Submission on the *Disability Discrimination Act 1992*

to
The Productivity Commission

by
Anti-Discrimination Commission Queensland

22 May 2003

1. Introduction

The Anti-Discrimination Commission of Queensland (ADCQ) believes that the *Disability Discrimination Act 199*2 (DDA) has worked well in its ten years of operation. The Human Rights and Equal Opportunity Commission's publication *Don't judge what I can do by what you think I can't: Ten years of achievements using Australia's Disability Discrimination Act* provides an impressive description of what has been achieved.

We were initially concerned that the Productivity Commission review of the DDA may have been part of a plan to wind back the legislation. This concern was shared by many NGOs in Queensland and was compounded by the disturbing provisions of the *Australian Human Rights Commission Bill 2003* presently the subject of an inquiry by the Senate Legal and Constitutional Legislation Committee.

The ADCQ was therefore heartened by the Attorney-General's comments on this review, when he addressed the National Disability Advisory Council Celebratory Dinner for the Tenth Anniversary of the DDA in Canberra on 6 March this year:

> It seems that whenever a review of this kind is announced, people immediately assume that governments are planning to reduce funding or cut back on services. Let me assure you that this is not the case. The Government remains as strong and resolute as ever in its commitment to serving people with a disability and protecting them from discrimination. The simple purpose of the review is to assess whether the DDA is working effectively and meeting its objectives. If there is scope for reform or improvement, this needs to be identified.

In this submission, we address some of the questions posed by the Productivity Commission's inquiry issues paper as well as making some suggestions about how the DDA could be strengthened. Where we have made no suggestions about particular provisions, this should be interpreted as support for the status quo.

2. Competition and economic impact

The ADCQ is of the view that the public and private benefits of the DDA far outweigh the public and private costs. The United Nations Human Rights Commission outlines the four core values of human rights law which are of particular importance in the context of disability:

- the *dignity* of each individual, who is deemed to be of inestimable value because of his/her inherent self-worth, and not because s/he is economically or otherwise "useful";
- the concept of *autonomy* or self-determination, which is based on the presumption of a capacity for self-directed action and behaviour, and requires that the person be placed at the centre of all decisions affecting him/her;
- the inherent *equality* of all regardless of difference;
- and the ethic of *solidarity*, which requires society to sustain the freedom of the person with appropriate social supports.

In our view, the major benefit of legislation such as the DDA is its contribution to elevating not only the dignity of individuals but, perhaps more importantly, the quality of our society.

We agree with the view expressed, by distinguished academics, Professor Theresia Degener and Dr Gerard Quin, in their paper to an International Disability Law and Policy Symposium:

> Most progressive disability legislation has been marketed politically on the basis that it is a "productive factor" in market economies. In other words, such legislation contributes to more rational labour market decisions and greater overall economic activity. We strongly agree. But we also feel that such legislation acts as a "civilising factor" in any society that respects difference and aims to create societies that are truly open to all. (Professor Theresia Degener, Professor of Law, Administration and Organisation, University of Applied Sciences Rheinland-Westfalen-Lippe, Germany and Gerard Quin, Lecturer in Law, National University of Ireland, *A Survey of International, Comparative and Regional Disability Law Reform*, International Disability Law and Policy Symposium, 22-26 October, 2000, p. 66)

In any case, the ADCQ believes that the DDA does not significantly restrict competition in that:

- it does not impose substantial barriers to market entry. The "unjustifiable hardship" provisions ensure that financial and other relevant considerations are taken into account and there are many cases that go to this point (see section 17 of this submission)
- it applies to all businesses, regardless of size
- most complaints are resolved through a confidential conciliation process, in which case there is no damage to the reputation of businesses who may be respondents
- there is no evidence that businesses that have made adjustments to accommodate employees or consumers with disabilities have been

less competitive as a result. In fact, UK research suggest that the opposite has been the case in that country (see section 18 of this submission)

- many other countries with whom Australian business competes have adopted similar legislation or, if the current trend continues, are likely to do so.

3. Overlap of Commonwealth and Queensland legislation

The ADCQ does not regard the overlap between the DDA and the Queensland *Anti-Discrimination Act 1991* (ADA) as problematic or confusing. People choose between the two, often based on access issues such as the proximity of the relevant commission. People are prevented from making the same complaint under both acts (DDA sec 13(4)).

The Human Rights and Equal Opportunity Commission (HREOC) and the state and territory-based anti-discrimination commissions perform complementary roles. The ADCQ relies on the research and policy work done by the specialist units at HREOC. We do not have the resources to do this work and believe that it is important that it is done at the national level.

4. Omnibus legislation and identified portfolio commissioners

The ADCQ supports the retention of separate pieces of legislation (Sex, Race and Disability) rather than the development of omnibus legislation.

We recognise that the Commonwealth legislation has developed in this way because of the timing of the development of the relevant international instruments. However, the Commonwealth legislation has served Australia well and reflects the needs that have been identified both at the domestic and international levels.

The Commonwealth legislation has a high public recognition factor because it is individually titled. This is particularly important for many people with disabilities who may have less access to information than others. In state and territory anti-discrimination legislation, disability is just one ground amongst many – often more than a dozen.

Related to this issue is the one of the retention of the identified portfolio commissioner position -- the Disability Discrimination Commissioner. It is doubtful that these positions would be retained under omnibus Commonwealth legislation, particularly given the current proposals set out in the *Australian Human Rights Commission Bill 2003* to abolish the identified portfolio commissioner positions.

The vast majority of complaints of discrimination and harassment received by the various Australian state and territory anti-discrimination commissions reflect the identified portfolios in HREOC, again reinforcing the fact that the portfolios have not been created on an arbitrary basis but in response to the needs of the community.

The table in appendix 1 illustrates this point. It shows that in the state and territory jurisdictions in 2001-2, between 70 per cent (New South Wales) and 92 per cent (Western Australia) of complaints lodged were on grounds that fall broadly within the portfolios of the federal Sex, Race and Disability Commissioners. This is a clear indication that the various federal governments which created the identified portfolio commissioner positions, including that of the Disability Discrimination Commissioner, were not wrong in identifying the portfolios needed and that these remain the areas of need.

The Disability Discrimination Commissioner has provided an important focus for the work of HREOC. There would be no guarantees about how much of the Commission's resources would be allocated to advocacy and educational work in the disability area with generalist commissioners established under omnibus legislation.

The removal of the Disability Discrimination Commissioner position would reduce the possibility that any generalist commissioner would be a person with a disability or a person with the life experience that would provide him/her with an understanding of and sensitivity to the issues faced by people with disabilities.

Australia assisted in developing the United Nations' Principles Relating to the Status of National Institutions that set out international minimum standards for national human rights institutions (the Paris Principles, developed in October 1991 and endorsed by the General Assembly in 1993 – resolution 48/134). One of these principles is that national human rights institutions should have a "pluralist" representation (Composition and guarantees of independence and pluralism, point 1). In the view of the ADCQ, the establishment of the specialist portfolio commissioner positions has been a good way of ensuring such pluralism.

The seventh annual meeting of The Asia Pacific Forum of National Human Rights Institutions held in New Delhi in November, 2002, reaffirmed that the structure and responsibilities of national institutions should be consistent with the Paris Principles and, on this basis, admitted the national human rights institutions of Malaysia, the Republic of Korea and Thailand as full members of the Forum.

Recommendations:

That the Disability Discrimination Act be retained as a separate piece of legislation.

That the position of Disability Discrimination Commissioner be retained.

5. HREOC's education role

In the view of the ADCQ, HREOC has played as effective role as an educator and contributor to public policy as it could within the confines of its funding. We believe that these roles have not been hampered by the Act but by the huge budget cuts imposed on HREOC and by the Commonwealth Government's failure to fill the Disability Discrimination Commissioner position.

In our view, it is not sufficient for the Human Rights Commissioner to be also performing the Disability Discrimination Commissioner role.

Recommendations:

That the position of Disability Discrimination Commissioner be filled at the earliest opportunity.

That HREOC's budget be restored to at least pre-1997/98 levels.

6. HREOC's inquiry role

The ADCQ sees HREOC's inquiry role as very important and we support recent initiatives to transform individual complaints which involve broad public policy issues into open, consultative inquiries.

Although State and territory anti-discrimination commissions may have the power to conduct public inquiries, they are often not resourced to do this effectively. Nevertheless, the ADCQ is aware of this initiative on the part of HREOC and will be considering its application in the Queensland jurisdiction.

We recognise the scope of inquiries to achieve systemic change and to have an educational value which confidential individual complaints can never have.

Recommendation:

That the Disability Discrimination Commissioner be provided with the resources to conduct at least one significant public inquiry each year.

7. A positive duty to promote equality

The ADCQ would like to see the DDA adopt a focus on equality by including a requirement that employers, service providers and other relevant bodies have a general duty to ensure equality without discrimination for employees, consumers and others. Reasonable adjustment is just part of ensuring that all can participate.

This is a similar approach to that adopted in occupational health and safety legislation which imposes a duty of care on employers to provide a safe and healthy work environment.

The report of the Director-General of the International Labour Office (ILO) to the 2003 International Labour Conference noted:

> A growing number of countries have moved away from a legal approach exclusively based on the imposition of a negative duty not to discriminate to a broader one encompassing a positive duty to prevent discrimination and promote equality. While an anti-discrimination model based on prohibiting discriminatory practices has proven successful in eliminating the most blatant forms of discrimination, such as direct pay discrimination, it has encountered less success with the more subtle forms, such as occupational segregation. Moreover, its effectiveness in eliminating discrimination is heavily dependent on litigation and this prevents it from reaching those workers who are the most disadvantaged and vulnerable to discrimination. These workers tend not to make use of the law to have redress because of ignorance or fear of retaliation.. (*Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 2002 Report 1(B) p.60)

A focus on a positive duty to promote equality could be complemented by new legislation on employment equity programs for people with disabilities as outlined in the section 9.

Recommendation:

That the DDA include a positive duty for employers, service providers and other relevant bodies to promote equality without discrimination.

8. Employment equity programs

Arguably, the DDA has had limited success in the employment area. In an address to a conference in 2000, he Deputy Disability Discrimination Commissioner, Mr Graeme Innes, acknowledged this:

> There is no point then in hiding from the reality that we have less measurable outcomes in eliminating employment discrimination, or in achieving effectively equal employment opportunity, than in almost any other area of life. (Graeme Innes AM, *The elimination of disability discrimination in Australia*, Address to Physical Disability Council of Australia conference, 20 November 2000, p.9)

In HREOC's publication on ten year's of achievement under the DDA as mentioned earlier, the Commission makes the point that more complaints are received on employment issues than on any other area under the DDA and that a high proportion

of these are resolved through conciliation. However, there has not been much evidence that the DDA has improved employment opportunities for people with disabilities. The Commission notes that direct strategies to achieve equal employment opportunity are also necessary:

> The DDA cannot provide the whole of a strategy for achieving equal employment opportunity. In the context of current welfare reform discussions, many disability organisations have called for attention to the "other side" of mutual obligation: the obligation of government and community to do all they can to remove barriers which presently exist to people with disabilities taking advantage of opportunities and contributing more fully in the economic life of Australia. (Human Rights and Equal Opportunity Commission, *Don't judge what I can do by what you think I can't: Ten years of achievements using Australia's Disability Discrimination Act*, 2003, p.41)

In this vein, the ADCQ would like to see the Commonwealth Government adopting a more active approach to promoting the human rights of people with disabilities, similar to that enshrined in the *Equal Opportunity for Women in the Workplace Act 1999* and the various acts covering equal opportunity in the public sector.

Just as the *Sex Discrimination Act 1984* could not, on its own, achieve equal outcomes for women workers, neither can the DDA, on its own, achieve equal employment opportunity for workers with disabilities.

Apart from its power to develop standards and conduct inquiries, the DDA focuses largely on individual redress for current discriminatory treatment. It does not address the historical discrimination that has prevented many people with disabilities from gaining the qualifications, skills and experience that many employers require.

Employment equity programs for people with disabilities could be introduced gradually, with organisations first identifying systemic problems and barriers to equal opportunity for people with disabilities and then being required and assisted to develop, implement and evaluate action plans to promote equal opportunity for employees and potential employees.

A system of rewards and accreditation, such as EOWA's Employer of Choice Accreditation Scheme, could be established. According to the EOWA, the Employer of Choice citation "allows organisations to differentiate themselves from their competitors and achieve public acknowledgment of their efforts in the area of equal opportunity for women".

Random audits could also be used to check the veracity of employer's claims and to assess the business's compliance with the legislation.

This approach would encourage best practice and complement the existing avenues for individual redress provided by the DDA. Such an approach would also complement the DDA's requirement that employers accommodate people with disabilities where this does not impose an unjustifiable hardship on the employer.

Naturally an employment equity program for people with disabilities could not be established without additional resources. The program could be administered by an expanded HREOC or a new, purpose-built agency.

Canada has such an approach in its *Employment Equity Act 1995*. The purpose of this legislation is:

> To achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences. (Sec 2)

Under the Canadian legislation, it is an employer's duty to identify and eliminate employment barriers for the designated groups and to institute positive policies to ensure the designated groups improve their representation in the workforce. Employers must prepare, implement and monitor employment equity plans. The Canadian Human Rights Commission conducts audits to ensure compliance and can give employers directions aimed at remedying the non-compliance.

The United Kingdom has also recently adopted such an approach to racial equality. Amendments to the *Race Relations Act 1976*, which took effect in 2001, impose a positive duty on more than 43,000 public authorities (including schools and higher education authorities) to provide fair and equitable services and to improve equity in employment. Many authorities are required to prepare and publish a Race Equality Scheme.

In South Africa, the *Employment Equity Act of 1998* provides for affirmative action as:

> measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer. (article 15)

According to the 2003 ILO report mentioned above, studies have shown that equal opportunity measures (most probably for women) have positive effects on productivity:

> A recent study covering Australia and the United Kingdom showed that equal opportunity measures have no negative effect on productivity in either country, even among groups of enterprises where these policies are, in principle, compulsory. Among large enterprises, in particular, the effects on productivity were generally positive and statistically significant in both countries. This shows not only that it is feasible to have strong legislation making it compulsory for enterprises to adopt affirmative action measures, but also that enforcing this legislation carefully and encouraging enterprises to make a commitment to affirmative action measures may be a viable strategy. (p.66)

Recommendation:

That the Commonwealth Government begin a process of consultation to develop employment equity for people with disabilities legislation.

9. Objects of the DDA

The objects of the DDA are obviously aspirational, verbalising a desired community standard, as is appropriate for legislation of this kind. It is also obvious that the objects of the legislation have not yet been achieved but then ten years is a very short time to overcome centuries of prejudice and discrimination.

The ADCQ believes that it is both inappropriate and impractical to quantify the DDA's effectiveness in eliminating discrimination or promoting recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community. No doubt the DDA has played its part in the last ten years in effecting cultural change but it is not possible to ascribe such change totally to the DDA nor even to quantify the changes. Many other factors are at work, including state and territory anti-discrimination legislation, de-institutionalisation, educational changes, employment schemes and international developments.

It is, of course, possible to look at how many people have lodged complaints under the DDA and how effectively these complaints have been handled.

10. Complaints function

It is no doubt daunting for people with disabilities to lodge complaints with HREOC and to proceed to the Federal Court if their complaints are not resolved. In our view, the best way to ensure that people with disabilities are not prevented from seeking individual redress for discrimination is to provide substantial resourcing and recognition for the relevant advocacy groups.

In the experience of the ADCQ, disability advocates are very helpful during the conciliation process in assisting and supporting their clients to resolve their complaints. Without such advocates, the processes would often be much lengthier and therefore much more costly.

HREOCA (sec 46P(4)) requires the Human Rights and Equal Opportunity Commission to assist potential complainants where it appears to the Commission that a person wishes to make a complaint and requires assistance to formulate and write the complaint. This is an important provision particularly for many potential complainants with disabilities and, in our view, it should be retained and strengthened.

One way of providing further assistance would be to give HREOC the discretion and resources to provide assistance to people whose complaints have not been conciliated and who wish to proceed to the Federal Court.

Recommendation:

That resourcing be increased for disability advocacy groups to allow them to provide greater assistance to people with disabilities wishing to lodge complaints of discrimination.

That HREOC be resourced sufficiently to allow it to provide proper assistance to potential complainants requiring help in formulating and writing their complaints.

11. Who may complain

At present, the *Human Rights and Equal Opportunity Commission Act 1986* (HREOCA) does not allow for organisations to make complaints directly on behalf of aggrieved people.

The ADCQ suggests that HREOCA be amended to allow for organisations to lodge complaints. The ADA has recently been amended to allow a "relevant entity" to lodge complaints about vilification the grounds of race, religion, sexuality or gender identity. Likewise, the US Equal Employment Opportunity Commission allows organisations or agencies to lodge complaints on behalf of an aggrieved person.

In our view, the capacity for HREOC to initiate complaints should also be reinstituted. This would allow the Commission to direct its resources to matters of public importance or matters affecting a number of people. It would also allow HREOC to ensure settlements included systemic changes, where appropriate, as well as redress for individual complainants.

Recommendations:

That the DDA be amended to allow for organisations advocating for people with disabilities to lodge complaints of discrimination.

That the DDA be amended to allow HREOC to initiate complaints of discrimination.

12. Definition of disability

The DDA's definition of "disability" is deliberately broad to protect people from unfair discrimination, that is, discrimination on the basis of a personal characteristic

that is irrelevant to the matter at hand, such as whether the person can do a particular job or study at a particular institution.

The *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* was adopted by the United Nations General Assembly in 1993. The rules take a broad view of disability:

> The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature (Point 17).

It is not appropriate to compare the definition in the DDA with the definition used for other purposes, such as for social security. The latter assesses the degree of a person's disability whereas the DDA simply attempts to ensure that any unfair disability discrimination is covered.

In the same way, age discrimination provisions in various anti-discrimination acts attempt to ensure that people can make complaints if they are treated unfairly on the basis of their age, regardless of what their age actually is. The legislation does not limit coverage to those who are eligible for social security because of their age. The crucial matter is whether the person is treated less favourably than others because of an irrelevant characteristic.

Many people with disabilities do not qualify for a disability pension but they may, nevertheless, face unfair discrimination because of their disability.

In a paper to the International Disability Law and Policy Symposium in October 2000 mentioned earlier, Dr Aart Hendriks (Secretary of the program on health law evaluation, Health Research and Development Council, The Netherlands) discussed various approaches to defining disability. Dr Hendriks commented:

> …many people are being discriminated against because of prejudices or other value judgments about their physical, mental, sensory and psychological condition. These judgments, such as fear of contamination or disgust, may be unrelated to any actual loss in a person's ability to function and participate, but they are as disabling in their effect. (Dr Aart C. Hendriks, *Different Definition – Same Problems – One way Out?*, International Disability Law and Policy Symposium, 22-26 October, 2000, p..9)

Recommendation:

That the definition of disability in the DDA be retained or broadened.

13. Direct discrimination

It may clarify the meaning of the term "discrimination" (sec 5) if the following were added:

> 5(3) It is not necessary that the person who discriminates considers the treatment is less favourable.
>
> 5(4) The person's motive for discriminating is irrelevant.

In our experience, respondents to complaints of discrimination sometimes say they were not intending to damage the other person but rather were attempting to protect them. This is particularly the case with:

- sex discrimination ("I decided not to employ her because the others are all men and they're a bit rough")
- pregnancy discrimination ("I thought she might slip over and have a miscarriage")
- race discrimination ("The manager in that section is a real racist and would give an Aboriginal person a hard time")
- disability discrimination ("I told her that she should not enrol in our drama course because, with her disability, she would have no chance of getting employment in that field").

The amendments suggested would ensure that it was clear, rather than implied, that motive is irrelevant.

Recommendation:

That the DDA be amended to clarify the meaning of "discrimination" so that it is clear that the discriminator's motive is irrelevant.

14. Indirect discrimination

We suggest that sec 6(a) read "with which a higher proportion of persons with out the disability comply or are able to comply". This deletes the word "substantially" before "higher proportion" . This would ensure that no arguments arose about the meaning of the term "substantially".

It may also help to clarify the meaning of "indirect discrimination" if the following were added:

> 6(2) It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.

Recommendation:

That the word "substantially" be removed from section 6(a) of the DDA.

That section 6 of the DDA be amended to ensure that it is clear that it is not necessary that the discriminator is aware of the indirect discrimination.

15. Examples

Simple examples included in anti-discrimination legislation can help people understand the legislation. Conciliated complaints provide a rich source of possible examples. Examples could be included in the DDA to illuminate the following provisions:

- Sec 5 – Disability Discrimination
- Sec 6 – Indirect Disability Discrimination
- Sec11 – Unjustifiable hardship
- Sec 15(4) – Inherent requirements of particular employment
- Sec 30 – Requests for information
- Sec 42 – Victimisation
- Sec 44 -- Advertisements
- Sec 45 – Special measures
- Division 3 – Discrimination involving harassment.

Recommendation:

That plain English examples be included in the DDA.

16.Harassment

At present, the DDA's provisions on harassment apply only in the areas of employment, education and the provision of goods and services.

The DDA could be strengthened by prohibiting harassment in any area of activity. The Queensland ADA prohibits sexual harassment generally (chapter 3). People can make complaints about sexual harassment regardless of where it occurs, whereas complaints of discrimination can be lodged only if the discrimination occurred in specific areas such as employment or education

Recommendation:

That the harassment provisions in the DDA be broadened so that there is a general prohibition on harassment.

17.Unjustifiable hardship

Sec 11 of the DDA defines "unjustifiable hardship". Sec 5 of the Queensland ADA also sets out, in quite similar terms, the meaning of "unjustifiable hardship".

This concept has worked well under the Queensland legislation in that it has allowed the Anti-Discrimination Tribunal to take into account the financial and other circumstances of the respondent. Two matters clearly illustrate this point.

The first is *Cocks v State of Queensland (1994) QADT 3*.. This case concerned a very large government-owned convention and exhibition centre in Brisbane which was under construction. Mr Kevin Cocks, who has a mobility impairment, complained that the front entrance of the complex was not accessible because it was designed with steps alone. The Tribunal considered the question of "unjustifiable hardship" and decided that the provision of non-discriminatory access could not be said to cause unjustifiable hardship to the State of Queensland because, amongst other things, the cost of installing a lift was small in the context of a multi-million dollar project and the Government should be able to meet the cost.

The second matter was *Opinion re: Jane and Leroy Hutton (1999) QADT 19*. The Huttons proposed to build a small guesthouse and were having problems with the local government authority because of non-compliance with the disabled access and facilities requirement of the building code. The Anti-Discrimination Commissioner sought an opinion on whether the Huttons could rely on the unjustifiable hardship provisions of the ADA. The Tribunal considered the financial and other circumstances and advised that it would be sufficient to provide wheelchair accessibility to entry, living and dining rooms and one bedroom and bathroom rather than to the whole premises.

18.Reasonable adjustment

The concept of "reasonable adjustment" is widely used by anti-discrimination and equal opportunity practitioners but is not included in the DDA.

It may be useful to include the concept. Section 6 of the UK *Disability Discrimination Act 1995* is called "Duty of employer to make adjustments". This section provides examples of steps which an employer may take as follows:

(a) making adjustments to premises;
(b) allocating some of the disabled person's duties to another person;
(c) transferring him to fill an existing vacancy;
(d) altering his work hours;
(e) assigning him to a different place of work;
(f) allowing him to be absent during working hours for rehabilitation, assessment or treatment;
(g) giving him, or arranging for him to be given, training;
(h) acquiring or modifying equipment;
(i) modifying instructions or reference manuals;
(j) modifying procedures for assessment or testing;
(k) providing a reader or interpreter;
(l) providing supervision.

Studies in the UK have found that small businesses report that they have not had to make adjustments to accommodate most employees with disabilities and that, where adjustments have been made, most have found it easy to do so. (N. Meagher, P. Bates et al, *Impact on Small Business of Lowering the DDA Part11 Threshold*, Disability Rights Commission, 2001)

Another UK study on the costs and benefits to service providers of making reasonable adjustments found:

> The overall assessment of the vast majority of establishments which have made adjustments for disabled customers is that the associated benefits are greater than or equal to the costs. For all but three types of adjustment, fewer than ten per cent of establishments felt that costs had exceeded benefits. Even in the case of these three adjustments (Braille copies, induction loops and wheelchair access) it was a minority (a third or less) of establishments making these adjustments who reported that costs exceeded benefits. Moreover, in all three cases, a larger proportion reported that benefits exceeded costs than reported the opposite.
>
> Similarly, when asked to think about their original objectives in making the adjustments, a large majority of respondents, in the case of each type of adjustment, reported that the adjustment had been as effective as, or more effective than anticipated. The case studies generally confirmed establishments' positive assessments of the impact of adjustments in practice. (N. Meagher, S. Dewson et al, *Costs and benefits to service providers of making reasonable adjustments under Part 111 of the Disability Discrimination Act*, Department for Work and Pensions, Research Report 169, 2002)

The *Americans with Disabilities Act of 1990* makes similar provisions entitled "reasonable accommodation":

> Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

These definitions provide a starting point but would need broadening to include areas other than employment covered by the DDA.

In the view of the ADCQ, the concept of reasonable adjustment or accommodation could well be adapted and applied to all anti-discrimination legislation. In this way,

it would be acknowledged that all people are different and that reasonable accommodation is exactly that – reasonable. For example, a reasonable adjustment for a parent may be flexible start and finish times to accommodate childcare schedules. A reasonable adjustment for a person with particular religious convictions may be that they are not rostered to work on their Sabbath. A reasonable adjustment for a women working in a traditionally male area may be that uniforms or safety equipment be redesigned to fit her. At present, such adjustments are merely implied by the indirect discrimination provisions in anti-discrimination legislation.

Recommendation:

That the concept of "reasonable adjustment" be included in the DDA (and possibly in the *Sex Discrimination Act 1984* and the *Racial Discrimination Act 1975*) and that any list of potential adjustments be non-exhaustive.

19.Costs in the Federal Court

The ADCQ would like to see guarantees that, where people bring representative complaints or where there is a strong public interest component with no private benefit to the complainant, that no costs will be awarded in the Federal Court.

In this way, people with disabilities and advocacy organisations will not be deterred from using the complaints mechanism in an attempt to effect important changes.

Recommendation:

That a guarantee of no costs in the Federal Court be developed for people who bring representative complaints or complaints where there is a strong public interest component.

20. Conclusion

In conclusion, the ADCQ would like to see the DDA retained and strengthened, as well as complemented by employment equity legislation. It is important to have national legislation in this area not only to ensure the human rights of all Australians are protected, regardless of where they reside, but also to give effect to Australia's international legal obligations which are about to become more specific as regards people with disabilities.

We also want Australia's commitment to human rights to be more than rhetoric and capable of practical implementation through proper resourcing of HREOC.

APPENDIX 1

Complaints lodged with State and Territory anti-discrimination commissions, by ground 2001-02

GROUND	QLD	WA	NT	VIC	NSW	ACT	SA	TAS[i]
Sex	141	77	29	464	392	10	24	8
Breastfeeding	4		1	2		4		6
Family/carer responsibilities/status	29	29	9	164	67	10		20
Pregnancy	46	28	2	93		6	6	6
Marital status	59	29	16	70	24	8	7	3
Sexual harassment	168	80	3	409		19	7	4
Race	171	164	45	233	262	37	18	10
Racial vilification /harassment	23	11			55	5		
Impairment/disability /medical record	249	143	33	703	332	57	42	38
SUB-TOTAL	890	561	142	2138	1132	156	104	95
All other grounds[ii]	364	48	33	775	482	55	32	39
TOTAL	1254	609	175	2913	1614	211	136	134
% Complaints based on first 9 grounds	**71%**	**92%**	**81%**	**73%**	**70%**	**74%**	**76%**	**71%**

[i] Figures based on 2000/01 Annual report. Complaints based on single attribute only

[ii] Excludes complaints on the basis of association and victimisation complaints. Includes complaints based on age, sexuality, physical appearance, religion, trade union activity, political activity, criminal record, gender identity, transexuality, lawful sexual activity and profession. These grounds vary from state to state