



**People with disability – from recipients to full
and active participants: response to the
National Disability Strategy Discussion Paper**

1 December 2008

Robin Banks, Chief Executive Officer

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- Expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Summary of recommendations

Recommendation 1: PIAC recommends that the National Disability Strategy involve the Federal Government working with state and territory governments as well as local government in achieving real and sustainable changes to Australian society and government in terms of the involvement of people with disability.

Recommendation 2: PIAC recommends that a key goal of the National Disability Strategy be achieving full compliance with the UN *Convention on the Rights of Persons with a Disability*, with priority given to achieving significant progress priorities agreed to in consultation with the disability sector.

Recommendation 3: PIAC recommends that the National Disability Strategy include the development and ongoing use of a tool to analyse the impact of laws, policies and programs across governments on full participation of people with disability in all aspects of Australian life.

Recommendation 4: PIAC recommends that the further development and implementation of the National Disability Strategy be a responsibility within the Department of Prime Minister and Cabinet with a specialist unit and the Parliamentary Secretary having direct responsibility to the Prime Minister.

Recommendation 5: PIAC recommends that the National Disability Strategy include a focus on ensuring people with disability can be partners with governments in achieving a fully inclusive and participatory Australian society, including strategies to improve employment opportunities within government, effective consultation mechanisms, and the promotion of people with disability as leaders.

Recommendation 6: PIAC recommends that the National Disability Strategy include a focus on shifting complaints handling, licensing and compliance activities that deal with disability-specific issues into appropriate mainstream government and regulatory bodies with retention of individual remedies and effective and accessible complaints mechanisms.

Recommendation 7: PIAC recommends that the National Disability Strategy include a focus on improvements to the legal system to enable more effective use of complaint mechanisms, whether human rights or disability specific or mainstream, by representative bodies. In particular, that the Australian Human Rights Commission and appropriate community advocacy bodies have a right of standing to bring complaints in respect of systemic wrongs against people with disability.

The National Disability Strategy consultation

PIAC welcomes the Federal Government's commitment to the development of a National Disability Strategy (the Strategy). PIAC also welcomes the Government's commitment to work with the states and territories, and people with disability and their advocates to ensure that the Strategy provides an effective and comprehensive mechanism to ensure the full inclusion and participation of people with disability in the economic, social and cultural life of their community and of the nation.

General comments

PIAC notes that people with disability continue to experience significant individual and systemic barriers to full inclusion and participation in Australian communities and the social, economic and cultural life of the nation.

Government programs and policies often fail to identify the contribution that people with disability can and do make to the economic, social and cultural well being of Australia. Rather they focus on people with disability as recipients of services.

An effective National Disability Strategy needs to change this focus and recognise the failure to provide necessary supports as barriers to people with disability exercising their full capacity, reaching their full potential and making a full contribution to their communities.

In this regard, PIAC acknowledges the pro-active approach that has been shown in recent months in the Federal Government's work. For example, the Government has shown a real willingness to bring about positive change with respect to the development of the national airline strategy that recognises and seeks to remove the barriers faced by people with disability in respect of airline travel. Similarly, the Federal Government has demonstrated a willingness to understand and respond to how airline security screening systems might impact on people with disability.

PIAC urges the Federal Government to ensure that it engages actively with local government to develop and implement the Strategy. Local communities can be and are often the first point of entry for people to active participation in their community, be it through volunteering in a local community service or urban renewal

program, accessing their local library or participating in the activities and policy development of their local government entity.

At present, the vision, principles and outcomes set out in the Strategy discussion paper focus on people with disability. PIAC submits that the language of the final Strategy needs to reflect the need for societal change. This could be achieved relatively easily through making society, government and community the subject of the vision, principles and outcomes rather than people with disability. For example, 'Equal social, economic and cultural participation of people with disability and their families', could be reframed as, 'Australian society, community and governments that encourage and enable the full and equal social, economic and cultural participation of people with disability and their families'.

Recommendation 1

PIAC recommends that the National Disability Strategy involve the Federal Government working with state and territory governments as well as local government in achieving real and sustainable changes to Australian society and government in terms of the involvement of people with disability.

International human rights and the Strategy

PIAC strongly endorses the Government's decision to base the National Disability Strategy on the UN *Convention on the Rights of Persons with Disabilities* (the Disability Convention) and congratulates the Federal Government on its speedy ratification of the Convention in July this year. This is the beginning of important work for all levels of government, as well as the private and community sector, to ensure Australia achieves full compliance in practice and provides best-practice leadership to other countries.

The Disability Convention provides a clear framework for the changes that are needed to make sure that the human rights of people with disability in Australia are protected, respected and fulfilled and that people with a disability can be fully participating members of the Australian community.

Working across all levels of governments, with Commonwealth leadership

State, territory and local governments administer many areas of policy, programs, services, law and regulation that are partly or wholly relevant to the full participation of people with disability.

However, the Federal Government plays a vital role in bringing together all of those levels of government. It is able to provide the overarching vision for a new way of working. It is also responsible for ensuring Australia's compliance with its international law obligations, and so has a particular opportunity and responsibility to provide leadership in all areas of the implementation of the Disability Convention.

Recommendation 2

PIAC recommends that a key goal of the National Disability Strategy be achieving full compliance with the UN Convention on the Rights of Persons with a Disability, with priority given to achieving significant progress priorities agreed to in consultation with the disability sector.

PIAC is aware that many other organisations will be focusing on mechanisms to be included in the Strategy to achieve a goal of this nature and does not provide further comment at this stage.

Ensuring a pro-active, whole-of-government approach

The lives of people with disability and their capacity to fulfill their potential and contribute fully to all aspects of the life of the community are affected by all aspects of government action or omission. It is not enough to focus on those aspects of the Federal Government's work that specifically respond to the disability-specific needs of people with disability. It is necessary to consider all aspects of the Government's work and how it operates to ensure that people with disability are not explicitly or inadvertently prevented from participating.

This means including mechanisms in the Strategy to analyse the impact of all Government policies and programs in terms of their potential to result in barriers for people with disability seeking to take full advantage of that policy or program.

PIAC proposes as a starting point for such an analysis a test developed by the Canadian Supreme Court to test whether or not laws, policies, programs or standards are unlawfully discriminatory in respect of disability.¹ In order to utilise the Supreme Court's test, it is necessary to reframe it as a pro-active analysis tool.² PIAC proposes that the analysis to be applied should take in the following elements:³

1. What is the nature and purpose of the law, service or program being provided or delivered?
2. What are the policies and standards within that service or program generally designed to achieve?
3. Has consideration been given to how the delivery of the service or program, and its underlying policies and standards can promote or interfere with the equitable participation and opportunities for people with disability?
4. Do the policies or standards expressly require the program or service to be delivered in a manner that is fully inclusive?

PIAC has done only preliminary thinking on how this approach might be applied and is willing to work with the Federal Government to develop this idea further.

Recommendation 3

PIAC recommends that the National Disability Strategy include the development and ongoing use of a tool to analyse the impact of laws, policies and programs across governments on full participation of people with disability in all aspects of Australian life.

Ensuring the Strategy has priority and is seen as a whole-of-government approach, requires it to be located at the centre of Government, that is, within the Department of Prime Minister and Cabinet (PM&C). There should be a unit established within PM&C to oversee the further development and implementation of the Strategy, and to work, through the Council of Australian Governments (COAG) with state and territory governments.

¹ *British Columbia (Public Service Employee Relations Commission) v British Columbia Government and Service Employees' Union* (9 September 1999) File No 26274 (SCC); *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)* (16 December 1999) File No 26481 (SCC).

² In the form provided by the Supreme Court, the test was articulated to analyse a rule, term or condition that was being challenged as unlawfully discriminatory.

³ PIAC notes that this approach will need to be refined through testing against a range of laws and programs to ensure that it effectively identifies the elements of government activity that need to be reshaped to ensure full participation is encouraged.

Recommendation 4

PIAC recommends that the further development and implementation of the National Disability Strategy be a responsibility within the Department of Prime Minister and Cabinet with a specialist unit and the Parliamentary Secretary having direct responsibility to the Prime Minister.

Promoting participation of people with disabilities in government and leadership

PIAC urges the Federal Government to use the Strategy as a means of ensuring that people with disabilities are afforded the opportunity to become active partners in the way we govern rather than simply being consulted from time to time. This means the Strategy needs to include mechanisms for:

- developing much more effective recruitment and retention strategies in respect of people with disability across all areas of government;
- ensuring that government procurement practices promote the purchasing of facilities and equipment that are fully accessible;⁴
- promoting opportunities for people with disability to work within government through secondments and participation in mainstream government advisory bodies, rather than only being involved in disability specific issues;
- facilitating effective consultation with and input from people with disability and their representative bodies;
- promoting the development of leadership capacity among people with disability to support them not only to be leaders within the disability sector, but also in all areas of life.

To achieve this, the Federal Government will need to commit resources to a range of processes, most particularly to enable national consultative processes that are effective and inclusive.

Further, recognition must be given to the fact that often people with disability who have participated in national policy development processes in the past, such as the development of disability standards under the *Disability Discrimination Act 1992* (Cth) have done so in a voluntary capacity, taking time away from their paid work to contribute. Most others around the table in such processes are attending as part of their paid work. Wherever the special expertise and experience of people with disability is required in policy and law development, funding needs to be available to cover the costs of participation including travel, accommodation, support and actual sitting fees.

In relation to the promotion of leadership, PIAC endorses the submission of Leadership Plus.

Recommendation 5

PIAC recommends that the National Disability Strategy include a focus on ensuring people with disability can be partners with governments in achieving a fully inclusive and participatory Australian society, including strategies to improve employment opportunities within government, effective consultation mechanisms, and the promotion of people with disability as leaders.

⁴ See, for example, section 508 of the Rehabilitation Act that apply to procurement, etc, in respect of information and communications technology.

Mainstreaming effective regulation

In many areas, the approach by Government to ensuring inclusive practices has been to extract the disability specific issues from the main regulatory bodies and make them the responsibility of a specialist disability-focused or rights-focused body. For example, regulation of airlines access for people with disabilities is not dealt with expressly in the licensing and regulation of the airline industry. Nor is the regulation in relation to the provision of captioning of television broadcasts dealt with expressly in the licensing and regulation of television broadcasting. By way of comparison, PIAC understands that the proposed Disability Standard in respect of access to premises will become part of the overall national regulatory framework for building in Australia. PIAC believes that the effect of the separation of disability-specific regulation from mainstream regulatory activities is to make the disability-specific regulation a lower priority for industry participants and to make the achievement of compliance with the disability-specific regulation less straight forward. It also emphasizes the exclusion faced by people with disability.

By contrast, the Canadian Government has given responsibility in respect of disability access in public transport to the department with primary responsibility for public transport, the Canadian Transportation Agency (CTA). This enables issues of access and barriers to access and participation to be dealt with in the context of all-of-industry regulation. This benefits industry, the regulatory process and people with disability, as there is only one place to go to find out about rights and responsibilities in respect of public transport. It also enables the relevant disability and human rights bodies to provide independent and impartial input to the development and review of the effectiveness of policies and programs.

PIAC believes that the National Disability Strategy should look at mainstreaming regulation that is consistent with equality and human rights law and improving the capacity of mainstream complaints handling, licensing and compliance bodies to ensure regulatory requirements are met. Any shift should not result in a reduction in the rights of people with disability to seek and achieve an effective and personal remedy, nor in reduced access to effective complaints mechanisms.

Recommendation 6

PIAC recommends that the National Disability Strategy include a focus on shifting complaints handling, licensing and compliance activities that deal with disability-specific issues into appropriate mainstream government and regulatory bodies with retention of individual remedies and effective and accessible complaints mechanisms.

This focus will also require consideration to be given to how disability advocacy and human rights bodies can have effective input to those mainstream bodies and what role they may play as complainants or notifiers. PIAC has for some time been advocating for more effective mechanisms for dealing with systemic discrimination through the establishment of a right of standing for the Australian Human Rights Commission and for appropriate community advocacy bodies to bring and pursue complaints of systemic discrimination in respect of people with disability.

Recommendation 7

PIAC recommends that the National Disability Strategy include a focus on improvements to the legal system to enable more effective use of complaint mechanisms, whether human rights or disability specific or mainstream, by representative bodies. In particular, that the Australian Human Rights Commission and

appropriate community advocacy bodies have a right of standing to bring complaints in respect of systemic wrongs against people with disability.