
Recommendations

Chapter 8 Eliminating discrimination

RECOMMENDATION 8.1

The Disability Discrimination Act 1992 should be amended to include a general duty to make reasonable adjustments.

- *Reasonable adjustments should be defined to exclude adjustments that would cause unjustifiable hardship.*
- *The person or persons on whom the duty would fall should be identified.*
- *Examples of how the duty might apply should be included in each area of the Act.*

RECOMMENDATION 8.2

The Disability Discrimination Act 1992 should be amended to allow an unjustifiable hardship defence in all areas of the Act that make discrimination on the ground of disability unlawful.

RECOMMENDATION 8.3

The criteria for determining unjustifiable hardship in the Disability Discrimination Act 1992 (s.11) should be expanded to:

- *require consideration of the costs and benefits to all persons and an assessment of the net benefit to the community*
- *include as a relevant circumstance, the availability of financial and other assistance*
- *clarify that any respondent to a complaint (not just ‘service providers’) can expect to have their action plan considered.*

RECOMMENDATION 8.4

The defence of inherent requirements should be available to employers in all employment situations.

Chapter 9 Equality before the law

RECOMMENDATION 9.1

The Attorney General, in consultation with State and Territory governments, should commission an inquiry into access to justice for people with disabilities, with a focus on practical strategies for protecting their rights in the criminal and civil justice systems.

RECOMMENDATION 9.2

The Commonwealth Electoral Act 1918 should be amended to ensure that federal voting procedures are accessible (physically and in provision of information and independent assistance), and the Australian Government should encourage State and Territory governments to follow suit.

RECOMMENDATION 9.3

The Disability Discrimination Act 1992 should apply to actions done in compliance with laws that have not been prescribed under section 47 of the Act.

Chapter 10 Promoting community recognition and acceptance

RECOMMENDATION 10.1

The Human Rights and Equal Opportunity Commission should work with employers and employer groups to develop and deliver targeted education campaigns.

RECOMMENDATION 10.2

The cooperative arrangements between the Human Rights and Equal Opportunity Commission and State and Territory anti-discrimination bodies should be formalised and extended. This would be facilitated by:

- including HREOC in the membership of the Australian Council of Human Rights Agencies*
- broadening the Council's focus to cover disability issues, especially the development of education programs, information provision, research priorities and programs, and a 'shop front' presence in each jurisdiction.*

Chapter 11 Definitions

RECOMMENDATION 11.1

The definition of disability in the Disability Discrimination Act 1992 (s.4) should be amended to ensure that it is clear that it includes:

- *medically recognised symptoms where the underlying cause is unknown*
- *genetic predisposition to a disability that is otherwise covered by the Act.*

A note should be added to the Act to explain that behaviour that is a symptom or manifestation of a disability is part of the disability for the purposes of the Act.

RECOMMENDATION 11.2

The definition of direct discrimination in the Disability Discrimination Act 1992 (s.5(1)) should be supplemented with examples (either included in the Act or guidelines) to clarify the ‘circumstances that are the same or not materially different’ for the purposes of making a comparison.

RECOMMENDATION 11.3

The definition of indirect discrimination in the Disability Discrimination Act 1992 (s.6) should be amended to:

- *remove the proportionality test*
- *include criteria for determining whether a requirement or condition ‘is not reasonable having regard to the circumstances’*
- *require the respondent to prove that a requirement or condition is reasonable*
- *cover incidences of proposed indirect discrimination.*

Chapter 12 Exemptions

RECOMMENDATION 12.1

The Disability Discrimination Act 1992 should be amended to clarify what are ‘other relevant factors’ for the purpose of the insurance and superannuation exemption (s.46). ‘Other relevant factors’ should not include:

- *stereotypical assumptions about disability that are not supported by reasonable evidence*
- *unfounded assumptions about risks related to disability.*

RECOMMENDATION 12.2

The Disability Discrimination Act 1992 should be amended to limit the application of the insurance and superannuation exemption (s.46). It should only apply if, when requested, insurance and superannuation providers give clear and meaningful reasons for unfavourable underwriting decisions (including an explanation of the information on which they have relied).

Applicants should be advised of their entitlement to request these reasons.

RECOMMENDATION 12.3

The exemption of the Migration Act 1958 and its regulations in the Disability Discrimination Act 1992 (s.52) should be reviewed and amended to ensure it:

- *exempts only those provisions which deal with issuing entry and migration visas to Australia*
- *does not exempt administrative processes under the Act and its regulations.*

RECOMMENDATION 12.4

The exemption in the Disability Discrimination Act 1992 for ‘special measures’ that are reasonably intended to benefit people with disabilities (s.45) should be amended to clarify that it:

- *exempts the establishment, eligibility criteria and funding of these measures*
- *does not exempt general actions done in their administration.*

RECOMMENDATION 12.5

The Disability Discrimination Act 1992 should be amended to clarify that the general exemption for ‘special measures’ (s.45) does not apply to wages paid to people with disabilities. Wages should be subject to the specific provisions for capacity-based wages in the Act (s.47(1)(c)).

RECOMMENDATION 12.6

The laws prescribed under section 47 of the Disability Discrimination Act 1992 should be reviewed every five years to ensure that the reasons for their prescription remain current. The laws that are currently prescribed should be reviewed as soon as possible and delisted if necessary.

Chapter 13 Complaints

RECOMMENDATION 13.1

The Human Rights and Equal Opportunity Commission should enter into formal arrangements with State and Territory anti-discrimination bodies to establish a ‘shop front’ presence in each jurisdiction but retain responsibility for managing complaints under the Disability Discrimination Act 1992.

RECOMMENDATION 13.2

The Human Rights and Equal Opportunity Commission Act 1986 (s.46PO) should be amended to allow complainants up to 60 days to lodge an application relating to unlawful disability discrimination with the Federal Court or Federal Magistrates Court.

RECOMMENDATION 13.3

The Australian Government should legislate to ensure that, where it is the clear intent of the parties, conciliation agreements should become legally binding agreements. The legislation should grant Federal Court or Federal Magistrates Court jurisdiction over such agreements. The legislation should also set out the remedies that may be granted by those courts in respect of a breach of such an agreement.

RECOMMENDATION 13.4

The Human Rights and Equal Opportunity Commission Act 1986 should be amended to require each party to a disability discrimination case to bear his or her own costs in the Federal Court and Federal Magistrates Court, subject to guidelines for cost orders based on the criteria in sections 117(3) and 118 of the Family Law Act 1975.

RECOMMENDATION 13.5

The Human Rights and Equal Opportunity Commission Act 1986 should be amended to allow disability organisations with a demonstrated connection to the subject matter of a complaint to initiate complaints in their own right and proceed to the Federal Court or Federal Magistrates Court if required.

RECOMMENDATION 13.6

The Attorney-General’s Department should investigate the implications of this inquiry’s recommendations about the disability discrimination complaints process for other federal anti-discrimination legislation.

Chapter 14 Regulation

RECOMMENDATION 14.1

Section 31 of the Disability Discrimination Act 1992 should be amended to clarify that disability standards cannot alter in a fundamental way the scope of the Act. The scope should only be altered via amendment of the Act, not via disability standards.

RECOMMENDATION 14.2

The Disability Discrimination Act 1992 (s.13) should be amended to clarify that where disability standards and State and Territory legislation address the same specific matter, the disability standards should prevail.

RECOMMENDATION 14.3

The Disability Discrimination Act 1992 (s.31) should be amended to allow disability standards to be introduced in any area in which it is unlawful to discriminate on the ground of disability. The standards-making power should extend to the clarification of the operation of statutory exemptions.

RECOMMENDATION 14.4

Where possible, monitoring and enforcement of disability standards should be incorporated into existing regulatory processes. The Human Rights and Equal Opportunity Commission's role should be to report to the Attorney General on the operation and adequacy of those processes.

RECOMMENDATION 14.5

The Australian Government should legislate to allow the Human Rights and Equal Opportunity Commission to certify formal co-regulatory arrangements with organisations to whom the Act applies.

RECOMMENDATION 14.6

The Human Rights and Equal Opportunity Commission should replace the Frequently Asked Questions for employment with guidelines in order to provide more formal recognition under the Disability Discrimination Act 1992 and greater clarity for employers regarding their responsibilities.

The Disability Discrimination Act 1992 (Part 3) should be amended to clarify that action plans can be developed and registered by any organisation or person covered by the Act.

Chapter 15 Other issues

The Australian Government should review the effectiveness of the various schemes it uses to subsidise the costs to organisations of adjustments needed by people with disabilities. This review should consider the merits of portable access grants that would contribute to the costs of adjustments required for participation in employment and education.