

To the Productivity Commission DDA Inquiry

I notice HREOC, in its latest submission to the Productivity Commission Inquiry into the DDA, says:

One submission (s104) refers to the statement in the Productivity Commission's Issues Paper that "a lack of support services, such as funding for a particular therapy or device (such as a wheelchair), may prevent access to employment or education, effectively discriminating against a person with a disability" and appears to interpret this as meaning that, in contrast to advice provided by HREOC to the author, the Productivity Commission views the DDA as covering this situation.

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HREOC does not consider that in this respect the Productivity Commission is in fact presenting a different view from HREOC. HREOC's initial submission also indicates that gaps or limitations in support and services have discriminatory results, but notes that the DDA does not define all of these situations as involving unlawful discrimination. The limited implementation in Australian law of the rights of children with disabilities as recognised under the Convention on the Rights of the Child is not simply a matter of interpretation by HREOC, or of a lack of recognition of and agreement with the views presented in this submission regarding the importance of early intervention and support for children with autism, but a matter of the limited extent of the laws passed by the Parliament.

It seems to me when the Productivity Commission says "effectively discriminating against a person with a disability" they mean "effectively discriminating unlawfully against a person with a disability". My observation is that members of the community expect this is what is intended by the DDA though they may not appreciate the fine detail of the legal interpretation. My communication with HREOC indicates HREOC's view is that in such discrimination is lawful (not unlawful). These are distinctly different views, in fact opposite views.

It seems that people expect that the discrimination under discussion (including "a lack of support services, such as funding a particular therapy ...") is unlawful. While I am not completely sure of the above interpretation of the view of the Productivity Commission, the perception of people I have spoken with believe a health system that does not provide critical treatment and rehabilitation is "effectively discriminating against a person with a disability". And they believe such discrimination is unlawful. HREOC's contrary view seems quite clear ... HREOC says that such discrimination is lawful in its reading of the DDA.

This difference in views may be because the law is not sufficiently clear. Were the law clear, it would be easy to point out the precise pronouncement on these issues in the law. As this has not been done, I suggest there is an issue of interpretation.

My intention in pointing out the difference in views is to highlight the need for the DDA to be clarified so that the potential or need for interpretation is reduced. I do not expect I can influence HREOC's interpretation. While I am disappointed by HREOC's interpretation, I expect there is good reason for it. My intention is not to criticise HREOC or anyone else ... it is just to identify this difference in people's understanding of the law and to suggest the need for clearer law. It seems to me that the Productivity Commission could comment on the possibility of clarifying law in its report if it saw fit to do so.

In addition, I aim to point out the relevant part of the UN CROC that I hope would be addressed in any recommendation related to clarification of the law.

sincerely
Bob Buckley

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Bob Buckley bob@buckley.id.au "The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore all progress depends on the unreasonable man."
"Some men see things as they are and ask why. Others dream things that never were and ask why not."
George Bernard Shaw

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