

10 October 2003

Ms H Owens

Presiding Commissioner
Disability Discrimination Act Inquiry
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne 8003

Dear Ms Owens,

SUBMISSION TO THE PRODUCTIVITY COMMISSION’S INQUIRY INTO THE DISABILITY DISCRIMINATION ACT 1992

Thank you for the opportunity to comment on the review of the *Disability Discrimination Act 1992*.

These are some brief comments and I apologise that I could not devote more time to reviewing this important initiative.

Office Of Public Advocate

The Public Advocate’s role is defined in the *Guardianship and Administration Act 2000*¹. It is to provide systemic advocacy for adult Queenslanders who have impaired capacity for decisions².

The functional responsibilities of the Office are to:

- protect (human rights and from exploitation, neglect and abuse),
- promote (quality programs, services and facilities), and
- monitor and review (the delivery of services and facilities)³.

This means that the Office has a mandate across diverse fields (ageing, mental health and disability), all sectors (Government, non-Government, business for profit) and many silos of Government responsibility including housing, legislative reform, criminal justice, employment, housing and so on.

¹Chapter 9 ss208-221

²Guardianship and Administration Act 2000, Schedule 4, "*capacity "for a person, for a matter means the person is capable of-*
(a) understand the nature and effect of decisions...,
(b) freely and voluntarily making decisions about the matter, and
(c) able to communicate the decision in some way.

³Section 209

My comments should be read as referring to adult Queenslanders who have some decision making disability.

The Submission Of The Anti-Discrimination Commission Queensland

I endorse the excellent submission of the Anti-Discrimination Commission.

In particular, I endorse the introductory comment, that it is heartening to see comments by the former Attorney-General that the review did not mean that funding to this important body would be reduced.

I also endorse comments that disability legislation is a vital way that individuals are respected and the creation of a society that is open to all. I support the retention of separate pieces of legislation (Sex, Race and Disability) rather than general legislation to ensure that one particular group does not influence the process. I make some suggestions later in relation to some special arrangements for people with an intellectual disability

I generally endorse the Anti-Discrimination Commission's comments in relation to the development of employment opportunities. It is trite to say that the development of such programs should include people who lack intellectual capacity as there would be many situations in which they could be productive members of the paid work force.

Items 10 and 11 of the Commission's submission refers to the need for advocates and for a right for organisations advocating for people with disability to lodge complaints of discrimination. Where the person put upon is unable to voice their complaint, either due to impairment or out of concern for the consequences, the mere existence of a right at law, without more, is of no assistance. For vulnerable people who lack the ability to advocate for themselves this seems a sensible amendment to the existing legislation

Support for particular treatment for people with an intellectual disability is provided in a 1992 paper by Commissioner Dr Sev Ozdowski⁴. He said that, while Australia has taken its commitment to remove discrimination seriously⁵ a worrying low number of complaints lodged by or on behalf of persons with intellectual impairment appears to indicate they are being left behind in this respect.

A simple analysis of the figures lend support to this view. Intellectual impairment is present in around 3% of the general population. That is approximately 600,000 people out of a total disability population of 2.4 million (based on a 12% estimate for all forms of disability). In terms of individuals complaining of discrimination on the basis of their disability, however, people with intellectual impairment have been responsible for only 219 complaints out of a total of 5,400 complaints in the first 10 years of operation of the *Disability Discrimination Act* 1992.

4 Address to the 1992 Direct Support Workers Conference Melbourne, Australia 1992. The paper is available on the HREOC website.

5 The Commonwealth Disability Discrimination Act was enacted in 1993.

So a cohort comprising around 25% of all Australians with disability have been responsible for only 4% of the disability discrimination complaints. Whether happy or unhappy, these vulnerable citizens are being very quiet about their lot in life in a way that can only be described as most unsettling.

The suggestion that there is a vital need for advocacy services seems eminently sensible to enable this vulnerable group to be heard. Equally it seems both sensible and appropriate for the Human Rights and Equal Opportunity Commission itself to be funded to be pro-active in seeking out these vulnerable people and assisting them to bring complaints under the legislation. I understand that such activity was funded in the early days of the Commission.

Disability Action Plans

Finally I would like to comment on the general failure of agencies both government and educational to prepare Disability Action Plans as outlined in the legislation. These plans are a bench mark against which improvement in the delivery of services to vulnerable people may be judged. Agencies should be encouraged to prepare these plans as an important first step in improving the lives of vulnerable people.

If you need any further information regarding this submission please do not hesitate to contact Deborah Barrett on 3224 7354

Yours faithfully

IAN BOARDMAN
Public Advocate - Queensland

cc Anti-Discrimination Commissioner Queensland