



**SUBMISSION TO THE  
PRODUCTIVITY COMMISSION  
REVIEW OF THE  
*DISABILITY DISCRIMINATION ACT 1992***

**MAY 2003**

## Introduction

The Australian Council of Trade Unions (ACTU) is Australia's peak union body representing over 1.8 million working Australians.

ACTU Policy on Discrimination (Congress 1983 Decision) states in part:

*"There is no place in Australian society for discrimination on the basis of race, colour, sex, marital status, sexual orientation, age, religion, political opinion, physical appearance, physical or mental impairment, criminal record, national extraction or social origin. The Union Movement is committed to equality of opportunity and treatment in society generally and in employment and occupation in particular.*

*There is a need for effective national anti-discrimination legislation and machinery which recognises the right to equal opportunity and freedom from discrimination, which promotes community understanding of this right and encourages conduct consistent with this right, and which provides measures for the enforcement of the right by aggrieved individuals."*

The ACTU welcomes the opportunity to make a submission to the Inquiry. Our submission is focused on the Terms of Reference and those issues raised in Section 3.1: Employment, of the Commission's Issues Paper.

## Terms of Reference

The ACTU respects the reference to competition policy in the Review Terms of Reference. However, it is ACTU policy that equal employment opportunity legislation, such as the *Disability Discrimination Act 1992*, should be exempt from the National Competition Policy Review of Commonwealth legislation.

ACTU formal policy about National Competition Policy was adopted at its 1995 Congress. The policy states that the ACTU:

*"Resolves to encourage affiliates to campaign with community organisations and to seek commitments from governments that:*

*(v) The proposed review of all State and Commonwealth legislation and regulation will exempt legislation which is in the public interest, in such areas as environmental protection, industrial relations, health and safety, **equal employment opportunity** and consumer affairs;"*  
(emphasis added)

The *Disability Discrimination Act*, an example of equal employment opportunity legislation, is very definitely in the public interest.

The National Competition Policy Public Interest Test was meant to be, and needs to be, a recognition that there are some absolute standards around which our society operates.

In reviewing the anti-competitive impact of legislation the Public Interest Test must be the window through which the social utility of legislation can be viewed.

In a strict sense equal employment opportunity may be anti-competitive. However, the same could be said for all legislation which establishes standards by which our society operates. But as key planks of the human rights we enjoy as Australian citizens then it must be in the public interest that

equal employment opportunity legislation is allowed to operate to the fullest extent.

The Public Interest Test is at the heart of placing appropriate limits around the National Competition Policy.

It should be recalled that the then Assistant Treasurer George Gear made a number of undertakings in his 1995 Second Reading Speech on the Competition Policy Reform Bill, which gave expression to much of the boundaries that need to be placed on National Competition Policy through a rigorous Public Interest Test.

Mr Gear assured the Parliament that:

*“The package gives appropriate recognition, not only to competition and efficiency considerations, but to all the other policy objectives which governments must balance in making policy decisions, such as ecologically sustainable development, social welfare and equity considerations, community service obligations, and the interests of consumers.”*

We note that the Issues Paper states:

*“..., legislation that restricts competition can be worthwhile when there is no other way of achieving important social objectives, and the negative impacts on competition are more than offset by other social benefits.”*

Social Policy legislation is about creating a level playing field for all Australian citizens. The *Disability Discrimination Act* is about protecting the human rights of Australians with disabilities. The application of competition policy to the *Disability Discrimination Act* is not the focus of the ACTU.

### Section 3.1: Employment

Social policy legislation, in this occurrence, is about assisting people with disabilities achieve access to employment. Rather than looking at competition effects, a review of *Disability Discrimination Act* should be about ensuring that support exists to ensure the objectives of the *Disability Discrimination Act* are met in the employment area.

More complaints are received on employment issues than any other area under the *Disability Discrimination Act*. During 2001-02, the Commission received 452 complaints under the *Disability Discrimination Act*. More than half of the complaints related to alleged discrimination in employment<sup>1</sup>. It is one measure of the effectiveness of the *Disability Discrimination Act* that people with disabilities have been empowered by the Act and have used the machinery the Act provides to enforce their human rights.

Notwithstanding, discrimination in employment continues. The further development of Employment Standards is supported by the ACTU as a measure to further the effectiveness of the *Disability Discrimination Act*.

The ACTU participated in the consultations and negotiations, which occurred between 1995 to 1998, to develop draft employment standards. As HREOC has noted at the end of that process there was a lack of consensus on whether to proceed with regulatory standards or only with guidelines<sup>2</sup>.

The ACTU supports the development and implementation of Standards under the *Disability Discrimination Act*. Standards can help clarify the principles embodied in the Act. The ACTU stands ready to participate in future work to develop the Employment Standards, if the parties are willing to commit to regulations.

---

<sup>1</sup> HREOC Annual Report 2001-2002, Chapter 2 Complaint Handling Section, Disability Discrimination Act

<sup>2</sup> HREOC Don't judge what I can do by what you think I can't: Ten years of achievements using Australia's Disability Discrimination Act, page 11

It should be noted that many people with disabilities do not need adjustments to the workplace, many more only need small adjustments.

The *Disability Discrimination Act* needs to be supported by progress in all other areas which support access to employment, including public transport and importantly vocational education and training. The ACTU emphasises the importance of education and skill development opportunities being made available to workers with disabilities and for further action to overcome the continuing under-representation of people with disabilities in the VET system.

Training and skill development opportunities are the means of providing greater job security, wage rates and personal satisfaction to workers with disabilities. There needs to be a higher priority for the policies which will allow greater numbers of workers with disabilities to access skill development.

Particular attention needs to be given to the following:

- Provision of technology to assist learning and undertaking higher level tasks;
- Ensuring that workers can access education and training providers through suitable transport and inclusive learning environments;
- Providing appropriate incentives for employers to engage workers with disabilities in contracts of training as trainees and apprentices and allowing them to continue to engage with training throughout their working lives.

The ACTU supports the ANTA Australian Disability Training Advisory Council (ADTAC) “Whole of Life” initiative as an important method of approaching and addressing these issues.