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

**Submission on the DDA**

This Submission relates to my experience with the DDA and will focus on the aspects that disturb me greatly.

The case I refer to is *Nerilie Humphries v Commonwealth H97/35* and its 'less than satisfactory' passage through 'the system'.

**Background**

In 1992 Nerilie was offered a position with the Department of Employment, Education and Training (DEET), because she was vision impaired. In February 1993 Nerilie commenced work in the Lismore Area Office of DEET. Nerilie's employment was characterised by a lack of preparation for employing a person with a disability, a lack of proper assessments and a lack of willingness to provide the necessary equipment to integrate her into the workplace. She had serious obstacles put in her way to prevent her succeeding in the workplace. After a physical an emotional breakdown, Nerilie's employment was terminated by DEET in July 1995.

Because of her experiences at work, Nerilie lodged a disability discrimination complaint with the Human Rights & Equal Opportunities Commission (HREOC), under the DDA, in May 1995. Nerilie's complaint included the names of over a dozen independent witnesses to the discrimination she endured. In responding, the Commonwealth chose not to contact any of the independent witnesses, choosing to rely entirely on the written responses from the three staff members, accused of the discrimination. There was, and there never has been, any proper investigation of this case, by the Commonwealth.

At a HREOC conciliation conference in November 1996, the Commonwealth made Nerilie a settlement token offer of $5,000. Nerilie made a counter offered of $12,000, but the counter offer was rejected (bare in mind that, in similar circumstances, Amanda McNeill had been awarded $22,500 in general damages by HREOC, in 1995, in a DDA case *Amanda McNeill v Commonwealth of Australia H94/79).* Through the entire conciliation meeting, it was obvious the Commonwealth's solicitor had been given no information about the case and was totally unprepared to enter into meaningful negotiations. It was quite clear the Commonwealth had no intention of reaching a position of conciliation with Nerilie.

The rejection of Nerilie's counter offer, in effect, was a decision by the Commonwealth, to proceed to litigation. That decision was made in the

full knowledge that the cost of preparing for the hearing and running the hearing would cost the Australian Taxpayer far more than the $12,000 counter offered at conciliation.

Nerilie could not afford a solicitor so I had to represent her. I have no legal experience or expertise, yet against two government solicitors we won. The so-called medical experts used by the Commonwealth to terminate Nerilie's employment were proven to completely lack any credibility and one of the Commonwealth's witnesses was of far more help to us than to the Commonwealth. The euphoria was however, short lived, as the Commonwealth immediately appealed the decision. The fact that we won against the Commonwealth with no solicitor is a very good indicator of the strength of our case and the lack of substance of the Commonwealth's defence.

In total this case ran for six years and nine months and included two HREOC hearings, a Federal Court appeal and a Federal Magistrates Court appeal. The end result was that Nerilie received her $12,000 compensation for being discriminated against and the cost to the Australian taxpayer was well over $750,000.

During the time this case ran, the Commonwealth presented numerous lies to support its case and seemed intent on wasting as much time as possible. It was usually late with the lodgement of court documents, such as submissions and outlines of argument. The Commonwealth also argued extensively on irrelevant issues both in court and in written submissions.

The conduct of Nerilie's supervisors at DEET and the Commonwealth solicitors involved in this case has been totally unacceptable, lacking honesty, ethics and integrity.

Nerilie has been left, a shattered human being, rarely venturing from home. On the rare occasions she does go out, she will not go anywhere alone. Nerilie lives on sedatives, anti-depressants, medication for hypertension and a myriad of vitamins. She now lacks the abundant self-confidence positive attitude and independence she once had.

**My Concerns**

The Commonwealth has a 'Model Litigant Policy' that requires the Commonwealth to act with honesty and integrity and in the public's best interest, whilst retaining the right to mount a defence. The Australian Government Solicitor also has an 'Ethics Statement' that talks of honesty and integrity. Neither the Ethics Statement nor the Model Litigant Policy have been apparent in any of the dealings I have had over Nerilie's case.

I contacted the Attorney General and the CEO of the Australian Government Solicitor's Office, regarding my concerns over the Commonwealth's lack of

regard for its own Ethics Statement and its failure to adhere to its own Model Litigant Policy. In both instances their responses were to protest their innocence and claimed that the Ethics Statement had been adhered to and the Model Litigant Policy had been followed. There has been no attempt by either to address my claims that the Commonwealth lied, just a blanket claim that they had acted with integrity, despite all the evidence to the contrary. The tone of both responses were, that the Model Litigant Policy included the right of the Commonwealth to 'mount a defence' and that acting with honesty, integrity as well as in the public's interest, was secondary to this right.

Why would the Commonwealth spend well over $750,000 on a case that it claimed was only worth $5,000 and where Nerilie was eventually awarded the $12,000 that she sought at conciliation? Whilst the amount spent on this case may not be relevant to the DDA, it is however indicative of the Commonwealth's lack of commitment to the DDA, putting into question the Commonwealth's perception of what is 'in the public's best interest'.

The focus of the Commonwealth seems to be on mounting a defence to any complaint regardless of the truth and the surrounding the circumstances. This case also points to the Commonwealth being a cruel and vexatious litigant, with little in the way of morals or integrity.

As Australia's largest employer, and according to HREOC, the employer most complained about, on disability discrimination issues, the Commonwealth offers little protection to its current disabled employees and virtually nothing in the way of protection to its disabled ex-employees. In my opinion, the employment section, in the DDA legislation, has proved to be of little protection for Nerilie, because of its desperate need for amendment and the cruel and vexatious nature of the Commonwealth as a litigant.

To further compound the problem is the lack of accountability of public servants, which is entrenched in the Australian Public Service. Nerilie's case sends a clear message to all public servants*; 'It's OK to discriminate against a person with a disability, because the Commonwealth will defend your despicable actions, lie to protect you, and you won't face any consequences as a result of your actions'*. The lack of accountability of Public Servants and the vexatious nature of the Commonwealth makes a mockery of the DDA and the Commonwealth's own internal EEO policies.

Looking at the relatively high proportion of disability discrimination complaints that are employment related, I find it difficult to understand the lack importance given to the development of 'Employment Standards' in the DDA, followed by the necessary legislative amendments.

Following through the Annual Reports of HREOC from 1996/97 to the present, the importance of 'Standards in Employment' has declined year by year. There has been less written about the efforts put into reaching a consensus amongst the wide range of interested parties. Each succeeding year less and less progress is made. Yes, it is an extremely difficult subject on which to get

consensus, but it is a very important issue to working Australian's with a disability.

It appears that the obvious disability issues such as Public Transport and Access have taken centre stage. These issues affect many people and the impact of these advances is recognised and applauded. The employment issue, however, is often a person by person, situation by situation issue. Employment discrimination issues are not 'in your face' issues that are always obvious to the general public. As such they attract little in the way kudos or 'window dressing value' for the Commonwealth and so appear to have been ignored.

## The major problem with the employment aspect of the DDA is the serious lack of commitment from the Commonwealth both as a legislator, and as a litigant.

### Solution

1. I want to see priority given to developing legislative amendments to the DDA, based on effective, accepted employment standards.

2. I would also like to see a commitment from the Commonwealth to act with honesty and integrity and uphold its own Model Litigant Policy. This commitment must be evidenced by the Commonwealth's actions …not merely words. I really think I'm dreaming here.

Submission by

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