

**NEW SOUTH WALES NURSES' ASSOCIATION
SUBMISSION
THE PRODUCTIVITY COMMISSION INTO THE DISABILITY
DISCRIMINATION ACT 1992

INQUIRY ISSUES PAPER**

INTRODUCTION

- **The NSW Nurses' Association (NSWNA)**

The NSW Nurses' Association represents the industrial and professional views of our 48,000 members. Of these 48,000 members some 1400 nurses are employed in the disability sector and subsequently are acutely aware of the Disability Discrimination Act 1992 (DDA) as it is the legislative instrument under which their patients/clients are represented.

- **The Structure of the NSWNA Submission**

The NSWNA does not intend to make comment on all aspects of the Inquiry. However we intend to make reference to those areas identified by our members as significant to their patient/clients concerns and needs. The NSWNA is most concerned with but limited to, number 2c(i) Term of Reference *"social welfare and equity considerations, including those relating to people with disabilities, including community service obligations"*.

SOCIAL WELFARE & EQUITY CONSIDERATIONS

It is the view of the NSWNA that although the DDA is capable of protecting people with a disability against most forms of discrimination, we are concerned that it needs to be supported by disability standards to further protect them. In other words the DDA alone is not the most effective or efficient way of protecting some people with a disability against discrimination. We are of the same opinion as expressed in the *Human Rights and Equal Opportunity Commission (HREOC) Issues Paper 1993* "The anti-discrimination provisions of the DDA, which are already in force, contain very broad ranging requirements for equality of access and opportunity for people with disabilities."¹

¹ Issues Paper: Disability Standards Under the Disability Discrimination Act for the DDA Standards Working Group Human Rights and Equal Opportunity Commission November 1993 p.3

We find that this is particularly relevant with children at school and residents of group homes who require invasive health care procedures. This is of increasing difficulty for the NSWNA and our members who are of the view that children and people with a disability receive health care at a lower standard than the remainder of the community. For example procedures such as tracheostomy tube change and the insertion of rectal Valium, are invasive procedures that require professional education and expertise. If people without a disability were to have these procedures undertaken they would expect a qualified nurse or medical practitioner to perform these complex health care procedures. The community at large can expect to have registered or enrolled community nurses taking on these roles. However for people with a disability who live in group homes this is not the case and the same applies for children with a disability at school.

Invasive health care procedures continue to be undertaken by unqualified staff, hence these children and people in group homes are being discriminated against by receiving less than optimal health care in their school or group home. It is the NSWNA's contention that this is a prime example of direct discrimination as these people and children with disabilities receive less favourable treatment reducing the opportunity and choices for people with a disability for health care to those without a disability. The NSWNA is of the firm view that legislation needs to be tightened to guard against such discrimination.

The UN Disability Treaty states, "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society".² It is our contention that this is certainly not the case and we would like to see this amended in the new legislation of the Act.

The NSWNA believes in the right to education for all children. We support children with a disability attending school and being integrated into the general education system. However we consider that those children who need health care at school must also be provided with health care by qualified health professionals not unqualified workers, as is the case at this time. Again we are of the opinion that these children are being discriminated against by receiving less than optimal health care delivered by untrained and unqualified workers.

SUMMARY

Access to qualified health professionals and health services for people with a disability in group homes and children with a disability at school is a growing concern in both rural and urban areas in NSW. People with a disability continue to face a great deal of stigmatisation from the influx of inexperienced generic health workers coming into the sector and the lack of access to qualified health professionals.

² The UN Disability Treaty Persons with disabilities: 09/12/94, CESCR General Comment 5 (General Comments) GENERAL COMMENT 5 Persons with disabilities (Eleventh session, 1994) p.9

The NSWNA recommends that the DDA must guard against discrimination both direct and indirect for people with a disability in relation to health care provision by refining the legislation in such a way as to remove any chance of these acts of discrimination being continued.

In the Objects of the Discrimination Act 1992 part c states:

“to promote recognition and acceptance within the community of the principle that people with disabilities have the same fundamental rights as the rest of the community”³. In our view that this principle certainly does not apply in relation to health care provision to people with a disability in a group home or a school in New South Wales. We would seek some assurance that this review will address this oversight in the legislation and in doing so protect people with a disability against such discrimination. The NSW Nurses’ Association firmly believes that people with a disability deserve access to appropriate health care as a fundamental right as does the rest of the community.

RECOMMENDATIONS

- That standards are introduced to support the DDA that protects people with a disability against discrimination in relation to health care in schools and group homes.
- We seek assurance that legislation is amended to ensure that persons with a disability are provided with the same level of health care within the same system as the rest of society.
- We seek assurance that health care procedures are provided to people with a disability by qualified and educated health professionals not unqualified workers, as is currently the case.

³ Disability Discrimination Act Inquiry Issues Paper p.7 Source: Disability Discrimination Act 1992,s.3.