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SUBMISSION

ON

EQUAL OPPORTUNITY ACT REVIEW

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Thank you for the opportunity to provide a response to the Equal Opportunity Act Review. The Ethnic Disability Advocacy Centre (EDAC) is a community based advocacy organisation representing the rights and interests of people with disabilities from culturally and linguistically diverse backgrounds (CaLD) and their families.

EDAC has identified a number of concerns, including:

1. Some of the concepts outlined in the Equal Opportunity Act use terminology that is not contemporary and/or unclear;
2. Knowledge of Act and how to make a claim appears to be limited in both the Disability and CaLD sectors;
3. Practical mechanisms of implementation;
4. High level of onus on complainant in complaints process;
5. Insufficient remedies in terms of deterring acts of unlawful discrimination;
6. Underutilization of investigative power of Equal Opportunity Commissioner;
7. The need for bullying and exclusion in the workplace to be addressed by the Equal Opportunity Act;
8. Consideration of increased emphasis on religious discrimination;
9. Harassment is not covered by the Act;
10. Access to building does not reflect current policies, practices and building codes;
11. The right of women to breastfeed in public is not covered by the Act;
12. Further consultation is required before the review is submitted to Government.

1. Some of the concepts outlined in the Equal Opportunity Act use terminology that is not contemporary

EDAC is concerned that some of the concepts outlined in the Equal Opportunity Act use terminology that is outdated and inappropriate in a contemporary setting.

For example, EDAC is uncomfortable with the term 'race' and how it may be interpreted. Although the term is defined within the Act, EDAC believes that a more appropriate term or terms should be utilized to reflect the meaning more accurately. In addition, the definitions of direct and indirect discrimination are unclear. Greater flexibility within these terms is required, with care taken to ensure definitions do not impact negatively on the individual making a complaint. EDAC also feels that more positive terminology should be used throughout the Act in order to assist in the promotion of human rights under the Act rather than the prevention of abuses of these rights.

Furthermore, EDAC recommends that the concept of substantive equality be incorporated into the Equal Opportunity Act. This will assist in the directional shift of the Act to allow more real outcomes to be achieved. Examples of good practice that are achieving or striving for substantive equality should be promoted to the wider community in order to encourage an attitudinal shift.

2. Knowledge of Act and how to make a claim appears to be limited in both the Disability and CaLD sectors

EDAC is concerned that many people with disabilities from culturally and linguistically diverse backgrounds do not seem to be aware of the Act or the claims process involved. This appears to reflect a lack of knowledge within both the disability and CaLD communities/sectors.

An increased emphasis on community education is recommended to address this concern. Such education programs should target people at risk of discrimination, including people with disabilities and their families as well as culturally and linguistically diverse communities. Factors such as cultural appropriateness and language should also be taken into consideration. Such training could also include outlining links between the Equal Opportunity Act and department and agency roles, to ensure the communities are aware of services available to them.

EDAC also recommends that increased emphasis be placed on educating the broader community about the Equal Opportunity, including workplaces, community organizations and all bodies affected by the Act. This training should not only include information about the Equal Opportunity Act but should include conscientisation about the rights of people and promote an attitude of valuing rather than tolerating diversity. It is believed that such training will, in addition to informing people of their legal obligations under the Act, help to overcome misunderstandings and misconceptions about those who are currently at risk of discrimination.

It is recommended that adequate funding be allocated to these education programs. Funding could be allocated to agencies working with these target groups or as part of the Equal Opportunity Commission's training department. This funding should be adequate to ensure a coordinated and comprehensive educational strategy may be implemented.

3. Practical mechanisms of implementation

In conjunction with the community education recommendations outlined above, EDAC also supports the promotion of practical mechanisms of implementation of the Equal Opportunity Act.

EDAC recommends that an increased promotion of the Equal Opportunity Act as a framework of implementation for service standards (e.g., Disability Service Standards from a CaLD perspective). Training should include links to other legislation and implementation strategies, with an emphasis on proactive strategies as examples of good practice.

It is further recommended that the Equal Opportunity Act be actively promoted and acknowledged through all service standards and agencies policies and procedures.

4. High level of onus on complainant in complaints process

EDAC is concerned with the high level of onus placed on the complainant during the complaints process. Placing a complaint regarding an incident of discrimination requires motivation and courage and complainants are often deterred to proceed when they learn about the process involved.

The complaint process is particularly daunting for people who come from non English speaking backgrounds. While EDAC recognizes and appreciates the availability of interpreters, the written requirement of the process does place extra stress on those who have been discriminated against and has proven to be a deterrent in progressing a claim.

The significant evidence that the complainant is required to produce has also proven to be an extra stress and deterrent for people with disabilities. The process is time consuming and can be quite drawn out, requiring a lot of motivation and commitment to complete the process. This is a barrier for some people with a disability; in particular people with psychiatric or intellectual disabilities can be deterred by the length of this process.

Furthermore, the complainant is required to engage their own legal representation if the matter is not resolved through the conciliation process and proceeds to the Federal Court. This can be a major barrier for some people with disabilities and people from CaLD backgrounds, particularly those making a claim without the assistance of an organisation.

EDAC is particularly concerned that people who have been victims of discrimination and make a claim under the Equal Opportunity Act, once again feel victimized through the complaints process. It is recommended that increased support is provided to complainants throughout the process as it is believed that this will significantly increase the number of victims of discrimination who feel empowered to make a complaint. Legal support provided to an individual in a tribunal hearing should be unconditional. It is also recommended that the onus be taken away from the individual and that agencies are able to make a claim on behalf of an individual or group of individuals who have been discriminated against.

Assisting a complainant to undertake the complaints process is very time consuming for not only the individuals concerned, but organizations supporting them. EDAC recommends that either the Equal Opportunity Commission plays a more intensive role in the support of the individual and/or that funding is allocated to organizations to play specific support roles.

It is also recommended that an alternative method to the Complaints system be explored. For example, emphasis could be placed on positive systemic and personal advocacy, where advocates work with agencies that discriminate to change their policies. This will need to be resourced and could be implemented by agencies in conjunction with the Equal Opportunity Commission. In this manner, issues of discrimination are addressed in a proactive way and the onus is removed from the complainant. The complaints process

could still be in place as the following step if the advocacy is not successful in resolving the problem.

5. Insufficient remedies in terms of deterring acts of unlawful discrimination.

EDAC believes that in some cases, the current remedies are inadequate in providing deterrence of acts of unlawful discrimination.

The effect of this is compounded by the fact that quite often the people being discriminated against are not aware of the Act and how to make a claim (as outlined in 2.). Therefore those who discriminate against people with disabilities from CaLD backgrounds are able to do so with the assumption that it is likely that the discrimination may not be identified by the person. In addition, the current deterrents of making a claim due to the high level of onus on the complainant (as outlined in 4.) further increases the likelihood of acts of discrimination occurring, without the Equal Opportunity Act being enacted.

Therefore, it is recommended that an increased onus be placed on the respondents, in order for the Act to be implemented more successfully. It is also recommended that a shift away from a legislation that is punitive to one that is empowering, positive, enabling and capacity building take place. A further recommendation would be for the Equal Opportunity Commission and organizations working with target groups to engage more intensely in systemic advocacy and to work with respondents to address concerns about discrimination. Proactive systemic advocacy by targeting areas of potential discrimination will also enhance community development and contribute to more substantive equality in the community.

6. Underutilisation of investigative power of Equal Opportunity Commissioner

EDAC would like to encourage increased utilization of the investigative power of the Equal Opportunity Commissioner. It is believed that if systemic issues are identified, including those identified through enquiries that do not proceed to formal complaints, that this should provide some basis for further investigation.

Examples of systemic issues that have been identified by EDAC include:

a) Problems with access to taxis for people with disabilities

Significant anecdotal evidence has indicated that substantial levels of disability related discrimination is occurring in Western Australia in regards to access to taxis. This has resulted in numerous incidents of people with disabilities waiting for long periods of time for transport. There are two components to this discrimination, being:

- i) indirect discrimination through the lack of accessible taxis in Western Australia in comparison to the demand; and

- ii) direct discrimination by taxi drivers who do not want to transport a person with a disability.
- b) Discrimination in regards to housing is a key concern for people with disabilities and people from CaLD backgrounds

Discrimination in regards to housing has been identified by EDAC as a major concern for people with disabilities from CaLD backgrounds. Finding housing can prove to be difficult, particularly if specific access requirements are needed and if accommodation is required for a large family. With these limitations, finding appropriate accommodation can prove difficult and there have been examples where people have been discriminated against because of their ethnicity and an unwillingness of landlords or real estate agents to accept these people. Furthermore, the availability of appropriate housing from Homeswest is limited and the needs of people with disabilities and people from CaLD backgrounds is not taken into account when designing and building new housing developments.

The need to find accommodation is a priority for these people and advocates and time is allocated into finding alternative accommodation rather than pursuing complaints. EDAC believes that more emphasis should be placed on the rights of these people and that remedies be examined to ensure that real estate agents and landlords are deterred from discriminating against people on the basis of either ethnicity or disability.

In addition it is recommended that the Equal Opportunity Commission be proactive by conducting research and community consultations to identify and discrimination issues for people from culturally and linguistically diverse backgrounds. In this way, it is hoped that incidents of potential discrimination can be identified before they occur and subsequent actions can be taken.

Furthermore, it is recommended that agencies also be able to identify systemic issues and work in conjunction with the Equal Opportunity Commission to address them.

- 7. The need for bullying and exclusion in the workplace to be addressed by the Equal Opportunity Act.

EDAC supports the widening of the Equal Opportunity Act to include not only bullying but also exclusion, particularly in the workplace.

Underemployment, depreciation and lack of education about people with disabilities and people from CaLD backgrounds are significant issues that need to be addressed. EDAC supports the promotion of proactive inclusion policies in order to achieve more substantive equality.

Furthermore, Welfare to Work reform and changes in dismissal guidelines under the new Industrial Relations legislation have serious implications for both people with disabilities and people from CaLD backgrounds and are likely to lead to increased discrimination in the workplace.

8. Consideration of increased emphasis on religious discrimination

EDAC is concerned that increasing levels of religious discrimination are emerging and that religious discrimination is, in some cases, more susceptible to discrimination and vilification than ethnicity.

EDAC would like more debate to occur to investigate how the Equal Opportunity Act and the Equal Opportunity Commission can more effectively decrease incidents of discrimination and vilification due to religion and to promote a culture where religious diversity is embraced and valued.

9. Harassment is not covered by the Act.

EDAC is concerned that there is no provision for disability harassment in the Equal Opportunity Act. Therefore, people are able to inflict harassment on people with disabilities or people from CaLD backgrounds. It is recommended that consideration be given to the inclusion of harassment under the Equal Opportunity Act.

10. Access to building does not reflect current policies, practices and building codes.

EDAC is concerned that building access as defined in the Act does not reflect current policies, practices and building codes. It is recommended that this is reviewed and adjustments are made to complement Commonwealth standards, such as in the Disability Discrimination Act.

11. The right of women to breastfeed in public is not covered by the Act.

EDAC believes that women have a right to breastfeed in public and are concerned that incidents of discrimination on this basis have been reported. It is therefore recommended that this right is included into the Act.

12. Further consultation is required before the review is submitted to Government.

Finally, EDAC believes that another round of consultation would be beneficial in order to gain further input into key concerns that are identified.

Summary of recommendations:

1. Terminology should be updated to reflect contemporary concepts
2. The concept of substantive equality be incorporated into the Equal Opportunity Act.
3. Increased focus on community education of the Equal Opportunity Act, particularly targeting groups that historically have experienced discrimination, including people with disabilities and people from culturally and linguistically and diverse backgrounds.
4. Increased emphasis on educating the broader community, not only about the Act but conscientisation programs that increased understanding and decrease misunderstandings and misconceptions about groups at risk of discrimination.
5. Adequate funding should be allocated to education programs.
6. Increased promotion of the Equal Opportunity Act as a framework of implementation for service standards
7. Increased support be provided to complainants throughout the process and/or agencies to be able to make complaints on behalf of individuals or about issues identified at systemic level.
8. Emphasis be placed on positive systemic and personal advocacy, where advocates work with agencies that discriminate to change their policies. This will need to be resourced and could be implemented by agencies in conjunction with the Equal Opportunity Commission. Proactive, positive improvement in community practices. Needs to be resourced. In conjunction with EOC. Complaints process as last resort.
9. The remedies should be reconsidered and an increased onus be placed on the respondent.
10. Increased utilization of the investigative power of the Equal Opportunity Commissioner.
11. Increased research and community consultation with people with disabilities and people from CaLD backgrounds to identify areas of discrimination/potential discrimination.
12. Widening of the Equal Opportunity Act to include bullying and exclusion, particularly in the workplace.

13. Increased emphasis on religious discrimination and debate on how to best address this.
14. It is recommended that consideration be given to the inclusion of harassment under the Equal Opportunity Act.
15. It is recommended that Access to Buildings for people with disabilities is reviewed and adjustments are made to complement Commonwealth standards, such as in the Disability Discrimination Act.
16. It is recommended that this right for women to breastfeed in public is included in the Act.
17. It is recommended that a further round of consultation should be conducted before the review is submitted to Government.