

**INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE  
TRIBUNALS IN NSW**

**Organisation:** People With Disability

**Date received:** 25/11/2011

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NGO in Special Consultative Status with the  
Economic and Social Council of the United Nations

25 November 2011

The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Director:

### **Inquiry into Opportunities to Consolidate Tribunals in NSW**

People with Disability Australia (PWD) is pleased to have the opportunity to make the following submission to the Inquiry into Opportunities to Consolidate Tribunals in NSW. Our submission focuses on our concerns about the impact of consolidation on the human rights of people with disability, in particular the ability of people with disability to participate in Tribunal processes, to receive relevant and appropriate supports for their participation, to have effective representation and to be heard by Tribunal members who have specific knowledge and expertise of people with disability and the disability sector.

PWD is a peak cross-disability human rights organisation that has been providing representation, information, advocacy, training and complaints handling for almost 30 years. Our expertise and interest in the issues being canvassed by this Inquiry is based on our extensive work in individual and systemic advocacy.

Our Individual and Group Advocacy Service assists people with disability, their families and carers on a daily basis by providing information, advice, referral and short-term, issue based individual advocacy on a broad range of subject matters. This includes matters relating to the jurisdiction of Tribunals, the provision of legal services and access to the legal system generally.

Our systemic advocacy role covers local, national and international issues. It also encompasses representation on many government and non-government committees, and providing submissions to reviews and inquiries relating to human rights, legal, justice and disability issues.

In addressing the terms of reference, PWD would like to make the following comments:

- *Greater legal need and barriers to legal access:*

It is widely recognised that people with disability face significant barriers in accessing the legal system, yet are more likely to require legal services and redress. These issues have been canvassed in a number of NSW and Commonwealth Government inquiries and evidenced by research.

For example, in its 2003 report, *Access to Justice and Legal Needs, A project to identify the needs, pathways and barriers for disadvantaged people in NSW: Stage 1 Public Consultations*, the Law and Justice Foundation of NSW found that people with disability rank higher on indicators of legal need, including direct exclusion from law and justice on matters of importance; direct and indirect discrimination; ignorance of the processes and avenues for seeking a remedy; lack of communication skills and lack of access to appropriate advocacy and support services.

In its 2006 report, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, the Law and Justice Foundation of NSW found that people with disability or chronic illness have increased vulnerability in nine of the ten most common legal issues, including consumer related legal issues, credit and debt legal issues and employment related legal issues.

These factors are significant considerations for this Inquiry. PWD strongly argues that consolidation of Tribunals in NSW would result in greater disadvantage and discrimination for people with disability if key measures and safeguards are not guaranteed. We argue that any consolidation plans for Tribunals in NSW must explicitly include measures that protect human rights and enable access to justice, such as:

- recognition of the rights of people with disability contained in the UN Convention on the Rights of People with Disabilities (CRPD), and in particular the rights contained in CRPD Article 13, *Access to Justice*;
- formal recognition of measures that enable access, participation, representation and support for people with disability, including advocacy support for people with disability;
- enhancement of specialist skills, expertise and ongoing training for Tribunal members in working with people with disability and on key issues and concerns for people with disability and the disability sector;
- enhancement of measures that aim to make Tribunal processes informal and less legalistic, such as the inclusion of community representatives as part of a multi-disciplinary tribunal, conducting hearings in informal, non-Court settings, and not requiring the presence of lawyers.

However, even where these measures are guaranteed, PWD would be concerned about any erosion of these measures after a period of time. Examples of such erosion are evident in the experience of the absorption of the Victoria Guardianship and Administration Board into the Victorian Civil and Administrative Tribunal (VCAT), and the Western Australian Guardianship and Administration Board into the State Administrative Tribunal. These examples are discussed more fully in the next section.

- *Special divisions essential but not enough:*

PWD has serious concerns about the consolidation of NSW Tribunals that deal with matters specific to people with disability, namely the Guardianship Tribunal and the Mental Health Review Tribunal. Both these Tribunals deal with fundamental human rights issues for people with disability relating to autonomy, self-determination and liberty.

Clearly, it would be totally unacceptable for the jurisdiction of these Tribunals to breach the human and legal rights of, or fail to offer adequate protection for, the very vulnerable people whom the jurisdictions are intended to serve. It follows that any initiatives that might affect the operation of that jurisdiction, including consolidation of these Tribunals with others, demand the closest scrutiny. It also follows that such initiatives must adhere to the highest of human rights and legal standards if they are to prove adaptive to the demands of such an important and complex jurisdiction.

While PWD argues that any plans for consolidation of Tribunals in NSW must include 'special divisions' for specialist matters such as guardianship and mental health reviews, we also argue that this is not a sufficient measure to guarantee that the human and legal rights of people with disability will be protected. PWD argues that the deficiencies that currently exist in guardianship and mental health legislative and administrative arrangements negatively impact on people with disability, and these will not be addressed by merely establishing 'special divisions' within a consolidated Tribunal (PWD and Mental Health Coordinating Council joint submission to the NSW Standing Committee Inquiry into Substitute Decision-Making for People Lacking Capacity).

In addition, the Victorian and Western Australian experiences of Guardianship Tribunals being absorbed into generalist administrative tribunals provide evidence of the erosion of key measures and safeguards in this area (Victorian Law Reform Commission, Guardianship Consultation Paper, 2011; Western Australian Parliamentary Inquiry into the Administration of the State Administrative Tribunal 2009). This includes:

- Specialist membership of the Victorian tribunal diminished even where there was a specific division for guardianship matters;
- Three member multi-disciplinary tribunal moving to a single sitting member;
- Specialist expertise lost, with members hearing guardianship matters also hearing other civil matters, and some members not having sufficient knowledge of people with disability;
- The role of non-legal members diminished and more formal and court like processes used (presence of lawyers for parties other than the person with disability, using court rooms and choosing to sit behind a bench rather than across the table from parties);
- Less staffing support to prepare matters for hearing and to investigate matters prior to hearing;
- Principles of 'less restrictive' alternatives rarely adopted;
- Inadequate attendance and lack of representation for people with disability who are the subject of the proceedings.

PWD holds serious concerns about the impact of consolidation of Tribunals in NSW on people with disability. We urge the Standing Committee on Law and Justice to closely examine how consolidation opportunities will genuinely protect human rights and access to justice for people with disability.

Yours sincerely

**THERESE SANDS**

Executive Director, Leadership Team