



N E D A

NATIONAL ETHNIC DISABILITY ALLIANCE

# **Human Rights**

## **Australian Human Rights Commission Legislation Bill 2003**

Submission from the:  
National Ethnic Disability Alliance

24<sup>th</sup> April 2003

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# INTRODUCTION

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The National Ethnic Disability Alliance (NEDA) and its members stand opposed to the provisions within the Australian Human Rights Commission Legislation Bill 2003 currently before the Australian Parliament.

On behalf of NEDA, the peak body in Australia representing people from a non-English speaking background (NESB) with disability and their families, I urge the Committee to reject the provisions of this Bill.

The Bill will have an adverse impact on the human rights of all people from a NESB with disability living in Australia.

NEDA has issued 5 recommendations to the Senate which are documented in this submission.

If you require additional information on these issues, please contact NEDA's Executive Director Ms. Lou-Anne Lind on (02) 9687 8933 or 0407 878 933.

Yours sincerely

Diana Qian  
**PRESIDENT**

# RECOMMENDATIONS

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- Recommendation 1:** That the Senate reject the proposal that the Human Rights and Equal Opportunity Commission (HREOC) be required to obtain the Attorney General's permission before intervening in court proceedings relating to discrimination issues.
- Recommendation 2:** That the Senate reject the removing of the current specialist Commissioners who have the necessary expertise within their portfolio areas to deal with the complex discrimination issues relating to ethnicity and disability.
- Recommendation 3:** That the Senate ensure that HREOC be empowered by legislation to adopt a greater role for community education.
- Recommendation 4:** That the expansion of the community education role for HREOC be matched with an increase in resources.
- Recommendation 5:** That the complaints handling function of HREOC continues as a priority area (together with community education) and that any attempts to outsource complaints does not lead to a decline in the quality of service provided by the Commission.

# ISSUES

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## Restricting the Right to Intervene

The most alarming component of the Bill is the government's desire to have a 'gatekeeper function' in relation to the Commission's intervention. With the Court's permission, the Commission is currently able to present written and oral arguments in proceedings that involve human rights and discrimination issues. NEDA understands that the Commission has used these powers in approximately 35 cases. There is no evidence to suggest that HREOC has in any way abused this power.

In spite of this, the government's current Bill seeks to limit the Commission's independence and severely reduce its ability to intervene in legal proceedings. NEDA believes it is completely inappropriate that a party to the litigation is giving itself this role. This section of the Bill will severely reduce the Commission's independence by tying its ability to intervene to the government.

It is NEDA's view that this particular section of the Bill will be used to the government's advantage. We fail to see how it this will secure the rights of people with disability. A significant amount of discrimination actually occurs within government agencies and HREOC must be able to intervene in these proceedings. The voices of people from a NESB with disability are often not heard by government and restricting the ability of Australia's human rights watchdog will only serve to further stifle these voices.

Over the past few years Australia has received intense criticism both locally and internationally on its record on human rights issues. If Australia wants to remain at the forefront of human rights issues, then it must adopt a leadership role in terms of ensuring that the human rights of its people are protected.

The Bill also needs to remain consistent with Australia's current position on democracy and an important part of democracy is ensuring that there are checks and balances within the system. The Bill blurs the boundaries between the executive levels of government when there is a clear need demarcate the different levels of government as a safeguard.

### **Recommendation 1**

*That the Senate reject the proposal that the Human Rights and Equal Opportunity Commission (HREOC) be required to obtain the Attorney General's permission before intervening in court proceedings relating to discrimination issues.*

## Specialist Commissioners

The discrimination issues relating to ethnicity and disability are complex. It has been NEDA's experience that across all levels of government, existing structures designed to manage the issues of race and disability do not cooperate effectively with each other to meet the needs of people from a NESB with disability.

It is our experience that this can usually be resolved by having different arms of the bureaucracy cooperating with each other. NEDA has experience in this area because of its cross-sector role (disability and ethnicity).

It is our experience that the success of this partnership work also comes down to the issue of resourcing. Since 1996 55% HREOC's funding has been reduced and this severely restricts the ability of the Commission to undertake cross-portfolio work.

The 'mainstreaming' approach that is proposed in the Bill will ultimately see people from a NESB with disability falling through the cracks of this structure which already occurs at every level of government.

In each State and Territory in Australia, there is a focus on people with disability and people from NESB which is an acknowledgment by government that these groups of individuals are disadvantaged due to their specific needs. As Australia has a Federated system, the Commonwealth also reflects this structure. Therefore, given that the Commission is a Commonwealth body, it needs to emulate the human rights needs that exist within the Federation of Australia.

Both the disability and ethnic sectors have been successful in their attempts to ensure that a Race Discrimination Commissioner and a Disability Discrimination Commissioner exist. These Commissioners have the necessary expertise in their separate portfolio areas to manage the complexity of direct, indirect and systemic discrimination against people from a NESB with disability. We fail to see how the establishment of three non specific Commissioners will enhance or protect the human rights of people from a NESB with disability.

### ***Recommendation 2***

*That the Senate reject the removing of the current specialist Commissioners who have the necessary expertise within their portfolio areas to deal with the complex discrimination issues relating to ethnicity and disability.*

## **Community Education**

People from a NESB with disability are one of the most disadvantaged and marginalised groups in society. The issues and needs of people from NESB with disability and their families have not been understood or addressed by governments, the community sector and the general population.

People from a NESB with disability continue to be discriminated against within all areas of our community life. There is no evidence to suggest that the levels of discrimination have been substantially reduced to warrant the proposed restructure.

The current structure of the Commission ensures that the individual Commissioners play a role in education and advocacy and NEDA supports the community education role of HREOC being enhanced with two conditions:

- that there is resourcing to match this expansion
- that complaints handling remains an equal priority.

### ***Recommendation 3***

*That the Senate ensure that HREOC be empowered by legislation to adopt a greater role for community education.*

### ***Recommendation 4***

*That the expansion of the community education role for HREOC be matched with an increase in resources.*

## **Complaints Handling**

Whilst community education does have its place in achieving systemic change, NEDA also believes that the development of enforceable Standards in areas such as education and employment together with the lodging of individual complaints is extremely effective for people with disability to ensure that their rights are protected.

Current waiting times for the processing of individual complaints are excessive due primarily to the lack of resources available to HREOC. NEDA does have some concerns that the proposal to extend the community education role of HREOC without appropriate resourcing will ultimately lead to longer waiting times and reduced access to the individual complaints by people with disability.

### ***Recommendation 5***

*That the complaints handling function of HREOC continues as a priority area (together with community education) and that any attempts to outsource complaints does not lead to a decline in the quality of service provided by the Commission.*

## **APPENDIX 1: NEDA**

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The National Ethnic Disability Alliance (NEDA) is the national consumer-based peak body for people from a non-English speaking background (NESB) with disability, their families and carers.

The overarching aim of NEDA is to advocate at a federal level, for the rights and interests of people from a NESB with disability, their families and carers

All activities undertaken by NEDA include strong consumer involvement and is based on the following Objectives:

1. Represent the rights and interests of people from NESB with disability, their families and carers.
2. Advocate on issues impacting on people from NESB with disability, their families and carers.
3. Work towards securing equitable outcomes for people from NESB with disability, their families and carers.
4. Co-ordinate policy advice to the Federal government and relevant peak bodies on the impact of policy and legislation on people from NESB with disability, their families and carers.

NEDA, because of its cross-sector role (disability and ethnicity) aims to collaborate with and work across a broad range of organisations to represent the interests of people from a NESB with disability

NEDA is governed by a Council, the majority of who are people from a NESB with disability. NEDA Council members serve for one-year terms and are appointed via the NEDA membership.

For more information, please log onto [www.neda.org.au](http://www.neda.org.au).

## **APPENDIX 2: NESB-DISABILITY ISSUES**

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### **General**

Discrimination occurs on an individual and a systemic level. Due to the high level of social control experienced by people with disability, the discrimination faced is often institutional.

People from NESB, in particular those with a disability and recent migrants, experience highly regulated environments where much of the discrimination is systemic.

There are many barriers facing people from NESB with disability including:

- lack of accessible information and knowledge about rights, essential services and supports
- lack of culturally appropriate services and supports
- myths, misconceptions and negative stereotypes about disability and ethnicity in both the NESB and Anglo-Australian communities
- prejudice against people with disability from both NESB and Anglo-Australian communities
- government's emphasis on 'mainstreaming' without acknowledgement of the inequities that exist in relation to ethnicity
- NESB people often do not understand concepts used to describe their situation
- ethnic communities often do not have the capacity to advocate for their needs.

Two areas are discussed in more detail below to help develop an understanding of NESB-disability in relation to this paper. For more information about NESB-disability issues, please visit the NEDA Website: [www.neda.org.au](http://www.neda.org.au).

### **Discrimination**

It has been the experience of NEDA that discrimination relating to both ethnicity and disability is interdependent and does not follow any logical order of preference.

The prejudicial attitudes and misconceptions regarding disability that are present in mainstream society are equally evident in NESB communities. Whilst there are differences in the perception of disability amongst different ethnic groups, the relative degree of stigma attached to disability appear similar across NESB and English-speaking communities.

By and large, NESB communities have missed out on education campaigns about people with disability because those conducting these campaigns have failed to seek out or consult with NESB communities. At the same time there have been consultations with people from NESB with disabilities, but those consultations have not resulted in concrete strategies.

Discrimination on the basis of ethnicity is also a reality. If ethnicity did not play a role in the provision of services to people with disability, the figures of service usage in relation to ethnicity would be comparable to those in the general community. The fact that there are so many Anglo-Australians and so few people from NESB in services shows that ethnicity does matter.

## Access to Services & Information

Objective 5 of the *Disability Services Act*, 1986 states that:

*Programs and services should be designed and administered so as to meet the needs of people with disability who experience a double disadvantage as a result of their sex, ethnic origin, or Aboriginality.*

However, in Australia, **three out of four** people from a NESB with disability miss out on receiving Commonwealth funded disability services. This is in addition to the current unmet need for people with disability in general (see NEDA website for more information).

This figure stands despite genuine efforts made by many to redress this situation. This figure points towards the need to seek systemic solutions to the whole disability services system, involving all stakeholders.

Access to information is often the first step towards people participating in the community. Access to information means, in effect, access to opportunities and therefore choices to participate in the community.

Like all people from NESB, people from NESB with disability and their families and carers experience increased difficulties in accessing services because of the lack of resources made available for interpreters and translations.

Services such as the Translation and Interpreting Service (TIS) and the Ethnic Affairs Commission language services have increasingly adopted the user pays principle, severely restricting the number of free or subsidised on-site and telephone interpreting sessions available to people and non-profit service providers.

The costs for language services are mostly unbudgeted, resulting in:

- a reduction in community services for people with disability from NESB
- the provision of inappropriate information
- the overall increase in the use of family members and other relatives as interpreters, in violation of standards such as confidentiality, dignity, privacy, etc.