



PHYSICAL DISABILITY COUNCIL OF AUSTRALIA LTD
P O BOX 77
NORTHGATE QLD 4013
Telephone: 07 3267 1057
Fax: 07 3267 1733
Email: pdca@ozemail.com.au
<http://www.ozemail.com.au/~pdca>
a.b.n. 79 081345 164
a.c.n. 081 345 164

Physical Disability Council of Australia Ltd (PDCA)

Response to the

Senate Legal and Constitutional Legislation Committee Inquiry

into the provisions of the

Australian Human Rights Commission Legislation Bill

April 2003

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 disabilities.

Recommendation 2

In recognition of the relative success of each 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 its resources.

Recommendation 4

The Senate should reject the proposal that the Commission be required to seek the Attorney-General's permission 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.

Physical Disability Council Australia

Physical Disability Council Australia (PDCA) is the peak national advocacy organisation representing the united voice of physically disabled Australians. Our mission is to achieve equity and equality for people with physical disability by promoting positive community attitudes, and a non discriminatory community.

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. requiring the Commission to 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.

The Removal of Specialist Commissioners

Overview

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

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

Response

PDCA does not support the proposal to remove the specialist commissioners. The issues involved in direct, indirect and systemic discrimination against people with disabilities are complex and specialist knowledge and expertise is required to accurately assess complaints. Moreover, a Commissioner with specialist knowledge of the impact of 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 disabilities.

An Increased Focus on Community Education

Overview

The Bill proposes to make the primary role of the Commission community education 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 alters the structure of the Commission to replace the identified portfolio Commissioners (who are currently responsible for the 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 PDCA's experience. Without agreed and enforceable Standards in areas such as education and employment, access and transport, the lodging of individual complaints has continued to be the most effective way for people who have a physical disability to protect their rights.

In addition, PDCA 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 are already unacceptably long. The proposal would simply stretch the Commission's already inadequate resources further.

Recommendation 2

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

Recommendation 3

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

Intervention in Court Proceedings

Overview

The Bill would require the reformed Commission to seek 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

The proposal is an attack on the Commission's independence. A significant proportion of the people that PDCA supports to take action in the Federal Court of Australia have complaints against Commonwealth agencies. The potential for the Attorney-General to refuse permission for the Commission to intervene in such cases in order to avoid embarrassment for the Government is clear.

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

Recommendation 4

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

Subcontracting of Complaints

Overview

The Bill would allow the Commission to subcontract complaints investigations to State and Territory complaints 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.

PDCA has found the work of the Commission complaints investigators to be of the highest quality. We would seek assurances that sub-contracting would not occur unless this quality of service could be maintained.

Recommendation 5

The Senate 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 that believe the bill significantly undermines the Commission's independence in the exercise of its "intervention powers". The Commission has used these powers in 35 cases in the Australian courts and tribunals where they involved human rights abuses and/or discrimination. They were able to present written and oral argument in the legal proceedings and were never refused leave to intervene.

Finally there is further concern that by taking away the specialist or portfolio Commissioners eroding of the knowledge, skills and credibility in areas where specialist knowledge and commitment is desperately required, will take place. The portfolio Commissioners such as Human Rights and A/Disability Discrimination Commissioner Dr Sev Ozdowski, have had the opportunity to consult and engage with the areas of responsibility they have been delegated and have been empowered through that process.

Three generic Commissioners simply will not have the same opportunity to develop the same degree of knowledge, community engagement and commitment.

PDCA calls upon the Commonwealth parliament to reconsider this proposal and maintain the independence of the HREOC and portfolio Commissioners.

PDCA would also like to offer to appear in front of the committee to provide further comment on this important issue.

Yours sincerely

Sue Egan
Executive Officer
Physical Disability Council of Australia Ltd