

Physical Disability Council of New South Wales



E.mail: pdcnsw@pdcnsw.org.au
Web Site: <http://www.pdcnsw.org.au>

St. Helen's Community Centre
3/184 Glebe Point Road
Glebe NSW 2037

Telephone (voice): 02 9552 1606
Telephone (TTY): 02 9552 1370
Fax: 02 9552 4644
Freecall: 1800 688 831

The Provisions of the Australian Human Rights Commission Legislation Bill

A Submission to the

Senate Legal and Constitutional Legislation Committee Inquiry

Physical Disability Council of NSW Inc

April 2003

Australian Human Rights Commission Legislation Bill

**A Submission to the
Inquiry of the Senate Legal and Constitutional Legislation Committee
by PDCN
April 2003**

Contents

Summary of Recommendations	3
Submission to The Senate Legal and Constitutional Legislation Committee Inquiry	4
About PDCN	8

Summary of Recommendations

Recommendation 1

The Senate should not support the proposal to remove specialist Commissioners and instead identify other means of broadening the Commission that do not come at the expense of people with disability.

Recommendation 2

In recognition of the relative success of each approach in achieving an end to systemic discrimination, the Senate should reject the Government's attempts to prioritise community education over complaints handling.

Recommendation 3

The Senate should not accept any move to expand the duties of the Commission without an accompanying increase in resources.

Recommendation 4

The Senate should reject the proposal that the Commission be required to seek the permission of the Attorney-General before intervening in court proceedings.

Recommendation 5

The Senate should institute amendments to ensure that the outsourcing of complaints investigations to State or Territory bodies does not lead to a decline in the standard of service provided by the Commission.

Submission to The Senate Legal and Constitutional Legislation Committee Inquiry

Introduction

On 27 March 2003, the Attorney-General introduced the Australian Human Rights Commission Legislation Bill 2003 (the Bill) which proposes substantial reform of the Human Rights and Equal Opportunity Commission, including:

1. the removal of specialist Commissioners;
2. an increased emphasis on community education;
3. the requirement that the Commission obtain the permission of the Attorney-General before intervening in court proceedings; and,
4. the subcontracting of complaints investigations to State and Territory complaints bodies.

Each of these proposals is addressed below.

1. The Removal of Specialist Commissioners

Overview

The Executive of the Human Rights and Equal Opportunity Commission consists of a President and five Commissioners - the Human Rights Commissioner, the Race Discrimination Commissioner, the Sex Discrimination Commissioner, the Disability Discrimination Commissioner, and the Aboriginal and Torres Strait Islander Social Justice Commissioner. In recent years the Race Discrimination and Disability Discrimination Commissioner positions have remained unfilled.

The Bill proposes to replace the specialist Commissioners with three generalist Human Rights Commissioners. Between them, these Commissioners would consider all complaints. The Government argues that this will allow the Commission to consider a broader range of complaints.

Response

PDCN does not support the proposal to remove the specialist Commissioners. The issues involved in direct, indirect and systemic discrimination against people with disability are complex. Specialist knowledge and expertise is required to accurately assess complaints. Moreover, a Commissioner with specialist knowledge of the impact of the discrimination experienced by people with disability is essential if the systemic policy work undertaken by the Commission is to be effective and well targeted.

Recommendation 1

The Senate not support the proposal to remove specialist Commissioners and instead identify other means of broadening the Commission that do not come at the expense of people with disability.

2. An Increased Emphasis on Community Education

Overview

The Bill proposes to make the primary role of the Commission to educate the community about discrimination and human rights. Accordingly, it proposes that the Commission be given a new responsibility to disseminate relevant information to the community. The Attorney-General has claimed that the Commission's responsibilities in terms of complaints would remain.

The Bill also alters the structure of the Commission to replace the five specialised Commissioners (currently responsible for the specified areas of Human Rights, Sex Discrimination, Race Discrimination, Disability Discrimination and the Rights of Indigenous people) with three "Human Rights Commissioners".

Response

The proposal is predicated on the assumption that community education about human rights can achieve systemic change. Unfortunately however, this is not the experience of PDCN and its members. Without agreed and enforceable Standards in areas such as education, employment, access and transport, the lodging of individual complaints has continued to be the most effective way for people with physical disability to protect their rights.

In addition, PDCN cannot give credence to the claim that the proposed change in focus will not impact on the Commission's ability to address complaints. The Bill proposes a substantial increase in the responsibilities of the Commission without an accompanying increase in resources.

Since 1996, the Commission's budget has been reduced by 55% and as a consequence waiting times for the processing of complaints have already become unacceptably long. The proposal would simply further stretch the Commission's already inadequate resources.

Recommendation 2

In recognition of the relative success of each approach in achieving an end to systemic discrimination, the Senate should reject the Government's attempts to prioritise community education over complaints handling.

Recommendation 3

Further, that the Senate should not accept any move to expand the duties of the Commission without an accompanying increase in resources.

3. Intervention in Court Proceedings

Overview

The Bill would require the reformed Commission to seek leave from the Federal Attorney-General to intervene in court proceedings that raise human rights issues, unless the Commission President is a Federal Court judge.

Response

This proposal is viewed as an attack on the independence of the Commission. A significant proportion of the people with disability experience discrimination by Commonwealth agencies. It is obvious that the potential exists, as a result of this proposal, for the Attorney-General to refuse permission for the Commission to intervene in such cases in order to avoid embarrassment for the Government.

While the nature of Commonwealth legislation is obviously a matter for Federal Parliament, there are many organisations and advocates nationally that are concerned that these amendments will seriously impede the advocacy and intervention powers of the Commission.

Recommendation 4

The Senate should reject the proposal that the Commission be required to seek the permission of the Attorney-General before intervening in court proceedings.

4. Subcontracting Complaints Investigation

Overview

The Bill would allow the Commission to subcontract complaints investigation to State and Territory complaints handling bodies.

Response

Past attempts by HREOC to subcontract complaints investigation work to State and Territory complaints handling agencies have met with mixed success. The services provided in some States were substandard, with the result that the Commission was forced to resume control of the work.

PDCN has found the work of the Commission complaints investigators to be of the highest quality. We would seek assurances that subcontracting would not occur unless this level of quality of service could be assured.

Recommendation 5

The Senate should institute amendments to ensure that the outsourcing of complaints investigations to State or Territory bodies does not lead to a decline in the standard of service provided by the Commission.

Conclusion

There are many within the community who believe the Bill will significantly undermine the independence of the Commission in the exercise of its "intervention powers". The Commission has used these powers on thirty five occasions in the Australian courts and tribunals during cases which involved human rights abuses and/or discrimination. The Commission was able to present written and oral argument to the legal proceedings.

Furthermore, it is the concern of PDCN that the removal of the five specialist portfolio Commissioners will result in the erosion of knowledge, skills and credibility. It is this specialist

knowledge and commitment which is desperately required in order to bring about real and lasting systemic change for people with disability. The five specialist portfolio Commissioners (such as the Human Rights and Acting Disability Discrimination Commissioner, Dr Sev Ozdowski) have had the opportunity to consult and engage within their areas of responsibility and have been empowered through that process. Three generic Commissioners simply will not have the same opportunity to develop the current degree of knowledge, community engagement and commitment.

PDCN calls upon the Commonwealth Parliament to reconsider this proposal and maintain the independence of the HREOC and the specialist portfolio Commissioners.

PDCN also offers to appear before the Committee in order to provide further comment on this vitally important issue.

Yours sincerely

David Brice
President
PDCN
Thursday, April 24th, 2003

About the Physical Disability Council of New South Wales Inc (PDCN)

1. The Physical Disability Council of New South Wales Inc (PDCN) provides a statewide voice for people with a physical disability. We aim to secure equal rights for people with disability. We participate in networks to build better links between people with a physical disability, their families and organisations. Whenever there are discussions involving service providers, decision makers in government, the communities in which we live or the world of business, we believe there should be “nothing about us without us.”

1.1. Our activities include

- Representation to government, non-government and private sector decision-makers on behalf of people with physical disability in NSW.
- Acting as a peak body and systemic disability advocacy organisation.
- Involving individuals and organisations in every region of NSW in open meetings and consultations about local, regional and statewide issues of interest to people with physical disability.
- Contributing to the network of information providers across NSW, principally as a key referral agency and ‘signposting’ organisation.
- Raising public awareness of the rights, needs and aspirations of people with physical disability.
- Producing regular newsletters, electronic bulletins and other information.

PDCN Membership

1.2. Membership of PDCN is open to anyone in NSW with a physical disability or their representatives (in the case of children under 16 years of age) as well as other people or organisations with a commitment to the civil and human rights of people with disability.

1.3. According to the most recent data provided to us by our organisational members, PDCN, as a peak advocacy body, represents in excess of 30,000 people with physical disability and/or their representatives in NSW.

1.4. PDCN has 290 financial members of whom;

- 204 are individual members, and
- 86 are organisational members.

1.5. Our organisational members range in size, scale and operations:

- Small, service-user led agencies such as *Allowance Inc.* in Sydney.
- Local service providers in regional and rural New South Wales such as the *Garden Court Centre* in Glenn Innes, *Western Plains Workforce* in Dubbo or *Family Link Wagga Wagga Respite Scheme Incorporated*.
- Statewide agencies such as *IDEAS Inc* (based in Tumut), *Jewish Care* and *Cystic Fibrosis NSW*.

1.6. PDCN’s organisational membership also includes non-government, state -wide disability service providers.

1.7. Organisations from the non-government, disability service providing sector join PDCN to participate in and contribute to a forum through which the interests of their service users can be protected, promoted and advanced through systemic advocacy. Service

providers can be part of a service provision network if they join an agency such as ACROD. PDCN fulfils a different function.

1.8. PDCN is concerned solely with the interests of the people with physical disability who are members and service-users of member organisations, not with the organisations themselves.