

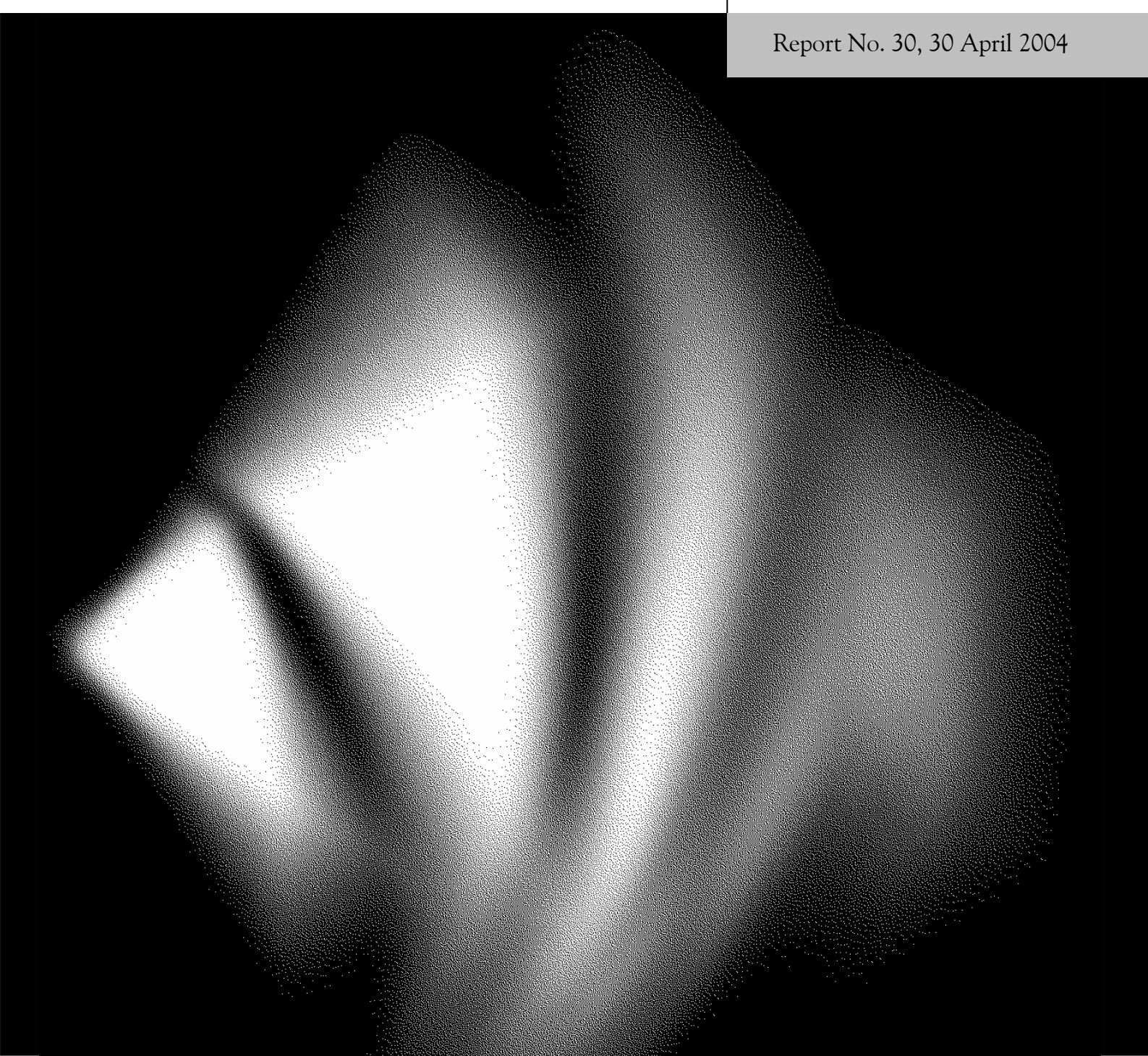


Australian Government
Productivity Commission

Review of the *Disability Discrimination Act 1992*

Productivity
Commission
Inquiry Report

Report No. 30, 30 April 2004



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The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.



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30 April 2004

The Honourable Peter Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's final report into *Review of the Disability Discrimination Act 1992*.

Yours sincerely

Helen Owens
Presiding Commissioner

Cate McKenzie
Commissioner



Terms of reference

National Competition Policy Review of the *Disability Discrimination Act 1992*

PRODUCTIVITY COMMISSION ACT 1998

I, IAN CAMPBELL, Parliamentary Secretary to the Treasurer, under Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer the *Disability Discrimination Act 1992* (DDA) and the Disability Discrimination Regulations 1996 ("the legislation") to the Productivity Commission for inquiry and report within 12 months of the date of receipt of this reference. The Commission is to hold hearings for the purpose of the Inquiry.

2. The Productivity Commission is to report on the appropriate arrangements for regulation, taking into account the following:
 - a) the social impacts in terms of costs and benefits that the legislation has had upon the community as a whole and people with disabilities, in particular its effectiveness in eliminating, as far as possible, discrimination on the ground of disability, ensuring equality between people with disabilities and others in the community, and promoting recognition and acceptance of the rights of people with disabilities;
 - b) any parts of the legislation which restrict competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation can be achieved only through restricting competition;
 - c) without limiting the matters that may be taken into account, in assessing the matters in (a) and (b), regard should be had, where relevant, to:
 - i) social welfare and equity considerations, including those relating to people with disabilities, including community service obligations;
 - ii) government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
 - iii) economic and regional development, including employment and investment growth;
 - iv) the interests of consumers generally or of a class of consumers (including people with disabilities);

-
- v) the competitiveness of Australian business, including small business;
 - vi) the efficient allocation of resources; and
 - vii) government legislation and policies relating to ecologically sustainable development.
- d) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;
- e) compliance costs and the paper work burden on small business should be reduced where feasible.
3. In making assessments in relation to the matters in (2) the Productivity Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement and the Government's guidelines on regulation impact statements. The Report of the Productivity Commission should:
- a) identify the nature and magnitude of the social (including social welfare, access and equity matters), environmental or other economic problems that the legislation seeks to address;
 - b) ascertain whether the objectives of the DDA are being met, including through analysis and, as far as reasonably practical, quantification of the benefits, costs and overall effects of the legislation upon people with disabilities, in particular its effectiveness in eliminating, as far as possible, discrimination on the ground of disability, ensuring equality between people with disabilities and others in the community, and promoting recognition and acceptance of the rights of people with disabilities;
 - c) identify whether, and to what extent, the legislation restricts competition;
 - d) identify relevant alternatives to the legislation, including non-legislative approaches;
 - e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the alternatives identified in (d), including on, or in relation to, people with disabilities.
 - f) identify the different groups likely to be affected by the legislation and alternatives;
 - g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

-
- h) determine a preferred option for regulation, if any, in light of the factors set out in (2); and
 - i) examine mechanisms for increasing the overall efficiency of the legislation, including minimising the compliance costs and paper burden on small business, and, where it differs, the preferred option.
 4. In undertaking the review, the Productivity Commission is to advertise nationally, consult with State and Territory Governments, key interest groups and affected parties (in particular, people with disabilities and their representatives) invite submissions from the public, and publish a draft report. To facilitate participation by people with disabilities, the Productivity Commission is to ensure that all hearings are held at accessible venues and that documentation and information distributed during the consultative and review processes including the draft and final reports, are available in accessible formats.
 5. In undertaking the review and preparing its final report and associated recommendations, the Productivity Commission is to note the Government's intention to release the report and announce its responses to the review recommendations as soon as possible, with the response to be prepared by appropriate Ministers, including the Attorney-General.

IAN CAMPBELL
5 February 2003

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Acronyms

ABA	Australian Bankers' Association
ACROD	National Industry Association for Disability Services
ADA	Americans with Disabilities Act 1990
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
ANAO	Australian National Audit Office
APS	Australian Public Service
ATO	Australian Tax Office
ATSIC	Aboriginal and Torres Strait Islander Commission
BAS	Business Activity Statement
BCA	Building Code of Australia
CAL	Copyright Agency Limited
CPA	Competition Principles Agreement
CRS	Commonwealth Rehabilitation Service
CSDA	Commonwealth State Disability Agreement
CSTDA	Commonwealth State and Territory Disability Agreement
DDA	<i>Disability Discrimination Act 1992 (Cth)</i>
DDLS	Disability Discrimination Legal Service
DEST	Department of Education, Science and Technology
DSA	<i>Disability Services Act 1986</i>

DSP	Disability Support Pension
FAQs	Frequently Asked Questions
FCA	Federal Court of Australia
FMS	Federal Magistrates Service
FTE	Full time equivalent
GBE	Government Business Enterprise
HILDA	Household, Income and Labour Dynamics in Australia
HREOC	Human Rights and Equal Opportunity Commission
HREOC Act	<i>Human Rights and Equal Opportunity Commission Act 1986 (Cth)</i>
ILO	International Labour Organisation
MCEETYA	Ministerial Council on Employment, Education, Training and Youth Affairs
MCS	Multiple Chemical Sensitivity
MOU	Memorandum of Understanding
NESB	non-English speaking background
NILS	National Information and Library Service
NCVER	National Centre for Vocational Education Research
NCYLC	National Children's and Youth Law Centre
NRS	National Relay Service
OH&S	Occupational Health and Safety
RDA	<i>Racial Discrimination Act 1975 (Cth)</i>
RIS	Regulation Impact Statement
SAISO	Strategic Assistance for Improving Student Outcomes
SDA	<i>Sex Discrimination Act 1984 (Cth)</i>

SOCOG	Sydney Organising Committee for the Olympic Games
TAFE	Technical and Further Education
TTY	Telephone Typewriter
UNCHR	United Nations Commission on Human Rights
UNCSD	United Nations Commission for Social Development
VET	Vocational Education and Training
WHO	World Health Organisation

Glossary

activity restriction	The impact of an impairment on an individual's ability to function without assistance
disability	A restriction on, or lack of, ability to perform an activity in a normal manner as a result of an impairment
direct discrimination	Treating a person less favourably, in response to their her disability, than a person without the disability would be treated in similar circumstances
equality of opportunity	Treating all individuals on merit. That is, decision making should not account for irrelevant characteristics.
equality of outcome	Taking account of disadvantage by requiring positive differential treatment of disadvantaged groups to achieve the same outcome as for advantaged groups
equivalent access	Access by people with disabilities to a premises with an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety. Equivalent access does not include a segregated or parallel service.
formal equality	An extreme form of equality of opportunity, which rules out any adjustment or favourable treatment for disadvantaged groups because to do so would discriminate against those who do not receive the preferential treatment
handicap	The social, behavioural and psychological consequences of disability. That is, the disadvantages facing the individual as a result of an impairment or disability.

harassment	Humiliating comments, actions and/or insults about a person's disability, which create a hostile environment
human rights	Rights recognised as inherent in every person by virtue of common humanity and innate dignity as human beings. They tend to be derived from moral or ethical codes and social mores. Many human rights are recognised in international conventions and local legislation
impairment	Any loss or abnormality of bodily function, whether physiological, psychological or anatomical
indirect discrimination	Applying the same rule or condition to everybody but with a disproportionate effect on people with a disability (and when the rule is not 'reasonable' in the circumstances)
inherent requirement	The activities that are essential to the satisfactory completion of the tasks required in a particular job
medical model	A view of disability that places it in a medical context as a condition to be 'cured'
open employment services	Services that assist in the transition of people with disabilities from special education or employment in a supported work setting, to paid employment in the open labour market. Recipients of these services are not paid by the service provider, but by their employer
pre-market discrimination	A situation in which a worker is disadvantaged in the labour market as a result of discrimination experienced in education
post-market discrimination	A situation in which a worker is discriminated against in the labour market solely as a result of their disability, not for their other characteristics
social model	A view of disability that places it in a social context and focuses on social barriers to participation

substantive equality	taking limited account of disadvantage by providing assistance to disadvantaged groups so they have the same opportunities as those of advantaged groups
supported employment services or business services (previously known as sheltered employment)	Services that provide support <i>and</i> employment to people with disabilities. Recipients of these services are employed and paid by the service provider, which receives part funding from the Australian Government
supported wage system	A system whereby people with a disability receive a proportion of the full Award wages equivalent of their level of productivity relative to that of a fully productive worker. Someone who is 70 per cent productive, for example, may receive 70 per cent of the Award wage.
unjustifiable hardship	Requirements to provide adjustments for people with disabilities are limited to the point where it would impose an ‘unjustifiable hardship’, taking into account likely benefits or detriments to any persons concerned and the financial circumstances of the provider.
victimisation	Threatening or subjecting a person to a detriment because they have made (or propose to make) a discrimination complaint.
vilification	Offensive, insulting, humiliating and/or intimidating behaviour.