
5 Eliminating discrimination

The first object of the *Disability Discrimination Act 1992* (DDA) is to eliminate, as far as possible, discrimination against persons on the ground of disability in specific areas of activity. This chapter examines the effectiveness of the DDA in achieving this objective. As noted in chapter 8, the DDA aims to achieve substantive equality (that is, to remove barriers to equality of opportunity), rather than equality of outcome. This should be borne in mind in assessing its effectiveness. Progress in eliminating discrimination also contributes to the other objects of the DDA: ‘equality before the law’ (discussed in chapter 9) and ‘promoting community recognition and acceptance of the rights of people with disabilities’ (discussed in chapter 10).

It is not easy to measure intangible concepts such as the level of discrimination. Because there is no single direct measure of discrimination, this chapter draws on a mix of quantitative (measurable in numbers) and qualitative (opinion-based) information. It is also difficult to distinguish the effects of the DDA from other influences on these measures. Other influences include:

- the protective framework provided by State and Territory anti-discrimination legislation, much of which pre-dated the DDA (see chapter 4)
- changes over time in the provision of disability services and the Disability Support Pension, which could have affected the ability or willingness of people with disabilities to participate in various activities
- policies of de-institutionalising and ‘mainstreaming’ many people with disabilities (see chapter 9)
- changes in the proportion of the population identified as having a disability
- technological developments over the past 10 years that have helped reduce the barriers faced by many people with disabilities.

Section 5.1 analyses disability discrimination complaints data. Sections 5.2 to 5.6 examine the effectiveness of the DDA in specific areas of activity. Section 5.7 looks at the effectiveness of the DDA in eliminating discrimination for different groups of people and section 5.8 assesses the DDA’s effectiveness overall in eliminating discrimination.

5.1 Complaints data

Complaints data compiled by the Human Rights and Equal Opportunity Commission (HREOC) can provide one source of information about the effectiveness of the DDA. However, these data should be interpreted with caution. First, only a small number of DDA complaints are made each year. Although the Australian Bureau of Statistics (ABS) estimates that nearly 20 per cent of the population has a disability, and there is anecdotal evidence of ongoing discrimination, only 493 DDA complaints were made to HREOC in 2002-03. These complaints might not be representative of the experiences of people with disabilities who did not complain to HREOC.¹

Second, complaints data measure how many people believe they have experienced discrimination and are willing and able to make a formal complaint. Complaints do not indicate whether discrimination necessarily has occurred, nor does the absence of complaints necessarily indicate an absence of discrimination. In this respect the Office of the Public Advocate, Queensland, noted that intellectual impairment:

... is present in around 3 per cent of the general population. That is approximately 600 000 people out of a total disability population of 2.4 million (based on a 12 per cent estimate for all forms of disability). In terms of individuals complaining of discrimination on the basis of their disability, however, people with intellectual impairment have been responsible for only 219 complaints out of a total of 5400 complaints in the first 10 years of operation of the *Disability Discrimination Act 1992*.

So a cohort comprising around 25 per cent of all Australians with disability have been responsible for only 4 per cent of the disability discrimination complaints. Whether happy or unhappy, these vulnerable citizens are being very quiet about their lot in life in a way that can only be described as most unsettling. (sub. 246, pp. 2-3)

Third, aggregate complaint numbers do not reveal the nature of complaints: one complaint might concern widespread systemic discrimination, while another concerns a specific instance of discrimination.

Fourth, factors other than the level of discrimination might affect the number of complaints. An increase in complaints, for example, could mean an increased use of the system in response to its success in tackling discrimination. A decrease in complaints might reflect disenchantment with an ineffective system.

Fifth, statistical issues about how complaints have been counted over time and in different jurisdictions mean only indicative comparisons can be made.

¹ In 2001-02 (2000-01 for South Australia and Tasmania), State and Territory anti-discrimination bodies received a total of 1599 disability- or impairment-related complaints. Different definitions and counting rules make it difficult to compare data across jurisdictions.

Complaint outcomes

For the reasons outlined above, the number of formal complaints is a relatively crude guide to the level and nature of discrimination in the community. However, the outcomes of the complaints process can give some insight into the likely presence of discrimination (table 5.1).

Table 5.1 **Outcomes of finalised Disability Discrimination Act complaints, 2002-03**

<i>Outcome</i>	<i>Number</i>	<i>Per cent</i>
Terminated	219	47.3
Not unlawful	25	5.4
More than 12 months old	5	1.1
Trivial, vexatious, misconceived, lacking in substance	100	21.6
Adequately dealt with already	11	2.4
Had more appropriate remedy available	8	1.7
Had no reasonable prospect of conciliation	70	15.1
Withdrawn	43	9.3
Conciliated	186	40.2
Administrative closure (for example, because complainant was not an aggrieved party)	15	3.2
Total	463	100.0

Source: HREOC, sub. 235, app C.

The first point to note about HREOC complaints data from any one year is that the number of complaints finalised will differ from the number received, simply because it takes time to deal with them. In 2002-03, HREOC received 493 complaints about discrimination on the ground of disability and finalised 463 complaints.

The second point to note is that almost half of all complaints are terminated. A relatively large proportion of these are terminated because they are judged to be 'trivial, vexatious, misconceived, or lacking in substance' (21.6 per cent), or 'not unlawful' (5.4 per cent). That is, HREOC regarded 27 per cent of complaints as not warranting redress.

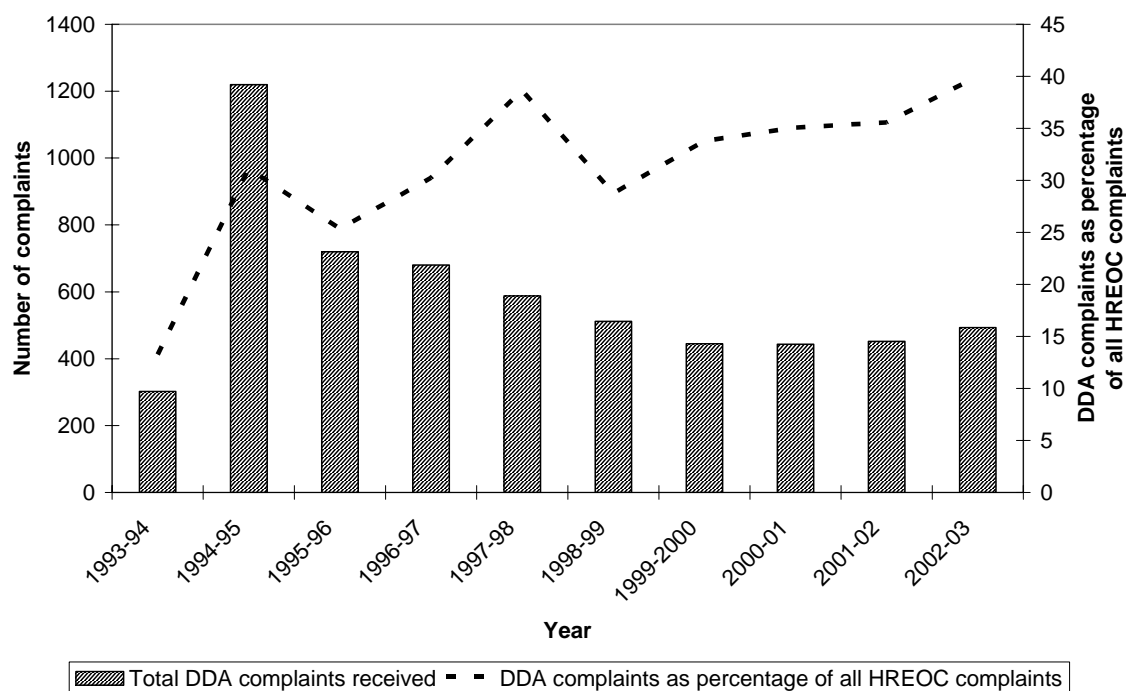
In 2002-03, a total of 256 complaints (55.3 per cent) passed HREOC's initial screening, implying that they were not 'lacking in substance'. (These were made up of 40.2 per cent of complaints that were successfully conciliated and 15.1 per cent that had 'no reasonable prospect of conciliation'). It is not possible to draw any inferences about the remaining 17.7 per cent of complaints.

Complaints over time

Changes over time in the number of DDA complaints might indicate changes in discrimination and, indirectly, the effectiveness of the DDA (although the possible influence of other factors must be considered).

The number of DDA complaints has generally declined since the DDA was introduced in March 1993 (figure 5.1). This decline would be more marked if the increase in the number of people declaring a disability over the same period were taken into account (see chapter 3). Within this general decline, three phases appear to be present: an initial period when complaints peaked in 1994-95; a gradual year-on-year decline running from 1995-96 to 1998-99; and relative stability since 1999-2000.

Figure 5.1 **Disability discrimination complaints to HREOC, 1993-94 to 2002-03**



Data sources: HREOC annual reports and HREOC, sub. 235.

The 1994-95 spike in DDA complaints appears to have been influenced by pent-up demand to use the new Act and its vigorous promotion by HREOC. The reasons for the gradual decline in the number of DDA complaints since 1995-96 and subsequent stabilisation since 1999-2000 are difficult to determine.

It is possible that disability discrimination might have decreased over this period, reflecting the success of the DDA in addressing systemic discrimination in areas such as telecommunications (section 5.5). Existence of the DDA might also have encouraged parties to reach informal solutions without the need for formal complaints. Or the decline in complaints could indicate that the complaints process became less effective or less accessible over time, discouraging people from making complaints.

The general decline in the number of DDA complaints must be set against two other observations.

First, the number of complaints successfully conciliated remained constant over this period (HREOC, sub. 235). In combination with the decline in numbers, this meant that the proportion of complaints successfully conciliated increased over time. This trend could reflect several factors unrelated to the level of discrimination:

- more selective use of the complaints process
- improvements in HREOC processes
- resource constraints that capped the number of conciliations in any year
- the transfer of the determinations power to the federal courts in 2000.

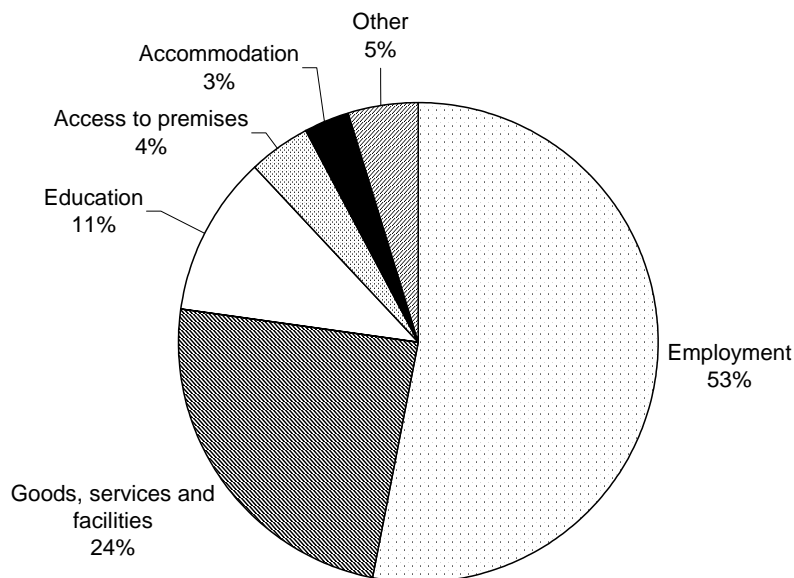
Second, despite declining in number since 1994-95, DDA complaints have generally increased as a proportion of all HREOC complaints (with some fluctuations).

The Productivity Commission considers that the number of DDA complaints, although small, indicates that disability discrimination remains an issue.

Complaints by area of activity

DDA complaints can be divided by area of activity (figure 5.2). In 2002-03, the most recent year for which disaggregated data are available, 53 per cent of DDA complaints were in the area of employment. The second largest area of complaint concerned the provision of goods, services and facilities (24 per cent). Relatively few complaints were made about access to premises (4 per cent)—a category that includes complaints about access to public transport.

Figure 5.2 DDA complaints received by area^a, 2002-03



^a An area is recorded for each ground of discrimination. There may be some double counting where complaints are made on multiple grounds (such as provision of goods and services and access to premises).

Data source: HREOC 2003p, p. 80.

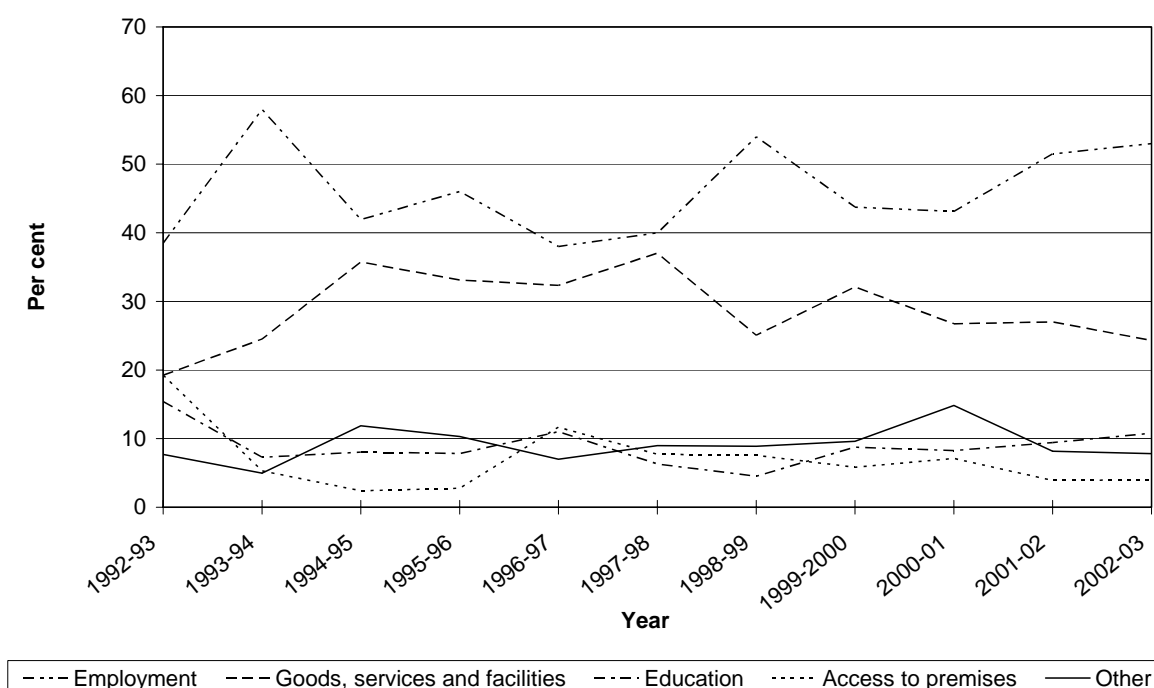
Employment has consistently accounted for most DDA complaints over time (figure 5.3). Access to goods and services has consistently made up the second largest area of complaints, but appears to have decreased slightly in importance since 1994-95.

The proportion of complaints about education, access to premises (including public transport) and ‘other’ have remained relatively constant over time.

5.2 Eliminating discrimination in employment

Discrimination in employment is not unlawful where a person with a disability does not meet the inherent requirements of a position, or can only meet them with the aid of workplace adjustments that would cause the employer unjustifiable hardship. These provisions of the Act mean that many job opportunities might not be available to some people with disabilities.

Figure 5.3 DDA complaints received, by area of activity, 1992-93 to 2002-03



Data sources: HREOC annual reports, various years.

In assessing the DDA's effectiveness in the area of employment, the Productivity Commission has relied on four separate sources of information, namely complaints, inquiry participants' comments, labour market outcomes and overseas evidence on the effectiveness of similar legislation. These sources are now investigated in turn. This is followed by a brief examination of other possible influences on employment of people with disabilities.

Complaints data

As noted, employment consistently attracts the most complaints under the DDA (around 50 per cent of all DDA complaints). While this proportion has fluctuated over the years, there has been no discernible increasing or decreasing trend. As noted, the total number of complaints, which had been broadly decreasing between 1994-95 and 1999-2000, has been relatively stable since then.

HREOC data indicate that the majority of DDA employment complaints are lodged by people with a physical disability or persons who have suffered a work injury. Complaints about unlawful work termination outweigh complaints about recruitment (HREOC, sub. 235). This aligns with the concerns many inquiry participants expressed about the difficulty in proving discrimination at the hiring

stage. They argued that discrimination occurring at that stage is relatively easy to conceal and that indirect discrimination is an issue in the way in which jobs are designed and advertised.

Inquiry participants' views on employment discrimination and the DDA

Most inquiry participants who commented on this issue argued that disability discrimination in employment is widespread. Many gave examples of personal experience or knowledge of discrimination in employment (Maxine Singer, sub. 8; Victor Camp, sub. 20; Debbie-Lee McAullay, sub. 25; Terry Humphries, sub. 66; Physical Disability Council of NSW, sub. 78; David W. Norton, sub. 111; Advocacy Tasmania, sub. 130; James Bond, sub. DR337). Box 5.1 summarises some problems encountered by these participants.

The Australian Chamber of Commerce and Industry provided a dissenting view on the prevalence of discrimination in employment:

There appears to be ... no explicit evidence of widespread discrimination by Australian employers toward people with disabilities. ... It is unacceptable to impute that Australian employers' attitudes and practices are the main cause of lower participation rates and higher unemployment rates than are experienced by those without disabilities. There is no evidence for such a conclusion and it does nothing to assist either persons with disabilities or their potential employers. (sub. DR288, pp. 3–4)

Many participants also argued that the DDA has had only limited effect on disability discrimination in employment, for several reasons (box 5.2).

Labour market outcomes

The DDA aims to achieve substantive equality, rather than equality of outcome. It cannot guarantee employment for people with disabilities, nor is this one of its objectives. This led some inquiry participants to argue that aggregate employment outcomes should not be used to assess the Act's effectiveness in this area (Australian Chamber of Commerce and Industry, sub. DR288; Ability Technology Limited, sub. DR295).

Box 5.1 Inquiry participants' views on employment discrimination

Many inquiry participants conveyed their personal experience or knowledge of disability discrimination in employment.

He has learnt in his job applications not to mention that he was educated at Deafness Units, but the fact that he wears two obvious hearing aids (this because of his severe hearing loss, although the aids enable him to hear quite well) he is turned down at every interview. He has even been told the reason for this is because his aids are a give-away to his hearing loss. (Deafness Association of Northern Territory, sub. 89, p. 3)

... for me this has meant well over 200 job interviews I did not succeed at in spite of qualifications in excess of those required, as the interviewers had the concept of my disability in the front of their mind, allowing their second-guessing and pre-judging of me as valid assessment protocol. (Andrew Van Diesen, sub. 93, p. 2)

... how can a disabled actor ever get that [public] profile if they are never given the casting opportunities in the first place? It is an industry which is entirely unaccountable for discrimination. And there are so many grounds on which it does discriminate. A casting agent can say they didn't consider a disabled actor for a role because that actor is too tall, too short, too dark, too fair, nose is too big, eyes too narrow, hair too short, hair not curly, fingers too short, teeth imperfect, too good looking, not good looking enough, looks too young—the list is endless. They need never mention the real reason for not casting that actor—disability. (Media Entertainment and Arts Alliance, sub. DR328, p. 1)

... discrimination in employment is very hard to prove. Employers of course do not actually say that these are the reasons the person did not get the job. They need only say that 'another person was better qualified' and under State and federal legislation, which was designed to eliminate these practices, the deaf person has nothing on which to appeal. In addition, with the vast number of employers using recruitment agencies, they are able to hide behind an additional smokescreen to escape being called to account under these laws. (Australian Association of the Deaf, sub. 229, p. 4)

I have even heard the opinion expressed by different levels of management that 'the person has a disability why don't they just go on [Disability Support Pension] and not even worry about trying to get employment'. (Peter Simpson, sub. 192, p. 2)

... people with mental illness who are seeking employment are still experiencing direct discrimination because of their disability. ... up to 90 per cent of [member organisations'] clients do not disclose their history of mental illness to a prospective employer as they have learned from past experience that if they do, they will not get the job. (Mental Health Coordinating Council, sub. 84, p. 3)

... discrimination in employment is a major running sore ... (National Council for Intellectual Disabilities, sub. 112, p. 15)

Box 5.2 Inquiry participants' views on the effectiveness of the Disability Discrimination Act in employment

Inquiry participants' views on the effectiveness of the DDA were generally negative.

Comprehensive evidence on the effectiveness of achievement of the objective of elimination of discrimination in employment is not available but such evidence as HREOC is aware of is not encouraging. (HREOC sub. 143, p. 59)

... significant discrimination still exists and historical attitudes remain entrenched in many areas. In particular, very little improvement can be seen in the areas of employment ... (Disability Services Commission, Western Australia, sub. 44, p. 4)

There has been excellent progress in other areas such as Public Transport and Physical Access, yet an issue [employment] that dominates the complaint process is so lacking in any action over the past 10 years ... (Terry Humphries, sub. DR345, p. 4)

A number of inquiry participants identified specific aspects of the DDA which limited its effectiveness:

- difficulty in proving discrimination (Australian Association of the Deaf, sub. 229; Blind Citizens Australia, trans., p. 1685)
- complainants being branded 'troublemakers' (Australian Association of the Deaf, sub. 229; Darwin Community Legal Service, trans., pp. 31–2)
- successful complainants did not often get their job back (Disability Action Inc., trans., p. 934; Larry Laikind, sub. 70)
- absence of employment standards (Disability Action Inc., trans; NSW Office of Employment Diversity, sub. 172; Terry Humphries, sub. DR345)
- inconsistencies with occupational health and safety legislation (Maxine Singer, sub. 8; Debbie McAullay, sub. 25; Job Watch, sub. 90; South Australian Equal Opportunity Commission, sub. 178).
- most employment barriers against people with disabilities are attitudinal, not physical, which means that the DDA's contribution to creating an accessible physical environment has had virtually no impact on discrimination against people who are blind or vision impaired (Blind Citizens Australia, sub. DR269).

To the extent that the Act removes discrimination from employment decisions, it should create additional opportunities and hence ultimately improve employment outcomes for people with disabilities, all other things being equal. For this reason, the Commission considers that employment data can provide an indirect, albeit imperfect, indicator of the existence of discrimination. However, the influence of factors other than discrimination should be borne in mind.

As briefly discussed in chapter 3, people with disabilities are less likely than people without disabilities to be in the labour force (that is, employed or actively looking for work). The ABS estimated the labour force participation rate of people with disabilities in 1998 at 53.2 per cent, compared with 80.1 per cent of people without a disability (table 5.2). Although people with disabilities made up 16.6 per cent of the working age population in that year, they made up only 11.7 per cent of the labour force (ABS 1999b).

Table 5.2 Labour force participation and unemployment rates of people^a with and without disabilities, 1988, 1993, 1998

	<i>People with disabilities</i>			<i>People without a disability</i>		
	<i>1988</i>	<i>1993</i>	<i>1998</i>	<i>1988</i>	<i>1993</i>	<i>1998</i>
	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
Labour force participation rate	51.5	54.9	53.2	75.3	76.9	80.1
Unemployment rate	11.5	17.8	11.5	8.1	12.0	7.8

^a Persons aged 15–64 years living in households.

Source: ABS 1999b, cat. no. 4430.0.

Between 1988 and 1993, the labour force participation rate for people with disabilities rose proportionately more than that for people without a disability. However, from 1993 (the first full year of application of the DDA) to 1998, the participation rate for people with disabilities fell slightly, while that for people without disabilities continued to rise.

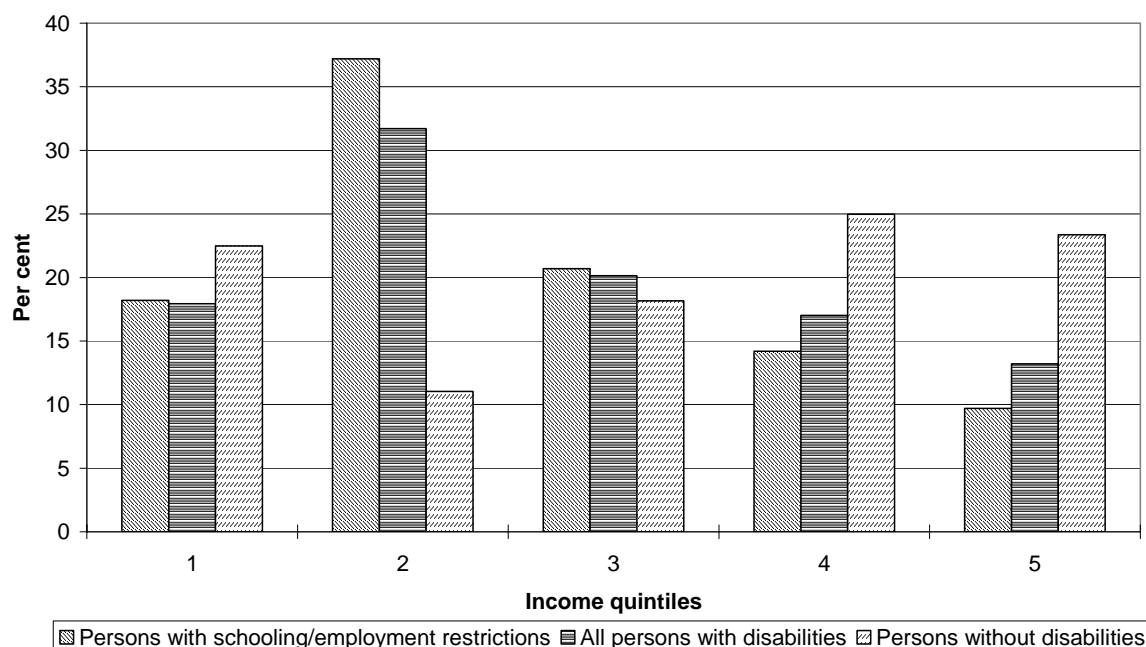
When in the labour force, people with disabilities are more likely to be unemployed than those without a disability. The unemployment rate differential between the two groups ranged between 3.4 percentage points in 1988 and 5.8 percentage points in 1993 and was 3.7 percentage points in 1998. The combination of lower labour force participation and higher unemployment means that people with disabilities were 23 per cent less likely to be employed in 1993, and 26 per cent less likely to be employed in 1998, compared to people without a disability.² On average, people with disabilities also are less likely to be employed full time and experience longer unemployment spells (see appendix A).

Compared with people without disabilities, people with disabilities also display different income and occupational characteristics. They:

² These percentages measure the raw probability of being employed (as opposed to unemployed or not in the labour force), which does not account for the different characteristics of the two groups. In appendix A, the Productivity Commission conducts a multivariate analysis of the probability of employment for each group, controlling for a number of other influences beside disability.

- tend to be clustered at opposite ends of the occupational spectrum, in the categories ‘managers and administrators’ or ‘labourers and related workers’ (see appendix A)
- are overrepresented in the second and third lowest income quintiles for working age Australians (figure 5.4).³ People with a schooling or employment restriction are even more likely to be found in the second and third income quintile. This pattern reflects the impact of these restrictions on wage earning ability.

Figure 5.4 Distribution of persons with schooling/employment restrictions, with and without disabilities, by total weekly cash income quintile, 1998^{a, b, c}



^a The height of the bars measures the percentage of each group that is found in a particular income quintile. For example, 37 per cent of persons with schooling or employment restrictions are in the second income quintile, compared to 32 per cent of all persons with disabilities and 11 per cent of persons without a disability. ^b Persons aged 15–64 years living in households. ^c Quintiles exclude ‘income not stated’. First quintile excludes refusals to respond.

Data source: ABS 1999b, cat. no. 4430.0.

The Productivity Commission compared the wages of people with disabilities and people without disabilities. On average, women with disabilities earned 7 per cent less per hour than women without disabilities. Men with disabilities earned 6 per cent less per hour than men without disabilities (see appendix A). However, these

³ The representation of people with a disability in the first quintile may be underestimated because that quintile includes people with nil income and people who reported no source of income.

differences do not account for the different characteristics of the groups being compared.

Testing wage differentials

The Commission conducted econometric analyses to gain a better understanding of the relative wages earned by people with disabilities. Using an analytical approach known as indirect testing of discrimination, the Commission analysed the differences in hourly wage rates between people with disabilities and people without disabilities. Indirect testing attempts to measure the extent to which socio-demographic characteristics such as age, education or experience, explain each group's average earnings. Health status can also be taken into account, as it is likely to influence the productivity of people with and without disabilities. If, after accounting for as many determinants of wages as possible, there is still a difference in wages between the two groups, this may be interpreted as wage discrimination towards people with disabilities. The 'unexplained' gap demonstrates that members of the two groups would be rewarded differently even if they had the same characteristics (except for disability).

The Productivity Commission applied two variants of this approach to a recent, detailed dataset for Australia: the 2001 wave of the survey of Household, Income and Labour Dynamics in Australia (HILDA). The analysis is discussed further in appendix A and detailed in appendix F. Its results suggest that different characteristics cannot explain between 20 and 44 per cent of the difference in the hourly wage rates of women with disabilities and women without disabilities, and between 27 and 49 per cent of the difference in hourly wage rates for men.⁴ These gaps could be interpreted as discrimination on the ground of disability.

Although its results are consistent with those of overseas studies, the analysis conducted by the Commission has a technically low explanatory power. This is common in this type of work, where many unobservable influences are at work simultaneously. Therefore, these results are very tentative. The Commission has endeavoured to include all relevant characteristics in its calculations, but some of the unexplained gap may stem from omitted characteristics or from differences in unobservable characteristics, such as motivation.

The Commission's results suggest that the difference in hourly wage rates between people with and without disabilities which could be due to discrimination is

⁴ Results from the Commission's preferred model (the Heckman extension of the Oaxaca–Blinder decomposition) suggest that 44 per cent (27 per cent) of the difference in hourly wage rates between women (men) with disabilities and women (men) without disabilities cannot be explained by differences in their characteristics (see appendices A and F).

relatively small. Disability discrimination leads to women with disabilities earning 3 per cent less per hour than similar women without disabilities. For men, the equivalent differential is 1.7 per cent. This might suggest that other industrial relations mechanisms provide significant protection from wage discrimination for people with disabilities who are employed, and that disability discrimination is more of an issue in obtaining and retaining employment.

However, the relatively small unexplained difference in wages between people with disabilities and people without disabilities might underestimate the role that disability discrimination plays in lowering the labour earnings of the former group.

Additional results from the quantitative analysis undertaken by the Commission show that lower educational qualifications, on average, are responsible for around 40 per cent of the explained wage gap between men with disabilities and men without disabilities, and 12 per cent for women (see appendix A). If, as is likely, part of the educational gap between people with disabilities and people without disabilities is due to the existence of discriminatory barriers in the education sector, then the overall effect of disability discrimination on the earning capacity of people with disabilities is higher than suggested by measures of discrimination occurring in the employment area alone.

In conclusion, available data indicate that people with disabilities have poorer labour market outcomes overall than people without disabilities. Moreover, in some areas, outcomes have not improved markedly since the introduction of the DDA. It might have been expected that, since 1993, progress in assistive technology would have allowed at least some improvement in the employment situation of people with disabilities.

However, poorer outcomes might be caused by many reasons other than discrimination. These include differences in capacity to work, labour productivity, work incentives, and job matching ability (box 5.3). They also include differences in education and work experience between people with and without disabilities.

Overseas evidence

Anti-discrimination legislation has the potential to have both positive and negative effects on the demand for workers with disabilities. It might increase demand for their labour, because employers are under threat of a complaint if they discriminate. Alternatively, employers might consider that anti-discrimination legislation makes hiring workers with a disability more expensive (through, for example, incurring adjustment costs, paying equal wages and experiencing difficulties in dismissing protected workers). Cost-sensitive employers might, therefore, prefer to hire

relatively less expensive workers without disabilities (even though, without the anti-discrimination legislation, they might have hired workers with disabilities). This effect could lead to reduced demand for workers with disabilities.

Box 5.3 Influences on labour market outcomes for people with disabilities

When analysing labour market outcomes for people with disabilities, the following influences are worth noting. Their disabilities might mean that:

- they are less productive (and therefore less employable) than people without a disability
- they are not capable of working, or they can work only intermittently
- the additional personal costs imposed by their disability mean it is not worthwhile joining the labour force
- if unemployed, they will take longer to find a job that provides a good match for their skills and their limitations.

These influences mean that, at any particular point in time, a higher proportion of the population with disabilities is likely to be classified as out of the labour force or unemployed, for reasons that may not be related to discrimination.

Moreover, there is evidence to suggest that disability can be a consequence, as much as a cause, of joblessness (Jenkins and Rigg 2004; Cai and Kalb 2004). The link between disability and disadvantage that such 'reverse causality' creates in published statistics is unrelated to disability discrimination.

Source: see appendix A.

There is a continuing debate in the United States about whether the Americans with Disabilities Act 1990 might have hurt the employment situation of people with disabilities in that country (box 5.4).

The DDA has employment provisions broadly similar to those of the Americans with Disabilities Act, so arguments used in that debate might be relevant to Australia. However, there is insufficient Australian data to replicate some of the detailed US analyses at the centre of this debate. For this reason, the Productivity Commission has chosen to rely on many strands of evidence to assess the effectiveness of the DDA in reducing disability discrimination in employment (and, hence, in enhancing the employment situation of people with disabilities).

Box 5.4 Impact of the Americans with Disabilities Act on employment

There has been much disagreement among researchers about the impact of the Americans with Disabilities Act in the United States. Acemoglu and Angrist (1998) and DeLeire (2000) found that the introduction of the Act had had an overall detrimental impact on the employment of people (especially men) with disabilities in the United States. They also found that the detrimental employment effects had occurred through reductions in hiring rather than increases in firing, suggesting that accommodation costs concern employers more than do the costs of litigation. None of these researchers found that the Act had affected the relative wages of workers with disabilities.

Other authors (Bound and Waidmann 2002; Hotchkiss 2003; Kruse and Schur 2003; Schwochau and Blanck 2000, 2003), however, have challenged these conclusions, based on the difficulty of defining disability that is covered by the ADA and of isolating the effects of the Act from other economic phenomena occurring at the time of its introduction.

The most recent research, by Kruse and Schur (2003), showed that the results were influenced by the choice of data and definition of disability. The authors concluded that:

These results do not permit a clear overall answer to the question of whether the [Americans with Disabilities Act] has helped or hurt the employment of people with disabilities, since both positive and negative signs can be found. Rather, the main conclusion is that there is reason to be cautious about findings of either positive or negative effects ... (Kruse and Schur 2003, p. 62)

Sources: see appendix A.

Other influences on employment

Inquiry participants identified several factors as having had a negative impact on the employment situation of people with disabilities since the introduction of the DDA. Blind Citizens Australia highlighted the influence of recent changes affecting the Australian economy and labour market on the employment of people with disabilities, such as the expansion of the retail sector, the visual emphasis of many new jobs, a reduction in entry-level jobs, an increased emphasis on multi-skilling, the expansion of the small business sector, a reduction in employment in the public sector, and the expansion in the use of recruitment and labour hire agencies (sub. 72, pp. 17–18).

Other factors identified by inquiry participants included the increasing requirement to hold a driver's licence (Mental Health Coordinating Council of Australia, sub. 84), the resistance of small business to the DDA's objectives (South Australian Equal Opportunity Commission, sub. 178), a shortage of Auslan interpreters (Australian Federation of Deaf Societies, sub. DR363) and the lack of an Australian

equivalent of the US Job Accommodation Network, which offers free advice to employers on possible adjustments (HREOC, trans.; ACE National Network, sub. DR361).

The Australian Chamber of Commerce and Industry argued that the labour market disadvantage experienced by people with disabilities was more likely to reflect barriers other than disability discrimination, such as low participation in vocational education, work disincentives created by income support arrangements, and ineffective return to work arrangements (sub. DR288).

In addition to the specific factors noted above, structural changes on the demand and supply sides of the labour market, unrelated to disability discrimination, could have shaped employment outcomes for people with disabilities.

A widely reported change affecting the labour markets of Australia (and other countries) during the 1990s was an increase in the relative demand for skilled workers (de Laine et al. 2000). It has been suggested that this phenomenon was associated with the rise in the number of disability pension recipients in some countries, as relatively less skilled, older workers faced the progressive loss of their traditional sources of employment (Nickell and Quintini 2001). Older workers, especially men, are both relatively less skilled and more likely to have a disability than the remainder of the workforce. Thus, as the labour market prospects of people in this group declined, the attractiveness of disability benefits to them increased.

As in the United Kingdom and the United States, a rapid increase in the number of recipients of the Disability Support Pension occurred in Australia during the 1990s. A number of studies (ACOSS 2002; Argyrous and Neale 2001, 2003; Cai 2000; Healy 2002) have contended that deteriorating labour market conditions for older men underpinned this increase. Argyrous and Neale stated that ‘the disability support program has acted as an institutional mop for soaking up older males who have lost jobs’ (2003, p. 21). They argued that this trend had been encouraged by a simultaneous relaxing of eligibility criteria for the pension and tightening of criteria for other forms of income support (such as unemployment benefits).

Another reason why demand for the labour of older workers might have decreased in recent years is age discrimination. According to the Australian Government, such discrimination is widespread and rising, and requires age discrimination legislation to be introduced (Australia 2003, p. 17622). Given that older workers are more likely to have a disability than their younger counterparts, lower labour force participation and employment rates for people with disabilities than for people without a disability could reflect age discrimination rather than disability discrimination. Nonetheless, it is likely that age and disability discrimination coexist to some extent.

Wilkins (2003) examined the probability of being employed in 1998, depending on age, disability status and age of onset of disability. He found that persons aged 55-64 who also reported a disability acquired late in life (late onset) were least likely to be in employment. This might suggest that older workers with disabilities experience both age and disability discrimination. However, discrimination is not the only possible explanation for their weak employment participation. Wilkins (2003) attributed the connection between ageing, mature-age disability onset and barriers to employment, to older workers having greater difficulties in adapting to a disability and fewer incentives to do so. Underlying both reasons, he suggested, was the fact that late onset disability was more likely to happen to relatively less skilled workers undertaking manual work. For this group of workers, both the attractiveness and feasibility of acquiring new skills once a disability is present is quite low, leading to their exit from the labour force.

Conclusions on effectiveness in employment

The employment situation of people with disabilities has not improved markedly since the introduction of the DDA. Employment is the principal area of complaints under the DDA, although the number of complaints remains low relative to the number of people with disabilities.

Despite an increase in the absolute number of people with disabilities in employment, this group made up a smaller proportion of the labour force in 1998 (the last year for which comparable data are available) than it did in 1993. This proportional decline has been accompanied by a significant increase in the number of people receiving the Disability Support Pension.

The Productivity Commission acknowledges that many factors on the demand and the supply side of the labour market shape the employment outcomes of people with disabilities. It is not easy to disentangle these factors to assess the role disability discrimination plays in the underrepresentation of people with disabilities in employment. What might at first appear to be employment barriers created by disability discrimination, might in reality be due to other types of discrimination, such as age discrimination, or to structural changes affecting the economy.

For a number of reasons, people with disabilities can be expected to participate less (and less successfully) in the labour market than people without disabilities, even in the absence of discrimination. Nevertheless, the Commission received many submissions arguing that employment discrimination was widespread, and providing circumstantial evidence of such discrimination. The Commission's own quantitative analysis points to the existence of some wage discrimination, albeit relatively limited.

Even allowing for the existence of disability discrimination in employment, it is not possible to measure precisely the role that anti-discrimination legislation in general, and the DDA in particular, may have played in reducing it. This is partly due to data deficiencies and partly to not knowing what the situation would be like in the absence of the DDA.

Taking all available qualitative and quantitative information into account, however, it is difficult to conclude that the DDA has been successful in this area. The lack of a significant improvement in the employment situation of people with disabilities suggests that the Act has been relatively ineffective in reducing disability discrimination in employment. But there are no indications that the Act's provisions have inadvertently led to even greater employment barriers being erected, in the manner attributed to the Americans with Disabilities Act by some US studies. Moreover, there are encouraging signs that the DDA has met with some recent success in persuading employer organisations to become more pro-active in educating their members about their duties under the Act, and about the potential advantages of employing people with disabilities (Australian Chamber of Commerce and Industry, sub. DR288; Australian Industry Group, sub. DR326).

FINDING 5.1

Complaints under the Disability Discrimination Act 1992, combined with participants' views and labour market statistics, indicate that disability discrimination in employment remains a significant issue.

5.3 Eliminating discrimination in education

Arguably, one of the most serious forms of disability discrimination (in terms of long-term effects on individuals) is exclusion from, and segregation in, education.

Although problems with discrimination and harassment remain evident, more students identified as having a disability (for government program purposes, see appendix B) are attending mainstream government and non-government primary and secondary schools. More students with disabilities are participating in vocational education and training (VET, including apprenticeships and Technical and Further Education (TAFE) courses) and universities. No data are available to indicate participation in pre-school education. Average educational attainment for people with disabilities improved during the past decade, but on average, remained lower than for people without disabilities.

Anecdotal evidence indicates the DDA has been, at least partly, responsible for these improvements in participation and attainment, although other factors, such as

inclusive education policies (many of which pre-date the DDA), have been important (see appendix B).

Disability discrimination complaints in education

Education accounted for the third highest number of complaints made under the DDA in 2002-03 (11 per cent of all complaints) (figure 5.2). Available data cover only a short period, but DDA complaints increased in all education sectors except TAFE colleges—part of the VET sector—between 1998-99 and 2002-03 (table 5.3). However, these numbers are very small in absolute terms and should be interpreted with caution. Disability discrimination complaints about education have also been made under State and Territory anti-discrimination Acts and directly to education authorities.

Disability discrimination in education can manifest itself in many ways. Inquiry participants and other sources indicated that the types of problems reported in disability discrimination complaints (under either the DDA or State and Territory anti-discrimination Acts) included: refusal of enrolment; reduced or limited enrolment; exclusion from sports, excursions or other activities; negative attitudes, harassment or bullying by other students; lack of suitably trained staff or special amenities; and unsuitable or inflexible curricula (see appendix B).

Table 5.3 **DDA complaints received that relate to education, by institution type, 1998-99 to 2002-03**

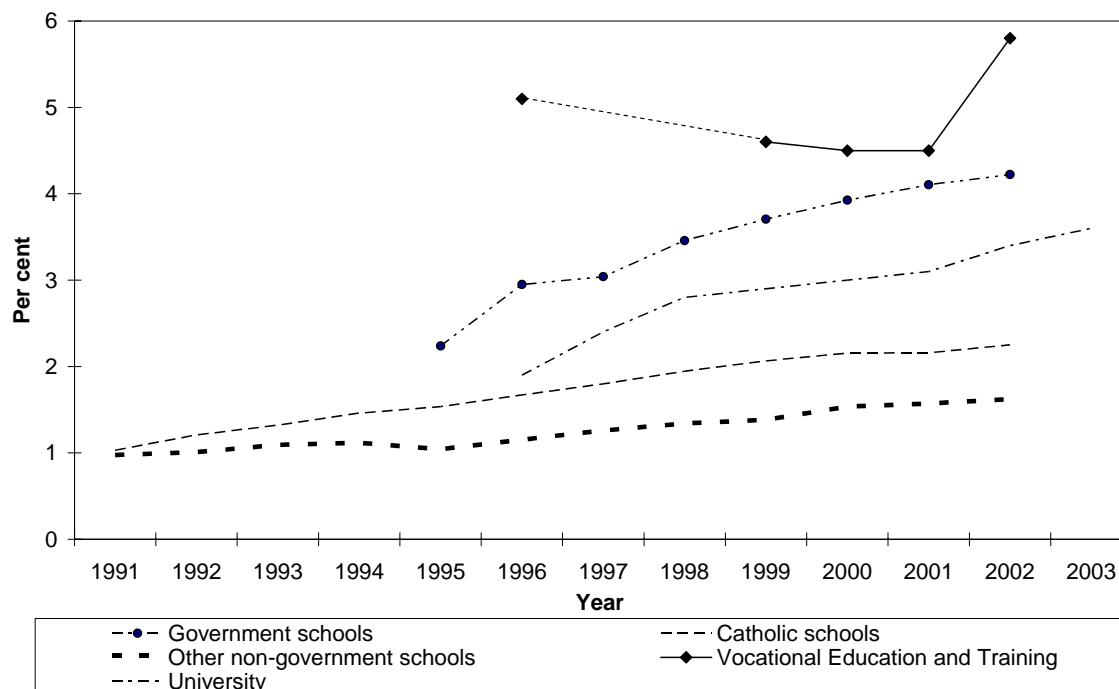
<i>Institution type</i>	<i>1998-99</i>	<i>1999-2000</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>
	no.	no.	no.	no.	no.
Primary school	5	9	10	13	11
Secondary school	4	11	10	10	15
TAFE	6	6	4	3	4
University	5	9	10	14	17
Other	3	9	0	1	4
Total	23	35	34	41	51

Source: HREOC, sub. 235, app. H.

Participation in schools

The number and proportion of full-time equivalent school students identified as having a disability (for government program purposes, see appendix B) increased across all three school sectors in the 1990s (government, Catholic and other non-government), but remained highest in government schools (figure 5.5).

Figure 5.5 **Students with disabilities as a proportion of all students, by education sector, 1991–2003^{a,b,c}**



^a National data are not available for all education sectors in all years. Government schools data are available from 1995. University data are available from 1996, for Australian domestic students only. ^b In VET and universities, students with disabilities are self-identified on enrolment forms. In government schools, Catholic schools and other non-government schools, students with disabilities are defined as full-time equivalent students who satisfy the criteria for special education services or programs provided by their State or Territory government. Eligibility criteria vary across States and Territories. Data for schools sectors include full-time equivalent students in mainstream and special schools. ^c There are no VET data between 1996 and 1999.

Data sources: Productivity Commission estimates based on DEST data (unpublished); NCVET 2002a, p. 3; NCVET 2002b, table 41; DEST 2002a, p. 22; DEST 2004, app. 4.1.

In government schools, the number of full-time equivalent students identified as having a disability for government programs almost doubled between 1995 and 2002—from 50 280 (2.2 per cent of all full-time equivalent students in government schools) to 96 567 (4.2 per cent of students in government schools). The reasons for this large increase are not clear, but may include increased and/or earlier diagnoses, and changes in the range and severity of conditions that are recognised as a disability for government disability funding and programs (see appendix B).

Catholic and other non-government schools also experienced increases in the number and proportion of full-time equivalent students identified as having a disability during the 1990s. For the period 1991 to 2002, the number increased by 240 per cent in Catholic schools and 250 per cent in other non-government schools, albeit from very low bases. Students identified as having a disability appeared to be moving from government to non-government schools at a slower rate than other

school students. While the proportion of school students without disabilities attending non-government schools increased from 29 to 32 per cent between 1995 and 2002, the proportion of students with disabilities attending non-government schools remained steady, at around 18 per cent (see appendix B).

Virtually all of the growth in the number of school students with disabilities appears to have occurred in mainstream rather than special schools. A small but significant proportion of students with disabilities were enrolled in special schools in 2001-02 (16 per cent), almost all in the government sector. These students are likely to be those with more severe disabilities and specialist education requirements.

In mainstream schools, some students with disabilities attend special education units located within the school for some or all of their education, depending on the nature and degree of their disability and the education resources available. Such special education facilities appear to be more common in government schools and larger non-government schools. They often specialise in certain types of disability or education needs—for example, education for students with hearing impairments or learning disabilities. Inquiry participants said there can be advantages and disadvantages for students attending classes in special education units (box 5.5 and appendix B). The extent of such students' day-to-day integration is not known and probably varies considerably. They are, nevertheless, counted as attending mainstream rather than special schools in Australian enrolment data.

Participation in tertiary education

In tertiary education, the proportion of students who chose to identify themselves as having a disability on their enrolment forms remained highest in the VET sector, generally at around 5 per cent of VET students for whom disability status is known, but up to 6 per cent in 2002 (figure 5.5 and appendix B). Among trainees in the New Apprenticeships program, the proportion of trainees who were known to have a disability increased from less than 1 per cent in 1995 (1000 trainees) to 2 per cent in 2000 (over 5600 trainees) (NCVER 2001b, 2002b; see appendix B).

The proportion of university students who reported a disability grew from 1.9 per cent of all domestic students in 1996 to 3.6 per cent in 2003 (figure 5.5). However, in both VET and universities, a high proportion of students chose not to reveal their disability status on their enrolment, graduation or other official forms.

Box 5.5 Inquiry participants' views on the effectiveness of the Disability Discrimination Act in education

Many inquiry participants commented on the positive effects of the DDA in education:

... schools and other educational settings are safer and there is less likelihood of harassment because of this preparedness to deal with it as it arises. One hopes that harassment is diminishing both as students progress through school and in terms of the overall levels. (Australian Education Union, sub. 39, p. 8)

... [the DDA's] direct impact can be seen in ... ensuring access to private education as a result of the outcomes of complaints. Enrolments in non-government schools have increased dramatically in the past 15 years and this is in part attributable to the requirements of the DDA. ... the DDA significantly influenced the ... Review of the Western Australian Education Act in 1999 which provided for more choice and inclusive education and resulted in greater integration of students with an intellectual disability; and [the] current Review of Educational Services for Students with a Disability in Western Australia was specifically undertaken to assess the compliance of services and the Western Australian Education Act with the provisions of the DDA. As a result, all students with an intellectual disability who requested fully inclusive education in 2003 were granted it. (Disability Services Commission Western Australia, sub. 44, pp. 3-4)

A range of factors are likely to account for the growing enrolments of students with disabilities in the independent school sector ... the DDA has undoubtedly played a role. ... schools have sought to adjust processes and better meet the needs of students with disabilities in line with their obligations under the Act. This learning and adjustment process is continuing. (National Council of Independent Schools' Associations, sub. 126, pp. 3, 15)

Other inquiry participants were more circumspect about the benefits of the DDA:

[People with Disability Australia] has ... noted no overall improvement in the provision of non-discriminatory educational opportunities for school students with disability over the last decade. Rather, [People with Disability Australia] has witnessed limited advances in some areas, only to witness retreats in others. (People With Disability Australia, sub. DR359, pp. 11-12)

The introduction of special education units within the grounds of mainstream schools has confused the statistics. Students in units are counted as being in the mainstream. The reality is that they may have no contact at all with the mainstream population. In fact, many students who previously would have remained within the regular classroom have now been labelled as 'disabled' and relocated to 'special' units. (Queensland Parents for People with Disability, sub. DR325, p. 1)

There may be an increase in the number of students with disabilities in mainstream schools but this does not indicate that the provision of appropriate disability supports has improved. This does not indicate the subtle discrimination that occurs when principals refer students with disabilities to the school down the road which provides better services for students in your situation. (Action for Community Living, sub. DR330, p. 1)

A greater number of students with disabilities [are] going on to tertiary study. ... [but] Students requiring materials in alternative formats ... experience considerable delays and most students who are blind or vision impaired still do not receive their course materials at the same time as other students. (Blind Citizens Australia, sub. DR269, p. 4)

In both the VET and university sectors, students who identified themselves as having a disability studied a slightly different mix of fields and subjects to other students, with more arts, humanities and social sciences (and in VET, more generic course modules) and fewer business, economics and engineering subjects. They were likely to be older than other students, more likely to be studying part time, and less likely to be studying at higher qualification levels. In VET courses, they were also less likely than other students to be working while they studied (see appendix B).

Students with disabilities were less likely than other students to successfully complete their VET and university subjects. Completion data for tertiary students with disabilities indicate that subject completion rates for VET students with disabilities were 2 to 8 per cent lower than for other students in 1994 and 1996 (Buys, Kendall and Ramsden 1999) and 2000 (NCVER 2002b). University students with disabilities were around three percentage points less likely to successfully complete their year's studies in 1996 to 2002 (James et al. 2004, p. 30). On the other hand, retention rates (that is, the proportion of students continuing their studies each year) for university students with disabilities were higher than for other students over the same period (DEST 2002b; James et al. 2004; see appendix B).

Educational attainment

National educational attainment data for people with disabilities are limited. They indicate that on average, educational attainment for people with disabilities appeared to have improved during the 1990s, but was still lower than for people without disabilities. For example, the proportion of people with disabilities who had completed bachelor or postgraduate degrees increased between 1993 and 1998, and the proportion who had completed only year 11 or less (or an unknown education level) declined. Average educational attainment varied significantly by type of disability. In 1998, people with a psychiatric or sensory/speech disability were more likely to have a bachelor or postgraduate degree than people with other types of disabilities. People with intellectual disabilities were more likely than other people to still be at school or to have completed only year 11 or less in each of 1993, 1998 and 2001 (ABS 1999b; HILDA unpublished; see appendix B).

Conclusions on effectiveness in education

The number and proportion of students in mainstream government and non-government schools identified as having a disability for funding purposes increased substantially in the 1990s. While such integration should be viewed as a benefit for students with disabilities, there is some uncertainty regarding the practical effect of

these trends for individual school students with disabilities—complaints about disability discrimination and harassment in schools are still being lodged, and some students still attend special schools and special education units (box 5.5).

Further, some inquiry participants argued that the effectiveness of the DDA in Australian schools has been hampered by the failure to provide adequate resources and support to the growing number of school students with disabilities, so as to enable their full and equal participation (and not just physical attendance) in mainstream education. Participants from the non-government schools sector (and others) highlighted access to government programs, funding and resources for students with disabilities, rather than discrimination *per se*, as the key issue facing many school students with disabilities (see chapter 15 and appendix B).

The number and proportion of students with (self-identified) disabilities increased significantly in VET and university courses in the later 1990s. These participation data would appear to indicate real improvements in tertiary education opportunities for students with disabilities. Data on educational attainment for people with disabilities are less conclusive, but appear to have improved over time.

The direct influence of the DDA on these achievements is unclear. In its review of 10 years of the DDA, HREOC noted that ‘what has been achieved through the DDA is probably more sharply disputed regarding education than any other area’ (HREOC 2003d, p. 47). Inquiry participants gave both positive and negative examples of the effectiveness of the DDA in education.

The DDA—together with State and Territory anti-discrimination legislation—appears to have had some influence on State and Territory education policies (although in most cases, inclusive education policies pre-date the DDA), and encouraged enrolments by students with disabilities in non-government schools and in tertiary education. Anecdotal evidence indicates that the DDA has been relatively effective in resolving individual complaints of discrimination in education, with some flow-on benefits in the form of more ‘systemic’ improvements (for example, to premises, curricula and assessment procedures), particularly in the VET and higher education sectors. However, as noted in chapter 8, the absence of an unjustifiable hardship defence post enrolment has created problems for educational institutions and may be inadvertently aggravating discrimination. Discrimination and harassment (as well as problems of access to resources and supports) remain important issues for many students with disabilities.

FINDING 5.2

The Disability Discrimination Act 1992 appears to have had some beneficial effects in education, although it has not been wholly successful in eliminating discrimination for students with disabilities. It appears to have been reasonably effective in improving educational opportunities for tertiary students with disabilities, with mixed results in schools.

5.4 Eliminating discrimination in access to public premises

There has been some progress in recent years towards a more accessible built environment. In this context, public premises include buildings to which the public has access and public transport. It does not apply to private premises. Many more new buildings are being constructed with access features that do not discriminate against people with disabilities, and most public transport providers are making progress in introducing accessible infrastructure and practices.

Complaints data

Access to public premises has not attracted many DDA complaints. HREOC received 36 complaints in this area in 2002-03 (4 per cent of all DDA complaints in that year) (figure 5.2). The number of complaints and the share of total complaints varied between 1992-93 and 2002-03, although the data suggest a decline since 1996-97 (figure 5.3).

Some individual DDA complaints have had systemic effects in this area. In response to complaints, State and federal transport departments began developing integrated accessible transport systems. In 1994, transport Ministers established a national taskforce.

Access to premises

There are no national data on the extent to which public premises are accessible to people with disabilities, or the influence of accessibility on the level of discrimination. Some inquiry participants claimed that the DDA has had a substantial impact on accessibility, while others acknowledged that small changes have been made, but much more needs to be done (box 5.6).

Box 5.6 Inquiry participants' views on the effectiveness of the Disability Discrimination Act in access to premises

Some inquiry participants argued that the DDA has had a substantial impact:

It is undeniable that the DDA has improved access to public premises. (Leichhardt Council Disability Access Committee, sub. 75, p. 5)

Access to premises is an example of an area of discrimination where the DDA has been of great value. (Disability Action Inc., sub. 43, p. 2)

... access to premises was one of the major barriers to participation. With the adoption of the DDA and further refinement of Australian Standards codes, the building industry and architects have become much more aware of planning and building to eliminate barriers. The local government sector have been key players in lodging disability action plans and raising awareness of their planning and certification processes. We are spoiled for choice when we go to town today for which toilet to use. That change is tremendous. (Becky Llewellyn, sub. 9, pp. 3–4)

Other inquiry participants argued that much more was needed:

Whilst the accessibility to public places has improved there still remains some difficulties. The current provision of access to premises is focused on the provision of the minimum standards. In some areas this does not allow for independently functional access for people with disabilities. (Northern Territory Disability Advisory Board, sub. 121, p. 5)

The DDA has improved access to public premises to some extent, but not as much as we would have expected in the 10 years of its life span. (Robin and Sheila King, sub. 56, p. 11)

The Building Code of Australia, and the relevant Australian Standards that it calls up, are insufficient in themselves to provide compliance with the DDA. ... The Act has served the community well in drawing attention to the issues, but more needs to be done to ensure compliance. (Independent Living Centre New South Wales, sub. 92, pp. 5–6)

The DDA applies to existing public premises and the design and construction of new public premises. The Building Code of Australia (BCA) also regulates the design and construction of buildings. Although the BCA includes some access requirements, compliance with the BCA does not necessarily mean that a building complies with the DDA. Despite the best of intentions, therefore, new buildings might still be approved that do not fully comply with the DDA. This has created considerable confusion for developers and difficulty for planning authorities.

To address this problem, the DDA was amended in 2000 to allow the formulation of disability standards for access to premises. Efforts were subsequently devoted to upgrading the accessibility provisions of the BCA and developing disability standards that would adopt those provisions. The draft standards were released for comment in January 2004 and they are expected to be introduced in May 2005. If implemented, they would help create consistency between the BCA and the DDA (at least for new buildings and renovations to existing buildings covered by the BCA). State and Territory planning processes would enforce the new standards.

When implemented, these arrangements would mean that the stock of accessible buildings that comply with the DDA will steadily increase, as new buildings replace old buildings. HREOC stated:

Improved access provisions which are coordinated between revised building law requirements and DDA disability standards should result in significant reduction over time in the proportion of Australia's building stock which is inaccessible, as new accessible buildings are constructed and as new work on existing buildings is required more reliably to provide for accessibility. (sub. 143, pp. 70–1)

However, less attention has been paid to the accessibility of existing buildings. The revised BCA will not address existing buildings not undergoing significant renovation, some public space around buildings, and some elements of building fit-out. Several inquiry participants commented on the access implications of public services provided from heritage buildings, particularly in regional areas (DDA Inquiry regional forum notes).

FINDING 5.3

The Disability Discrimination Act 1992 appears to have had some impact on making new buildings more accessible. However, inconsistencies between the Building Code of Australia and the Act limit the effectiveness of the Act. Proposals for formal links between the building code and disability standards on access to premises would help to address these inconsistencies.

The Disability Discrimination Act 1992 has been less effective in improving the accessibility of existing buildings, and the proposed disability standards will only address this issue for refurbished buildings.

Access to public transport

The introduction of disability standards for public transport in October 2002 greatly increased the influence of the DDA on the accessibility of public transport. The disability standards (and associated guidelines) establish minimum accessibility requirements that providers and operators of public transport conveyances, infrastructure and premises must meet. A timetable for compliance has been agreed, with targets set at 5, 10, 15 and 20 years from the date of commencement.

Negotiation on introducing the standards took many years, during which time some operators made significant improvements in the accessibility of their services, in anticipation of the standards. It is generally accepted that improving accessibility reduces the level of discrimination. However, not all people can take advantage of improved access and others may not wish to. The degree to which people with disabilities will use more accessible transport is uncertain. Many people with

disabilities state that they can use existing public transport (87 per cent in 1998) but only about half report actually using it (47 per cent in 1998) (box 5.7). Further, analysis presented in the Regulation Impact Statement for the transport standards showed that improving the accessibility of Australia's public transport system would result in a relatively small increase in patronage by people with disabilities and the wider community (between 5 and 13 per cent) (Attorney-General's Department 1999).

Box 5.7 Use of public transport by people with disabilities

ABS data on the use of public transport by people with disabilities suggest that approximately 1.6 million people with a disability used public transport in 1998 (the latest available statistics), but that almost three million people with disabilities (or 87.3 per cent of all people with disabilities) were capable of using at least some form of public transport.

Over two million people with disabilities (65.6 per cent) were able to use all forms of public transport with no difficulty, and a further 80 500 (2.4 per cent) were able to use some forms of public transport without any difficulty. In total, almost 2.3 million people with disabilities (68 per cent) have no difficulty using public transport. However, almost 12 per cent of people with disabilities (or 396 700) are not able to use any form of public transport, while a further 1 per cent (31 300) do not leave home.

Getting to/onto stops/stations and getting into/out of vehicles/carriages caused most concern for those people with disabilities using public transport, because these activities involve steps. A total of 443 100 people with disabilities (13.1 per cent) reported steps in vehicles/carriages as causing the most difficulty. Getting to/onto stops/stations was the second largest cause for concern, with 297 700 people with disabilities (8.8 per cent) reporting difficulties (see appendix C).

ABS data show an increase in the proportion of people with disabilities using public transport between 1981 and 1998. Over three quarters of people with disabilities (78.4 per cent) did not use public transport in 1981, but this proportion had fallen to 53.3 per cent by 1998. The proportion of people with disabilities who reported difficulties using public transport changed little over the period, down from 33.3 per cent in 1981 to 31.1 per cent in 1998.

Source: ABS 1999b, cat. no. 4430.0.

Inquiry participants' views on the accessibility of public transport varied (box 5.8). Some participants argued that there have been marked improvements in accessibility, largely driven by the DDA. Others acknowledged improvements in accessibility, but argued that they are limited to particular geographic areas. Still other participants argued that there have been few improvements in the accessibility of public transport (see appendix C).

Box 5.8 Inquiry participants' views on the effectiveness of the Disability Discrimination Act in public transport

Some inquiry participants considered that the DDA had improved public transport access:

The Act has certainly been very useful in achieving systemic change for people with disability in particular areas of everyday living, including public transport. (National Ethnic Disability Alliance, trans., p. 1430)

Though improvements in accessibility have been predominantly to access for people with physical disabilities, we have been able to use the DDA to support our advocacy for measures to create an accessible physical environment for blind people including the provision of tactile ground surface indicators, audible announcements on public transport and Braille and tactile signage. (Blind Citizens Australia, sub. 72, p. 22)

Access to public transport in South Australia has improved significantly since 1994 when a complaint was lodged against the State Government on the grounds that it was discriminating against people with disabilities in the provision of transport services. (South Australian Equal Opportunity Commission, sub. 178, p. 6)

... the access on public transport has improved. Maybe that's because of legislation within the State area, as well as the federal, because that has improved dramatically. (Dennis Denning, trans., p. 134)

Other inquiry participants noted only patchy gains or no improvement:

In NSW, accessibility of public transport has improved on state transit buses and some train stations with newly installed lifts. However, this is not the case with privately owned buses that operate outside the inner metropolitan area of Sydney ... (Independent Living Centre NSW, sub. 92, p. 5)

Public transport is significantly more accessible than it was before the question of access was first raised under the Disability Discrimination Act. That said, people with disabilities argue that it is still inadequate. Improvement in access has mainly occurred in cities and it not yet anywhere near achieving 'ordinary' access. (Department of Family and Community Services, sub. DR362, p. 15)

... other trends in transport services are making public transport less safe and thus less accessible for blind people. For example, transport operators are reducing staff at railway and bus stations without providing other means to assist blind travellers. (Blind Citizens Australia, sub. 72, p. 22)

The majority of the attention has been on rolling stock and access issues related to boarding the conveyances. ... no formal arrangement has been proposed to inform cooperation between the range of players that collectively control and maintain the assets that support transport stock. This includes footpath and road maintenance and improvements along with other pedestrian and traffic facility management. (Marrickville Council, sub. 157, p. 11)

... things have not changed a lot for us in the last 10 years in public transport. (Barb Edis, trans., p. 1838)

In Tasmania, regional and rural areas receive greatly reduced transport services ... Accessible transport in many of these areas is non-existent. ... The provision of accessible bus services is thought to be decades away due to the ability to claim 'unjustifiable hardship' on the grounds of economic viability. (Advocacy Tasmania, sub. 130, p. 4)

Little national data are available to assess progress in implementing accessible public transport. The Productivity Commission notes that an Accessible Public Transport National Advisory Committee was established to monitor compliance with the new disability standard. However, the reporting framework being developed by the Committee has yet to be finalised and it is unclear when data will be available to the public. In the meantime, HREOC (sub. 143) has provided the following summary of improvements in public transport accessibility.

- Almost 25 per cent of publicly operated and 20 per cent of privately operated metropolitan buses are now accessible. The accessibility of non-metropolitan buses is substantially lower but has begun to be implemented with around 6 per cent now accessible.
- Almost 100 per cent of metropolitan rail carriages provide some degree of access even if not in full compliance with the standards. The figure for non-metropolitan rail carriages is lower but still exceeds the first five-year 25 per cent target.
- Rail station access is difficult to quantify but appears to have exceeded 25 per cent for physical access in all jurisdictions either for independent or assisted access.
- Accessible acquisitions commenced later for trams than for other transport modes, but is at 100 per cent in Sydney (which has seven trams) and is 20 per cent in Melbourne. However, a much lower proportion of tram stops in Melbourne are accessible.

HREOC (sub. 143, pp. 64–5) also identified the need to improve:

- local and State government coordination to ensure accessible transport services match with accessible local infrastructure (such as bus stops and access paths connecting with rail stations)
- access for passengers using wheelchairs to regional and rural air services.

Some inquiry participants were concerned about wheelchair accessible taxis (WAT). For example, the Independent Living Centre NSW submitted:

Taxis are available, but not reliable. People who need an accessible taxi are never guaranteed of its arrival, let alone arrival on time. It is very difficult to organise your life with such uncertainty built into your daily program. (sub. 92, p. 5)

The Disability Council of NSW provided a list of common complaints with WAT:

- the demand for signed blank cab vouchers
- the practice of signing vouchers on behalf of the person with the disability who is unable (due to their position in the cab) to see the meter

-
- licensing taxis that do not fit licensing requirements (like the roof being too low or safety straps (seat belts) not being available)
 - refusing to pick up a fare because the passenger is known to be ‘too much bother’
 - using accessible taxis for the most profitable enterprise (eg delivering flowers on Valentine’s Day) when license restrictions note the licences are provided principally for the purpose of transporting disabled passengers. (sub. 64, p. 20)

Similar views were expressed by Bruno Marmo (trans., p. 2987); Disability Action Inc. (trans., p. 943); Dr Harry New (sub. 218) and people participating in the Upper Hume regional forum (DDA Inquiry regional forum notes).

HREOC (sub. 143, p. 64) noted that the proportion of WAT had increased to 7 per cent in metropolitan areas and 9 per cent in non-metropolitan areas, but that response times required further improvement. The Australian Taxi Industry Association (ATIA) (pers. comm., 7 April 2004) submitted that the figures quoted by HREOC were likely to underestimate the number of WAT currently in operation. Data for New South Wales, Victoria, Queensland, Western Australia, South Australia and the ACT indicate that, on average, 8.1 per cent of metropolitan and non-metropolitan taxis are wheelchair accessible. The proportions were generally higher in regional areas than in metropolitan areas (see appendix C). The ATIA also noted that WAT were not suitable for all people with disabilities, such as passengers with visual impairments (sub. DR311).

A number of reasons have been suggested for the problems identified with WAT. First, the ATIA (sub. DR311) argued that the regulations governing WAT provided few incentives for operators to provide these services. It noted that only 4 of the 15 WAT licences released by the South Australian Government in 2002 were taken up (sub. DR311, p. 1). State and Territory regulators determine the fare structure for wheelchair dependent passengers, which the ATIA argued does not reflect the time required to pick up and drop off these passengers. It argued further that WAT represent a greater proportion of the taxi fleet compared with proportion of people generally requiring those services, and therefore it was important that WAT operators be allowed to carry passengers without disabilities (sub. DR311, p. 1).

Second, the South Australian Government noted that the structure of the industry makes it difficult to ensure compliance with the disability standards for accessible public transport:

Taxi services are provided commercially by independent small business operators, with every level within the taxi industry being a separate business entity. ... drivers, as individual business entities, can choose how to prioritise the jobs they accept from the booking service. State Government regulation and specified licence conditions ensure that taxi services are available for people who require an Access Cab. However,

compliance with standards ultimately falls on the business decisions of operators and drivers of taxis, as small business operators. (sub. DR356, p. 3)

The ATIA (sub. DR311) noted that many people with disabilities responded to the slow response times by booking services directly with WAT operators, a practice resulting in further increases in general waiting times. Some jurisdictions, such as New South Wales, have introduced measures to monitor this situation, by requiring WAT operators not accepting radio bookings to prove that they are providing sufficient services to wheelchair passengers (ATIA, pers. comm., 7 April 2004).

Additional data on accessible public transport in some jurisdictions are presented in appendix C.

FINDING 5.4

The Disability Discrimination Act 1992 appears to have been relatively effective in improving the accessibility of public transport in urban areas. However, it has been less effective in relation to taxis.

5.5 Eliminating discrimination in the provision of goods and services and other areas

The DDA makes it unlawful to discriminate in the provision of goods, services and facilities, and in providing access to other areas that this report terms ‘social participation’ (the disposal of land, accommodation, clubs and incorporated associations, superannuation and insurance, and sport). Given the wide coverage of everyday activities, it is difficult to measure the effectiveness of the DDA in eliminating discrimination in all these areas.

The provision of goods, services and facilities accounts for the second highest proportion of DDA complaints after employment (section 5.2). The social participation areas do not usually attract many complaints. In 2002-03, about 3 per cent of DDA complaints related to accommodation, 2 per cent related to superannuation and insurance, and 1 per cent related to clubs and incorporated associations. No complaints were received about the purchase of land or sport (see appendix D).

Effectiveness of the Disability Discrimination Act in selected areas

The DDA has contributed to positive outcomes in the provision of certain goods and services, both for individuals and at a systemic level (box 5.9). There is little

evidence of the use of the DDA in most areas of social participation, and it is not possible to assess the effectiveness of the Act in these areas. There has been some use of the DDA in relation to insurance (superannuation and insurance are discussed in chapter 12).

Box 5.9 The Disability Discrimination Act and goods and services

Banking

Following a HREOC inquiry, the banking industry adopted industry accessibility standards on Internet and phone banking, EFTPOS facilities and automatic teller machines. The Australian Bankers' Association and some banks have also developed (or updated) DDA voluntary action plans (Jolley 2003, p. 50).

Telecommunications

A DDA complaint and HREOC inquiry encouraged mobile phone companies to introduce schemes in April 2001 addressing problems for people using hearing aids (HREOC 2001e).

A DDA complaint (*Scott v Telstra* [1995] H95/34, H95/51) changed company and industry practices, and influenced the definition of a standard telephone service under the *Telecommunications Act 1997*. It has been described by many, including Bourk (2000a) and Jolley (2003), as a watershed for people with disabilities.

HREOC has received requests to investigate other telecommunications services, particularly SMS messaging on mobile phones (HREOC 2002h).

Access to information

A DDA complaint (*Maguire v SOCOG* [1999] H 99/115) had a significant impact on information availability, particularly website accessibility (Blind Citizens Australia, sub. 72, p. 9). However, some inquiry participants argued that the DDA corrective and punishment mechanisms had an effect only 'after the event', and that other influences such as international Internet standards have been more important (Physical Disability Council of NSW, sub. 78, p. 23).

Insurance and superannuation

The insurance and superannuation exemption was a topical issue in this inquiry (see chapter 12). The DDA has played a role in encouraging insurance industry reforms. The threat of a DDA complaint led to progress in developing a memorandum of understanding (MOU) between the Insurance and Financial Services Association (IFSA) and mental health sector stakeholders. The MOU requires IFSA members to revise their underwriting practices and adopt new guidelines for dealing with people with mental health problems (Mental Health Council of Australia, sub. 150, p. 10). It is too early to tell how successful this MOU might be or how it might translate into treatment received by people with other disabilities.

Access to goods and services and social participation includes a broad range of activities. Access for people with disabilities appears to have improved in some of these areas, often as a direct result of a DDA complaint or inquiry.

Many inquiry participants acknowledged the role of the DDA, with Blind Citizens Australia (sub. 72, p. 23) commenting that the DDA ‘has certainly provided a mechanism to get services to change entrenched practices’. The Deafness Forum of Australia (sub. 71, p. 3) acknowledged that ‘without the DDA, many deaf and hearing impaired people would be isolated and unable to participate in the society and economy at all’.

Public inquiries into some specific goods and services—including captioning and e-commerce—appear to have been particularly effective in improving outcomes for people with disabilities, as well as awareness of disability issues. The consultation processes involved have been a major factor contributing to their impact (see chapter 10). High profile complaints have also helped to improve outcomes for people with disabilities in certain areas, including the accessibility of information and telecommunications (see appendix D).

However, some inquiry participants argued that progress was the result of a number of factors, with the DDA being only one. The Mental Health Coalition of South Australia (sub. 171, p. 2) commented, for example, that the greater ability of most people with a disability to participate in community life is due ‘in part to funding increases for services since 1985 as well as regulatory actions like the introduction of the DDA’.

FINDING 5.5

The Disability Discrimination Act 1992 has played a significant role in reducing discrimination in access to some goods and services, including electronic banking and telecommunications.

5.6 Eliminating discrimination in the administration of Commonwealth laws and programs

The DDA makes discrimination in the administration of Commonwealth laws and programs unlawful (s.29). The number of complaints in this area grew from 1992 to 2001, but has been falling steadily since, and the total number of complaints is relatively small (see appendix E). HREOC noted that federal agencies, in general, ‘do not appear to have been a particular target for complaints above and beyond other providers of services’ (HREOC, sub. 143, p. 79). Moreover, many complaints in this area were about the content of laws or the eligibility criteria for government

programs, rather than about the way in which these laws and programs were administered. Of the remaining complaints, most were related to the physical accessibility of government premises and the availability of program information in alternative formats. However, progress in areas such as the accessibility of polling places continues to be lacking (see chapter 9).

The Australian Government has also been subject to a number of complaints under section 15 (employment) and section 24 (goods, services and facilities) (see appendix E). Between 1998-99 and 2002-03, employment complaints were the most numerous of all complaints against the Government; they also represented 12 to 21 per cent of all employment complaints received by HREOC under the DDA.

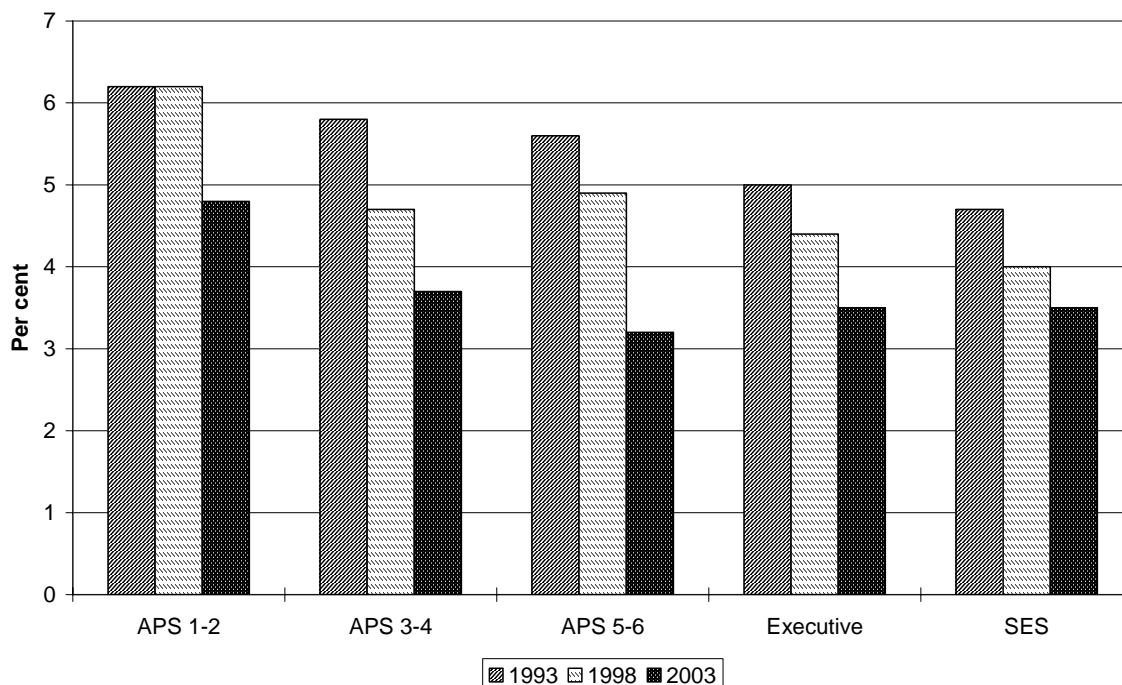
Some inquiry participants criticised the Australian Government's performance and behaviour as an employer of people with disabilities (Terry Humphries, sub. 66; Alexa McLaughlin, trans.; Blind Citizens Australia, trans.). The original Commonwealth Disability Strategy (the planning framework adopted by the Australian Government in response to the DDA), aimed to increase the representation of people with disabilities in the Australian Public Service (APS) between 1994 and 2000. However, that proportion has declined since 1993 (see appendix E). In 2003, only 3.6 per cent of APS employees reported a disability. (This figure is based on self-reporting of disability, and the true representation of people with disabilities in the APS is likely to be somewhat higher.)

The overall decline might be explained in part by the effects of downsizing and contracting out of lower level administrative positions. But this does not explain why the employment rates of people with disabilities in the APS decreased at all staff levels (figure 5.6).

Other Australian Government activities, such as the provision of accessible information, have met with somewhat more success under the Commonwealth Disability Strategy. For example, in the successive reviews of the strategy, most agencies reported improvements in the accessibility of the information they provide. The adoption, as part of the Government Online Strategy, of the World Wide Web Consortium guidelines for accessible web sites has been beneficial in this regard.

Given the wide-ranging nature of the activities carried out by the Australian Government, it is not possible to provide a single-line assessment of its performance of in relation to all its obligations under the DDA. Although the Australian Government has been the target of a number of DDA complaints, this is to be expected given the breadth of its responsibilities. Moreover, a number of those complaints appear to have been about the content of laws and funding of programs rather than about their administration.

Figure 5.6 Ongoing staff with disabilities, by Australian Public Service classification group, 1993, 1998, and 2003



Data source: APSC 2002; 2003a.

There are indications, however, that Australian Government departments and agencies have not consistently provided harassment- and discrimination-free environments for employees with disabilities. This might explain why, despite several reviews since its introduction, the Commonwealth Disability Strategy has failed to ensure adequate representation of people with disabilities in the APS.

FINDING 5.6

The Australian Government has implemented its own Commonwealth Disability Strategy in response to the Disability Discrimination Act 1992. This strategy has been ineffective in improving employment opportunities for people with disabilities in the Australian Public Service.

5.7 Effectiveness of the Disability Discrimination Act for different groups

The effectiveness of the DDA has varied for different groups of people with disabilities. These groups include people with different types of disability, and people with disabilities and other potential sources of disadvantage.

People with different types of disability

Many inquiry participants noted that the DDA appears to have been less effective for people with certain types of disability. As Queensland Parents for People with a Disability noted, the DDA appears to be least effective for those who are most vulnerable:

... people who are most vulnerable (ie people living in institutions, people with mental illness or intellectual disability, people with multiple disabilities) are provided the least protection under the Act. (sub. DR325, p. 1)

HREOC has stated that the DDA has led to better outcomes for people with 'visible' disabilities (such as mobility and sensory impairments) than for people with 'hidden' disabilities (such as mental illness, intellectual disability, acquired brain injury and long term chronic illness such as multiple chemical sensitivity and chronic fatigue syndrome). Outcomes have also been less favourable for people with dual or multiple disabilities (HREOC 2003d; NNDDL 2001).

The Guide Dogs Association of South Australia and the Northern Territory (sub. DR292) stated that, even among people with sensory disabilities, the 'DDA seems to have been of most use to those who are articulate and/or courageous, and often any success they may have had, has had little impact on those who are less advantaged' and that although 'some with a sensory disability have benefited':

... still many people with sensory disabilities have significant issues in terms of employment, education, access to community services, access to government service, access to community and private legal and medical supports because of direct and indirect discrimination. (sub. DR292, pp. 2–3)

As noted in chapter 13, some people with disabilities face particular barriers to using the DDA complaints process, which in turn limits the effectiveness of the DDA for these people. The Mental Health Council Australia, for example, argued that people with psychiatric disability faced particular barriers:

The complaints process for reporting occurrences of discrimination is no doubt a stressful process. But particularly for people with a psychiatric disability, the necessary self-disclosure and stigma they may experience during the process may act as a deterrent and the process may indeed be a risk factor in illness relapse. (sub. 150, p. 19)

Similarly, people with different forms of cognitive disability often rely on carers or advocates to complain on their behalf (see chapter 9). People living in institutional accommodation can also find it difficult to make complaints because they are wholly or partly dependent on the person or organisation about whom they would like to complain (see chapter 13). In addition, the process of 'de-institutionalisation' (see chapter 9) means that only those with the greatest restrictions, and most difficult to integrate, remain in institutions.

As noted in chapters 2 and 8, the DDA aims to provide substantive equality for people with disabilities—that is, access to the same opportunities as other people. But the nature of some people’s disabilities may be such that they cannot take advantage of these opportunities. As discussed in chapter 3, there is a relationship between different disability types and the nature and severity of restriction those disabilities impose (ABS 1999b). A far greater proportion of people with a psychiatric or intellectual disability required constant help (profound restriction) or frequent help (severe restriction) to carry out communication, mobility and/or self-care, compared with people with a ‘physical/diverse’ disability. In contrast, people with sensory/speech disabilities seemed the least restricted group. This group had the largest proportion with either no restrictions or only mild restrictions.

There is a limit to how far the DDA can address the disadvantages faced by some people with disabilities. Anti-discrimination legislation benefits most those against whom discrimination is most unreasonable; that is, where the disability is least relevant (in degree or kind) to the circumstances. Some people may not be able to take advantage of the opportunities created by the DDA without additional support, such as legal aid or disability services. Although legal aid and disability services are extremely important for improving participation by many people with disabilities, the Productivity Commission considers that decisions about their establishment, funding and eligibility are beyond the scope of anti-discrimination legislation (see chapter 15).

FINDING 5.7

The Disability Discrimination Act 1992 appears to have been more effective for people with mobility and sensory impairments than those with a mental illness, intellectual disability, acquired brain injury, multiple chemical sensitivity or chronic fatigue syndrome. It also appears to have been less effective for people with dual or multiple disabilities and those living in institutional accommodation. However, reasons for these differences often relate to factors other than disability discrimination, such as the severity of disability.

People with multiple disadvantages

Some people with disabilities have other sources of potential disadvantage, apart from their disabilities, which can limit the effectiveness of the DDA in eliminating discrimination.

Indigenous people with disabilities

There is a lack of comprehensive data on Indigenous people with disabilities. The report *Overcoming Indigenous Disadvantage* cited research that found that although Indigenous people might have around the same rate of genetic disabilities as the rest of the population, they have a higher rate of disability owing to environment and trauma-related disabilities (SCRGSP 2003, pp. 3.4–3.5).

The 2001 HILDA survey found that 29.7 per cent of people identifying as Aboriginal or Torres Strait Islander reported having a disability, compared with 23.2 per cent of those who did not identify as such. This is likely to underestimate the true prevalence of disability among Indigenous Australians because the survey did not cover people living in remote areas of Australia, and the cultural basis of disability means that Indigenous Australians are likely to identify with disability differently from the way in which non-Indigenous Australians do (box 5.10).

There is strong anecdotal evidence that the DDA has been much less effective in addressing discrimination for Indigenous people with disabilities. The Aboriginal and Torres Strait Islander Commission (ATSIC) argued that Aboriginal and Torres Strait Islander peoples with disabilities, their families and their carers face specific difficulties:

... difficulties normally experienced by people with disabilities, including disability discrimination, are compounded in the case of Indigenous people with disabilities by various factors. These factors include, in particular:

- a lack of sensitivity and understanding of Indigenous culture by service providers
- lack of understanding by urban support services and hospital, medical and nursing staff about the facilities and support available in Indigenous communities. For example, service providers may not fully appreciate that equipment such as wheel chairs may suffer increased wear and tear because of the terrain
- limited influence on decisions affecting them (for example, concerning better access to government services that suit their particular needs)
- insufficient government action to make Indigenous people with disabilities aware of their entitlements under law
- the socially disadvantageous position of Indigenous people (in terms of health, education, employment and infrastructure services) which detracts from their awareness of their rights and their capacity to assert them. (sub. 59, pp. 2–3)

In addition, ATSIC noted that complaint procedures do not reflect the needs of Indigenous people with disabilities (sub. 59, pp. 2–3, 5).

Box 5.10 Centre for Remote Health information on Indigenous disability

There is a severe lack of comprehensive data in regard to Indigenous disability.

There are difficulties in establishing the prevalence of 'disability'. Available research tends to be confounded by several factors—the identification of Indigenous peoples, the accuracy of estimates of the Indigenous population, varying methodologies of different studies and most importantly the differing definitions of disability between Indigenous and non-Indigenous peoples. This is partly because 'disability' is a social construct. Definitions of disability used by non-Indigenous health professionals may not be the same definitions as those used by Indigenous people. This may have substantial impact on reporting rates of disability, particularly when the methodology depends on self reporting.

While the exact extent of disability in the Indigenous population is unclear, there are indications that it may be substantially more than in the non-Indigenous population. In general terms, the extremely poor health status and large burden of ill health, as measured by mortality, hospital separations, injury rates, and prevalence of medical illnesses, of Indigenous peoples is likely to give rise to an increased prevalence of disability. Given that many diseases affect Indigenous people at an earlier age than non-Indigenous people, it is likely that disability will also affect Indigenous people at an earlier age than the non-Indigenous population.

One of the most thorough studies estimating the numbers of Indigenous people with a disability was undertaken by Thomson and Snow in 1994 in New South Wales. This study found that in the sample of the 907 Aboriginal usual residents of Taree, 25.0 per cent were identified as having one or more disabilities, 13.7 per cent as being handicapped by their disability and 5.1 per cent as being severely handicapped.

When adjusted for age, the Taree study found that Aboriginal males were 2.5 times more likely to have a disability than were all Australian males, 1.7 times more likely to be handicapped and 2.4 times more likely to have a severe handicap. Similar differences were noted between Aboriginal females and all Australian females.

Source: Centre for Remote Health 2001.

The Disability Services Commission Western Australia, along with Edith Cowan University, is currently undertaking an Indigenous Disability Action Research Project. Consultations to date have identified a number of issues regarding 'lack of sensitivity and understanding of Indigenous culture by service providers', and 'the need to establish local disability advocacy groups to have a strong united voice to inform government of their needs' (sub. DR360, pp. 5–6).

Many Indigenous people with disabilities also have other potential sources of disadvantage, including multiple disabilities and remoteness. The Physical Disability Council of the Northern Territory stated:

Many Indigenous persons have high levels of multiple disabilities and their rights can be easily infringed upon, due to the disempowerment of a most marginalised group of people. The remoteness and tyranny of distance can lend itself to discrimination occurring and not being acted upon to reverse the situation. (sub. 125, p. 1)

The Productivity Commission visited Indigenous people and disability service providers in Alice Springs in July 2003. These visits highlighted a number of barriers that limit the effectiveness of the DDA for Indigenous people in that area, but also provided at least one example of the use of the DDA to address discrimination (box 5.11).

Box 5.11 Inquiry participants' views in Alice Spring visits

ATSIC Commissioner Alison Anderson stated:

A rate of deafness of 4 per cent is considered a crisis in the rest of Australia. Yet 70 per cent of children in some remote communities are hearing impaired. Vision impairment problems are severe, too, due to glaucoma.

There is a culture of non-complaint amongst Aborigines, including in regard to racial discrimination. This is partly because of lack of awareness of rights, partly because of historical reasons. Also, they can be victimised if they complain, by the only service provider in town.

The HREOC complaints process is too long and not culturally adapted. People will just walk away.

The Alice Springs Disability Services Centre stated:

It appears that disability is not a primary issue when primary health care is still lacking and high on the list of priority.

While individuals would like to remain in their communities, they usually have to go to Alice Springs for health care and services. This can lead to big social issues and cultural dislocation.

Many Indigenous people with disabilities are not job ready and the labour market is limited.

There are two Indigenous schools in Alice Springs; one is a primary school (Yiprinya) and the other one, Yirara, is the Indigenous high school. There are, and have been, students with disabilities at these schools. Originally, no extra support was provided to these students without a fuss being made. Support was eventually provided under threat of the Disability Discrimination Act, which has proven a powerful ally in addressing such matters.

Indigenous organisations require more education about the DDA as there is a lack of knowledge and understanding of the Act.

Source: Alice Springs visit notes.

The Productivity Commission considers that Indigenous Australians with disabilities can face multiple disadvantages. These disadvantages relate to factors such as race discrimination, language barriers, socioeconomic background and

remoteness. The DDA can be of only limited effectiveness in addressing these other sources of disadvantage. Nevertheless, DDA-specific issues should be addressed.

More comprehensive data on the experiences of Indigenous Australians with disabilities is needed to allow the development of better policy. Some of this work is underway. The ABS *Indigenous Social Survey*, expected to be published in 2004, will provide information on the prevalence of disability in the Indigenous population (it is planned to conduct the survey on a six yearly basis).

In addition, the Council of Australian Government (COAG) Steering Committee publishes the *Indigenous Compendium*, a collation of Indigenous data from the *Report on Government Services* (SCRGSP 2004), and *Overcoming Indigenous Disadvantage: key indicators 2003* (SCRGSP 2003). This presents indicators of Indigenous disadvantage, including in the area of disability.

In 2002, a working party made up of representatives chosen by ATSIC, the National Disability Advisory Council and National Caucus of Disability Consumer Organisations recommended the establishment of a National Indigenous Disability Network. The Australian Government is currently considering a consultant's report into the establishment of such a network.

The Productivity Commission considers that a National Indigenous Disability Network could perform a valuable role in ensuring disability policy recognises appropriate cultural sensitivities. There appears to be a role for HREOC in liaising with the National Indigenous Disability Network to improve awareness of the DDA among Indigenous disability groups and individuals. However, as discussed in chapter 7, the Productivity Commission does not think it is appropriate to amend the DDA to refer specifically to Indigenous disability issues.

People with disabilities from non-English speaking backgrounds

The 2001 HILDA survey indicated that 17 per cent of people with disabilities came from non-English speaking backgrounds (NESB).⁵ This was the same proportion as for people without a disability (HILDA unpublished).

The National Ethnic Disability Alliance (NEDA) stated that people with disabilities who are from a NESB face many barriers including:

- lack of accessible information and knowledge about rights, essential services and supports

⁵ The National Ethnic Disability Alliance stated that 25 per cent of people with disabilities come from a non-English speaking background (sub. 114, p. 4).

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- lack of culturally appropriate services and supports
 - myths, misconceptions and negative stereotypes about disability and ethnicity in both the NESB and Anglo-Australian communities
 - prejudice against people with disability from both NESB and Anglo-Australian communities
 - government's emphasis on 'mainstreaming' without acknowledgment of the inequities that exist in relation to ethnicity
 - NESB people may not understand concepts used to describe their situation
 - ethnic communities often do not have the capacity to advocate for their needs. (sub. 114, p. 7)

NEDA argued that people from a NESB are reluctant to use the DDA due to:

- the complexity of the process involved—high degree of English literacy and comprehension of the Australian legal and service system is required
- fear of reprisal—a very real fear for those who originally come from countries under harsh dictatorships
- cultural perspectives of making complaints
- the associated costs—by and large, people from a NESB with disability are poorer than their Anglo-Australian counterparts
- the adversarial nature of making complaints
- the burden of proof that rests on the complainant
- not all people have, or are offered, the services of an advocate to support them through the process. (sub. 114, pp. 7–8)

NEDA suggested increasing HREOC's resources so it could 'provide more education and accessible information to people from a NESB with disability about the DDA and its availability to those who have been discriminated against' (sub. 114, pp. 5–6).

As for Indigenous people with disabilities, the Productivity Commission considers that the DDA can be less effective for people from non-English speaking backgrounds. This lower effectiveness partly relates to barriers to using the complaints process. The Productivity Commission has made recommendations to improve the complaints process, which should reduce some of these barriers (see chapter 13).

People with disabilities from rural and remote regions

The 2001 HILDA survey found that 59 per cent of people with disabilities were living in major cities, 29 per cent in 'inner regional areas' and 11 per cent were in

‘outer regional areas’ (defined in terms of road distance from the nearest urban centre). Only 1 per cent were living in remote areas. These proportions were not very different from those for people without disabilities.

The DDA can be less effective for people with disabilities living in rural and remote regions. The Productivity Commission attended a number of regional forums in northern Victoria, at which several participants commented on difficulties faced by people with disabilities in regional areas (box 5.12). Some of these difficulties, such as limited choice, are more closely related to remoteness and small populations than to shortcomings in the DDA. But other disadvantages are more closely related to the DDA, such as the lack of awareness and barriers to using the complaints process (see chapter 13).

The effectiveness of the DDA in regional areas can also be affected by the increased likelihood that the defence of ‘unjustifiable hardship’ will apply. As noted by participants in the regional forums, many services in the regions are provided by small businesses or local councils that do not have significant resources. In addition, many services are provided in historic premises which can be expensive to modify or which have heritage considerations.

FINDING 5.8

People with disabilities from Indigenous or non-English speaking backgrounds, and those living in regional areas face multiple potential sources of disadvantage. However, reasons for this often relate to factors other than disability discrimination, such as race discrimination, language barriers, socioeconomic background and remoteness.

5.8 Summary and conclusions

There is no direct measure of the level of discrimination. The Productivity Commission has drawn together a number of indirect measures with evidence from inquiry participants to give a general picture of disability discrimination and the effectiveness of the DDA in eliminating discrimination.

The DDA has been reasonably effective in addressing disability discrimination. But its effectiveness has been patchy and there is still a long way to go. The Commission is especially concerned about discrimination in employment, because having a job is a key to people participating more fully in the community. Furthermore, the nature of the challenge facing the DDA is changing as the focus shifts from addressing physical barriers to attitudinal barriers.

Box 5.12 Inquiry participants' views in Victorian regional forums

Comments on awareness included:

There are fewer people with each type of disability than in the city, so people with a disability are even more of an invisible minority than in city areas. (Upper Hume)

People do not have much knowledge of anti-discrimination law. ... There is no general community awareness of the DDA, so how can they be expected to comply? (Central Hume)

Comments on belonging to a small regional community included:

Belonging to a small community can have benefits if people understand your needs. But it can have disadvantages if you become identified as a troublemaker. (Central Hume)

Many services are located in historic buildings with access issues. (Central Hume)

Even local offices that people with disabilities need to visit regularly, such as Centrelink and FaCS, are not accessible. (Upper Hume)

Students with disabilities and their families often have to move to larger towns to get access to suitable services. This is not a discrimination issue as such, but a problem of access to specialist services in small population centres. (Upper Hume)

There are limited accommodation options for people with disabilities ... Public housing is not always suitable ... The private rental market is tight, so people who might require the landlord to spend money on adjustments are not considered. (Upper Hume)

Comments on making complaints included:

People are not inclined to make complaints about discrimination because of the fear of being ostracised or victimised. This is particularly important in a small community. ... It seems contradictory to the general objective of getting along with others. People want to fit in, not to make waves and draw attention to themselves. (Central Hume)

The DDA is seen as too difficult, and HREOC as too distant, to respond effectively to complaints. (Upper Hume)

Comments on progress over the past 10 years included:

Generally there has been some progress over the last 10 years or so in reducing discrimination but there is a long way to go. Improvements have been more in the physical disabilities area than in the less obvious non-physical areas such as intellectual disability, mental health, chemical sensitivities etc. (Central Hume)

The DDA brought so much hope when it was established in 1992, but it has been very disappointing. There has been no practical change in regional areas. (Upper Hume)

With regard to physical access to public buildings such as shops and offices, threatening to make a formal complaint under the DDA has brought results in several cases. (Upper Hume)

Source: DDA Inquiry regional forum notes.

Eleven years is not a long time in which to achieve the types of fundamental change intended to be achieved by the DDA. Pervasive 'network effects' mean that many of the benefits of the DDA will be fully realised only as more of the system becomes accessible. Reducing discrimination in employment, for example, might be less effective if discrimination in education limits the opportunities for people to

obtain labour force skills. Similarly, the benefits of accessible public transport will increase as more destinations become accessible.

FINDING 5.9

Given its relatively short period of operation, the Disability Discrimination Act 1992 appears to have been reasonably effective in reducing overall levels of discrimination. However, there is still some way to go to achieve its object of eliminating discrimination.

The effectiveness of the DDA in achieving its other objectives is discussed in chapter 9 (equality before the law) and chapter 10 (promoting community acceptance and recognition).