

# Anti Discrimination Commission Queensland

24 March 2004

Ms Helen Owens  
Commissioner  
Productivity Commission  
Locked bag 2 Collins Street East  
MELBOURNE VIC 8003

Dear Ms Owens

I refer to my letter of 25 February 2004.

In my letter I raised the issue of the recommendation in the Draft Report that the Disability Standards displace the State anti-discrimination legislation.

It would appear to me that there are three possible models that could be considered by the Commonwealth Government and the respective State and Territory Governments in determining how the Standards could be dealt with by the State and Territory jurisdictions.

The first is the model proposed in the draft report, that the Commonwealth amend s13 of the DDA, and make it explicit that the Standards cover the field, and displace the general provisions of the State and Territory anti-discrimination laws.

The second is a model whereby the States and Territories agree to adopt the Standards as part of their respective anti-discrimination laws, most likely via the existing regulation powers contained in most State and Territory anti-discrimination laws, or by amending the relevant Acts to incorporate the Standards.

The third model is the approach of there being no legislative intervention into the operation of existing State or Territory laws, either at the Commonwealth or State level, and that the issue of the jurisdiction of the States to deal with a particular complaint that is clearly covered by the Standards, will depend on whether or not there is an operational inconsistency between the State anti-discrimination laws and the Standards. There is a persuasive argument that where an operational inconsistency occurs, the State Commission would lose jurisdiction to investigate or conciliate, as on those facts the DDA would prevail by virtue of s109 of the Constitution.

Having carefully considered each of the abovementioned models, the Anti-Discrimination Commission Queensland is of the view that either the second or third model should be the preferred approach, and would urge the Productivity Commission to recommend to the Commonwealth Government that either it work co-operatively with the State and Territory Governments to see if a similar uniform approach to the adoption of the Standards can be achieved across all the State and Territory jurisdictions, or that the relevant State entities examine each matter as it arises, to determine whether an operational inconsistency arises on the facts of that case.

There are a number of advantages of the adoption of models two or three over model one. The first is that co-operation between the Commonwealth, State and Territory Governments is highly desirable in Human Rights Law. Model two if adopted across all jurisdictions, will provide the same level of certainty to industry and to the disability sector as to what is required in situations where disability standards apply, as would occur in the model one approach. If model three was adopted, certainty is provided in that the matter is clearly covered by the Standard, as there is a highly persuasive argument that the Commonwealth only has jurisdiction to deal with the complaint.

The Anti Discrimination Commission Queensland suggests it is a regressive step to amend s13 of the DDA, where other alternative approaches could just as effectively achieve the same result. There is a great benefit from a human rights perspective, in the Commonwealth fostering and encouraging State and Territory Governments to implement in their own jurisdictions, human rights protections that are consistent with Australia's international obligations. This is undermined if amendments are made to s13 of the DDA.

Obviously, if model two is to be implemented, further discussion would need to occur between the Commonwealth and the States on an operational level on the detail of how complaints that are clearly covered by the Standard would be managed. The issue of the resources necessary for States and Territories to manage complaints in accordance with the Standard, would also need to be given consideration. Issues of consistency of approach and outcome to complaint management would need consideration among the issues that would require further discussion. The ADCQ believes that if necessary, these are issues that can be negotiated and managed, with a cooperative approach being adopted by the agencies concerned.

If you require any further information do not hesitate to contact me on (07)32470901.

Yours sincerely

**Susan Booth**  
**Anti-Discrimination Commissioner**  
**Queensland**

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