

MDAA



**Multicultural Disability Advocacy
Association of NSW**

PO Box 381, HARRIS PARK NSW 2150
40 Albion Street, Harris Park
Telephone: (02) 9891 6400
Toll Free: 1800 629 072
TTY: (02) 9687 6325
Facsimile: (02) 9635 5355
E-mail: mdaa@mdaa.org.au
ABN:60 737 946 674



28 April 2003

Senate Committee on Constitutional & Legal Affairs
Parliament House
Canberra ACT 2600

Australian Human Rights Commission Legislation Bill 2003

On behalf of the Multicultural Disability Advocacy Association of NSW (MDAA), the peak organisation in NSW for people from a non-English speaking background (NESB) with disability and their families, I urge the committee to reject the major provisions of the Australian Human Rights Commission Legislation Bill 2003.

MDAA believes the major changes proposed in the Bill will have detrimental results for people from a NESB with disability. Because of the very short period of time allowed for comment after the tabling of the Bill we are unable to provide the detailed submission we would prefer. Nevertheless we make the following comments and are happy to provide additional evidence to the committee during the public hearings in Sydney.

Reviewing the role and functions of the Human Rights and Equal Opportunity Commission (HREOC)

We understand that one of the main purposes of the Bill is to emphasise HREOC's community education function. Another is to remove HREOC's independence to seek leave to intervene in court proceedings where human rights are an issue.

Community education

While MDAA supports a greater role for HREOC in community education to make human rights accessible to all members of the community, we would prefer to see this as an expanded role for HREOC rather than it becoming the primary focus due to the curtailment of other functions. Many people from a NESB with disability are unaware of their right to be free from harassment, abuse and discrimination. As a result, people from a NESB with disability are discriminated against in all aspects of their daily lives.

In our view there is an urgent need for community education about human rights for people from a NESB with disability. Appropriate and effective community education and information campaigns to NESB communities about human rights may require additional resources to be allocated to HREOC for interpreters, translations and adequate community consultation in the development of the campaigns. Additionally, if discrimination and societal barriers are to be eliminated, education campaigns are also needed to the general public to dispel myths and stereotypes about people from a NESB with disability. Both these education campaigns need to

be delivered in order to protect the human rights and maximise the social and economic participation of people from a NESB with disability.

We also welcome the emphasis of "human rights - everyone's responsibility" because it acknowledges that society is part of the construction and removal of barriers. But we object to this shift of responsibility entirely onto the Australian community, while the Federal government absolves itself from being monitored by choosing when HREOC can seek to intervene in legal proceedings, especially proceedings concerning the government's own behaviour (see comments below).

Recommendations

1. MDAA recommends that the Senate support HREOC's greater role in community human rights education by implementing the necessary legislative changes to enforce this function.
2. MDAA recommends that the Senate ensure through legislative changes that the requisite resources be allocated to HREOC to implement an effective human rights education strategy for the general community and specific NESB communities.

Removing HREOC's independent right to seek leave to intervene in legal proceedings

We do not support the removal of HREOC's independent right to seek leave to intervene in court proceedings by having to seek prior approval of the Attorney-General. To date, HREOC has only sought to intervene in approximately 35 legal proceedings and has never been refused leave by the courts. It is clear from this record that HREOC has not abused this power so far as the courts are concerned.

In our view it would seriously detract from HREOC's independence to have to seek approval from the Attorney-General, who may well be a party to the proceedings concerned. The cases in which HREOC has successfully intervened have not always been decided in favour of the Commonwealth government. To restrict HREOC's right to decide which proceedings it can seek leave to intervene in would, in our view, be detrimental to the establishment and maintenance of specific human rights in Australia. As Australian citizens and residents do not have the protection of a Bill of Rights we need to know there is an independent watchdog able to seek leave to intervene in legal proceedings whenever this appears necessary. The fact that HREOC is open to a costs order, like any other litigant or intervenor, is sufficient to limit the number of proceedings in which it is likely to seek leave to intervene.

Proposals to restrict HREOC's watchdog role and independence send powerful messages to people whose human rights are being abused that their rights may not be protected. Australia has been a leader in standing up for the rights of disadvantaged members of the community and HREOC was established to promote and protect their rights. Any removal or restriction of this function will not assist people from a NESB with disability, who are among the most disadvantaged and marginalised in the community: those HREOC was established to protect.

If the government's real concern is that two arms of the Commonwealth should not be arguing for different outcomes in the same legal proceedings, it may be more appropriate for the Attorney-General and other Commonwealth litigants to seek advice from HREOC, before embarking on litigation, to ensure that there are no human rights issues involved, rather than for the government to propose restrictions on HREOC's right to seek leave to intervene.

In our experience, the issues of concern to people from a NESB with disability are too often ignored by Commonwealth, State and Territory governments to allow any further restrictions on the agency established to assist in resolving them.

Recommendation

3. MDAA recommends that the Senate reject the proposal to remove HREOC's independent right to seek leave to intervene in court proceedings relating to human rights issues in order that HREOC's independent human rights watchdog role is maintained.

Complaints handling

We do not support any reduction in HREOC's compliance monitoring functions. While education is important and can bring about societal changes in attitude, it can also remain a vague activity and, in our experience, will only bring about systemic change if it is tied to monitoring and compliance mechanisms associated with legislative requirements and the introduction of industry standards.

Recommendations

4. MDAA recommends that the individual complaints handling function of HREOC continue to be a main role.

5. MDAA recommends that the Senate recommend the increased allocation of resources to HREOC so that the processing of individual complaints can be dealt with more efficiently in order that this function is seen to be effective in the protection of human rights.

2. Alternatives to the structure of HREOC

We understand that the Bill proposes to repeal the provisions relating to specialist Commissioners responsible for Indigenous Australians, Disability Discrimination, Sex Discrimination, Race Discrimination and Human Rights and replace them with provisions for a President and three Human Rights Commissioners without specific responsibilities.

Generalist (non-specialist) Commissioners

There are arguments for and against this proposal for people from a NESB with disability, who come within two of the existing specific responsibilities identified: race and disability. If the proposal is adopted, the new Human Rights Commissioners will have no specific responsibilities and, in theory, any one of them will have the authority to take up any human rights issue without the restrictions of 'is this disability discrimination?' or 'race discrimination?' or both. In practice it is likely that each of the new Commissioners will be allocated particular areas, depending on their expertise and interests. In any event, the new Commissioners will be monitoring the same distinct pieces of legislation as before, so some degree of specialisation is inevitable and the same questions will still need to be asked: does this issue fall within the race, disability or sex discrimination provisions?

MDAA usually argues for non-specialist, mainstream agencies to include consideration of the needs of people from a NESB with disability as a matter of course in their general planning and service delivery. In theory this means we should welcome the proposed 'mainstreaming' of the existing Commissioner's roles to achieve greater flexibility and cut across the race, disability or sex discrimination boundaries. But there are dangers in the proposed approach.

The difficulty is that issues of race and disability are complex. In our experience, even with the specialist Commissioners, the existing race/ disability discrimination functions of HREOC are not working as well as they could. In our view the way to address this is not to take away the emphasis on specialist Commissioners: it is more a matter of getting the HREOC bureaucracy to work more cooperatively together than it has in the past. In reality this may be a matter of restoring resources to encourage more cooperation between the different units within HREOC (race, disability, etc) as the organisation's resources have shrunk dramatically since 1996.

Additionally, another danger with the current proposal is that without a nominated 'champion', people from a NESB, including people with disability, will find that their issues drop off the agenda at a more alarming rate than they have to date. This is consistent with our experience of other government agencies when specialist programs are 'mainstreamed': the concerns of people from a NESB with disability get lost or take second place because they are complex and not well understood.

If the proposed changes take place we believe the new Commissioners will be likely to focus on privacy and sex discrimination to the detriment of race and disability issues because the latter are much more complex and difficult to resolve.

Recommendation

6. MDAA recommends that the Senate ensure adequate allocation of resources to monitor compliance with Disability and Race Discrimination legislation as well as Privacy and Sex Discrimination legislation.

Advantages of specialist Commissioners

In light of the fact that information is not provided in the Bill about the consequent structure of HREOC in the event of the specialist Commissioners being replaced by three Human Rights Commissioners, MDAA would also like to raise the following concerns.

First, a dedicated policy unit and an associated specialist Commissioner have the following advantages: there is a consistent person associated with championing a cause; a specific specialist Commissioner can coordinate a framework and consistent approach and be held responsible for the advancement of certain issues; it has been helpful in education campaigns with industry and service providers in the disability field to have the authority to say that Commissioner "X" says or thinks "..."; and, progress made over the past ten years in certain disability areas (eg, access for people with hearing impairments) has been facilitated and accelerated by the commitment of a specific specialist Commissioner and dedicated policy unit. In our view this progress will be slowed down with the removal of specialist Commissioners.

Secondly, specialist Commissioners and their associated policy units hold much expertise and specialist knowledge and it would be a great tragedy to the advancement and protection of human rights to throw this expertise away. Alternatively, if the specialist units are kept, they would be greatly assisted by a dedicated Commissioner.

Recommendation

7. MDAA recommends that the Senate reject the proposal to remove the current specialist Commissioners as this will result in the loss of specialist expertise and knowledge required to deal with complex discrimination issues.

I am happy to provide further information if you wish.

Yours sincerely

Maureen Kingshott
Assistant Director