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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

14 December 2012

Dear Committee Secretary,

I am writing in response to the call for submissions to the Senate Committee on the Exposure Draft Human Rights and Anti-Discrimination Bill 2012.

The concerns that myself and my Department of Developmental Disability Neuropsychiatry have with the Draft Human Rights & Anti-Discrimination Act are detailed in the attached. Our concerns are focused on persons with an intellectual disability and the associated issues this population faces in terms of having their human rights upheld in many aspects of their life, especially health care. We feel it is imperative that greater acknowledgement of these issues is required in the drafting of the Human Rights and Anti-Discrimination Legislation and that this will serve to improve recognition of the mental health issues faced by people with an intellectual disability in the field.

I trust you will find this submission useful in the further drafting of the legislation.

Yours sincerely;

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Chair, Intellectual Disability Mental Health
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Submission to Senate Committee Inquiry into the Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

**Department of Developmental Disability Neuropsychiatry
University of New South Wales**

We appreciate the opportunity to comment on the *Exposure Draft of Human Rights and Anti-Discrimination Bill 2012*.

Background

To provide some contextual background, information on the issue of people with an intellectual disability (ID) and a co-occurring mental illness is provided below:

- Mental disorders are at least 2.5 times more common in people with ID than in the general population.
- Many people with ID, especially those with complex developmental disabilities, experience an atypical profile and presentation of mental disorders and thus require a high level of psychiatric expertise.
- The strong link between physical and mental health in people with severe and multiple disabilities highlights the importance of specialist mental health care for people with ID and complex needs.
- People with ID and mental illness or disorders experience major problems accessing appropriate mental health care as there are only limited pockets of expertise and the specific mental health needs of people with ID are poorly met. Australian research indicates very poor access to mental health services for people with intellectual disability and co-morbid mental illness [1].
- An appropriately skilled and tailored clinical approach within community mental health teams and acute inpatient mental health facilities is currently lacking.
- In relation to people with ID and mental disorders, Australian research also indicates that GPs, Psychiatrists and trainees lack confidence and training; think that people with ID and mental disorders receive a poor standard of care and that community mental health supports are inadequate [2-7].
- Despite ratifying the UN Convention on the Rights of Persons with a Disability (CRPD) in 2008, Australia's progress towards realising its commitments with respect to health and mental health for people with disability is still at an early stage [8].

It is for these reasons that the rights of people with an intellectual disability need to be championed at both a legislative and a policy level to raise awareness of the issues faced by this population. In doing so, it is hoped that an understanding of the issues is generated right across the sector and that the basic human rights of persons with an intellectual disability are upheld.

Recommendations on the *Exposure Draft of Human Rights and Anti-Discrimination Bill 2012*

Our main recommendations for amendment of the wording and scope of the current *Exposure Draft of Human Rights and Anti-Discrimination Bill 2012* are as follows:

- We recommend that special consideration is given to 'disability' under the jurisdiction of the Commission alongside the Commission's special consideration of 'Aboriginal and Torres Strait Islander' and 'Children' groups. This would include people with an intellectual disability, the rights of whom require championing at both a legislative and policy level. This is required if Australia is to meet its commitments to this vulnerable population under the ratification of the UN Convention on the Rights of Persons with a Disability (CPRD).
- The premise of consolidating all five Discrimination Acts into one is laudable and generally the tenets of the proposed Act accommodate the issues we are concerned with. However, there is no strong sense that the Act is championing Human Rights at a fundamental level despite its title. The proposed Act is centred more on outlining parameters on Anti-Discrimination and the jurisdiction of the Human Rights Commission.
- We would strongly recommend clearly stating at the outset what the Human Rights are that the legislation is aiming to uphold. We recommend that the focus of the Act is on promoting the upholding of Human Rights. Thereby under s3. Clause (d) "to promote recognition and respect within the community for: (i) the principle of equality (including both formal and substantive equality); and (ii) the inherent dignity of all people" (s3, Clause 1(d) Division 2—Objects of this Act) should become Clause (a).
- We recommend the order of the Act is reversed, so that the Human Rights component of the Act is championed at the start of the proposed Act. This would be both, in line with the title of the Act and the notion that discrimination legislation is required in order to ensure a person's human rights are upheld in the first instance. A reversal of the order of the Act would also focus attention foremost on the positive aspect of the intentions of the Act, which is to uphold human rights.
- A stronger emphasis on the Human Rights aspect of the proposed Act would be more in line also with the intentions of the legislation, which is to reinvigorate the capacity of Discrimination legislation in promoting attitudinal change on this issue. As it stands, we remain unconvinced that the Human Rights element of the proposed Act has been given enough weight to have achieved this effectively.

References

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