



PO Box 5198
Alphington Vic 3078
PH: 03 9411 4033
FAX: 03 9411 4053
E-mail: info@acenational.org.au
www.acenational.org.au

ACE National Network Submission to Review of the Disability Discrimination Act 1992 Draft Report – March 2004

1. Introduction

ACE National Network is the peak industry body representing agencies that provide open employment assistance to people with disabilities across Australia. ACE was formed in the early 1990s and has approximately 155 members across Australia. Members range from small stand alone employment services with one or two staff, to large multi faceted services with hundreds of staff.

ACE National members receive funding from the Department of Family & Community Services to deliver disability employment assistance across almost every region in every state and territory in the country. Services have in common the desire to see an effective and streamlined service system for people with disabilities wanting open employment opportunities and a fair system of contract management for service providers.

ACE National Network receives no Government grants and is primarily funded by member subscriptions. It is managed by a voluntary National Executive Committee comprising 12 representatives (2 from each state).

ACE National Network's key roles are to represent the views of members to government, provide information and resources, and provide an information-sharing forum for members. ACE National Network is routinely consulted on issues affecting service provision and invited to sit on government reference and working groups.

ACE welcomes the opportunity to comment on the Productivity Commission's preliminary report & categorically endorses the Commission's goal of strengthening the DDA in its ability to fulfil its anti-discrimination, equal opportunity & community education objectives while enhancing its net benefit to the Australian community as a whole. ACE agrees that the report card on the achievement of these DDA objectives has been mixed, taking note that in the area of its own operation –disability & employment –the Commission acknowledges unsatisfactory results: discrimination in employment appears not to have been significantly reduced nor greater opportunities for employment created for people with disabilities.

ACE was pleased to see that the Commission's terms of reference enabled it to look at alternative non-legislative measures that would promote the DDA's broader equity objectives as it is clear that rights-based legislation alone will never provide adequate solutions to the ongoing employment equity & access needs of people with disabilities:

"Often the only way to achieve equal outcomes is to provide disability services. This goes beyond the scope of anti-discrimination legislation.....Some people argue that equity of outcome requires enforceable rights to receive support, assistance or services required for effective participation..." (p.xxix & p20)

Disability discrimination & disadvantage involve an interrelated set of barriers (related to transport & mobility, public infrastructure, education, community attitudes, employment) that require a whole-of-government approach if an inclusive society that values equity, accessibility & full participation is to be built in this country. ACE, however, in this submission, will concentrate largely on the employment-related issues raised in the Commission's Report.

2. Legislative Changes

ACE supports any recommendations for changes that will strengthen & increase the effectiveness of the DDA:

2.1 Existing DDA Provisions & Processes

ACE member agencies work assisting a wide range of people with disabilities into employment. So it welcomes the call to widen & clarify the legislative definition of disability in the Act to ensure it covers genetic conditions, certain medically recognized symptoms, and behaviours directly related to disability.

ACE also supports the suggestions to amend & clarify the definitions of "direct" and "indirect" discrimination, to extend the "unjustifiable hardship" defence to all areas of DDA coverage (including post-enrolment education & the administration of Commonwealth laws & programs), and to tighten the exemption provisions (especially in relation to superannuation & insurance).

ACE strongly endorses the Commission's ideas about breaking down barriers for people with disabilities actually using the DDA & making the complaints process more accessible through setting fair criteria on when court costs would be awarded & allowing HREOC & disability organizations to initiate complaints in their own right in certain circumstances.

2.2 New Affirmative Action Provisions

ACE agrees that existing "soft" affirmative action provisions of the DDA have not been extremely effective in the area of employment.

The Standards process in the Employment area has got nowhere despite much initial effort in drawing up Draft Standards and embarking on widespread consultation. ACE would argue (see below) that maybe there are other ways to educate employers about the intricacies of successfully employing workers with disabilities.

Similarly the voluntary uptake of Disability Action plans has been largely disappointing except in the tertiary education, public service & local government areas. In the business world very few plans have been lodged with HREOC, with the major exception being large financial institutions & Telstra. Consequently ACE would support the Commission's notion of encouraging industry's through ACCI or their constituent industry associations to adopt industry-wide "codes of practice" concerning the benefits and practicalities of employing people with disabilities. The Banking Industry have already done so; there is no reason why

other industries cannot. This should be supported by Government funding too, perhaps through the formation –on the UK model- of an Employer Forum promoting “best practice” in this area. Indeed the UK Employers Forum of Disability sponsored & published an excellent document called *Solutions At Work: Practical Guides to Managing Disability*, which was tied to training packages available to companies on related issues (see next section). Presently, under the DDA, employers lodging Disability Action Plans with HREOC, are only required to address service-provision issues. ACE would support the expansion of this employer requirement to include employment policies & practices in line with better existing Action Plans.

Consequently ACE would also support the introduction of stronger affirmative action provisions into the Act along the lines of those suggested by the Commission, namely, the creation of a positive duty for employers to take reasonable steps to identify & work toward removal of barriers to the employment of workers with disabilities.

Like the Commission ACE does not support the notion of mandatory quotas as this has been seen in other parts of the world to be ineffective; though this does not mean that ACE would not support organizations introducing internal affirmative action policies with projected targets based on the proportion of people with a disability (ca. 15%) in the workforce. This after all is the ideal: workplaces reflecting the full diversity of our community.

ACE does not think any such duty should be restricted to large employers, as small businesses would be protected by the undue hardship provisions. Though perhaps, like under the Affirmative Action legislation for women, there could be requirements on large organizations (over 100 workers) to lodge Action Plans in HREOC or with Parliament –with a public naming process to reveal to the wider community who is and isn’t supporting the employment of people with disabilities. Perhaps compliance provisions could be tied to some innovative tax credit schemes.

ACE is supportive of the idea of spelling out what “reasonable steps” means in the context of such a new employer duty as this whole central core concept of EEO for workers with disability –the notion of “reasonable adjustment”- is not one greatly understood by employers and it is not really defined in the current DDA. Currently the Commission (p369-379, Box 13.3) have outlined 7 examples of “reasonable” affirmative action; we would suggest they add a couple more – consideration of job redesign or job creation, the use of the Supported Wage System for workers whose productive capacity is an issue and use of the Workplace Modification Scheme in situations where worker productivity could be increased by the provision of aids or equipment.

Indeed the Commission did not mention this last program, the Supported Wages System, at all in its Report when it is an excellent affirmative action initiative in the national industrial relations system that has open up doors to integrated mainstream employment for over 5,000 workers with more significant disabilities. ACE believes that this program needs to more widely marketed by Government as a viable alternative to segregated employment through Business Services (formerly better known as sheltered workshops). Furthermore ACE would like to correct the Commission’s suggestion (Ch 13, p385) that “business services” alone “assist people who are unlikely to be able to meet the ‘inherent requirements’ test for employment in the open market, and who would therefore fall outside the scope of the DDA employment provisions”. This is not the case at all as ACE’s constituents have been using the Supported Wages System since 1995 to place people with significant disabilities in jobs in the open labour market, the majority of which have been modified or re-designed in the spirit of affirmative action to suit the mutual needs of the employer and the worker with a disability.

To return the original point about reasonable adjustment, ACE condones the idea that employers should not be forced to make unnecessary adjustments just in case a worker with disability is employed. It should be on a case-by-case basis, which will vary with the individual, the job, and the business involved.

ACE can only see positive benefits to the business world, the wider community & people with disabilities by strengthening the DDA in these ways; not to mention reducing the ever-increasing welfare bill of the federal government.

3. Non-Legislative Measures

When discussing the creation of stronger DDA affirmative action provisions, the Commission rightly qualified its recommendation with the argument that this should be balanced by improved government programs to offset (at least partly) the costs of workplace adjustments.

ACE supports this argument as it believes that the whole thrust of the government's mutual obligation philosophy creates responsibilities for all stakeholders in the employment assistance universe: government, business, & community must all contribute to and share the costs of the wider goal of creating an inclusive society and economy.

The Commission has advised that it lacks information on the costs of workplace modifications.

Productivity and independence can be enhanced significantly through the provision of workplace modifications. Lowered independence often has an indirect effect on productivity in terms of other staff members' time - for example by having to assist someone to get a cup of coffee because they can't reach the hot water tap, or assistance to use the photocopier – negative effects on time use for both the person with a disability (who usually has to wait until assistance can be provided) and the staff that need to assist.

The reality is that the majority of people with disabilities do not need high levels of funds spent on such adjustments to commence employment and many do not require them at all. American research conducted by the Job Accommodation Network suggests that those requiring a workplace modification often need less than US \$500 per person. More recent Australian figures (from DFACS) on their Workplace Modifications scheme indicate that between 1998-2002 \$2.7 million was outlaid on 1096 people under this program at an average of \$2,200 per workplace modification (please note: FACS WMS statistics do not include figures for people with disabilities who are participating in traineeships, as this is funded elsewhere). However it should be kept in mind that the majority of people accessing this program had sensory (vision) or physical impairments; less than 5% of program-users had cognitive impairments and they make up nearly 50% of the people accessing disability employment services. In many situations, very simple and inexpensive modifications are the only things needed, and the figures stated by FACS do not reflect this, as most agencies will only apply for funds where the modification is expensive.

It is also not known how much employers contributed under this scheme per approved workplace modification; it is now a requirement that agencies applying for workplace modification funding must provide confirmation that they have discussed cost-sharing with employers in the spirit of the reasonable adjustment provisions of the DDA. Anecdotally, ACE has found a figure of anything under approx. \$200, sometimes up to \$500, will usually be paid for by the agency or employer, without using the WMS because

of the time and staff resources required to apply. ACE is also aware of situations where the employer has paid the full amount required for workplace modifications - \$6000 in one instance.

3.1 Government Responses

ACE agrees with the Commission that there are basically three inter-related policy approaches (along a spectrum of strong to weak intervention) that government can take in this area, and would argue strongly that for any serious impact to be made on unemployment and economic disadvantage for people with disabilities that the government needs to take action in all three areas:

3.1.1 Enforceable Rights Legislation –improved affirmative action provisions for people with disabilities (as outlined above in 2.2)

3.1.2 Services & Resources

The federal government already funds an Income Support system through Centrelink and a three-pronged employment assistance system for people with disabilities. ACE recognises that the Government has been increasing funding in recent years, but more funding is without a doubt needed to satisfy unmet needs amongst people with disabilities and employers

Currently people with disabilities can receive help to find and maintain employment through CRS Australia (run now by the Department of Health & Aged Care), Department of Family & Community Service-funded Disability Employment Services or through the Job Network (funded by the Department of Employment & Workplace Relations) which have also set up small national network of specialist disability employment agencies in addition to a wide chain of generic mainstream employment services. ACE has members in the last 2 categories and its members also have varying relationships & strategic alliances with CRS regional units around the country.

ACE believes however that there are inconsistencies in the Government's funding approach across this service delivery system that impact adversely on service quality to consumers of services and employers:

- (a) The Job Network has the capacity to provide a service to all that need one (including unemployed people with disabilities) whereas the DFACS Disability Employment Assistance program is subject to a budget cap. This means in effect that the Government is treating those disabled jobseekers who need additional support less favourably than non-disabled jobseekers who have an entitlement to an appropriate employment service. This fact also in part explains the Commission's startling revelation in its Draft Report that "only 3% of employed people with disabilities got their jobs" through "community-based disability employment agencies". Equally startling is the fact that only 9.7% of people receiving Centrelink's Disability Support Pension receive any income from employment. Clearly a large proportion of the one million-plus employed people with disabilities find work through the same means as any jobseeker, but a significant proportion will require specialist assistance –and a program with a capped budgetary capacity will never be able to address this problem. ACE would also argue that the Job Network, since its creation in 1996, has not been able to adequately service jobseekers with disabilities who make up a large minority of the long-term unemployed whose numbers have actually increased. Some argue that the ideal would be to "mainstream" employment services for people with disabilities, and this is the argument behind the recent injection of funds into Job Network disability specialists & DEWR's Disability Tool Kit project, i.e. the lessons learnt through the specialist wing of Job Network can then be passed on to the whole Network. The mission of servicing jobseekers with

disabilities through generic service delivery will only work if there is a concerted effort to hire & train skilled staff. This proved unsuccessful in the CES, which made various attempts in the 1980s and 1990s through various Disability Reform initiatives, and ACE believes that it would not work in the Job Network either as it consists of many more smaller agencies and is much more tightly funded under an largely outcome-based funding system that would not allow for or encourage the extra time & expertise required in providing quality pre-employment & and post-placement services to jobseekers with disabilities. ACE also feels that employers are increasingly confused and unimpressed with a service-delivery system that is divided across different Government portfolios and competing against each other. Disability Employment Services should be funded under one program & the budget cap should be removed to make the receipt of specialised disability employment assistance a right for those who need it.

- (b) The CRS Work Training Program very effectively assists people return to work but is only available to CRS clients –and not those accessing other government-funded disability employment programs. ACE feels this is an inequity that needs prompt addressing as currently this program is the only one that satisfactorily provides workers compensation coverage to employers as well as a training allowance for individuals under the scheme. Employers have long argued that effective work experience or work trial programs are what they want to open their doors and minds to employment opportunities for people with disabilities.

This leads directly to another aspect of the whole question of an integrated approach to disability employment service provision. Indeed a more integrated approach in program provision is one of the recommendations within DFACS own recent review of its Employer Incentives Strategy. This strategy has funded various schemes to assist employers such as Wage Subsidies, Workplace Modifications, Supported Wages & the Disability Recruitment Co-ordinators program. This DFACS review made 10 excellent suggestions for reform relating to improvements to the above-mentioned schemes as well as in the area of collaborative policy-making & program design, better marketing and service information provision to heighten employer awareness, and supporting industry ‘best practice’ initiatives.

ACE, in line with the Commission’s identification of the need for improved government programs, would argue that there is a strong need to develop & implement an integrated suite of employer initiatives. This could involve the following:

- Modelling an overall Employment Assistance Scheme (akin to the UK’s current “Access to Work” scheme) with the aim of providing all the advice and practical support a jobseeker/worker with a disability and their employers would need to help overcome work related obstacles resulting from disability & maximizing the chances of the employment being successful. So one Access program rather than a bundle that could cover a range of possible interventions-communication support at job IVs or on-the-job (eg interpreters, support workers), special equipment or workplace adaptations, help with travel costs, work-based personal assistance, assessment under a productivity-based wage system (like Supported Wages). In a sense this idea is an extension of what is now called the Jobseeker Account in the Job Network system –an additional pool of funding was introduced into what was originally designed as a purely outcome-based funding system as it was discovered that the most disadvantaged jobseekers were not getting a service. This Jobseeker Account idea essentially sees the re-introduction of several CES/Working Nation programs which were abandoned in 1996, namely fares assistance, minor assistance with work clothes, interpreter services, targeted pre-employment training courses or licenses. Similarly the latest designs of DFACS new funding system have re-introduced

additional payments to assist more disadvantaged consumers/services or at least compensate services who provide additional services to such clients. Any new integrated "Access to Work" program would need, of course, to be adequately funded – more along the lines of the very generous UK program than the current under-resourced Job Network Jobseeker Account

- Supplementing wage subsidies with a tax credit or rebate scheme (as in the USA). ACE is of the opinion that in the imminent case-based funding system, in which wage subsidies will be "cashed out", this is a real necessity. Wage Subsidy usage by agencies has been decreasing in recent years; and some would argue that this has partly stemmed from the realisation that "wage subsidy" programs can be stigmatising in that they perpetuate the traditional "deficit" ideas of disability, i.e. that people with a disability need to be subsidised to get a job & can't get one on their own merit. Others would argue that wage subsidy incentives could 'open doors' for more difficult to place jobseekers, however the reduction of wage subsidy utilisation comes as a direct response to the major reduction in the amount of subsidy currently available (reduced from \$3600 – \$7000 approx in 1995 to \$1500 in 2004).
- The creation of an Australia-wide phone and web-based disability employment information resource akin to, but broader, than the American Job Accommodation Network. This Network provides detailed case-studies and examples of work-based reasonable accommodations for all types of disability groups as well as phone-based advise services for employers. DFACS, in their above-mentioned report, also canvass this idea calling it a Disability Information Bank that targets information, advice & support to employers. This could be a collaborative research & implementation project involving ACE, Disability Works (the newly funded national Disability Recruitment Project) & ACCI –or similar organizations. This is a further elaboration of the one-stop-shop notion that employers have long been saying they want.

3.1.3 Education/Moral Suasion

This brings us now to the very important third area of necessary government policy response & action: community education and awareness-raising about the rights and needs of workers with disabilities, and the availability of services to assist employers and people with disabilities. It also ties in well with the Commission's own recommendations about promoting community recognition & acceptance and breaking down attitudinal barriers. Indeed the Commission highlights the education of employers as "a priority given the perceived continuing issues in workplace awareness and attitudes" (p162), and identifies 3 main areas where significant improvements could be made: research into specific priority areas, enhancing links & co-operation with other anti-discrimination & community organizations, and improving the targeting of its information provision through an expanded use of the internet and focusing on schools/students, employers and other groups with responsibilities under the DDA.

ACE agrees with these priorities and this focus. It supports the development of a DDA schools resource that would educate students at all levels about issues to do with disability & discrimination. It supports the Commission's call for more funding for HREOC to improve & build its already impressive web-site and undertake more research, especially in the area of employment discrimination & its alleviation. It also supports the idea of joint marketing initiatives on national television on the area of disability & employment discrimination & equal opportunity. This could be a targeted collaborative initiative with ACE, Diversity Works, DFACS, ACCI, the RCSA & the like combined with an information campaign to announce and explain changes to the affirmative action provisions of the DDA. This would make sense as it could then advertise the full gamut of services and programs available to assist employers meet their new legislative obligations while at the same time educating the wider community on these issues.

This consciousness-raising work ((along with widespread improvements to the accessibility to all aspects of public infrastructure that impact on the employment prospects & access of people with disability) is paramount for, as the Commission itself has pointed out: *"A significant expansion in these programs would be required to make substantial inroads into overall disability unemployment. Although funding of disability employment programs is likely to be a helpful complementary exercise, the problem of discrimination in the open labour market would remain"* (p. 364)

3.2 ***Employer Responses***

Employers, independently or with support from government and the disability employment industry, need also to be encouraged to embrace the concept of inclusive & flexible workplaces in which people with disabilities have a valued part to play.

ACE can see a number of ways this could be possible:

- The establishment of an Employer Forum (as previously canvassed)
- The funding of "Disability Officers" at Industry Peak Bodies –to develop "codes of practice" in the area of disability & employment (as previously mentioned)
- Participation in researching & setting up a National Disability & Employment Information/Advice bank (as previously discussed)
- A national marketing/education campaign designed with the help of, and directed at, employers (as previously discussed)
- Support from Industry peaks in developing & advocating specific "EEO/Affirmative Action for Workers with Disability" or "Disability Equity & Access" clauses that members could adopt or adapt for inclusion in Enterprise Bargaining Agreements or related workplaces policies (See Appendix—an example supplied by an interested ACE member)

Appendix to ACE National Network's Productivity Commission DDA Review submission

Draft EEO/Affirmative Action (Workers with a Disability) Model Clause

-this Version incorporates a short (or stage 1) and a long (or stage 2) model clause and has been influenced by the CFMEU Forestry Divisions model EBA clause and information on the Equal Opportunity for Women Agency's web site (see www.eowa.gov.au)

Equal Employment Opportunity and Affirmative Action -Workers with Disabilities

(Short version)

The parties agree to commit to the consultative development and implementation of an EEO/Affirmative Action strategy for workers with a disability.

The parties recognize that for many people with a disability the main barrier to equal opportunity, participation and performance is not the disability itself but some feature of the work situation (whether structural or attitudinal) which can be readily altered. The parties acknowledge that most workers with a disability will not require significant or costly adjustments

Accordingly it is agreed that if a person with a disability can perform the inherent requirements of the job with some alterations or adjustments then such alterations or adjustments will be made unless it is agreed by the parties that this will impose "unjustifiable hardship" on the company.

Equal Employment Opportunity and Affirmative Action -Workers with Disabilities

(Long version)

The parties agree to commit to the consultative development and implementation of an EEO/Affirmative Action strategy for workers with a disability.

This strategy shall involve a six step workplace program put in place in consultation with union representatives and employees with disabilities:

- Step 1: Prepare a workplace profile –include number and roles of employees with disabilities
- Step 2: Analyse the issues for workers with disabilities with reference to six key
Employment areas –recruitment & selection; promotion, transfer & termination; training & development; work organization; conditions of service; arrangements for dealing with disability-based harassment or discrimination complaints
- Step 3: Prioritise the issues
- Step 4: Take action to address priority issues
- Step 5: Evaluate the effectiveness of these actions
- Step 6: Summarise future actions

Throughout this process the parties shall recognize that for many people with a disability

the main barrier to equal opportunity, participation and performance is not the disability itself but some feature (structural or attitudinal) of the work situation which can be readily altered. The parties acknowledge that most workers with disabilities will not require significant or costly adjustments.

Accordingly it is agreed that if a person with a disability can perform the inherent requirements of the job with some alterations or adjustments then such alterations or adjustments shall be made unless it is agreed by the parties that this will impose “unjustifiable hardship” on the company.

Reasonable Adjustments

Types of reasonable adjustments required may include:

- *Changes to recruitment and selection procedures*; for example, eliminate any medical questions or entrance/aptitude tests which are not strictly justified by inherent job requirements; or ensure interview process caters to the access needs of all potential applicants
- *Changes to job design, work schedules or other practices*; for example, provide flexibility in leave arrangements or rostering for workers whose disability necessitates periodic treatment.
- *Modifications to workplace and/or special equipment*; for example, fit visual as well as audible fire alarms and provide accessible communications technologies/strategies for hearing-impaired or Deaf employees; make premises accessible to physically impaired employee; or contribute to purchase adaptive software/hardware for vision-impaired employees
- *Provision of training and other assistance*; for example, extend training time for workers with a learning disability and allow external support workers from specialist employment or disability services on-site if necessary for orientation and/or learning assistance; or facilitate appropriate disability awareness training for workplace colleagues, supervisors and managers.
- *Job development or “carving”*; for example, the creation of positions suited to workers with disabilities and necessary to the functioning of the organization by swapping job tasks and re-designing jobs.
- *Productivity-based wages*; for example, the use of the Supported Wage System to hire or retain workers whose disability impacts adversely on their productive capacity