

**PRODUCTIVITY COMMISSION**

**DISABILITY DISCRIMINATION ACT INQUIRY**

**SUBMISSION FROM THE  
ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION  
(ATSIC)**

**APRIL 2003**

## Introduction

The Aboriginal and Torres Strait Islander Commission (ATSIC) welcomes the opportunity to present this submission to the Productivity Commission (PC) for its Inquiry into the *Disability Discrimination Act 1992* (DDA). The submission has been prepared having regard to the “Call for submissions” and the “Issues Paper” prepared by PC to assist persons to present their views.

### *Background concerning ATSIC*

ATSIC was established by the *Aboriginal and Torres Strait Islander Act 1989* as the nationally representative organization of Aboriginal and Torres Strait Islander peoples. The ATSIC Board of Commissioners is elected from amongst the membership of Regional Councils in each of the ATSIC zones. The Board, which elects the Commission Chairman, comprises 18 people representing the major regional and cultural groupings across Australia. The 35 Regional Councils are integral to the work of the Commission although they are separate bodies corporate.

ATSIC’s key functions are to:

- develop policy proposals for consideration by government;
- assist, advise and cooperate with Aboriginal and Torres Strait Islander communities, organizations and individuals;
- monitor the effectiveness of programs for Aboriginal persons and Torres Strait Islanders;
- advocate Indigenous interests to all spheres of government, especially the Minister responsible for Aboriginal and Torres Strait Islander affairs; and
- formulate and implement programs for Aboriginal and Torres Strait Islander peoples.

In carrying out its role ATSIC has an obligation to articulate the views and aspirations of our communities and to uphold the values of our people, while recognizing that our future will be based on securing our rights.

### *Difficulties facing Indigenous people with disabilities*

ATSIC believes that there are specific difficulties faced by Aboriginal and Torres Strait Islander peoples with disabilities, as well as their families and carers. It considers that difficulties normally experienced by people with disabilities, including disability discrimination, are compounded in the case of Indigenous people with disabilities by various factors. These factors include, in particular:

- a lack of sensitivity and understanding of Indigenous culture by service providers;
- lack of understanding by urban support services and hospital, medical and nursing staff about the facilities and support available in Indigenous communities. For example, service providers may not fully appreciate that equipment such as wheel chairs may suffer increased wear and tear because of the terrain;
- limited influence on decisions affecting them (e.g. concerning better access to government services that suit their particular needs);
- insufficient government action to make Indigenous people with disabilities aware

- of their entitlements under law; and
- the socially disadvantageous position of Indigenous people (in terms of health, education, employment and infrastructure services) which detracts from their awareness of their rights and their capacity to assert them.

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The above views accord with the findings of the December 2000 Report of the Working Party established by the Commonwealth Government to advise on the establishment of a National Indigenous Disability Network. They also appear to harmonise with the statement at page 18 of the Issues Paper that “the DDA might have been less effective for people with disabilities who also suffer discrimination on other grounds, such as race, sex or age...”.

ATSIC believes that the DDA should respond fully to the needs of Indigenous people with disabilities, with its provisions being designed to ensure that Indigenous people with disabilities are able to exercise their rights (e.g. in terms of having access to culturally appropriate services). In this regard, it has identified certain provisions of the DDA which may need to be amended (as far as the Constitution allows). ATSIC strongly favours the amendment of state and territory statutes, in the context of Council of Australian Government processes, to close any legislative gaps which would prevent this purpose being achieved.

## **Discussion of possible amendments to the DDA**

A discussion on what provisions of the DDA may need to be amended in the interests of Indigenous people with disabilities is presented below.

### *1. Objects of the DDA*

While ATSIC considers that the objects of the DDA (at section 3) are of sufficient scope, it wants the section to specifically recognise the situation of Indigenous people with disabilities. It therefore proposes that section 3 of the DDA should include the specific aim of ensuring that Indigenous people with disabilities are fully able to exercise their rights, recognising that, in the case of Indigenous people, disadvantage associated with disability is compounded by highly adverse social conditions involving a range of negative factors concerned with matters such as health, education, employment and infrastructure services.

### *2. Definition of “disability”*

At section 4 of the DDA, “disability” is defined to include (among other things) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

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<sup>1</sup> An Interim National Indigenous Disability Network (I-NIDN) (comprising members of the Working Party) has responsibility for establishing a National Indigenous Disability Network (NIDN), with ATSIC (assisted by the Department of Family and Community Services) providing administrative and policy support. ATSIC has hired a consultant to consult with the Indigenous community on NIDN-related issues, with the outcome of the consultations to be considered by a national workshop on Indigenous disability issues scheduled for July 2003. Following the workshop ATSIC will prepare a report to relevant Ministers on the work of the I-NIDN, including recommendations for the NIDN's establishment.

Given that the adverse personal histories of many Indigenous people would strongly and understandably impact on their emotions, it may be appropriate to amend the definition of “disability” to make it clear that it includes past experiences and memories of them that affect an Indigenous person’s emotions. For example, in the case of an Indigenous persons separated from their parents in childhood, their emotions would be expected to be strongly affected by such a traumatic experience and memories of it. It would seem more appropriate to regard their emotions as being affected by the experience and memories of it rather than resulting from a “disorder, illness or disease”.

It may also be appropriate for the definition of disability to be amended to make it clear that disability includes a disorder, illness or disease including a disorder, illness or disease resulting from the misuse of alcohol, drugs or other substance.

### *3. Performance of functions under the DDA*

The DDA provides for certain functions to be performed by:

- the Minister, who, under section 31, is able to make disability standards on employment, education, accommodation and public transport for persons with disabilities;
- the Human Rights and Equal Opportunity Commission (HREOC), which under section 67 (for example) is able to:
  - monitor disability standards;
  - promote an understanding and acceptance of, and compliance with, the DDA;
  - the undertaking of research and educational programs on behalf of the Commonwealth for the purpose of promoting the objects of the DDA; and
  - to prepare and publish guidelines for the avoidance of discrimination on the ground of disability;
- the Disability Discrimination Commissioner, who, under Part 2, Division 4, of the DDA may undertake inquiries in response to a complaint; and
- service providers (e.g. a Commonwealth Department or public authority who provides goods and services or makes facilities available), which, under section 60, may prepare voluntary action plans providing for the devising of policies and programs to achieve the object of the Act.

The DDA should provide that the above persons, in exercising their functions, must do all things necessary to protect the rights of Indigenous people with disabilities, and in particular:

- in communicating with Indigenous people, take full account of their culture and language, making use of interpreters and liaison officers as appropriate;
- in undertaking research in relation to Indigenous people with disabilities, do so in a culturally sensitive manner; and
- have regard to the factors compounding the difficulties faced by Indigenous people with disabilities (referred to under **Introduction**).

#### *4. Disability standards*

Under section 31, the Minister (Attorney-General) may make disability standards in the areas of employment, education, public transport, accommodation, access to premises and administration of Commonwealth laws and programs. However, the Minister may not make disability standards concerning purchase of land, access to clubs, access to sport or access to goods and services, although the DDA makes it unlawful to discriminate in these areas.

In addition, disability standards are only enforceable through the complaints mechanism, with the DDA including no independent monitoring and enforcement arrangements.

ATSIC agrees with the view of the HREOC (referred to at page 24 of the Issues Paper) that there is no good reason for not allowing the Minister to make disability standards in all areas covered by the DDA. A particular advantage for Indigenous people in this approach is that it would allow standards to be made in relation to services provided to people with a disability, with such standards taking account of the needs of Indigenous people with disabilities.

ATSIC also favours the independent monitoring and enforcement of disability standards for reasons similar to those for favouring expanding the range of persons who may initiate a complaint under section 69. Given that ATSIC has an important role in monitoring the effectiveness of programs for Aboriginal persons and Torres Strait Islanders, there may be scope for the DDA to involve ATSIC in the monitoring the impact of disability standards (or the lack thereof) on Indigenous people with disabilities.

ATSIC is concerned that the DDA does not appear to require the Minister to undertake a process of public consultation in making disability standards, nor does it appear to specify matters to be taken into account in making standards.

ATSIC suggests that the DDA should require the Minister to produce draft disability standards for public consultation (involving a consultation period of at least 28 days), with a requirement that the draft standards be sent to certain persons or organisations with a particular interest in disability issues, including ATSIC where appropriate. The Minister would be required to take account of comments received in making final standards.

ATSIC also suggests that among the matters to be considered by the Minister in making standards should be the needs of Indigenous people with disabilities.

Similar comments (concerning consultation and matters for consideration) apply in relation to action plans able to be prepared by a service provider.

#### *5. Complaint procedures*

The DDA does not appear to provide for complaint procedures to reflect the needs of Indigenous people with disabilities. For example there is no provision for the procedures to be sensitive to Indigenous culture or to involve interpreters or liaison

officers. ATSIC strongly favours the DDA making provision for such matters, the absence of which could result in Indigenous people feeling too disempowered to make a complaint.

The restrictions on who may lodge a complaint under section 69 may also have an effect on the interests of Indigenous people. As the Issues Paper points out (at page 25), complaints may only be made by or on behalf of “a person aggrieved” (not by any interested party). ATSIC considers it would be desirable for organizations representing the interests of Indigenous people (including ATSIC itself) to be able to make a complaint on the basis of being an interested party, without having to do so on behalf of “a person aggrieved”. This would be useful in situations where an Indigenous person felt strongly about a disability discrimination issue, but did not want to become personally involved in the complaint process.

ATSIC agrees with the Issues Paper (at page 26) that making a complaint or going to court can be intimidating, particularly for many people with disabilities and that the problem can be compounded in the case of certain groups of people, including Indigenous Australians.

It also supports the HREOC being given the power to make a complaint of its own volition, given that the HREOC may no longer make determinations arising out of the complaint process. As the Issues paper points out (at page 26), the power of the HREOC to make complaints on this basis was removed when it still had the power to make determinations and because it was considered inappropriate for it to have both powers (i.e. to make complaints and to make determinations).

## **Conclusion**

ATSIC thanks the PC for the opportunity to make this submission and trusts that, in reporting on the Inquiry, it will address the matters which ATSIC has raised. ATSIC also takes this opportunity to signal its wish to be consulted in the development of any amending legislation concerned with disability discrimination to ensure that it fully responds to the needs of Indigenous people.

*Aboriginal and Torres Strait Islander Commission  
1 May 2003*