

TO: Helen Owens
Presiding Commissioner
Public inquiry into the *Disability Discrimination Act 1992*
Productivity Commission
Melbourne VIC 8003
(Email: dda@pc.gov.au)

FROM: Val Pawagi
ACT

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WHAT THIS SUBMISSION IS ABOUT:

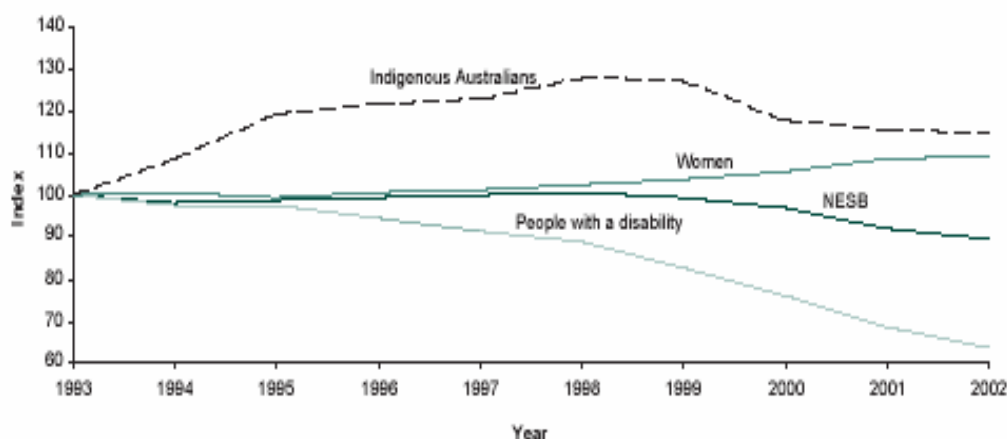
THE EMPLOYMENT OF PEOPLE WITH DISABILITY IN THE
AUSTRALIAN PUBLIC SERVICE (APS)

- **Employment Statistics** – Downward trend in the representation of people with disability in the APS
- **Analysis of the Issues** – Public sector reforms, unconscious discrimination
- **Proposed Solution** – Job creation and retention

EMPLOYMENT STATISTICS

1. There has been a consistent decline in the employment of people with disability in the Australian Public Service (APS) in terms of both numbers and proportion. The representation of this group in the APS has fallen from 8,036 (5.9%) in June 1989 to 4,243 (4.2%) in June 1999 to 4,056 (3.6%) in June 2002. This downward trend has been particularly marked since 1995 (see Figure 1 below from the *APS Statistical Bulletin 2001-2002*, page 71).

Figure 1: Change in population, weighted and indexed, for equal employment opportunity groups, 30 June 1993 to 30 June 2002



2. Among the group of people with disability in ongoing employment in the APS at 30 June 2002: 55% were male; 78% were employed at the APS 1 – 6 levels, with the highest proportion at the APS 4 level (27%), now the main source of base grade recruitment; and 86% had five or more years length of service, with 63% with a length of service of 10 to 29 years inclusive. This compares with 48% of men, 77% at APS 1 – 6 levels and 63.5% with a length of service of five or more years, respectively, for all APS staff.¹ These figures indicate that there is an issue with the recruitment and appointment of people with disability to the APS.

ANALYSIS OF THE ISSUES

3. The decrease in the representation of people with disability in the APS chiefly stems from structural reforms to the public sector. Consistent with the push to give individual agencies maximum flexibility to establish their own recruitment programs and to use centralised base-grade recruitment programs, there is now *no* specific reference in the *Public Service Act 1999* to the Intellectual Disability Access Program (IDAP), established in 1992, for the recruitment of people with intellectual disability.² There is an expectation that individual agencies will continue to use the IDAP guidelines as the basis for recruitment of, and support for, people with intellectual disability. This change, however, marks the end of the legal right of this group to employment in the APS.
4. The far greater devolution of responsibility to individual agencies has also meant that the meeting of disability-related employment costs rests with the employing agency, if not the individual branch or section. Not all areas within the APS have the capacity to meet such costs.
5. This change has been compounded by the introduction of outcomes-based budgeting (tighter financial controls and a greater focus on performance and

¹ APS Statistical Bulletin 2001-2002.

² Section 33(4)(b) of the former *Public Service Act 1922* permitted the declaration of approved programs under regulation to encourage the appointment to the APS of people with intellectual disability. The regulations approved the IDAP for the recruitment of people with intellectual disability: see PSMPC (1999) *Public Service Act 1999 Advice No. 3: Special employment measures*, 17 November 1999.

accountability). Among managers, paying for disability-related employment expenses could be seen as a financial liability and not a good investment. This would be particularly so where there are competing demands for resources and pressures to deliver on outcomes.

6. The other impact of these two developments is that it restricts intra and inter-agency mobility of some staff with disability. Their transfer or promotion is dependent upon the employing area accepting financial responsibility for meeting the costs associated with their disability.
7. Another factor contributing to the decline of people with disability in the APS is the introduction of multi-skilling, resulting in fewer positions at the lower classification levels³ where a large proportion of people with disability are and were employed.
8. These factors have created disincentive effects to employ people with disability. This has contributed to a workplace culture within the APS that is reluctant to employ them and reduces the fairness with which they are treated. This practice constitutes discrimination.
9. Interestingly and significantly, the United Nations has found that, in most countries, discrimination against people with disability takes the form of *unconscious discrimination*, including the creation and maintenance of barriers preventing them from enjoying full economic participation.⁴ Assuming this observation also applies to Australia, the APS would be largely unaware that its present employment practices have the potential to discriminate against people with disability. To this end, it becomes very difficult for people with disability to secure employment even though employment decisions are required to be made on the basis of merit.
10. The issues highlighted above persist in spite of numerous measures favouring the employment of people with disability in the APS:
 - the *Public Service Act 1999*, which explicitly recognises that employees must be provided with a fair work environment, with employment decisions made on the basis of merit;
 - the *Disability Discrimination Act 1992* (DDA). The DDA prohibits discrimination: in employment; against commission agents; against contract workers; by partnerships consisting of three or more partners; by

³ For instance, in 1975, the proportion of people employed at APS 1 and 2 levels accounted for half of all ongoing employment in the APS. The proportion fell slowly until the mid 1980's and then fell more quickly throughout the 1990's before leveling out to around 7 per cent at June 2002 (APS Statistical Bulletin 2001-2002).

⁴ Cibinel, A. and Kiwanuka, J. (1998) "*Human Rights and Disabled People*", paper presented at the United Nations Human Rights Vienna +5 Conference, Ottawa, June 1998.

qualifying bodies; by unions and employer organisations registered under the *Workplace Relations Act 1996*; and by employment agencies⁵;

- the *Commonwealth Disability Strategy*, which is a strategic framework for inclusion and participation by people with disability in Commonwealth Government policies, programs and services.⁶ Central to the Strategy is the core role of APS agencies as employer. Performance requirements of the employer role include: employment policies, procedures and practices comply with the requirements of the DDA; recruitment information for potential job applicants is available in accessible formats on request; agency recruiters apply the principle of reasonable adjustment; training and development programs consider the needs of staff with disability; training and development programs include information on disability issues as they relate to the content of the program; and complaints/grievance mechanisms, including access to external mechanisms, in place to address issues and concerns raised by staff;
- the replacement of the APS-wide *Equal Employment Opportunity Program* with the *Workplace Diversity Program* in 1998.⁷ Workplace diversity is inclusive of all individuals, including EEO groups. It is presented as a business issue and management responsibility as well as a social or political imperative. Once the talk was mainly of social justice and equality, now it is of efficient business practices. Adoption of strategies more attuned to the business case for workplace diversity is considered as an effective way to achieve EEO goals. The object of workplace diversity therefore is to ensure that the APS makes the fullest possible use of the diverse backgrounds and skills of all employees through flexible employment practices and to utilise these differences in ways that serve to enhance the performance of the APS.
- far greater flexibility in the way APS agencies organise and manage their work (including greater access to *part-time and home-based work*);
- advances in *assistive technology* for people with disability (e.g. voice recognition computer software);

⁵ Part 2 – Prohibition of disability discrimination, Division 1 – Discrimination in work, sections 15, 16, 17, 18, 19, 20 and 21, respectively.

⁶ The Strategy – which was first developed in 1994 in response to the DDA and revised in 2000 – is about supporting equity of access to all mainstream Commonwealth policies, programs and services to ensure that people with disability are empowered to achieve economic and social participation. The Strategy is intended to provide written guidance for APS agencies to remove barriers which prevent people with disability from accessing their policies, programs and services.

⁷ In February 1998, the Public Service Commissioner repealed the previous EEO guidelines and issued to all APS agencies the new workplace diversity guidelines. In April 1998, the then Public Service and Merit Protection Commission (PSMPC) (now the Australian Public Service Commission) issued to all APS agencies a “Workplace Diversity Practitioners Handbook”.

- the availability and provision of *reasonable adjustment*. Reasonable adjustment is any form of assistance or adjustment that is necessary and reasonable to counter the effects of an employee's disability in the workplace. It is intended as a means of bringing people with disability to the point at which they can compete against others without the disadvantage effects of the disability, i.e. to compete on their merits and to perform effectively in the workplace.
 - the *Workplace Modifications Scheme*. The Scheme helps with the cost of leasing, hiring or buying workplace modifications or adaptive equipment. Up to \$5,000 is available to reimburse the cost of modifications. Reimbursement may be made to the employer, employee, employee's advocate or a disability employment service. To be eligible, the prospective employee must be receiving assistance from a disability employment service or a Job Network Intensive Assistance service provider⁸. Worksite assessments are carried out by CRS Australia⁹ and the cost of approved worksite assessments are covered by the Department of Family and Community Services (FaCS);
 - *Disability Recruitment Coordinator* services, which assist employers and disability employment services to place people with disability into employment. They provide a single contact point for large organisations to recruit people with disability;
 - the *Disability Employment Assistance Program*. The Program is part of the Commonwealth's general labour market assistance and support programs and is currently provided by non-government organisations and CRS Australia. Service providers offer specialist employment assistance to people with disability that is likely to be permanent and results in the need for ongoing support.
11. The downward trend in the representation of people with disability in the APS suggests that the above rights-based (laws) and incentives-based (voluntary action) measures have a minor impact on securing and retaining their employment in the APS. This downward trend therefore is likely to continue unless an APS-wide approach is adopted to redress the issues raised.

PROPOSED SOLUTION

⁸ The Job Network is the national network of private, community and government agencies funded by the Department of Employment, Workplace Relations and Small Business (DEWRSB) that specialise in employment assistance to people of working age receiving income support. The Job Network provides three tiers of employment assistance: Job Matching, Job Search Training & Intensive Assistance.

⁹ CRS Australia provides vocational rehabilitation services to people who have an injury or disability to obtain employment or return to their job.

12. It is critical that the Australian Public Service Commission in consultation with the Human Rights and Equal Opportunity Commission (HREOC) and FaCS takes the lead in demonstrating to other employment sectors, the welfare sector and the wider community their commitment to the employment of people with disability.
13. People with disability might be better helped to securing and retaining employment in the APS through the adoption of an obligations-based approach in the form of a mandatory employment quota enshrined in the *Public Service Act 1999*. This would ensure that individual agencies are legally bound to employ a certain proportion of people with disability.
 - This approach is adopted in more than one-third of the Organisation for Economic Cooperation and Development (OECD) countries, ranging from 2% of the total workforce in Korea and Spain to 7% in Italy.¹⁰
14. The OECD in its *Transforming Disability into Ability: Policies to Promote Work and Income Security for Disabled People* report concluded that the most effective quota scheme is one which: is enshrined in legislation; covers both new job applicants and current employees; and has legislated sanctions and instruments to enforce those sanctions where an employer does not comply with their obligations.¹¹ Sweden has a quota scheme which fulfils these criteria.

¹⁰ See OECD (2003) *Transforming Disability into Ability: Policies to Promote Work and Income Security for Disabled People*, OECD, France, pp. 104-107.

¹¹ Ibid, p.107.