

'Education Standards under the Disability Discrimination Act – The Process and Interim Response'.

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Introduction

The Australian Disability Discrimination Act (1992) (DDA) received royal assent on November 5, 1992 and became law. The DDA was a milestone in the enfranchisement of Australians with disabilities. When the Act was promulgated through parliament, it contained provisions for the rights and obligations under the Act to be set out in more detail through instruments to be known as Disability Standards.

Under section 31 of the DDA, there is provision for the Attorney General to formulate specific Standards under the Act in the areas of: Transport; Education; Employment; Accommodation; Administration of Commonwealth Government Laws & Programs; and Access to Public Buildings (added following an amendment to the DDA on September 23, 1999). The DDA Standards are intended to clarify how the DDA should apply to a particular area or service such as a local school or transport service. "Without Standards, the impact of the Disability Discrimination Act would be limited to those persons who either complained themselves or who benefit from decisions made in relation to someone else's complaint".¹

Under the Disability Discrimination Act, people with a disability who are discriminated against can make a complaint to the Human Rights and Equal Opportunity Commission (HREOC). However, "experience of anti-discrimination law in Australia and specifically disability discrimination suggests that complaints based mechanisms do not effectively address systemic discrimination"² Disability standards are designed to deal with systemic discrimination without the need to resort to a complaints based process through the HREOC.

The Transport Standard is the most advanced of all Standards and Federal cabinet has recently announced their endorsement of them. There has also been a considerable amount of work over many years on a Disability Standard for Education. A Draft was released in August 2000 for a public comment period up to November 24. Where is this process up to and where is it headed? This paper will explore the context for developing a Draft Standard, the process and the interim response from the consultation.

The DDA Standards Project

In broad terms, the DDA Standards Project is funded by the Federal Attorney General's Department to coordinate disability sector input into the DDA Standards development. The DDA Standards Project, is a project of the National Caucus of Disability Consumer Organisations. However, because the Caucus is not an incorporated body, it can not receive and administer funds for the Project; therefore

¹ Pp 21 Rights for Australians Right for Australia. Michael Ramsey and Associates Pty Ltd. October 1994.

² Federal Government Funding for the Development of Disability Standards. A Justice Statement Initiative. Contract signing and Presentation of Cheque.

this role is undertaken by one of the member organisations, Deafness Forum of Australia, which has just taken over from Blind Citizens Australia.

The DDA Standards Project is a network of organisations. There is no formal membership, there are no affiliation fees, and there is no constitutional or incorporation base. The Commonwealth Attorney General's Department provides funding to the Project for meetings of the Steering Committee and for a one-person secretariat to provide the disability sector with administrative coherence across all the DDA Standards processes.

The DDA Standards Project Steering Committee comprises of 11 National Peak bodies. As of November 2000, these are :

Australian Association of the Deaf
 Australian Psychiatric Disability Coalition (now unfunded)
 Blind Citizens Australia
 Carers Association of Australia
 Deafness Forum of Australia
 Head Injury Council of Australia
 National; Association of People Living with HIV/AIDS
 National Council on Intellectual Disability
 National Ethnic Disability Alliance
 Physical Disability Council of Australia
 Women with Disabilities Australia

The member organisations nominate individuals to be the representatives of the DDA Standards Project and their respective constituents in the development of Standards. The Project provides an opportunity for the community to focus on the development of the Standards, and to ensure that the opinions of people with disabilities are heard with a strong voice.

The DDA Standards Project facilitates and coordinates input from people with disabilities in Australia into the standards process. It selects and supports consumer representatives taking part in the DDA Standards development. In addition, the DDA Standards Project provides a flow of information between the Standards Working Groups and the disability sector. It ensures that debate on the issues at hand are heard by all concerned and that all opinions are heard and taken into account."³

Objectives of DDA Standards Project

Considerable work on internal policies within the Project has resulted in a clear set of objectives, which are to:

- "Elect disability sector representatives to DDA Standards development working parties;
- Educate people with disabilities about Section 31 of the DDA and provide information about the different standards processes;
- Engage the disability sector in debate and discussion on specific issues around DDA standards through consultation with people with disabilities during the development of specific DDA standards;
- Reflect all the views expressed by people with disabilities during consultations;

³ DDA Standards Project - Position Paper. February 1998 (updated June 1999)

- Protect the rights of people with disabilities from erosion during standards development processes.”⁴

Background to an Education Standard

Discrimination against people with disabilities in the education system has been widespread in Australia. The discrimination has ranged from non-acceptance at enrolment, to unwillingness by the education providers to make appropriate adjustments for an individual with a disability through to indirect discrimination due to ignorance and/or lack of disability awareness. Many individuals and families have been confronted with the arduous task of lodging a complaint under the Commonwealth Disability Discrimination Act (1992) or via the respective State and Territory Equal Opportunity Acts. This has not only been a very stressful process for the families concerned but it has, in some cases, taken years to settle.

What’s more, while the complaint process has been in progress, many of the complainants have been excluded from the school system which further delays their education. Even when cases have been won by individuals, the outcomes only pertain to that individual which is why many of the cases have been settled out of court. “Experience of anti-discrimination law in Australia and specifically disability discrimination suggests that complaints based mechanisms do not effectively address systemic discrimination”⁵

The National Children’s and Youth Law Centre published a report on disability discrimination in schools which was released in 1997. Interviews were conducted with 784 people including parents, students, former students and carers. The discrimination issues uncovered were in the areas of enrolment, post enrolment, meeting personal support needs, participation and belonging, discriminatory attitudes by staff, bullying, other parent’s attitudes and insensitivity to disability specific issues.

The study found that complaints under the DDA were both costly and time consuming with long delays involved. Complaining direct to the school was also negative for a large majority, with students discriminated against or forced to leave school as a result. The report found that the delays could extend to several years between the time of the initial complaint and its resolution. During this period the child’s education is commonly disrupted if not stopped completely. It is for these reasons that many individuals and families drop the complaint rather than going through the whole ordeal.

The Draft Disability Standards

These draft Standards are being put out for consultation by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) Taskforce on Disability Standards in Education. MCEETYA includes all Commonwealth, State and Territory Ministers responsible for education and training.

At its December 1995 meeting, MCEETYA agreed to establish a Taskforce on the development of disability standards for education. In setting up the Taskforce, the Ministers were keen to ensure that as many stakeholders as possible were

⁴ pp 1 & 2 Disability Discrimination Act Standards Project – Position Paper June 1999.

⁵ Federal Government Funding for the Development of Disability Standards. A Justice Statement Initiative 1995.

represented. They also had to consider the overall size of the group, and the need for a balance between the different sectors of education.

“In 1996 MCEETYA endorsed the development of a discussion paper which canvassed the issues of the feasibility and the desirability of DDA Education Standards. In 1997 the Council endorsed a consultation process based on the discussion paper. The outcome of those consultations was a decision to proceed with the development of standards.”⁶

At its meeting on 31 March 2000, MCEETYA agreed that the current draft Disability Standards for Education and accompanying Guidance Notes, should be used as the basis for further consultation with key stakeholder groups, with the outcomes of this process to be reported to MCEETYA.

These draft Standards specify how education and training are to be made accessible to students with disabilities. They cover the following five areas:

- enrolment;
- participation;
- curriculum development, accreditation and delivery;
- student support services; and
- elimination of harassment and victimisation.

Each area includes a statement of the *rights* of students with disabilities in relation to education and training. The areas then describe the legal *obligations* of education authorities, institutions and providers. Each area then sets out *measures* which can be taken and which will be evidence of compliance with the legal obligation.

The current draft Standards document also:

- defines important terminology used in the DDA and throughout the draft Standards document;
- broadly identifies education authorities and institutions, or providers, obliged to comply with the draft Standards;
- describes the scope of the draft Standards; and
- identifies exceptions where compliance is not required.⁷

Current Situation

The DDA Standards Project would argue that the DDA standards are designed to deal with systemic discrimination with less need to resort to a complaints based process through the Human Rights and Equal Opportunity Commission (HREOC). If the Standards are drafted correctly, they could be used to address any perceived weaknesses or ambiguities in the Disability Discrimination Act. Conversely, if Standards are weak, the potential result could be a legal endorsement of discrimination against people with disabilities.

The DDA Standards representatives have been working very hard to ensure that the DDA Standards for Education are drafted to protect the rights of people with a disability and their associates. However, they are only two members of a large taskforce that has broad representation from both the private and public education sectors. It is also true to say that the Taskforce is trying to do the ‘almost impossible’ by drafting a Disability Standard that applies to all forms of education from Kindy to

⁶ Consultation on Draft Disability Standards for Education. DETYA, August 2000

⁷ Ibid

primary, secondary and tertiary education. For the record, we do need to state that the DDA Standards Project representatives were able to obtain some significant changes to the current Draft but were not successful in getting the changes we wanted in all areas.

The current Draft, we would argue is by no means perfect. There are a number of changes, which have already been identified through the consultation process that could strengthen the consultation draft. The DDA Standards Project would like to acknowledge and thank all four Consumer Representatives, initially Joan Hume, Belinda Epstein-Frisch, and now Sandi Seymour and Graham Smith for all their hard work and commitment on the Education Standards. We would also like to acknowledge and thank those involved in the Reference Group, Darrell Wills, Paul Cain and Jenny Shaw. The Position Paper along with a range of other documents and submissions are on the Projects web site at www.ozemail.com.au/~ddasp

Position Paper and Consultation

Since the consultation Draft has been finalised, the Project called together an 'expert' Reference Group to undertake a critical analysis of the Draft and prepare a Position Paper. Some representatives from the tertiary sector have expressed concern that the Position Paper is focused predominantly on the compulsory education sector and is not as relevant to the tertiary sector. While that is completely true, it needs to be acknowledged that the aim of the paper is to initiate and support further discussion during the consultation phase.

The Project representatives have also organised and facilitated forums in all States and Territories from August 21 to September 7 as a means to promote discussion on the Draft Standards and encourage individuals and organisations to carefully consider them and submit their own comments into the process. The next step is for the representatives to write up the results of the consultations and to construct an analysis of the submissions received so that we can develop a consolidated report back to the taskforce. The consolidated report will help form the basis for negotiating further amendments to the Draft Disability Standard for Education.

Interim Comments thus far

The DDA Standards Project has endorsed a set of beliefs which are that:

- "Whilst the process of developing Standards is lengthy and difficult, the complexity, importance and future benefit of clarifying rights under the DDA demand that it be undertaken;
- Any Standards developed must not dilute any rights already enshrined in the DDA and must be consistent with the current laws of Australia;
- The process of developing Standards should aim to achieve legally binding Standards;
- If Standards are not acceptable to the community, the principles developed during the development process should form the basis of alternate methods to clarify rights under the DDA;

Any alternative to Standards should be endorsed and supported by the disability sector as a whole"⁸.

⁸ DDA Standards Project Review by Maurice Corcoran 2000 pp 2

I attended the consultations in Adelaide and Melbourne where there appeared to be a general feeling that although the current Draft Standards were not perfect, there were some very good ideas on ways to strengthen them such as alternative dispute resolution strategies. This seems to suggest general support for a Standard if it can be amended in certain areas. Some have also suggested that this together with an overall directive that compliance should also be achieved via compulsory Action Plans that relate directly to the Standards.

Two organisations have suggested that we reject the Draft Standards and when questioned as to what specific issues they had with the current draft, they replied that they hadn't done the detailed analysis yet but wanted them rejected. The Project has continued to stay in communication with both organisations and has encouraged them to forward more details as they come to hand.

There has also been a position put forward that the current Draft would be better as a guideline and therefore not erode in any way the power of the DDA itself.

We will continue to take on board all comments on the current Draft Disability Standard for Education and be especially grateful for submissions that give details on any concerns they have and what the likely implications are likely to be. We as a sector are reliant on sharing our ideas, comments and knowledge on how to achieve compliance with the DDA and remove systemic discrimination from within our education system in Australia. Our Consumer Representatives and the DDA Standards Project on behalf of the disability sector, need all the advice and help we can get in negotiating the best possible outcome for people with a disability and their associates.

Summary

In summary, there is a commitment by the DDA Standards Project in working toward the best possible outcome for people with a disability in Education but there is also a need for open ideas and suggestions in a constructive way to come back from the sector. The more responses that come back to us, the more likely we are going to be able to influence the process. It is particularly vital that the tertiary disability sector assist and contribute to the struggle on behalf of the younger generation and show constructive leadership in this field.

Thank you