able to combine accuracy with neutrality: there is little point to anti-discrimination law which perpetuates disadvantage and negative stereotypes. Instead, a person with disability might, for instance, have ‘conditions’ or ‘restricted or changed function’.

Further to this, the DDA does not specifically recognize that disability has social components as per Article 1 – Purpose:

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in

interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

This recognition should be expressed broadly in any consolidated law, but should be augmented by an explicit recognition of disability-specific requirements for access and non-discrimination. This should include, for example, clearly recognizing the right to use Auslan as a first, native language; that non-verbal and non-language communication cues should be accommodated in a manner appropriate for the person, and that Braille and other alternative formats should be supplied as necessary. This is a standard practice throughout the UN CRPD, for example in Articles 9 and 24.

While the Standards under the DDA recognize the need for disability specific adjustments in certain contexts – such as the Disability Standards for Education – it is important that these are broadly recognized and understood as first order methods for preventing and alleviating discrimination across all areas. For example, the provision of someone to read a form at a hospital should be secondary to providing an electronic or Braille copy for a person who is vision impaired or blind.

At present the DDA is the only anti-discrimination act in the suite of acts considered for consolidation which protects the rights of associates – family, friends or carers who experience discrimination on the basis of another person’s protected attribute. For the consolidation of these laws to provide maximum consistency, associated should be protected for all attributes.

AFDO is extremely supportive of proposals to include additional protected measures in the consolidated legislation. Like other

members of society, people with disability also experience discrimination based on their sexual orientation³, gender identity or gender expression. Volunteering in the community is often a critical step to gaining employment for people with disability, and the support of volunteers is often critical to the work of disability focused organizations.

There are areas where people with disability often experience over-representation in society. In particular, people with disability are often from low socioeconomic backgrounds⁴, experience high rates of domestic violence⁵ and high rates of entry into the criminal justice system⁶. In addition, the ability for employers to obtain and store health records can have a particularly adverse impact on people with disability.

Given the high numbers of people with disability in many of these categories, AFDO strongly recommends that a recognition of intersectionality – a case where a number of attributes have contributed to discrimination – should not be restricted to a certain number of attributes, or to certain combinations. For example, an Aboriginal woman with acquired brain injury leaving prison who experiences discrimination when applying for housing should be

³ Karen I. Fredriksen-Goldsen, Hyun-Jun Kim, and Susan E. Barkan Disability Among Lesbian, Gay, and Bisexual Adults: Disparities in Prevalence and Risk. *American Journal of Public Health*: January 2012, Vol. 102, No. 1, pp. e16-e21, abstract available at: <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300379?prevSearch=disability&searchHistoryKey=>

⁴ Australian Institute of Health and Welfare, 2009, *The Geography of Disability and Economic Disadvantage in Australian Capital Cities*, available online at: <http://www.aihw.gov.au/publication-detail/?id=6442468227>

⁵ Women with Disabilities Australia, 2011, *Submission to the Preparation Phase of the UN Analytical Study on Violence Against Women and Girls with Disabilities*, available online at: <http://www.wwda.org.au/subs2011.htm>

⁶ Department of Justice Victoria, 2012, *Prisoners with Disability Research*, available online at: <http://www.justice.vic.gov.au/home/prisons/research+and+statistics/justice+-+prisoners+with+disabilities+research>

able to clearly explain how all of those factors may have contributed to discrimination.

RECOMMENDATION: AFDO supports the inclusion of a range of new protected attributes, including sexual orientation, gender identity and gender expression; volunteers; previous criminal record; homelessness; experience of domestic violence and socioeconomic status.

Exceptions and Exemptions

Article 5 of the UN CRPD – Equality and non-discrimination explicitly states that all forms of discrimination are covered:

- 1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.*
- 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.*
- 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*
- 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.*

Under the UN CRPD there is no case made for exceptions and exemptions beyond those outlined in the definition of ‘reasonable accommodation’ (a disproportionate or undue burden). However, the case is made that specific measures aimed at improving the

rights of people with disability – such as affirmative action in employment – should be treated as non-discriminatory.

AFDO believes that this total ban on exemptions should extend to temporary exemptions. Although the argument might be made that issuing temporary exemptions encourages governments and other organizations to progressively realize the rights of people with disability and allows the achievement of de facto equality, current realities show that when they do work – and sometimes the lack of enforcement for temporary exemptions can cause problems with achieving their goals – their success comes at a high price.

At present, temporary exemptions create an administrative burden on advocacy organizations and individuals with disability who respond to calls for public comment when applications for exemptions are made. The Australian Human Rights Commission uses self defined criteria in deciding whether a temporary exemption should be granted, and there appears to be no recourse if an applicant fails to comply with the measures set out in their temporary exemption, beyond further action by individuals.

While it is AFDO's recommendation that temporary exemptions be halted altogether, at a bare minimum any reform to the temporary exemption law needs to take the above concerns into account by providing for when and how exemptions can be sought, and giving enforceable penalties for non-compliance. The framework set out by the Discrimination Law Expert Group would be a useful one; especially if there was a provision for a set period of time for consultation to allow for people with disability and their advocates to adequately respond.

RECOMMENDATION: 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 Complaints Process

The current complaints process lacks the capacity to support people with disability as necessary, and to enforce compliance with the process from all parties. People with disability are frustrated that:

- Respondents are not compelled to attend conciliations or penalized for either non-attendance or non-compliance with the agreed outcomes from conciliation;
- The length of time to go through the conciliation process averages between three and nine months. This is a lengthy timeframe which not only causes stress for many complainants, but may cause real practical concerns when the matter is urgent – such as matters related to education or employment;
- There can be lengthy periods between asking for information from respondents and getting it. While this also applies to complainants, it appears to be more common with larger organizations and government departments;
- People with disability and their advocates often feel that there is a practice among larger respondents of weighing up

the financial cost of going through conciliation versus ending the (alleged) discrimination. Because the number of conciliation cases which make it to court are small, the incentive to resolve a complaint at – or before – conciliation is minimal;

- Placing blame on complainants is not uncommon and adds to stress, especially in cases where an individual is trying to resolve a systemic issue;
- Unjustifiable hardship and reasonable accommodations can be difficult to quantify (deciding what is truly unjustifiable and what is truly reasonable). As with the issues around burden of proof, people with disability do not always have the skills, resources and information necessary to counter claims by respondents;
- Consideration need not be given to the UN CRPD, or any other Convention ratified by Australia, as part of the conciliation process. This may cause issues as complaints progress beyond the Commission and court processes to treaty committees.

RECOMMENDATION: That the conciliation process should include penalties for non-attendance and non-compliance with agreed outcomes, and that there should be an upper limit to the time allowed for responses. Penalties should be harsh enough to encourage swift and effective resolution in what might otherwise be lengthy cases.

Court Cases

At present, the number of cases proceeding to court is quite small. This is due to several factors. While it is true that many complaints can be effectively resolved through conciliation, some fail to make it to court because of the time, money and stress of following a court case. In particular, the risk of costs – even with a cost cap – is too high for many people with disability, who are often on government income support or low incomes. Being responsible for the maximum cost cap of \$20,000 is the equivalent of a year's income for a person on Disability Support Pension, and more for a person with disability on NewStart.

Failure to provide an environment which encourages discrimination court cases means that important systemic precedents – especially against large companies or governments – may not be made, and their merits not even heard publicly.

The Disability Law Experts Group recommends a number of actions to improve the accessibility of court cases for complainants. These include:

- Allowing for 'triage' of complaints so that complaints are either swiftly dealt with if they require information or referral, sent to conciliation or given the option to go directly to court.
- Changing court rulings so that costs are withdrawn, except in cases where either the complainant has not acted reasonably, or in the case where a large organisation is able to pay the complainant's costs;
- Legal and advocacy assistance should be freely available to complainants wishing to pursue court cases. This would address some issues around financial disadvantage as well

as logistical issues for people with disability who often have to actively seek pro bono support for court cases.

RECOMMENDATION: People with disability should not be liable for any costs if a case proceeds to court because they often face financial hardship which makes even small payments impossible. By the time cases have been through the conciliation process, it should be clear that a claim is not vexatious and has some merit.

Systemic Outcomes

Although a complainant can choose to include a systemic outcome to their complaint, the complaints system still relies heavily on individual complainants to inform systemic change. Coordinated complaints campaigns which involve a number of individual complaints lodged and run by an advocacy organisation have been used to bring large respondents to the table to effect change, but these can impose an administrative burden upon resource-poor advocacy groups as well as the individuals involved. As with isolated individual complaints, there is little the Australian Human Rights Commission can do to enforce agreements reached as part of coordinated complaints campaigns.

Although the Australian Human Rights Commission can investigate systemic issues and make recommendations (such as the 2005 investigation into the employment of people with disability), these are non-binding. Giving the Commission the power to make binding systemic recommendations for change poses real difficulties, especially in areas where binding

instructions would apply to State or Territory governments. Nonetheless, it is an area worth exploring further.

The Commission could:

- a) Be given the power to take complaints of great systemic importance to court on behalf of complainants;
- b) Be divided into individual and systemic branches, so that the functions of complaints versus systemic investigations could be clearly defined;
- c) Be able to issue infringement notices, as suggested by the Discrimination Law Experts Group, so that civil compensation claims could be made by individuals against an organisation breaching anti-discrimination law.

From the perspective of people with disability, the method of ensuring systemic powers with the AHRC is not as important as the outcomes. These outcomes should be that:

- The burden on individuals with disability to make complaints about systemic issues is lessened, if not completely removed;
- Systemic issues across one organisation, area of public life or one industry are monitored under a compliance regime; and
- Reporting on identified systemic issues is undertaken on a regular basis. Priorities should be decided either through

legal mandate for review (as is the case with the Disability Standards) or consultation with relevant stakeholders.

RECOMMENDATION: People with disability should have the option, but not the expectation, to resolve issues of systemic discrimination which affect them. The new law should engage a number of strategies to ensure that people with disability, their representative organizations and the Australian Human Rights Commission can all act in this area.

Supporting Anti-Discrimination Law with Information

Data Collection

Currently, the AHRC provides some data on disability discrimination complaints in its Annual Report. These are categorised by type of complaint. Of further use would be a requirement in the consolidated law to provide data which includes:

- anonymous data about complainants to better illustrate who uses the Commission; for example, by protected attribute, gender, education level and employment status;
- data about intersectionality in complaints;
- a compendium of complaints which can be de-identified and used as case studies. This is provided in a limited fashion at present;
- a 'name and shame' list of repeat large scale offenders, such as large corporations and government departments
- progress reports in key areas of systemic concern.

Educative Role of the AHRC

Community education about discrimination and about people with protected attributes is critical if positive promotion of rights is to

become a reality. People within affected communities – such as people with disability – need appropriate access to information about the law and about the legal and non-legal processes available to them, from both the AHRC and from within their own communities. Both avenues of communication must be adequately resourced.

In the disability community resourcing provides a very practical constraint: because of the variety of effects of disability, a variety of communication methods need to be used to keep people with disability well-informed. These may include, but are not restricted to, Auslan interpreting and interpreters using other community and indigenous languages, Braille and other accessible formats, Easy English and Plain English, face to face communication, web based information and access to telephone help.

RECOMMENDATION: When introducing and upholding the new law, governments should consider data collection and public education to be paramount, and should ensure that the Australian Human Rights Commission and community organizations are well resourced to carry out these functions.