

**Submission of the Disability Council of NSW**  
**To the Senate Legal and Constitutional Legislation Committee**  
**Inquiry into the provisions of the Australian Human Rights**  
**Commission Legislation Bill 2003**

The Disability Council of New South Wales operating under the Community Welfare Act 1987, is the official advisory body to the NSW Government on issues and policy that affect people with disabilities and their families in NSW. It is also the Disability Advisory Body to the Commonwealth Government for Commonwealth issues that affect people with disabilities and their families in NSW.

## **1. Introduction**

The Disability Council of NSW does not support the Australian Human Rights Commission Legislation Bill 2003 in its current form. The Council is concerned that the bill contains changes to the Commission that do not strengthen its powers to protect the human rights of Australians, particularly Australians with disabilities and their families.

The loss of a dedicated Commissioner with expertise in the needs and rights of people with disabilities would be a significant loss to the protection of the rights of people with disabilities and suggests that the rights of this often marginalized group are not a priority for the Government. The Council is also concerned that the independence of the Commission will be compromised should it be required to gain the consent of the Attorney-General before exercising its power to seek leave to intervene in court proceedings.

In the Disability Council's submission to the Productivity Commission Inquiry into the Disability Discrimination Act (1992) the Council has argued that the powers of Human Rights and Equal Opportunities Commission (HREOC) need to be strengthened. The Australian Human Rights Commission Legislation Bill 2003 aims to strengthen only HREOC's educative powers but in the opinion of the Council it otherwise diminishes the powers of the Commission. This bill does not strengthen the imperative on government and the community to ensure that the human rights of all Australian citizens are protected and promoted. By analogy, when State Governments demonstrate their commitment to halting 'drink driving', they do so by both resourcing strong community education campaigns and attaching serious penalties to those caught drink driving. The Council urges the Government to demonstrate that it takes violations of human rights and discrimination as seriously by empowering the Commission to promote the enforcement of equal rights for all Australians.

## **2. Executive structure of a President and the three Human Rights Commissioners**

The Council supports the creation of the position of President where responsibility for the functioning of the Commission would be centralized. The Council does not agree with the assertion that three generalist Human Rights Commissioners replacing the identified portfolio Commissioners will result in greater efficiency and effectiveness of the Commission.

The specialist knowledge of the dedicated Commissioners, especially the Disability Discrimination Commissioner has ensured that complaints are expertly handled, and specialist policy advice and assistance is provided in the area of disability discrimination. The resolution of disability complaints in the past 10 years has proven to be challenging, particularly because of the diversity of conditions among people with disabilities, and it is not clear how broadening the required knowledge base of individual Commissioners to include all areas of discrimination will aid in the promotion of human rights in this complex area.

The Council is not aware of instances where the separate portfolio responsibilities of the Commissioners have resulted in rigidity in the way complaints are handled. In fact there are significant benefits to the specialist knowledge the Disability Discrimination Commissioner of the unique impact of age or sex discrimination for people with disabilities.

In summary, the Council supports the assertion of HREOC that the three Commissioners with overlapping responsibilities replacing the existing structure is an unnecessary and unproductive change.

## **3. Central functions of the new Commission**

The Bill identifies that the central functions of the Commission are to provide education and to disseminate information. The Council agrees that educating Australians about human rights and discrimination and promoting understanding that it is responsibility of all members of the Australian community to respect human rights is an important function of the Commission. It is equally important that this message is clearly supported by the Government and that the Government leads the community in upholding human rights and preventing discrimination.

The Council is concerned that the Government would be sending the community a mixed message about the importance of human rights should the requirement to obtain the Attorney-General's consent before exercising its power to seek

leave to intervene in court proceedings be retained. The impression is that discrimination is acceptable when the interests of the broader community, however this is interpreted by the Attorney-General, are in conflict with a person who has been discriminated against. The effectiveness of education and information dissemination will be impaired, and would create the impression that the community should 'do as I say and not as I do'.

As stated earlier the Council believes that the powers of the Commission should be strengthened beyond an educative focus to enforcement approach as appropriate. This is needed in tandem with legislation that identifies the human rights of Australian which are to be protected and the penalties which will be imposed when people and/or organizations are found to actively discriminate or to not take reasonable measure to prevent discrimination.

The Council maintains that a community education approach will only be successful should this be consistent with powerful legislation that requires compliance and a clear message from Government that it seeks to lead in upholding human rights in Australia.

#### **4. Requirement to obtain the Attorney-General's consent before exercising its power to seek leave to intervene in court proceedings**

The Disability Council of NSW strongly supports the recommendation of the Senate Legal and Constitutional Committee's Inquiry into the Human Rights Legislation Amendment Bill (No. 2) which was for "*the 1998 bill [to] be amended to restore the status quo, so that the Commission's intervention power remains free of the need for approval by the Attorney-General*"<sup>1</sup>.

The findings of this inquiry in 1998 remain pertinent and are that:

- the Commission has not demonstrated an abused of it's power;
- such a change would threaten it's real and/or perceived independence;
- that a conflict of interest for the Attorney-General is possible;
- the intervention of the Commission has been found to be useful by the courts; and
- power should remain with the court to decide who may intervene.

The case for requiring the consent of the Attorney-General is difficult to justify since it is hard to understand when there would be a competition of interests of the broader community with a person who has been discriminated against. Surely it is in the interests of the community that none of its members are discriminated against unless there is some perceived benefit to the community from discrimination, which of course would not be the position of the Government.

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The impartiality of the Government must be maintained also for those instances when Commonwealth legislation, policies and services are under examination. The Government must be seen to be under the same level of scrutiny as other members and institutions of Australian society.

The Council strongly recommends that the requirement for the Commission to obtain the Attorney-General's consent before exercising its power to seek leave to intervene in court proceedings be removed from the bill.

## **5. Conclusion**

The Disability Council of NSW does not support the Australian Human Rights Commission Legislation Bill 2003 in its current form. The Council is concerned that the bill contains changes to the Commission that do not strengthen its powers to protect the human rights of Australians, particularly Australians with disabilities and their families.

The Council supports the position of the Government that human rights are important in Australia and that we should be proud of the human rights record of our country. The Council urges the Government not to rest on its laurels and to by resource the Commission adequately both financially and with strong legislation to ensure that the rigorous protection and promotion of human rights.

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