

15/5/2003

Ms Helen Owens
Commissioner
Disability Discrimination Act Inquiry
Productivity Commission
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Melbourne 8003



*Working For
Mental Health*

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Dear Ms Owens

Thank you for providing the Mental Health Co-ordinating Council (MHCC) with the opportunity to contribute to the Productivity Commission's inquiry into the Disability Discrimination Act 1992 (DDA). MHCC is the state peak body for non-government organisations (NGOs) working for mental health throughout NSW. MHCC represents the views and interests of over 100 NGOs in the formation of policy and acts as a liaison between the government and non-government sectors. Our member organisations specialise in the provision of services and support for people with a disability due to mental illness.

MHCC strongly supports the promotion of equal rights and opportunities and the elimination of discrimination against people with disabilities and welcomes the inquiry into the scope and effectiveness of the DDA.

General Comments

There appears to be a wider acceptance of people with disabilities and their increased participation in education and other areas of the community since the introduction of the DDA. This is particularly the case in large organisations such as TAFE who have developed extra support services for people with disabilities, and government departments such as the Attorney General's Department who are endeavouring to make their services more accessible to people with disabilities. These types of initiatives are helpful for people with disabilities and are to be commended.

*MHCC is the peak
Body for mental health
Organisations in NSW*

Specific comments

- As stated on page 25 of the DDA Inquiry Issues Paper, the practical application of the DDA relies heavily on complaints. Without a complaint, the Human Rights and Equal Opportunity Commission (HREOC) cannot investigate particular breaches of the DDA. Once a complaint has been made HREOC can order the parties involved to attend conciliation but, as in any conciliation process, the outcomes are not binding. If not satisfied with the conciliation process, the complainant can choose between dropping the case or having the complaint heard in the Federal Court. The complaint process is useful and should be retained. However, there are some limitations associated with the complaints process. For some people with disabilities, the process can seem too difficult, too complicated, too intimidating and too expensive. It seems inconsistent to develop legislation which aims to help people who need help because they are disabled, but which also expects them to have the knowledge, experience, financial resources, organisational ability and professional support necessary to be able to engage in a complex complaints process in order for the legislation to work. While it is acknowledged that organisations such as the Public Interest Advocacy Centre assist people with disabilities to have their complaints heard, there are many people with disabilities who are unaware of the help available or are unable to access it. In addition to the existing complaints process, the DDA should be amended to allow HREOC and/or other appropriate bodies to also initiate complaints.
- The difficulties involved in developing standards (as outlined in the Disability Discrimination Act Inquiry Issues Paper) are acknowledged, however it is important that work continues in this area and that agreed, workable standards are developed and used in addition to, and in conjunction with, the existing complaints process. Independent monitoring and enforcement of standards is necessary and the DDA should be amended to allow this to occur.
- The DDA does not provide sufficient guidance on the meaning of unjustifiable hardship. The term needs to be clearly defined, quantified and explained. The concept is currently too vague. This lack of clarity makes it difficult for employees and employers to understand what would be justifiable and what would be unjustifiable hardship. This makes it very difficult for a person with a disability to stand up for his or her rights as an employer could claim that adjustments would cause unjustifiable hardship and the employee faces difficulty in determining whether or not this is the case.
- The cost for employers in complying with the DDA should not be understated. These costs need to be included in funding for government departments and community based services. Private businesses also need to be assisted to meet the costs incurred. This could be done by providing funding to cover necessary costs or by allowing businesses to claim these costs as tax deductions.
- The percentage of people with a disability who are in employment has fallen in the past ten years. This is the case even though there is now wider acceptance of the rights of people with a disability to be in the workforce. One of the main factors causing this decrease in employment is the increasing incidence of employers including a current drivers license as one of the essential criteria in job advertisements even when the job requirements could be successfully carried out without the person having a driver's license. This requirement for a drivers license immediately excludes a wide range of people with disabilities such as visual impairment or epilepsy. It also excludes many people who take medication to help them

manage a variety of conditions such as mental illness or physical pain. In many cases it is not necessary for every employee in an organisation to be able to drive. In other cases, the person could still perform the inherent requirements of the job with minor adjustments being made, for example public transport or taxis could be used.

- In addition to the indirect discrimination referred to above, people with mental illness who are seeking employment are still experiencing direct discrimination because of their disability. In developing this submission, discussions were held with MHCC member organisations that assist people with a mental illness to access employment. Staff in these employment agencies have found that discrimination against their clients still exists even though community attitudes to people with disabilities are improving. The staff report that up to 90% of their clients do not disclose their history of mental illness to a prospective employer as they have learned from past experience that if they do, they will not get the job.
- The DDA has been useful in contributing to the increasing acceptance of the rights of people with disabilities and has achieved significant change. It is acknowledged, however, that attitudinal and behavioural change is a process that takes time.

In conclusion, the DDA is useful and should be retained with amendments to broaden and strengthen the complaints process, together with further development of standards, which are monitored and enforced.

If you would like to clarify any points in this submission, please do not hesitate to contact Ann MacLochlainn on (02) 9555 8388.

Thank you for considering this feedback.

Yours sincerely

Jenna Bateman
Executive Officer
Mental Health Co-ordinating Council