

**SUBMISSION BY THE  
WESTERN AUSTRALIAN EQUAL OPPORTUNITY  
COMMISSION  
IN RESPONSE TO THE  
INQUIRY INTO THE *DISABILITY DISCRIMINATION ACT 1992***

**INTRODUCTION**

The Western Australian Equal Opportunity Commission is committed to meeting Australia's international obligations relating to human rights and equality issues. Accordingly, we welcome the opportunity to make a submission in response to the Productivity Commission's Inquiry into the *Disability Discrimination Act 1992*.

**WESTERN AUSTRALIAN LEGISLATION**

Long before the Commonwealth legislation was introduced, Western Australians have had access to impairment discrimination provisions that were incorporated in the *Equal Opportunity Act 1984* (EOA) in 1988. The aim of the EOA is:

*"to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age, or involving sexual or racial harassment or, in certain cases, on gender history grounds".*

The Objects of the EOA are:

- "(a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;*
- (b) to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation;*
- (c) to promote recognition and acceptance within the community of the equality of men and women; and*
- (d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or ages."*

Part IBA of the EOA makes discrimination on the ground of impairment unlawful in work; education; access to places and vehicles; accommodation; clubs and incorporated associations; sport; application forms; and superannuation and provident funds.

## **COMMONWEALTH LEGISLATION: *DISABILITY DISCRIMINATION ACT 1992***

The *Disability Discrimination Act 1992* (DDA) was passed by the Federal Parliament on 15 October 1992 and came into effect on 1 March 1993. The DDA makes discrimination against people with a disability unlawful in the area of employment; education; access to premises used by the public; provision of goods, services and facilities; accommodation; buying or selling of land; activities of clubs; sport; and the administration of Commonwealth Government laws and programs.

### **Objects of the DDA**

The objects of the DDA are:

- “c to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:*
  - i. work, accommodation, education, access to premises, clubs and sport; and*
  - ii. the provision of goods, facilities, services and land; and*
  - iii. existing laws; and*
  - iv. the administration of Commonwealth laws and programs; and*
- d to ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as the rest of the community; and*
- e to promote recognition and acceptance within the community of the principle that people with disabilities have the same fundamental rights as the rest of the community.”*

It is suggested the object “equality” be promoted to gain recognition and acceptance, as follows:

*“to promote recognition and acceptance within the community of the principle of equality of people with disability to have the same fundamental rights as the rest of the community”*

### **Effectiveness In Achieving Objectives**

The HREOC recently jointly celebrated the first 10 years of the DDA in Perth on 1 March 2003. At this forum HREOC launched the release of its 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* which illustrated the achievements during the first 10 years of operation of the DDA. The forum was attended by more than sixty participants and co-hosted by the EOC and the Town of Vincent. In its publication HREOC stated:

“ There is no doubt there have been many achievements.

- Thousands of disability discrimination complaints have been dealt with.
- Standards for accessible public transport have been adopted and already widely implemented.
- Telecommunications access has improved for deaf people and other people with disabilities.
- Negotiations on standards for improved access to buildings and education are in the final stages, and there are many practical instances of improved access in these areas.
- Captioning of television programs has increased, with further increases being negotiated.
- There has been widespread adoption by the banking and financial service industry of standards for disability access to ATMs, internet banking, EFTPOS and phone banking.

- Hundreds of service providers, particularly local governments and universities, have developed voluntary action plans for improved disability access” (p. 4).

### **Definitional Issues**

The DDA broadly defines disability to ensure that it covers all potential sources of discrimination and makes it unlawful to discriminate on the ground of disability in many areas. Nationally, there are other definitions of disability (e.g. Disability Services Act, Social Security Act, National Privacy Health Code).

When handling disability related complaints, the focus is whether or not discrimination has occurred, instead of determining if the complainant has a disability or not. However, in some instances complainants have to provide evidence to demonstrate that they have the disability stated (e.g. Chronic Fatigue Syndrome)

It would appear that the current DDA definition of disability works because of its broad definition.

### **Competition and Economic Effects**

The terms of reference outline the scope of the inquiry. Section 2 of the terms of reference outline the social impacts in terms of costs and benefits that the DDA has had.

It is often difficult to review the effectiveness of social justice issues, such as disability discrimination, by measuring the costs and benefits as the benefits achieved over the last ten years far outweigh its costs. The benefits gained during the past decade have enabled people with disability to achieve improved access to goods and services provided to the community as well as participate in all areas of public life (such as, education, employment, accommodation). In fact, with the increasing number of disability complaints that have been successfully resolved during this period, the benefits gained by the community are immeasurable.

Conversely, Australia’s first-ever research into employers who have employed people with disability (Graffam, Smith, Shinkfield and Polzin, 2001) found:

- employees with disability were much more economical (cost less/benefit more); and
- from the perspective of most employers, there were far more benefits associated with employing a person with a disability than costs.

## **ENQUIRIES**

From 1993/94 to 2002/03, the EOC has continuously received enquiries from individuals seeking information about disability discrimination. These enquirers are provided with information about both the EOA and the DDA. Table 1 provides details of all impairment enquiries received from the Commission during the last decade.

Table 1: Disability/Impairment enquiries received by the EOC from 1993/94 to 2002/03

| <b>Year</b> | <b>Number of impairment enquiries</b> | <b>Number of other grounds</b> | <b>Total number of enquiries</b> | <b>Percentage of impairment enquiries</b> |
|-------------|---------------------------------------|--------------------------------|----------------------------------|---|
| 1993/94     | 691                                   | 7737                           | 8428                             | 8   |
| 1994/95     | 683                                   | 7928                           | 8611                             | 8   |
| 1995/96     | 624                                   | 8268                           | 8892                             | 7   |
| 1996/97     | 718                                   | 7578                           | 8296                             | 9   |
| 1997/98     | 596                                   | 6417                           | 7013                             | 8   |
| 1998/99     | 670                                   | 6523                           | 7193                             | 9   |
| 1999/00     | 615                                   | 5824                           | 6439                             | 10  |
| 2000/01     | 701                                   | 5556                           | 6257                             | 11  |
| 2001/02     | 606                                   | 6162                           | 6768                             | 9   |
| 2002/03     | 648                                   | 4293                           | 4941                             | 13  |

In some particular cases, these enquirers are referred directly to HREOC as their enquiries relate specifically to the DDA. Table 2 below provides details of the number of disability enquiries referred directly to HREOC as the enquiries specifically related to the DDA.

Table 2: Number of DDA disability enquiries referred directly to HREOC, 1993/94 to 2002/03

| <b>Year</b>  | <b>Number</b> |
|--------------|---------------|
| 1993/94      | 13            |
| 1994/95      | 4             |
| 1995/96      | 12            |
| 1996/97      | 4             |
| 1997/98      | 5             |
| 1998/99      | 8             |
| 1999/00      | 7             |
| 2000/01      | 12            |
| 2001/02      | 3             |
| 2002/03      | 4             |
| <b>Total</b> | <b>72</b>     |

## COMPLAINTS

In Western Australia complaints of impairment discrimination have increased from 143 in 2001/2002 to 174 in 2002/2003. The 18.8% increase in complaints on the ground of impairment by 31 complaints has resulted in impairment overtaking race as the most common alleged ground of unlawful discrimination.

From 1993/94 to 2002/03, the Commission has handled impairment complaints in relation to the EOA. During the last ten years, the number of complaints on the ground of impairment has risen from 57 (12%) in 1993/94 to 174 (27%) in 2002/03 – an increase of 67.2%. Refer to Table 3 for details of these impairment complaints.

Table 3: Disability Complaints in relation to the EOA received by the EOC from 1993/94 to 2002/03

| Year    | Number of impairment complaints | Number of other grounds | Total number of complaints | Percentage of impairment complaints |
|---------|---------------------------------|-------------------------|----------------------------|-------------------------------------|
| 1993/94 | 57                              | 411                     | 468                        | 12                                  |
| 1994/95 | 51                              | 413                     | 464                        | 11                                  |
| 1995/96 | 47                              | 417                     | 464                        | 10                                  |
| 1996/97 | 80                              | 501                     | 581                        | 14                                  |
| 1997/98 | 46                              | 358                     | 404                        | 11                                  |
| 1998/99 | 95                              | 308                     | 403                        | 24                                  |
| 1999/00 | 85                              | 336                     | 421                        | 20                                  |
| 2000/01 | 114                             | 400                     | 514                        | 22                                  |
| 2001/02 | 143                             | 491                     | 634                        | 23                                  |
| 2002/03 | 174                             | 463                     | 637                        | 27                                  |

In addition, individuals can make complaints about disability services (such as in-home support, carer's respite, therapy, employment, day options, recreation, leisure and advocacy) in accordance with the Western Australian *Disability Services Act 1993*. To complement the objects of the *Disability Services Act 1993* and the DDA, state and federal Disability Services Standards have been developed which incorporate a standard in relation to the management of disability services complaints and disputes.

The Commission handled these disability services complaints from 1995 until 15 December 1999. During this period the Commission received 17 complaints. When the *Disability Services Act* was amended in 1999 the functions of Office of Health Review were expanded to include disability complaints. Table 4 provides the number of disability services complaints the Office of Health Review has received to date.

Table 3: Disability Services Complaints received by the Office of Health Review from 1999/00 to 2002/03

| Year      | Number |
|-----------|--------|
| 1999-2000 | 2      |
| 2000-2001 | 17     |
| 2001-2002 | 24     |
| 2002-2003 | 43     |

## HREOC'S EDUCATION, PUBLIC POLICY AND INQUIRY ROLES

Since 1997 HREOC has released the following major reports on disability rights:

- Wheelchair accessible taxi inquiry;
- Building bridges over the digital divide;
- E-commerce inquiry;
- Sterilisation of girls and young women in Australia: issues and progress; and
- Sterilisation of girls and young women in Australia.

Under the direction of the Disability Discrimination Commissioner HREOC continues to successfully achieve its core functions which include public education, policy development, conducting national inquiries and producing reports on important issues of community

relations in Australia. We believe the present work of the HREOC is imperative for addressing equality in the political, economic, social and cultural fields for everyone regardless of disability.

It is imperative that HREOC continue to maintain its independence which is fundamental for it to perform (and be seen to perform) its functions with effectiveness, integrity and impartiality.

We note in her recent lecture at the Edith Cowan University in Perth, Ms Cherie Booth, QC, a leading human rights lawyer, paid tribute to the work of HREOC in promoting a culture and commitment to human rights in Australia. Ms Booth referred to the view, advanced by some in the United Kingdom, that without an equivalent body the *Human Rights Act 1998* would never achieve its full potential.

It is the view of the Equal Opportunity Commission that measures that have the potential to weaken the role of the HREOC in safeguarding and promoting human rights as outlined above should be avoided.

## LOOKING TO THE FUTURE

Current issues of relevance to people with disabilities are:

- e-commerce access (including web accessibility and accessible banking);
- education;
- electoral access;
- employment;
- insurance;
- public transport;
- sport;
- telecommunications;
- access to premises;
- arts and culture; and
- captioning.

Progress towards some of the above issues already been achieved. To exemplify this, movie captioning has now improved access to some people with hearing disability as a result of a class action suit lodged with the HREOC. Moreover, there are new public transport standards improving accessibility for people with disability.

The report *Don't judge what I can do by what you think I can't: Ten years of achievements using Australia's Disability Discrimination Act* concludes with HREOC stating its goals for the future and reflections on using the DDA "The Commission's goals for the next ten years of the DDA are simple to state, however challenging they may be to achieve:

- To continue the expansion of opportunity and access for people with disabilities and the elimination of disability discrimination across Australia.
- To keep moving forward in areas of success, such as transport and access to premises, while seeking more effective strategies in other areas such as employment and for sections of the disability community who are benefiting less than others from the legislation.

Policy processes including public inquiries, negotiation of standards, and shaping legal Precedents through the intervention and *amicus curiae* functions, will remain highly

important to these goals. However, the main driver of change towards a more accessible and equal Australia remains the complaint process and the ability of people with disabilities to use it effectively to pursue their own aspirations” (p. 66).

### **WESTERN AUSTRALIA’S *EQUITY AND DIVERSITY PLAN 2001-2005 FOR THE PUBLIC SECTOR WORKFORCE***

The Western Australian Government has developed an *Equity and Diversity Plan 2001-2005 for the Public Sector Workforce* as it is “committed to developing an equitable and diverse public sector workforce which is representative of the Western Australian community at all levels of employment and enables employees to combine work and family responsibilities”. One of the priorities identified in the plan is to achieve greater workforce diversity through improved representation at all levels, including people with disabilities.

To support the plan a guide for employing people with disabilities has been prepared and circulated. The Office of Equal Employment Opportunity’s latest newsletter *The Key*, Volume 11, Issue 2, Autumn 2003 provides some case studies involving employing people with disabilities. These case studies are provided in Appendix “A”.

As the 1996 Census indicated that 4% of the community had a disability, the plan aims to increase the representation of people with disability in the public sector from 2.1% in 2001 to 3.6% in 2005. The first progress report on the plan states “There continues to be good distribution of people with disabilities across all levels of the public sector. The Equity Index is close to the ideal of 100”.

## **APPENDIX “A”**

### **CASE STUDIES: PEOPLE WITH DISABILITIES**

#### **WIN/WIN EXAMPLES**

##### **Corporate Information Project Officer—Workcover**

Linda Penfold is employed as a Corporate Information Project Officer with WorkCover in Shenton Park. She enjoys her job and the independence that goes with it. The workplace is easy to get to from her home and is a friendly environment. Her job involves entering all the books from the library into the computer. She also helps out in the Records section to find and return files.

Linda was born severely to profoundly deaf but no modifications to the workplace were required and the only extra piece of equipment required is a volume control phone.

Linda commenced in the public sector in 2001 as a data entry operator at the former Department of Family and Children’s Services. She wanted a job working with computers after completing a business skills course at TAFE.

Linda would like to see more deaf people employed in the public sector as many jobs can be performed independently without necessarily requiring hearing. She would like barriers between hearing and non-hearing people broken down and thinks more people should learn the Auslan sign language, as many are still nervous about speaking to deaf people.

##### **Data Entry Operator—Legal Aid**

It was a combination of one woman’s positive spirit and an employer’s ability to look outside the square that recently made life changes for Jackie Greene.

Jackie has Athetoid type cerebral palsy, the severity of which considerably impedes her movements and speech. Daily tasks most individuals take for granted – such as preparing a meal, eating, drinking from a glass, even speech and walking – require a supreme effort.

However this has not prevented Jackie from living an independent life with her young son in her own home. The only area of life that seemed to evade Jackie was again something commonly taken for granted: being able to do a fair day's work for a fair day's pay.

To achieve this goal Jackie completed units in Business Administration at TAFE, then registered with Bizlink. Bizlink is an employment agency funded by the Department of Family and Community Services. It assists people with disabilities to secure and retain quality employment.

Jackie sat and passed the public service exam using a scribe from Bizlink to assist with recording her answers. A short work experience at Legal Aid WA demonstrated that she has a positive attitude and 100% accuracy. Jackie was offered a contract to work part-time on a productivity-based wage.

Using a modified mouse and keyboard, Jackie works as a data entry operator in a busy team environment.

“The job is easy, I can do it at my ability because they [Legal Aid] have adapted it to suit my needs”, says Jackie. “I love the fact that I can get out of the house and I feel part of the workforce. I love my job, it has made a huge difference to my life and my co-workers are great”.

Legal Aid's willingness to look at adapting a contract to suit Jackie and 'redesign' the job has allowed Jackie to achieve a life long goal. In return Legal Aid have a more diverse work force, strong team morale and another dedicated, valued employee.

Source: *The Key*, Volume 11, Issue 2, Autumn 2003, pages 4-5, the West Australian Office of Equal Employment Opportunity.