

Queensland Parents for People with a Disability

Response to Productivity Commission's Draft Report

Inquiry into Disability Discrimination Act (1992).

QPPD agrees with many of the findings and recommendations of the draft report. However we believe the report while acknowledging the Act's limitations is overly optimistic about its success. Draft recommendations 6.1 and 6.2 highlight the failure of the legislation in meeting the most basic human right for access to justice and democratic processes for people with disabilities.

QPPD reiterates that people who are most vulnerable (ie people living in institutions, people with mental illness or intellectual disability, people with multiple disabilities) are provided the least protection under the Act.

QPPD highlights the additional following issues as areas of concern:

Mainstreaming of students with disabilities

QPPD believes that the figures supplied to the Productivity Commission and outlined in the draft report (section 5) have led to a misinterpretation of the reality of the lives of students with disabilities.

Historically the system provided two types of educational settings for students, mainstream schools and special schools. The introduction of special education units within the grounds of mainstream schools has confused the statistics. Students in units are counted as being in the mainstream. The reality is that they may have no contact at all with the mainstream population. In fact, many students who previously would have remained within the regular classroom have now been labelled as "disabled" and relocated to "special" units.

In 2001 Education Queensland (EQ) stated that 45 special schools remained, with 219 special education units located in mainstream schools. EQ statistics show that the number of students enrolled in special education actually increased in 2001 and at 2,519 enrolments, was at its highest level for the five years since 1997.¹

The results of research conducted by QPPD in 2003 on the process of decision-making around educational choice by parents of students with disabilities found that:

- The majority of students with disability attend school at a special education unit or special school and do not attend the same school as their siblings.
- Parents said that their child would not be at the school they currently attend if they did not have a disability and the advice and information given to them by teachers, school officials and other professionals is often biased towards segregated education pathways and strongly influences the decision-making process.²

Therefore, QPPD cannot agree with the statement in Section 1.1

Significantly, a generation of children with disabilities are moving through the mainstream education system and soon will be seeking higher education and employment. At the same time, their student peers are having a greater experience of interacting with people with disabilities.

¹ www.education.qld.gov.au/schools/statistics/pdfs/es03_01.pdf

² There's small choice in rotten apples, Queensland Parents for People with a Disability, December 2003

Private and Public School Sectors

We note the submissions from the non-government school sector are heavily weighted with financial details on the cost of supporting students with disabilities. QPPD has observed that the non-government sector uses the lack of resources to exclude students with disabilities. Yet non-government schools have greater flexibility and more choice in deciding to use their resources for this support. QPPD has gathered anecdotal evidence that even students with modest support needs are being refused enrolment. QPPD believes this is a conscious decision by the non-government sector to avoid investment in resources for students with disability. Some non-government schools actively discourage parents from enrolling by informing them that they cannot afford to support their son or daughter.

The Senate Inquiry into students with disabilities rejected the funding models proposed by the private sector. In the Senate Inquiry Report Corrigendum the Catholic education system is estimated to have an income in 2004 that is 15.2 per cent higher than the state system and other non-government schools estimated to have an income that is 52.2 per cent higher.³

Educational Choice

QPPD's recent research into parental choice in education indicates that many parents had no real options to choose from, others had unsuccessfully worked through a range of options or had been encouraged to make particular choices.⁴ QPPD can conclude that while parents were, in all instances, bending over backwards in their efforts to find the right place for their child, for many parents of children with disability the right to choose the school their child attends is illusory.

While the evidence from QPPD's research clearly applies only to the particular groups of people, the findings are nonetheless significant and important in their implications for the debate around discrimination and choice. Our research demonstrates that choice for the majority of the participants was a very complex issue, constrained by factors which most other families do not experience.

QPPD's agrees with the Productivity Commission (p379) that students with disabilities should ONLY have the same choices in education as all other students have:

In the interests of reducing discrimination and promoting integration in education, the Productivity Commission considers that a general objective of government education funding arrangements should be to ensure school students with disabilities have the same range of education choices that other students have. Their choice of school sector should only be subject to the same personal factors-such as location, income and education needs as other students.

Suspension and exclusion

QPPD is particularly concerned about the numbers of exclusions and suspensions of students with disabilities. Often exclusion is directly related to the student's disability in that it is students with high support needs and/or challenging behaviours who are often excluded, and not only from the local mainstream school setting, but from the Special School or Special Education Unit to which the student has been 'placed' on a recommended placement from Education Queensland. In other words, students are being denied access to EQ's own special education programs and services for students with disabilities.

³ *Inquiry into the Education of Students with Disabilities*, Senate Employment, Workplace Relations and Education References Committee, Department of the Senate, Canberra. 2002

⁴ *There's small choice in rotten apples*, Queensland Parents for People with a Disability, December 2003

Unjustifiable Hardship

While the DDA only refers to unjustifiable hardship in the context of enrolment we note that the draft Standards expand the scope of unjustifiable hardship to all areas of education provision. QPPD believes this is unacceptable and in direct contradiction to the intent of the DDA. We cannot imagine on what grounds an education provider could argue unjustifiable hardship with regards to curriculum development for instance.

Accommodation Standard

QPPD believes that institutions are discriminatory by nature and could not possibly meet an accommodation standard under the Disability Discrimination Act (1992). We could not in good faith participate in any process that legitimised institutionalised accommodation settings.

The difficulty for many people is that they are placed in institutionalised accommodation (for example group homes and hostels) with no possibility of getting out. Many services remain block funded by government and people have no option to take resources with them when they leave. This means that people tolerate deplorable conditions and abuse and service providers have no incentive to improve anything. If each person had individualised funding they would at least have the option to leave the service and use their funding in ways that met their specific needs most effectively and efficiently.

The use of a comparator

QPPD finds the discussion around the use of a comparator is most problematic when considering 'different accommodation or services'. We find this area of the law most confusing. What would be the comparator for a person with disability aged 25 living in a nursing home for example? We would assume that in this situation the comparator could be the living setting of non-disabled young people, which would obviously not be nursing homes. It is distressing to think that thousands of people with disability in Australia are being placed in nursing homes without any possibility of accessing the law.

Harassment

QPPD is deeply concerned by our contact with families across Queensland who have expressed fear of speaking out against abuse and/or neglect. Many families fear that there will be retribution shown towards their son or daughter if they take action. They are right to feel so as some families have been sent threatening letters or harassed as a result of their advocacy. Others feel that if they speak out they may lose the little support they may be receiving. This risk is real.

Access to the Justice System

People with disability are more vulnerable to abuse than other people. Queensland academic Dr Lesley Chenoweth (1996) observed that people with a disability were more likely to be assaulted than other people. One of the world's leading experts on violence and abuse in the lives of people with disability states that 28% of perpetrators of sexual abuse against people with disability were service providers.⁵ The main reason given for this high number is the power inequity that characterises staff-client relationships. In a study conducted in by the National Policy Research Unit and Flinders University involving 174 people with intellectual disability it was found that the group was 3 times more likely to be assaulted and 10 times more likely to be sexually assaulted than people without disability.⁶ Despite the overwhelming evidence that people with disability are much more likely than other people, their access to the justice system is severely restricted. QPPD is aware of

⁵ Dick Sobsey, (1994) *Violence and abuse in the lives of people with disabilities*, Baltimore Paul H. Brookes Publishing Co.

⁶ National Committee on Violence of Women, (1993) *Access to services for women with disabilities who are subjected to violence*. Canberra, Office of the Status of Women

families who have been told “not to bother” seeking justice as their son or daughter is not a credible witness.

QPPD thanks the Productivity Commission for this opportunity to comment on the Draft Report. To discuss any part of this submission further contact:

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