Carers
Australia

The Commissioner
Productivity Commission
Disability Discrimination Act Inquiry
LB2 Collins Street EAST
MELBOURNE VIC 8003

Email: dda@pc.gov.au

Dear Sir or Madam

Re: **Inquiry into the Disability Discrimination Act 1992**

Thank you for your invitation to respond to the Productivity Commission's inquiry into the *Disability Discrimination Act 1992*.

Carers Australia's mission is to be the national voice of carers. We represent the 2.3 million carers in Australia, including a conservative estimate of 450,000 primary carers. These carers, who are usually family members or friends, provide unpaid care at home for children or adults who have a disability, mental illness, chronic condition or are frail and aged.

One of our guiding principles is that carers are entitled to the same rights, choices and opportunities as other Australians in order to enjoy optimum health, social and economic wellbeing and to participate in family, social and community life, employment and education. This Inquiry is therefore relevant to carers in that the *Disability Discrimination Act 1992* covers, not only people with disabilities, but also their associates including carers.

In an effort to gather material to provide meaningful and evidence based comments to this Inquiry, Carers Australia put out an invitation through our website and to the state and territory Carers Associations that comprise our membership. We were surprised when we received no comments through either the website or the state and territory carers associations, with the exception of the Queensland Council of Carers (see attachment). This raised questions as to why there was so little comment on the *Disability Discrimination Act 1992* in relation to carers, from these key interest groups.

Further investigation in the 2001-02 Annual Report of the Human Rights and Equal Opportunity Commission, revealed that of the 870 complaints the Commission dealt with that year, only 25 (or less three per cent) were in relation to associates of a person with a disability (Table 27). This small number of complaints may help explain why we have received so little comment.

Carers Australia Unit 2/43-49 Geils Court, PO Box 73, DEAKIN WEST ACT 2600, Australia
T: 02 6282 7886 **F:** 02 6282 7885 **E:** caa@carersaustralia.com.au **W:** www.carersaustralia.com.au
ABN 12 231 938 308

Carers Australia accepts that the number of complaints is not an accurate measure of discrimination, but it does indicate how infrequently the complaints mechanism that HREOC facilitates through the Act is being used. This small number of complaints raises further questions, which Carers Australia is hopeful that this Inquiry might explore.

- Is the DDA working effectively so that discrimination against associates of people with disabilities is not an issue, given the small number of complaints that HREOC receives in this area? Obviously further research is required to investigate this possibility, which is beyond the resources of Carers Australia.
- Are associates of people with disabilities using state based anti-discrimination laws or other laws to address any discrimination they may experience. Again, Carers Australia does not have any evidence of this and research needs to be done to investigate it.
- Alternatively, associates of people with disabilities may not be aware of the DDA and the remedial legal action that can be taken to overcome discrimination? If this is the case, more effort and resources are needed to educate associates on their rights, the role of the DDA and HREOC, and what avenues of recourse are open to them.
- Another possibility is that associates are aware of the DDA but the complaints process is not suitable or too difficult for them to pursue for a range of reasons. It is highly likely that for many carers, who are trying to balance their caring role with other roles and working with limited resources, the added stress of going through the complaints process makes using the DDA to resolve the situation an unattractive option. We note from your Issues Paper that the complaints area is a particular focus for the Inquiry. The attached paper prepared by the Queensland Council of Carers highlights the issue of complaints and suggests areas that need reviewing in order to make it more effective for carers.

The paper prepared by the Carers Council of Queensland, which is attached, offers additional comments on the DDA, why it is important to carers, and how it might be improved to offer greater benefit to carers.

We look forward to seeing the Commission's report and hope it will address the issues we have raised.

Yours sincerely

IRENE GIBBONS
Chief Executive Officer

15 April 2003

Queensland Council of Carers Australia

Comments on the

Commonwealth Disability Discrimination Act

for the

Productivity Commission Inquiry 2003

Carers have historically experienced disadvantages as a direct consequence of their caring role, usually in relation to their employment and education prospects, their financial position, their health and wellbeing and their ability to participate in social and community life. It is necessary that anti-discrimination legislation continues to respond to the inequities experienced by carers to ensure that carers have equal rights, choices and opportunities as other members of the community.

The continuing need for anti-discrimination legislation then, is beyond doubt. Whether the legislation serves as an instrument of change, an educative function or merely as a symbolic focus of disadvantage, the benefits of the Disability Discrimination Act can not be denied. The participation of people with disabilities and their carers in the community benefits not only people with a disability and their carers but the community as a whole. Our society is enriched as people with a disability and their carers realise their full potential.

Therefore, the Queensland Council of Carers believes that the central question which the inquiry should concern itself with is not whether the benefits of the DDA outweigh the costs – no monetary value can be placed on the social and cultural benefits that emanate from the DDA – but whether the objectives of the act might be better achieved through alternate means.

The current situation

Presently, the DDA relies on a disputes driven process. The use of this process as the primary mechanism of the DDA is disadvantageous for a number of reasons.

Firstly, it is, by definition, an adversarial process which tends not to encourage the initiation of change until a complaint is lodged. In the absence of a direct complaint there is little incentive for change other than the future threat of a complaint.

A reliance on the complaints mechanism also puts the onus for achieving equity on the person experiencing the discrimination (that is people with a disability and their carers) through the lodging of complaints. Lodging a complaint can be a daunting and laborious process for someone who may already be disadvantaged and as a consequence may not possess the necessary resources (including energy and motivation) to initiate such a process. As equity is an issue for the whole of society, responsibility for the initiation of change should be shared across the whole of society rather than only with those people who experience discrimination.

In addition, the complaints process can be extremely stressful for the complainant (and for the respondent). This may act as a further disincentive for people to lodge a complaint and exercise their legal rights.

In response to these concerns it might be appropriate to consider allowing others to initiate complaints on behalf of people with a disability and their carers/associates. That is, disability and carer organisations who represent these disenfranchised groups or human rights organisations such as HREOC. Of course, it would be essential that in exercising this power on behalf of people with a disability and their carers/associates that these organisations remain sensitive to the people that they represent and do not risk disempowering these groups in the process.

Strategic approaches versus reliance on complaint mechanisms

While the need for a complaints process is essential, especially in addressing issues in the federal arena, all available mechanisms should be employed to achieve the objects of the act. Rather than relying primarily on the complaints it appears other approaches available to HREOC related to the DDA (like the DDA Standards, guidelines, etc) might be more effective in achieving the objects of the act.

The benefits of standards, guidelines, codes of practice, etc in comparison to the complaints process, is that these parts of the regulatory framework perform an educative role and clearly set out expectations to eliminate discrimination. As such, they have the potential to initiate wide spread and systematic changes and motivate compliance. Ultimately, this is a proactive response to discrimination which in the long term would be expected to reduce the need to resort to the complaints process.

The major drawback in relying on these approaches is that currently the guidelines and advisory notes are not enforced and therefore their effectiveness is limited. To be effective it might be necessary to couple these mechanisms with certification or monitoring and enforcement capabilities.

DDA Standards in all areas

People with disabilities and their carers are citizens who participate in all spheres of public life and as a consequence discrimination has the potential to impact on all aspects of their lives. Therefore it would be highly desirable to develop standards in all potential areas of discrimination rather than restricting them to employment, education, public transport, accommodation, access to premises and administration of Commonwealth Laws.

Additional strategic approach

Another relatively successful strategic approach employed in Queensland is the Anti-Discrimination Commission of Queensland's Disability Advisory Group, of which the Queensland Council of Carers is part. This meeting provides the disability sector with the opportunity to work directly with the commission in identifying issues and areas of concern in relation to disability discrimination and also to identify strategies to combat this discrimination. While this is a relatively informal approach it encourages open dialogue and debate with relevant parties before disputes arise and is therefore proactive in addressing discrimination.

Effectiveness of DDA – Impact of the DDA on carers

In measuring the effectiveness of the DDA consideration needs to be given to the impact that it has not only on outcomes for people with a disability but also on the carers/associates of people with a disability. Disability and the discrimination against people with disability impacts not only on the person with a disability but also, either directly or indirectly, on their carers. As a consequence it would be appropriate to also examine carer's participation rates in employment, welfare, income, educational attainment, etc.

In most instances, anti-discrimination legislation would appear to benefit both the person with the disability and the carer of that person. On occasion however, the participation of a person with a disability, may place additional demands on the carer of that person. For instance, if a person with a disability who was previously unemployed becomes employed, the carer may have to transport them to work (because no accessible transport is available or that person is not able to travel unaccompanied) yet the carer will have to bear the cost for this. The impact that the DDA has needs to be viewed holistically.

Unjustifiable hardship has reduced effectiveness of DDA

Some carers have expressed concern that the unjustifiable hardship provision has reduced the effectiveness of the DDA. Essentially, the grounds of 'unjustifiable hardship' puts a price on a persons inclusion in the community. For example, it allows a respondent to say, 'I know you can't access my shop but it'll cost me $2000 to put in a ramp'. Basically the message that this conveys to a person with a disability and their carer is that 'you're just not worth it'. This is a very strong message and one that is unacceptable.

Interaction with State Based Legislation

The duplication and overlap of the DDA with state-based anti-discrimination/equal opportunity legislation can be confusing. It is not always clear when people should pursue a complaint at the State or federal level. Proportionally, more people choose to lodge a complaint at the state based level, forfeiting their ability to then make a complaint to HREOC. This confusion needs to be resolved to provide more clarity to people with a disability and their carers.

Conclusion

There exists a continuing need for legislation to ensure the participation and inclusion of people with a disability and their carers in the community. However, it is the opinion of QCC that rather than employing essentially reactionary mechanisms in responding to discrimination, the DDA needs to take a more proactive and strategic approach (as outlined above) to eliminate discrimination against people with a disability and their carers.

Prepared for the Queensland Council of Carers on 14th March, 2003 by Toni Cannon, Senior Policy Officer with assistance from Jo Abbatangelo, Community Development Officer, Far North Region.