

## Disability Discrimination Act 1992

Human Rights & Equal Opportunity  
Commission

### Session outline

- i) Overview of the Disability Discrimination Act
- ii) What is covered by the law
- iii) The complaint process

## Disability Discrimination Act:

- Physical disability
- Work related injury
- Intellectual disability
- Psychiatric disability
- Sensory disability
- Learning disability
- Medical condition
- Having an assistance animal

## What does the law cover?

Discrimination on the basis of disability in specific areas of public life such as employment, education, the administration of Commonwealth programmes and the provision of goods and services

## What does the law cover?

### Direct discrimination

- treating a person less favourably.....
- .....than someone without the disability would be treated in similar circumstances.

## What does the law cover?

### Indirect discrimination

- imposing a requirement or condition...
- which appears neutral but which disadvantages a person with a disability.....
- and which is not reasonable in the circumstances.

## What aspects of employment are covered by the law?

- Recruitment.
- Terms and conditions of employment.
- Opportunities for promotion, transfer or training.
- Other benefits associated with employment.
- Termination of employment

## Education Complaints

Applies to schools and universities.

Areas covered include:

- enrolment/admission
- participation in class
- curriculum development and delivery
- Student support services
- exam conditions
- the way material is provided
- exclusion from a course
- harassment and victimisation of students.

## Disability Discrimination Act 1992

It is also unlawful to:

- harass a person in relation to their disability.. and/or
- harass an associate of a person with a disability, in relation to the disability.

## Exemptions/exceptions - DDA

Include:

- inherent requirements
- unjustifiable hardship

## Inherent requirements

May include:

- the ability to perform the tasks or functions which are a necessary part of the job
- productivity and quality requirements
- the ability to work effectively in a team or other type of work structure
- the ability to work safely.

## Unjustifiable hardship

Circumstances taken into account include:

- the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;
- the financial circumstances of the respondent and the estimated expenditure required.

## Example complaint

Max has been in a government job for 7 years and is highly regarded. He has adult ADHD but has not disclosed this to his employer.

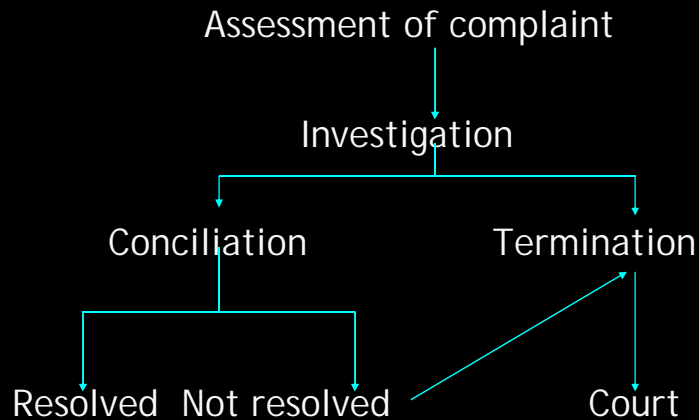
Max was offered the supervisor role for a 6 week period while the supervisor took leave. After 2 weeks Max was finding it difficult to cope with the organisational requirements of the job and he asked to go back to his position. After some thought he disclosed to his manager that he had ADHD.

Max has been referred to the government medical officer for an assessment of his fitness for duty.

## How are alleged breaches of the law dealt with?

- ✍ Complaints can be lodged by e-mail, in writing or in-person.
- ✍ Assistance can be provided to put a complaint in writing.
- ✍ Complaints should generally be lodged within 12 months of the alleged act of discrimination.

## How are complaints dealt with?



## Termination grounds

Grounds to terminate a complaint include:

- more appropriate remedy available;
- lacks substance, trivial, vexatious, misconceived;
- 12 months or more delay before complaint lodged;
- no reasonable prospect of conciliation.

## Investigation

- ✍ HREOC generally asks the respondent to provide a written response to the allegations
- ✍ Urgent matters may be expedited
- ✍ HREOC can compel a person to respond to a complaint
- ✍ Complainant is advised of the respondent's reply

## Statutory conciliation

- ✍ Conciliator assists parties to explore issues and negotiate mutually satisfactory settlement terms
- ✍ Confidential process
- ✍ Held in various locations around Australia
- ✍ Conciliation DVD/video
- ✍ Conciliation register.

## Advantages of the HREOC process

- ✍ Staff expert in discrimination law
- ✍ Investigation prior to conciliation
- ✍ Flexibility of process
- ✍ Court orders can include compensation for economic loss, general damages, aggravated damages and exemplary damages
- ✍ No monetary limit on compensation that can be awarded
- ✍ Cost award if claim is successful @ court.

## More information

- ✍ HREOC website  
[www.humanrights.gov.au](http://www.humanrights.gov.au)  
Follow link to employee page
- ✍ Complaints Info line 1300 656 419  
or (02) 9284 9888