Ms Helen Owens
Presiding Commissioner
DDA Review
Productivity Commission

Re: Feedback to the Draft Report

Dear Commissioner

Thank you for a copy of the Draft Report on the efficacy of DDA in regard to competition and the intents of the act.

One of the more revealing aspects, to me, was from the Alice Springs submission that noted that Disability is a 'social construct'. Indeed, the notions of deinstitutionalisation, integration and inclusion, which are mentioned in your Draft Report, are matters of cultural belief that require a form of cultural change for their implementation. Community Education is paramount, yet a case by case methodology is the modus operandi of HREOC.

One concern that I have relates to the general information about the conciliation process as provided by HREOC. It is misleading and confusing. From your Draft findings, I can only assume that this matter has not been raised during your inquiry.

As I mention in my earlier Submission (your ref. No 210), at no time was I made aware that any provisions within a Deed of Release are not enforceable.
In the 1999 edition of 'The Complaints Guide' provided by HREOC, there is a general 'spin' suggesting open and clear dialogue from all parties. Perhaps because my complaint was against a state education department that had policies relating to the matter, and I am seemingly incredibly naïve to boot, but I was quite shell shocked by the written response provided to my complaint by DEET. There was no right of reply available, until the conciliation process was under way.
I assumed that DEET would be conciliatory. I was wrong.
I blame in part, the general 'blurb' made available about the process.

EDUCATION

Unlike the draft report analysis in relation to Education, my discontent does not stem from a matter of "choice of school", nor about the amount of funding provided for my son's special needs. He was funded in the 'high needs' category, but with no school willing to accept him, this meant zero. That the HREOC process failed to provide for any sort of requirement for secondary education to be provided for him, is a major concern.
I thought that I had managed to include such a provision, but it was not made enforceable.

I appreciate that the DDA applies to a significant proportion of the population, however there would appear to be a role of the Act to enforce some "safety net" for

the most disadvantaged, since they have fewer options, and any discrimination then leads to vicious cycles of further discrimination and disadvantage.

Access to educational opportunity is much about access to goods and services. Education is a service that is expected, at least until age 16,and a 'given' right in our society. When this doesn't occur, there are no options.

As the parent of someone with age appropriate receptive language, but no expressive language except for some limited signing, I have found the whole service provision to be extremely discriminative. The mainstream secondary schools fail to address bullying and victimising, thus perpetuating unsafe educational environments for special needs students, while specialist educational settings can get away with not offering literacy or access to a broad curricula.

It's this denial of access to educational services that perpetuates a vicious cycle of disadvantage, regardless of the amount of money spent.

Families and the DDA

As a side effect of deinstitutionalisation and 'inclusion', there is an increasing demand on families to provide goods and services for relatives with significant impairment. As associates, familial carers often suffer economic and social disadvantage as do the persons for whom they are expected to care.
This issue is not addressed in your Draft Report. From a personal perspective, I can "get a life" only after my son gets one. Double, treble, layer upon layer upon layer of discrimination, disadvantage and inability to participate.
State and Territory Governments spend about $80,000 pa on people in supported care. I receive no money from my state government to do the same. I get a federally funded carer payment. I cannot compete in the labour market whilst I am being a familial carer.
This is a major issue of discrimination in the allocation of funding by the states and territories, and it prevents familial carers from participating in the community. Even foster parents get paid more to do it.

HREOC processes

What can be described as a "desire to conciliate" by a HREOC conciliator, can also be interpreted by a complainant as advice of a likelihood of losing a Court Case.

Better-represented complainants would probably be advised otherwise though.

The economic disparities between the parties inhibit the execution of determinations favouring the intent of the Act.

There are some vagaries around a case against a government department. Most potential witnesses remain in the employ of the respondent.

In the conciliation process that I was involved in, there were three representatives for the respondent, none of whom had ever met my son, on whose behalf I took action. The HREOC person did not know him, nor did the Disability lawyer on our side. Given that DEET may have inadvertently lied in their written response to my complaint, a sort of bureaucratic "Chinese whispers" if you like, or else lied for a more clandestine reason, anyway, any consensus arrived at would be on the "evidence" however fictional that may have been.
I was in a no win situation, regardless of the merits of the complaint.
These issues are systemic and exacerbated by under funded Disability Legal Services.
What happens when a respondent fabricates facts in a written response?
Is there no consequence?

I hope that these issues that I have raised assist in your findings.
I wish to reiterate my belief in the primacy of access to education.
There are age barriers to the Disability and Impairments Program. In Victoria, once over 18, a student must be doing VCE (yrs 11 and 12). Without year 10, the option of doing yrs 11 and 12 is not available.
So my son got no secondary education and HREOC processes did nothing.
This should not happen. Because the education department failed to provide a school, no educational goods or services were available for my son's education, from when he was 13. He was eligible and funded for a full-time one to one worker, but I was unable to find a school that would accept him, so that funding was not available. After 3 years of this, and after going to HREOC, a school kept him away from all of the regular classes, and even then, he only attended for less than 15 hours a week.

This is a "catch 22" that should not be allowed to happen.
It's the worst sort of discrimination, and it falls through the cracks.
If a school discriminates, and in so doing, evokes negative behaviours from the victim of the discrimination, then the label "challenging behaviour" gets applied, then the student has no rights.
Staff can evoke negative responses when they chose.
No understanding and no right of reply.
Because this snowballing cycle has occurred over the past six years, most of the complaint falls outside of the DDA. What has occurred in this regard, in the past 12 months would not constitute much of a case of discrimination. It's the perpetuation of the denial of access that is the real discrimination. Most of it happened in 1998.
I'm still miffed.

Yours in good faith

Graeme Taylor