

Submission to: Productivity Commission Submission on the
Disability Discrimination Act 1992

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NSW

Date: 1st March 2004

Introduction

The section of the DDA that most interests me is the issue of Employment for People with a Disability

Background

I look at the issue of employment of people with a disability in the public sector as a time-bomb waiting to explode. My views are based not only on my wife Nerilie's disgraceful treatment as a Commonwealth Public Servant, but also on the process that should have afforded her protection from discrimination and justice for her suffering, that have all failed her so miserably. The processes I refer to are extensive and include the internal public service appeals processes, OH&S, EEO and Merit Protection Review as well as the external processes of the Disability Discrimination Act, the Administrative Appeals Tribunal and the Commonwealth's Model Litigant Policy.

Submission

I would like to look at a number of issues that I believe contribute too the level of effectiveness of the DDA, with an emphasis on employment complaints.

Participation Rates & the Public Sector

Since the introduction of the Disability Discrimination Act 1992 the statistical information provided in the Draft Findings at Table 5.2 indicates that the employment participation level of people with a disability has reduced very slightly from 54.9% in 1993 to 54.6% in 2001. However Dr Sev Ozdowski said, in a speech to the ACROD 2003 Employment Forum, that employment in the public sector, of people identifying as having a disability has decreased from 6% in 1993 to just 3.6% in 2003. This is a massive decrease of 40%. I would suggest that if one was to remove the public sector participation figures from the equation then we would have seen an increase in participation level of people with a disability from 1993 to 2003.

This is indicative of either a strong move by people with disabilities away from the public sector, a strong move by the public sector away from employing people with a disability or a combination of both. In any event this is a very disturbing trend and should be identified in the Productivity Commissioner's report as an area of grave concern.

The Commonwealth Public Service

I believe that the lack of accountability of public servants has led to the development of a culture of abuse. It has become a safe haven for bullies and as is usually the case, the bullies prey on the most vulnerable including the disabled. Until we can rid the Public Service of these predators we will see a continued decline in the employment participation rate of people with disabilities in the public sector and continuing claims of disability discrimination. The only way this could change would be to have the Public Service Act amended to make individuals made accountable, particularly for breaches of the DDA. I believe the Public Service Act impedes the effective operation of the DDA, by offering personal protection to offenders.

A senior legal officer from HREOC told me in 1998 that the Commonwealth was by far the most complained about employer in Australia on employment related disability discrimination issues.

Standards in Employment

If there had been standards in employment in place when Nerilie was employed by the Commonwealth, there may well have been a substantially different outcome for her as I would suggest for many others.

Dr Sev Ozdowski in his speech to the ACROD 2003 Employment Forum suggested that employment standards would do little to boost the employment of people with a disability. Standards in employment should be implemented to protect the rights of people with a disability who are currently employed and to give employers a guide for making provision for facilitating the employment of a person with a disability. They are not there to boost employment figures.

Strategies need to be developed to increase the participation rate of people with a disability in the workplace. These strategies have nothing to do with the development and implementation of standards in employment and the two issues should not be confused.

Unjustifiable Hardship as a Defence

The Commonwealth claimed unjustifiable hardship as a defence for not purchasing a large computer monitor for Nerilie. The monitor would have cost about \$2500 and would have made an enormous difference to Nerilie. This is a blatant abuse of this provision and should no longer be available to the Commonwealth to continue to abuse.

Commonwealth's lack of commitment to the DDA and to people with disabilities

The Commonwealth Government should hang its head in shame for the atrocities it has inflicted on Nerilie. Her life has been ruined and they are to blame for allowing the discrimination to occur in the first place. Secondly for defending the actions of the bullies who discriminated against Nerilie, without even bothering to investigate her claims and find out what happened. The Commonwealth appeared only interested in having the matter go to litigation and the lack of research into the facts of the case, the lies told to HREOC, the Federal Court and the Federal Magistrate's Court, the ferocity of their defence and the expenditure of almost \$1million of taxpayer's money to defend a claim of a few thousand dollars are all proof of the Commonwealth's lack of commitment to people with disabilities.

Below is a list of factors that I feel are of critical importance when considering barriers by the Commonwealth to the effectiveness of the DDA.

- The Commonwealth has claimed unjustifiable hardship in defence of blatant discrimination.
- The Commonwealth is the considered the worst employer in Australia when it comes to employment disability discrimination complaints to HREOC.
- The Public Sector has had a 40% decrease in employment of people with disabilities over the past 10 years.
- We still have no permanent appointment of a Disability Discrimination Commissioner and have not had a permanent appointment since Elizabeth Hastings completed her term in late 1997.
- The Commonwealth vigorously defends claims of discrimination, putting into question its adherence to its own Model Litigant Policy.
- The Commonwealth continues to foster a culture of abuse in the public service, by not requiring public servants to be accountable for their actions.

Conclusion

The Commonwealth is meant to be a Model Litigant and from my experience it has fallen far short of reaching the standard set out in the Model Litigant Policy. The Commonwealth should also be a 'Model Employer', setting an example to the rest of the country. As taxpayers surely we have the right to expect that our taxes are paid to provide services in an honest and ethical fashion, free of discrimination and harassment.

Comments on Draft Findings

Draft Findings 5.1 States; *The number of complaints under the Disability Discrimination Act 1992 and participants' views indicate the disability discrimination in employment remains a significant issue. Overall, the Act appears to have been least effective in reducing discrimination in employment.*

My Comments: Whilst I agree with the draft finding above, I am concerned that there are no recommendations I can find that address this very significant

flaw in the Act. There has been excellent progress in other areas such as Public Transport and Physical Access, yet an issue that dominates the complaint process is so lacking in any action over the past 10 years and is so lacking in any constructive recommendations from this inquiry.

From the HREOC Annual Reports over the past 10 years we have seen a lesser and lesser emphasis put on the development of employment standards, to point where they almost appear to be off the agenda altogether. Nerilie's case has highlighted the urgent need for these standards to be written and passed as part of the legislation.

Recommendations

Employment Standards

As a matter of urgency it should be recommended that HREOC develop Employment Standards under the DDA. Further I would recommend that the development of these standards be put into a realistic time frame, giving consideration to both the urgency and complexity of the task involved.

Unjustifiable Hardship

The Commonwealth should have no access or at best, limited access to the provision of Unjustifiable Hardship as a defence for discrimination.

Strategies to increase Employment of People with Disabilities

Strategies need to be developed and implemented to increase the participation rates in employment, of people with disabilities.

Thank you for the opportunity of presenting my feelings and hopes for a brighter future.

Terry Humphries