

Submissions to the

Legal and Constitutional Affairs Legislation Committee

INQUIRY INTO THE CRIMINAL CODE AMENDMENT (HATE CRIMES)
BILL 2024

November 2024

About Us

Villamanta Disability Rights Legal Service Inc. (**Villamanta**) has been providing advocacy and legal services to people with disability since 1990. We are funded to provide advocacy under the National Disability Advocacy Program, NDIS Appeals and the National Legal Assistance Partnership Agreement.

Villamanta engages in the following activities which inform this submission:

- **Telephone Information Service** – our intake team receives around 2,000 contacts per year from people with disability seeking assistance.
- **Advice calls** – our legal team provide discrete advice to over 150 people with disability per year.
- **Casework** – we provide representation to individuals, most of whom have a cognitive impairment.

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Contents

Introduction.....4

Findings of community forum4

Broad support for the inclusion of disability as a protected class – but there is more to be done4

People’s experience of hate crime.....5

 On the basis of disability.....5

 Intersection with being a member of other protected classes5

 Proof and being believed.....6

More to be done6

 Community perceptions of people with disability.....7

Introduction

We thank the Legal and Constitutional Affairs Legislation Committee for the opportunity to provide these submissions on the proposed *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth).

In preparing these submissions, we conducted a virtual forum to seek the opinions and experiences of members of the disability community. The forum was attended by approximately 30 people with disability who reside in Victoria.

Forum participants' deidentified comments and experiences have been included in this submission.

Findings of community forum

The following key takeaways from the forum inform these submissions:

- There was broad support from members of the disability community who attended the forum for the strengthening of anti-hate crime legislation, however they felt like more should be done.
- Many people shared stories of experiencing violence or threat of violence due to their disability, as well as due to their status as a member of another protected class.
- While the consensus among forum participants was that this is a step in the right direction, some people raised some concerns of how people with disability may be negatively impacted by the legislative changes.

Broad support for the inclusion of disability as a protected class – but there is more to be done

Amongst the participants in our forum, all who spoke were in favour of disability being included as a protected class in sections 80.2A and 80.2B of the *Criminal Code Act 1995* (Cth) and the proposed sections 80.2BA and 80.2BB.

All who spoke expressed the sentiment that people with disability (**PWD**) are the subject of hate speech and violence due to their disability status. One speaker stated that PWD, like people of colour or people of a minority religion, are targeted because they are “different”.

Several speakers identified that protection from speech which threatens or urges violence against PWD is essential to protect their human rights. In particular to give effect to the recommendations of the Disability Royal Commission, uphold Australia's obligations under the Convention on the Rights of Persons with Disabilities, and even to make it possible to achieve the stated goal of the National Disability Insurance Scheme to support the social and economic participation of PWD.

Many speakers, however, made clear that they felt more protections were needed to protect PWD from actual prejudicial violence, and not just speech which could threaten or urge violence, at the Commonwealth level.

In sharing at the forum, it was clear that many people's experiences of vilification and prejudicial violence is intertwined with their understanding of disadvantage, discrimination, institutionalised abuse and systemic oppression. As one person described it, discrimination and hate crime "feed on each other". This evidences the consistent experience of people in the disability community that they are the target of a spectrum of pervasive ill-treatment due to their disability which highlights that the root cause of hate crime towards them is anti-disability bias, and that more needs to be done by the Federal Government to protect their human rights.

People's experience of hate crime

On the basis of disability

At least one person told the forum about their experience of being the subject of the kind of hate speech to which these amendments are directed. This person was the target of a campaign of hateful speech which threatened and wished violence upon them, due to putting themselves forward as a PWD online. This person felt unsafe, and the targeting led to their personal information being published online putting them at risk of violence.

Other participants told the forum of their experience of being the target of actual violence due to their disability. One person described being harassed and attacked at a protest due to their visible disability. They now feel that they cannot exercise their rights to protest safely.

A point was made by another participant that PWD are "uniquely vulnerable" to prejudicial violence, citing opportunism as a motivating factor for crime. While PWD may be targeted just for being a member of this protected class, many may also be less physically able to defend themselves making them an ideal target for people with hateful intentions.

In this scenario, is the PWD targeted due to prejudice or vulnerability or both? Where does the line between hate and opportunity intersect? Although not specifically relevant to the proposed amendments, the question highlights both the need for increased protections for PWD and the difficulties in making meaningful legislative change.

Intersection with being a member of other protected classes

Several speakers at the forum identified that they had been targeted, not just because of their disability, but also because of other protected characteristics. Different participants raised being targeted for being First Nations and/or LGBTQI+, as well as due to their disability.

One participant described being the subject of hateful comments due to their intellectual disability and being First Nations. Another person described being attacked due to their gender identity, but when the perpetrators realised their disability, using that as a further means to attack them.

These experiences highlight that PWD are a diverse group of whole people who may face other types of bias too. As such, the community forum tended to agree that the inclusion of a number of different protected classes in the proposed amendments was appropriate and needed.

Proof and being believed

A panellist at the community forum emphasised the importance under this legislation of proving that the perpetrator was motivated by the victim being a member of a protected class.

Many participants spoke about their concerns with this, both that PWD may find it more difficult to report crimes committed against them, and that many times PWD are not believed when they report something that has happened to them.

One person explained that many PWD would find it difficult to report things to police and spoke from their experience as a deaf-blind person who has found it difficult to give sufficient information to police in the past.

Another person said that in their experience as a person with an intellectual disability, they often find it difficult to be believed or listened to. Many PWD at the forum reported feeling like they were not believed when they spoke up about things that have happened to them.

More to be done

Many members of the disability community have experienced violence or the threat of violence due to their disability in their lifetimes, and countless more have been victims of bias, prejudice and discrimination. At our virtual forum, we heard numerous stories of PWD being targeted because of who they are or because of their perceived vulnerability, and sadly this is not surprising. In 2020, a study from the University of Melbourne showed that people with disability were almost twice as likely than those without disability to have experienced physical violence in the past 12 months¹.

No doubt due to these experiences, those that attended our forum overwhelmingly supported the inclusion of disability as a protected class in the *Criminal Code Amendment (Hate Crimes) Bill 2024* (Cth). Any strengthening of protections for members of the disability community, as well as for all vulnerable groups, is a step in the right direction.

However, as discussed at our forum and above, PWD are victims of actual violence – whether motivated by prejudice or opportunism – and not just speech which could threaten or urge violence. Including disability as a protected class under existing hate crimes legislation is sensible, but it remains to be seen how effective these laws are at reducing incidents of hate motivated crime. More needs to be done at a federal level to protect PWD and other groups of vulnerable people from hate and from violence.

¹ Byars S, Sutherland G, Vashishtha R, Kavenagh M, Bollier AM, Krnjacki L, Hargrave J, Llewellyn G & Kavanagh A (2020). *The Australian Disability and Violence Data Compendium*. Melbourne: Centre of Research Excellence in Disability and Health

Community perceptions of people with disability

As noted by forum participants, experiences of violence or threats of violence are experientially inseparable from disadvantage, discrimination, institutionalised abuse and systemic oppression, and are deeply rooted in negative perceptions of people with disability in the broader community.

It is our view that the roadmap for the broader cultural change required to address these issues was laid out by the Royal Commission into Violence, Neglect and Exploitation of People with Disability, whose recommendations included:

Recommendation 4.1 Establish a Disability Rights Act

The Australian Government should commit to the enactment of a Disability Rights Act and take the necessary steps to introduce the legislation into Parliament and support its enactment. The necessary steps should include consultation with people with disability, disability representative organisations and other key stakeholders.

Recommendation 4.5 The right to non-discrimination and equality before the law

The Disability Rights Act should recognise all human beings are equal in worth and dignity and every person with disability has the right to enjoy their human rights without discrimination.

Recommendation 4.6 The right to equal recognition before the law

The Disability Rights Act should recognise that people with disability have the right to recognition as a person before the law. Accordingly, they have the same rights as other members of the community to make decisions that affect their lives to the full extent of their ability to do so.

Recommendation 4.7 The right to live free from exploitation, violence and abuse

The Disability Rights Act should recognise people with disability have the right to live free from all forms of exploitation, violence and abuse, including the right to freedom from gender-based violence and abuse.

Recommendation 4.8 The right to liberty and security of person

The Disability Rights Act should recognise every person with disability has the right to liberty and security of person. In particular, no person with disability may be arbitrarily arrested or detained. No person with disability may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.

Recommendation 4.10 Public authority conduct

The Disability Rights Act should make it unlawful for a 'public authority' to:

- act in a way that is incompatible with a right in the Disability Rights Act
- fail to give proper consideration to a right where relevant to the decision being made.

Recommendation 4.12 Positive duty to promote disability equality and inclusion

The Disability Rights Act should include a requirement for a Commonwealth entity, in the exercise of its functions, to have due regard to the need to take necessary and proportionate action to

advance the policy objectives of equality, inclusion and respect for the dignity of people with disability.

Recommendation 4.21 Strengthening awareness and understanding of disability rights

The Disability Rights Act should provide the National Disability Commission with statutory functions to:

- promote understanding and acceptance, and the public discussion, of the rights of people with disability under the Act
- develop and deliver guidance materials and educational and training programs in relation to the rights and duties under the Act. Guidance should include how the intersectional experiences and identities of people with disability can affect the ways in which rights are limited or promoted in practice.

Recommendation 4.27 Positive duty to eliminate disability discrimination

The Disability Discrimination Act 1992 (Cth) should be amended to introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation, based on the December 2022 amendments to the Sex Discrimination Act 1984 (Cth).

Recommendation 4.29 Offensive behaviour

The Disability Discrimination Act 1992 (Cth) should be amended by inserting a new provision concerning offensive behaviour on the basis of disability.

Recommendation 4.30 Vilification because of disability

The Disability Discrimination Act 1992 (Cth) should be amended by inserting a new provision concerning vilification because of disability.

We note the disappointing response from the Commonwealth, in which recommendations 4.1 to 4.21 above are subject to further consideration, and 4.27 to 4.30 are accepted only in principle.

Inclusion of disability as a protected class in the Hate Crimes Bill is a positive step, but there remains much work to be done in disability specific legislation and action before the disabled members of our community can be seen to have the same rights as others, and can experience the same protections from abuse and violence.