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## 6 Benefits and costs of the DDA

### 6.1 Introduction

This chapter, together with chapter 7, address the inquiry's terms of reference relating to the competition and economic effects of the *Disability Discrimination Act 1992* (DDA). As noted in chapter 1, the terms of reference require the Productivity Commission to use a broad analytical framework that draws on the Competition Principles Agreement (CPA) between the Australian, State and Territory governments and on the Regulatory Impact Statement (RIS) process of the Australian Government.

Although these two processes have somewhat different objectives, they have largely similar analytical requirements. Moreover, they overlap with the Productivity Commission's own policy guidelines for the conduct of research and inquiries, defined in section 8(1) of the *Productivity Commission Act 1998*.

Particularly relevant to the three approaches mentioned above are those terms of reference that require the Productivity Commission, in reporting on the appropriate arrangements for regulation, to account for:

- the social impacts in terms of costs and benefits that the legislation has on the community as a whole
- any parts of the legislation that restrict competition
- efficient regulatory administration
- compliance costs on small business.

Within this framework, the purpose of this chapter is to ascertain whether:

- the DDA has the potential to restrict competition (section 6.2)
- the benefits of the DDA outweigh its costs (sections 6.3 to 6.6).

The third question posed in CPA legislation reviews—whether there are alternative ways of achieving the objectives of the DDA that would impose lesser restrictions on competition—is addressed in chapter 7.

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## 6.2 Can the DDA restrict competition?

Under the terms of CPA legislation reviews, legislation should not restrict competition unless the benefits to society of those restrictions outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

Some inquiry participants criticised the rationale for subjecting the DDA to a CPA review (Dorothy Bowes, AHESA Queensland, sub.DR286; Women with Disabilities Australia, sub.DR318; D. Buckland, sub.DR252). However, competitive pressures in an economy encourage efficiency gains, which result in higher living standards for all, including people with disabilities. These gains are diverse and widespread, ranging from innovation and greater choice, to lower costs and higher productivity. By reducing such benefits, legislation that imposes restrictions on competition can result in a net welfare loss for the community.

It is possible, nonetheless, that the disadvantages from restricting competition might be outweighed by the benefits of the legislation. If there are no alternatives to the legislation that would impose lesser restrictions on competition, the legislation would be deemed to meet the CPA principles for good regulation.

According to the National Competition Council (CIE and NCC 1999, p. 34), regulation or legislation could restrict competition if it:

- governs the entry or exit of firms or individuals into or out of markets
- controls prices or production levels
- specifies strict technical standards for products or services
- restricts advertising and promotional activities
- restricts the quality, level or location of goods and services available
- restricts price or type of input used in the production process
- is likely to confer significant costs on business, or
- provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.

Based on the above, several of the DDA's features may have the potential to restrict competition. It could be argued, for example, that the DDA creates barriers to firm entry because it limits the potential for business and other organisations to market non-accessible goods and services. Also, the DDA's requirement to accommodate people with disabilities might impose significant compliance costs on business and other organisations, and restrict the type of inputs used by them. For example, although employers are entitled to recruit employees based on merit, under the DDA they are not at liberty to take the costs of any workplace adjustments into

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account (unless these would cause unjustifiable hardship). This might mean recruiting a person with a disability who, although ranked highest on merit, does not make the largest net contribution to the firm's profit.

In summary, the DDA might restrict competition by regulating the inputs and outputs of organisations. There is, therefore, an *a priori* case for investigating whether these potential restrictions on competition are justified by the net benefits that the DDA generates.

FINDING 6.1

*By regulating inputs used by organisations and their outputs, the Disability Discrimination Act 1992 has the potential to impose costs on business and other organisations, and to restrict competition in the Australian economy.*

### **6.3 Approaches to measuring the benefits and costs of the DDA**

Some of the benefits the DDA produces come at a cost in terms of community resources. Thus, tradeoffs arise between policies aimed at combating disability discrimination and those pursuing other desirable societal objectives. Society faces a tradeoff, for example, between expenditure on preventing disability from occurring (for example, through medical research and workplace accident prevention) and expenditure on reducing discriminatory barriers by accommodating disability that does occur.

The unjustifiable hardship defence and some exemptions contained in the DDA are an acknowledgment of these tradeoffs (see chapter 8). These provisions recognise the need for society's resources to be allocated among conflicting ends in a way that maximises overall welfare. This goal would not be achieved if, for example, disability adjustment costs imposed on an organisation left it unable to address workplace safety issues adequately or drove it out of business.

The costs and benefits of the DDA are likely to be widespread and, to a large extent, intangible and non-measurable. It is not feasible, therefore, to carry out a quantitative cost–benefit analysis of the DDA. This problem was acknowledged by the Equal Opportunity Commission Victoria, which stated that:

Although the [Equal Opportunity] Commission acknowledges that measuring the effectiveness of anti-discrimination schemes is essential, it warns against the application of a rigid costs/benefits analysis without regard for the overriding value and importance of protecting human rights. (sub. 129, p. i)

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There is scope for CPA legislation reviews to go beyond quantifiable costs and benefits, to gauge whether, on balance, the legislation is in the ‘public interest’. That is, where the CPA calls for the costs of a particular policy to be balanced against its benefits, a range of matters other than narrowly defined direct costs and benefits may be taken into account, where relevant. These matters include social welfare and equity, the interests of consumers generally, economic and regional development, and ecologically sustainable development.

The remainder of this chapter relies on a combination of quantitative and qualitative evidence that, although necessarily fragmented and incomplete, allows a tentative conclusion to be reached about whether the DDA, in its present form, is in the public interest (section 6.6). This conclusion is based on an examination of the benefits (section 6.4), costs (section 6.5) and net benefits (section 6.6) of the DDA.

## **6.4 Benefits of the DDA**

This section examines the nature of the ongoing benefits generated by the DDA. Because the DDA reaches into virtually all areas of economic and social life, it has the potential to produce myriad benefits, both direct and indirect.

Not all benefits of the DDA might be tangible. As discussed in chapter 2, the DDA embodies a social model of disability. According to that model, disability stems from physical and attitudinal barriers erected by society that prevent people with disabilities from making the most of their abilities, participating more fully in the community, and expressing their human rights. The range of barriers suggests that disability discrimination legislation can also generate intangible benefits in the form of greater fulfilment, wellbeing and self-esteem, and a more cohesive society.

### **Direct benefits**

Disability discrimination legislation can generate direct benefits for people with disabilities, for people without disabilities, for organisations and for the community in general.

#### *Benefits accruing to people with disabilities*

For people with disabilities, important direct, tangible benefits of the DDA arise from greater disposable income and higher levels of consumption. These benefits arise when barriers that restrict the range of education, work, consumption, leisure and socialising opportunities available to them are removed.

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Direct and indirect discrimination in several areas of society mean that people with disabilities are often unable to express fully whatever abilities and objectives they have. Barriers encountered in accessing school, university, the workplace, the sports field, the theatre or other social networks combine to lower the income earning opportunities of people with disabilities below those of people with identical potential but without disabilities. Those barriers might result from prejudice or a lack of adjustments at school, university, or in the workplace. They might also be a consequence of an inaccessible environment.

Frisch (1998a) estimated the loss in income due to an inaccessible environment (for example, buildings and transport) for people who use a wheelchair. He argued that lack of access constituted a significant barrier to the greater labour force participation of this group of people with disabilities. He calculated, based on conservative assumptions about productivity, wages and potential increases in participation, that the value of income forgone in Australia as a result of an environment which is inaccessible to people using a wheelchair was \$300 million per annum. He suggested that this figure was an underestimate of the total loss of income due to an inaccessible environment, as it did not account for other types of physical disabilities or for the income forgone because carers of people with disabilities had to ‘step in’ to assist with transport, transfer and mobility (see appendix C).

An inaccessible physical environment also prevents people with disabilities from making consumption decisions that they would otherwise choose. A person who has a disability is limited in the range of goods and services that they can consume, because they lack access to some products. In some cases, making a product accessible to a person with any type of disability poses insurmountable technical challenges. In many more cases, however, technical solutions are available that would make the product accessible at little extra cost. For example, the increasing use of e-commerce in society means that relatively inexpensive adjustments to make websites accessible can produce large benefits for users with disabilities. By mandating such adjustments, the DDA can broaden the consumption options of people with disabilities, and thus increase the level of utility and fulfilment that they derive from goods and services.

The range of goods and services from which a person with a disability can choose is also constrained by the additional, non-discretionary costs associated with having a disability. Where a person without a disability may choose to spend more on, say, entertainment than transport, a person with a disability with the same disposable income and preferences may have no choice but to spend more on transport because of having to use taxis rather than public transport or private cars. By requiring public transport and public buildings to be accessible, the DDA lowers the

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additional costs of having a disability. This allows people with disabilities to act more in accordance with their innate preferences and obtain greater satisfaction from their consumption decisions.<sup>1</sup>

Frisch (1998b) estimated the additional costs that an inaccessible environment (including transport, buildings, goods and services) imposes on wheelchair users at \$4000 per annum on average (this figure includes, for example, the cost of portable ramps). Based on 120 000 wheelchair users of all ages, this translates into a total cost of disability of \$480 million per annum. If the additional costs incurred by other mobility-impaired people (for example, people on crutches) are taken into account and assumed to be \$1000 per annum affecting 250 000 persons, the total benefits of an accessible environment increase to \$730 million per annum.

Combining Frisch's estimates of the potential aggregate benefits from higher incomes (\$300 million) and lower additional costs for people in wheelchairs (\$730 million) yields a total figure of approximately \$1 billion per annum. This suggests that, when all areas and forms of disability covered by the Act are included, the benefits that the DDA might produce are commensurately higher. However, this conclusion—and Frisch's estimates—require qualification, for several methodological reasons (box 6.1).

Putting the issue of estimation aside, however, it would appear that people with disabilities can derive important tangible benefits from anti-discrimination legislation such as the DDA. These benefits are in the form of greater consumption opportunities and associated utility, which arise because of increases in income and decreases in the additional costs of disability.

Alongside the tangible benefits of the DDA for people with disabilities are potentially significant intangible benefits—for example, the sense of worth and equality that a reduction in discrimination can give them. SANE Australia noted:

Research ... reveals that stigma and discrimination—being treated as less worthy than other members of the community—is a primary concern of people with a mental illness, contributing to low self-esteem ... (sub. 62, p. 1)

Even when not experiencing discrimination personally, people with disabilities can benefit from the sense of belonging and inclusion that being able to move freely in the community can bring.

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<sup>1</sup> This includes the consumption of leisure: reduced costs of living lead to an increase in real income, to which some people with disabilities might respond by choosing to work less.

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**Box 6.1 Measuring the benefits of disability discrimination legislation**

Considerable uncertainty surrounds the appropriate methodology for measuring the value of the benefits produced by disability discrimination legislation. When, as in the case of the general provisions of the DDA, the benefits arise through voluntary compliance or through complaints, they are impossible to estimate in the aggregate. The reason for this is that the number of beneficiaries is not known. In the case of disability standards, quantification of benefits is on firmer ground, because widespread compliance can be assumed and the number of beneficiaries estimated.

Even so, the benefits arising from successive disability standards have been subjected to inconsistent measurement methodologies. The least satisfactory of these has been the 'cross-benefits' methodology used in the transport standards RIS by consultants Booz Allen and Hamilton (Attorney-General's Department 1999). This method, originally developed in the United Kingdom (Fowkes et al. 1994), defines the benefits of the standards as the government savings that would follow an increase in employment and mobility of people with disabilities (see appendix C). Such savings would arise as a result of lower public expenditures on aged and health care, and on the disability support pension, and of an increase in income tax.

However, such savings only benefit the government's budget constraint. As income transfers, they do not represent an increase in the welfare of the community.

A different approach to measuring the benefits of disability standards has been proposed by Jack Frisch (1998a, 1998b and subs. 120, 196, DR331). He argues that the benefits of the standards are threefold: (1) the 'insurance value' of an accessible environment; (2) the lost income due to an inaccessible environment and the additional costs of disability; and (3) the value of an accessible environment to people other than people with disabilities. Frisch's approach is anchored in the welfare economics concepts of 'compensating variation', 'existence value' and 'willingness to pay' (Johansson 1991). These concepts are commonly used to measure the value to individuals of goods and services—such as an accessible environment—for which no markets exist (or are incomplete). However, their application to disability policy is relatively new.

Using the Frisch methodology, the Physical Disability Council of NSW (PDCN) calculated benefits for the transport standards far in excess of those appearing in the RIS (PDCN 1998a). That methodology was subsequently adopted, with some modifications, for the quantification of benefits in the access to premises standards RIS (see appendix C and ABCB 2004).

Although the Frisch approach is preferable to the government savings approach adopted in the transport standards RIS, it is not without problems. First, it is unable to apportion the benefits of accessibility between the transport and access to premises standards. It is arguable that, because of network effects, the benefits calculated by the PDCN (1998a and 1998b) will only arise once a completely accessible environment is achieved.

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Box 6.1 (continued)

Second, the Frisch approach assumes knowledge of:

- the number of people benefiting from the standards, and
- the extent to which they would benefit.

Yet, both of these unknowns are hard to estimate. People with different types of disability would benefit to a varying extent from greater access to public transport and buildings.

More importantly, it is not possible to rely on rigid parameters to estimate how greater accessibility will affect the employment, income and costs of living of people with disabilities. These parameters cannot be known in advance because the interrelationships that exist in any economy can give rise to second-round and flow-on effects that might reinforce or reduce the initial effects of the standards.

Given the possible existence of unforeseen effects, therefore, the net employment and income impact of the standards cannot be known *ex ante* with any certainty. Similar concerns have led Barrell et al. (2003) to recommend the use of macroeconomic modelling as part of any assessment of the impact of large scale disability policies. This aligns with the view, expressed in the access to premises standards RIS, that general equilibrium modelling might be more suited to the estimation of the economywide costs and benefits of those standards, given the pervasiveness and importance of buildings as an input into production.

*Sources:* Barrell et al. 2003; PDCN 1998a and 1998b; Attorney-General's Department 1999; Frisch 1998a, 1998b and subs. 120, 196 and DR331; Fowkes et al. 1994; Johansson 1991.

In some instances, intangible benefits might serve to reinforce the tangible benefits previously mentioned. For example, the potential benefits from a reduction in employers' discriminatory attitudes might go unrealised if people with psychiatric conditions lack the self-motivation or confidence to apply for a position. If greater acceptance of this group by society leads to greater levels of self-confidence for its members, they might take up more job opportunities.

In summary, the tangible and intangible benefits of the DDA allow people with disabilities to lead richer and more fulfilling lives, psychologically, socially and materially. Blind Citizens Australia expressed the benefits of the Act as follows:

The DDA has literally increased the visibility of people with disabilities. Since the introduction of the DDA, increasing accessibility has enabled people with disabilities to become more active as employees, consumers and as social, political and cultural participants in the community. (sub. 72, p. 11)



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### *Benefits accruing to people without disabilities*

Disability discrimination legislation that increases the participation of people with disabilities in all facets of daily life might also produce direct benefits for people without disabilities. Within the workplace, for example, management's willingness to accommodate the needs of employees with disabilities (and their carers) might lead to more flexible work arrangements that meet the needs of all employees. In the area of transport, the increase in patronage predicted to result from the introduction of disability standards was partly attributed to an increase in transport usage by people without disabilities, particularly parents with prams and elderly people. One inquiry participant claimed that, to all intents and purposes, a person caring for two children under five years of age suffers from a temporary disability (Kaerest Houston, sub. 19). It may be argued that these groups of people without disabilities would also benefit from the greater accessibility of public buildings that might follow the introduction of the access to premises standards. In addition, people without disabilities would benefit from the reduction in staircase accidents that would follow the installation of lifts (ABCB 2004). Finally, in the area of goods and services, customers from minority groups other than people with disabilities might enjoy the benefits of better, more flexible customer care in businesses that are aware of diversity.

The DDA is aimed at people with disabilities, but also at their carers and associates. Carers in particular might benefit from the increase in employment, education and consumption opportunities that a reduction in discrimination might allow people with disabilities. In 1998, the labour force participation rate of primary carers was 59.2 per cent, compared with 80.1 per cent for people without disabilities (ABS 1999b). This difference suggests that carers also face significant barriers in employment, reflecting the constraints on their time from caring for people with disabilities (Cora Barclay Centre, trans., p. 1030). To the extent that the DDA allows people with disabilities to become more independent and self-sufficient, carers might become more employable and, hence, achieve greater income and consumption levels.

As with people with disabilities, people without disabilities can benefit in intangible ways from reductions in discrimination. In education, for example, most inquiry participants who commented on this issue agreed that inclusive education was of significant benefit to the school culture and to the school community (see appendix B).

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### *Benefits accruing to complying organisations*

Greater involvement with people with disabilities might also have advantages for those organisations complying with anti-discrimination legislation. In employment, some inquiry participants suggested that the operation of the DDA has increased the quality of labour and the range of skills from which employers can choose (Human Rights and Equal Opportunity Commission, sub. 143; Equal Opportunity Commission Victoria, sub. 129). The availability of a wider range of skills to employers might, in turn, lead to increases in firm productivity through, for example, better matching between jobs and individuals (Office of the Director of Equal Opportunity in Public Employment, sub. 172).

Some Australian case studies have shown that employees with disabilities can equal or better the work performance of their counterparts without disabilities (see appendix A). Many inquiry participants mentioned low absenteeism and turnover, and greater employee loyalty and staff morale as some of the benefits of employing people with disabilities (The Australian Industry Group, sub. DR326; Department of Family and Community Services, sub. DR362; Tasmanians with Disabilities, trans., p. 2171; Recruitment and Consulting Services Association, sub. 29). These claims are consistent with the results of some overseas studies reported in Stein (2003). Lower turnover costs would also result from employers making adjustments for their employees who acquire a disability, as such adjustments have been shown to prolong employment of these employees (Burkhauser et al. 1995).

Whether people with disabilities would continue to display better performance in these areas in the absence of discrimination in the labour market is open to question. Faced with an absence of discrimination, they may prove to be just as mobile as other workers and no more or less loyal.

In the area of goods and services, many inquiry participants argued that complying with the DDA produced commercial benefits for businesses, in excess of the costs of complying with the Act (see appendix D). Despite these views, no incontrovertible evidence is available that the benefits in terms of sales of complying with the DDA generally outweigh the costs. If this were the case, it might be expected that businesses that knew of these benefits would voluntarily make adjustments to cater for customers with disabilities, without the need for legislation. The relatively large number of complaints received by the Human Rights and Equal Opportunity Commission (HREOC) in the area of goods and services seems to suggest that businesses are either unaware of the DDA or of the benefits of compliance, or that they do not view benefits as offsetting the costs (see chapter 5 and appendix D).

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Insights into the potential benefits of adjustments in the provision of goods and services may be gained from a detailed 2001 survey of the effects of part III of the UK Disability Discrimination Act 1995 by Meager et al. (2002) (see appendix D). Of the establishments surveyed that had made adjustments to cater for customers with disabilities, a majority reported that the benefits from those adjustments outweighed their costs. Benefits reported by the establishments were both commercial (for example, increases in the number of customers with and without disabilities, and in sales/turnover) and non-commercial (for example, improvements in staff morale, customer satisfaction, and reputation/image). Few establishments reported a reduction in complaints/litigation as a benefit of making adjustments.

Meager et al.'s results must be interpreted with caution, because they apply only to establishments that had made adjustments (40 per cent of the sample). Establishments that make adjustments might do so because they anticipate benefits and are predisposed to finding that the benefits outweigh the costs. Equally, the 58 per cent of establishments surveyed that did not make adjustments (2 per cent did not respond) might have found that the costs of adjustments outweighed the benefits.

Nonetheless, if applicable to Australia, Meager et al.'s results support the anecdotal evidence provided by inquiry participants, suggesting that individual organisations can benefit in commercial and non-commercial ways from improving their accessibility. The fact that some organisations do not make adjustments and are the target of complaints, therefore, may be due more to a lack of knowledge and awareness of those benefits, than to a desire to discriminate or an inability to pay for adjustments (see section 6.5).

## **Indirect benefits**

Beyond the direct benefits outlined in the previous section, the DDA has the potential to generate a number of other benefits, less closely related to the Act's objectives. The occurrence of these indirect effects is somewhat less certain. Possible indirect benefits of the Act include cross-sector benefits and improvements in social capital. They are examined below.

### *Cross-sector benefits*

Cross-sector benefits arise when the DDA causes a reduction in discrimination in one area, which in turn leads to improvements in another. For example, if lower discrimination in education results in better educational outcomes for students with disabilities, then those students might enjoy greater labour market access and higher

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earnings (provided an influx of qualified people with disabilities into the labour market does not lower the returns to education).

Dockery et al. (2001) estimated the economic benefits that might flow to people with disabilities from their greater representation in the vocational education and training (VET) sector. They considered two alternative scenarios: (1) a one-off increase Australia-wide that would bring the VET participation of people with disabilities in each age group on par with that of people without disabilities; and (2) a one-off increase Australia-wide that would put the VET representation of people with disabilities on par with their representation in the overall population. Dockery et al. assumed that new entrants into the VET sector would accrue lifetime benefits comprised of an increased likelihood of employment and higher earnings. They calculated that such increases would yield economic benefits with a net present value of \$2.5 to 4.3 billion (after allowing for additional training and workplace accommodation costs) over the working life of the new entrants (depending on the scenario).

Dockery et al.'s results underline the potential loss in income and output that could result from disability discrimination preventing greater participation in education by people with disabilities. However, these results probably represent an upper-bound estimate of the benefits from their assumed greater educational participation. The link between educational attainment and labour income that this study relies on is mainly applicable to people without disabilities. Given the diversity of disabilities that the new entrants into the VET sector would have, it cannot be assumed that their employability and income would similarly benefit from improved educational attainment. For some, their disabilities might be such that their productivity would not significantly benefit from the acquisition of formal skills. This pessimistic scenario appears to be supported by evidence showing that the employment rate of students with disabilities enrolled in the Technical and Further Education (TAFE) sector in 2000 did not appear to benefit to the same extent from vocational education and training as that of students without a disability (see appendix B). On the other hand, at least part of the gap in benefits from vocational education between the two groups might be due to disability discrimination in employment.

### *Social capital*

Social capital is a way of thinking about how people interact. It relates to the social norms, networks and trust that facilitate cooperation within or among groups in society (OECD 2001b, p. 41). The World Bank developed the following definition:

The social capital of a society includes the institutions, the relationships, the attitudes and values that govern interactions among people and contribute to economic and social development. (World Bank 1998, in PC 2003b p. IX)

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Social capital can arise in many areas of life, such as families, religious, ethnic and community groups, and the workplace. The potential for social capital to influence economic wellbeing, both positively and negatively, is increasingly recognised. Greater amounts of social capital in a country can help reduce transaction costs, disseminate knowledge and information, and promote cooperative and socially minded behaviour (PC 2003b).<sup>2</sup>

A number of inquiry participants argued that one of the benefits of the DDA was its contribution to social capital (Disability Services Commission, Western Australia, sub. 44; Paul Jenkin, sub. 100; Office of the Director of Equal Opportunity in Public Employment, sub. 172; Mental Health Council of Australia, sub. 150). Disability Action Inc. stated:

There is no doubt that the DDA contributes to the reduction of discrimination against people with disabilities in Australia. The reduction of discrimination in turn enhances the social capital of the nation and contributes ultimately to growth in the gross national product ... (sub. 43, p. 2)

The Anti-Discrimination Commission Queensland similarly observed that:

In our view, the major benefit of legislation such as the DDA is its contribution to elevating not only the dignity of individuals but, perhaps more importantly, the quality of our society. (sub. 119, p. 4)

However, it is not possible to make clear predictions regarding the direction and nature of the interaction between social capital and anti-discrimination legislation such as the DDA.

Governments adopt many policies that implicitly aim to support or enhance social capital. Measures of social capital include participation in community activities and civic engagement. Anti-discrimination legislation which aims to include people with disabilities in all facets of society thus might contribute positively to the nation's stock of social capital. It could do so directly, for example by prohibiting discrimination in sports and clubs, or indirectly by providing people with disabilities with the disposable income necessary to engage in non-work activities. For example, Schur (2002) showed that having a job increases the likelihood of people with disabilities participating in community and political activities. She noted that this likelihood is due to employment encouraging the development of 'civic skills' and the perception that one's voice is being heard instead of ignored. Based on Schur's findings, it might be argued that anti-discrimination legislation that results in more people with disabilities being employed and thus participating

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<sup>2</sup> This contribution may be direct (lower transaction costs) or indirect (improvements in government performance, improvements in education and health, and reductions in crime and violence).

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in community and political life would lead to greater amounts of social capital, to the ultimate benefit of the economy. Similar benefits might result from the DDA's prohibition of discrimination in areas such as recreation, sport and entertainment.

Social capital can also be associated with strong internal group cohesion, which can lead to intolerance of others. If anti-discrimination legislation influenced social norms to incorporate tolerance for difference within society's shared values and rules for social conduct, it might lead to a reduction in such harmful forms of social capital.

By contrast, the DDA might also lead to an erosion of social capital if it meant that some community organisations or volunteer services could no longer operate, due to the costs of complying with the Act's access requirements. There is a potential risk that people with disabilities enforcing their rights could also be viewed as 'troublemakers' or as the source of social disharmony.

Given the potential for the DDA to erode as well as enhance social capital, it is important that any proposals to reform the Act be cognisant of the effects on social capital. Cox and Caldwell (2000 quoted in PC 2003b) proposed a checklist to assist policy analysts to account for social capital considerations.

- Does the policy increase people's skills to engage in social activities with people they do not know—their sociability?
- Does the policy target some groups at the expense of others, or create feelings of scapegoating or exclusion?
- Does the proposed form of service delivery allow the building of informal relationships and trust with all stakeholders?
- Does the project help extend networks, confidence and optimism among participants?
- Do participants increase their capacity to deal with conflict and diversity?
- Does the program evaluation include the social as well as financial and individual aspects of outputs and outcomes?
- Does the auspice [the body or mechanism delivering the program] itself affect the way people see the program?
- What messages does the program offer to people about their own values and roles?
- What impact does the program have on attitudes to formal institutions of governance? (Cox and Caldwell 2000, in PC 2003b, p. 65).

Notwithstanding the potential drawbacks of disability discrimination legislation for some aspects of social capital, the Productivity Commission considers that the DDA has the potential to contribute more than it detracts from the amount of beneficial social capital, and so have broad benefits for Australian society.

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## Economy-wide benefits

With almost one in five Australians experiencing a disability in 1998 (see chapter 3), the costs imposed by disability on the Australian economy overall are large and pervasive. Measures that reduced these costs could be expected to produce economy-wide benefits. It is arguable that anti-discrimination legislation is one such measure (box 6.2).

Many inquiry participants argued that the operation of the DDA has the potential to have economy-wide benefits, by increasing both the amount of goods and services that the economy can produce (the supply side) and the demand for these goods and services (the demand side). For example, the Office of the Director of Equal Opportunity in Public Employment stated:

The reduction in unlawful discrimination can aid [gross national product] in a number of ways. The enhancement of the economic and social participation of people with disabilities contributes to both the supply and the demand side of the economy. Greater participation of people with disabilities in training, education and employment directly affects the productive capacity of the nation. (sub. 172, p. 3)

### Box 6.2    **The economy-wide cost of disability and of disability discrimination**

The economy-wide costs of disability are significant. For example, Access Economics (2002) estimated the total cost of schizophrenia at \$1.85 billion (in real dollars) in 2001. This figure would be greatly multiplied if the costs of all disabilities were added together. A policy that successfully reduced the prevalence and/or impact of disability would therefore produce significant economy-wide benefits.

The costs of disability discrimination are one element of the total cost of disability. However, the aim of the DDA is to reduce disability discrimination, not reduce disability *per se*. Most of the costs associated with disability are not amenable to reduction via anti-discrimination policies. For example, the cost estimate for schizophrenia, mentioned above, includes direct health costs estimated at \$653 million. But there are other costs that are likely to stem in part from disability discrimination. Access Economics (2002) extrapolated that, if people with schizophrenia had enjoyed the same employment rate as the overall population, there would have been an extra 13 210 persons with schizophrenia in the workforce in 2001. This was, however, a partial estimate which did not account for possible displacement and feedback effects in the labour market. Nonetheless, assuming that discrimination is part of the reason that people with schizophrenia experienced relatively greater unemployment, any progress achieved by the DDA in that area might lead to an increase in employment and, hence, income and output.

Source: Access Economics 2002.

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### *Supply-side effects*

The output of an economy depends on the quantity and quality of factors of production such as labour. In some circumstances, an increase in the number of workers will result in greater output (a ‘quantity’ effect). Output also increases when labour productivity rises—for example, as a result of improvements in the intrinsic quality of labour (from greater education and skill levels) or better matching of jobs and job seekers.

A number of inquiry participants argued that a ‘quantity of labour’ effect is one of the benefits of the DDA, especially in the context of an ageing population (Disability Action Inc., sub. 43; Equal Opportunity Commission Victoria, sub. 129).

In theory, by reducing discrimination, the DDA could lead to a long term increase in the quantity of labour available to the Australian economy. This could result in greater national income and output.

Quantitative estimates presented in appendix A suggest that employed workers with disabilities received slightly lower hourly wages in 2001 than did their counterparts with identical characteristics but no disability. While care was taken to ensure that these estimates are statistically independent of any differences in productivity-related characteristics, the extent to which this ‘unexplained’ gap in earnings is due to wage discrimination cannot be ascertained conclusively.

Although the hourly wage differential between workers with and without a disability is small in absolute terms, the discrimination component of that differential might nonetheless have discouraged some workers with disabilities from entering the labour force (see appendices A and F). The fact that the labour of these discouraged workers remained unused in 2001 means that overall output, income and employment in Australia could have been below potential in that year, all else being equal. Nonetheless, it is possible that wage discrimination and thus the number of discouraged workers would have been greater without the DDA. If this were true, then the DDA might have led to greater levels of output, income and employment than would have been achieved in its absence.

Beyond this wage effect, a ‘quantity of labour’ effect might also be expected from a successful reduction in disability discrimination at the hiring and firing stages of the employment relationship. Results from Wilkins (2003) suggest that having a disability significantly reduced the probability of being employed for both men and women in 1998. To the extent that this probability effect was due to disability discrimination at the recruitment and lay-off stages, reducing discrimination would add to the productive capacity of the economy. The Productivity Commission estimates that the probability of being employed increased from 1993 to 1998 for



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men with disabilities and decreased for women with disabilities. However, it is not possible to isolate the role of the DDA in either of these changes (see appendices A and F).

The DDA might also give rise to ‘quantity of labour’ effects in regard to carers and older Australians. As noted earlier, the ability of primary carers to seek and find employment might be enhanced if discrimination towards those in their care diminishes. Moreover, as suggested by Rita Struthers, greater accessibility of the physical environment might provide incentives for older Australians to delay retirement (sub. 118).

If the DDA creates an increase in employment of people with disabilities and other groups, it cannot be assumed that employment would rise in aggregate. In the presence of unemployment in the economy, increases in the employment of some groups of workers can occur at the expense of other groups of workers, with no or little improvement in employment overall. This is termed a ‘substitution’ or a ‘displacement’ effect, and can have two alternative explanations.

- If anti-discrimination legislation leads to some employers hiring people with disabilities where previously they would have hired workers without disabilities, then the latter group will experience reduced levels of employment (Ability Technology Limited, sub. DR295).
- If anti-discrimination legislation leads to some employers making costly workplace adjustments, then those employers’ overall capacity to hire labour will be diminished. In this scenario, all categories of workers will experience reduced levels of employment (Australian Industry Group, sub. DR326).

Although these two scenarios have opposite implications for the employment of people with disabilities, they suggest that aggregate employment might fall or stay the same following reductions in employment discrimination, with no improvements in the economy’s productive capacity.

It is difficult to detect any displacement effects caused by the DDA (or any legislation). Doing so would require knowledge of what changes would have taken place in the labour market in the absence of the DDA. Although displacement effects could have occurred in individual firms, Acemoglu and Angrist (1998) found no evidence that the Americans with Disabilities Act 1990 had negative consequences on the overall employment of people without disabilities in the United States. Neither were long term displacement effects observed by Barrell et al. (2003) in their modelling of UK disability employment policy (box 6.3). Instead, these researchers found that an influx of people with disabilities into employment would lead to a number of favourable outcomes in the medium- to long term, such

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as increases in real Gross Domestic Product (GDP) and employment and reductions in consumer prices.

The key to the absence of long term displacement effects in Barrell et al.'s simulations is the downward adjustment in real wages, following an inflow of ex-disability pension recipients into the labour force. Such an adjustment requires a flexible labour market. To the extent that this may be the case in Australia, an inflow of people with disabilities into the Australian labour market might not produce durable displacement effects. Applying Barrell et al.'s results to Australia suggests that a reduction in disability discrimination that persuaded, for example, 5 per cent of those receiving the Disability Support Pension to enter the labour force in 1995-96 might then have resulted in GDP exceeding its 2000-01 value by \$1100 million (all other influences kept constant). The existence of some rigidities in the Australian labour market (for example, minimum wages) would mean that the benefits are likely to be somewhat less than that figure.

**Box 6.3 Economy-wide effects of disability benefits recipients moving into the labour force**

Barrell et al. (2003) used a modified model of the UK economy to investigate the effects on key macroeconomic variables of a government program that permanently shifts 5 per cent of all current disability benefit recipients into the labour force.

The authors hypothesize that such a large-scale policy is likely to have economic implications that go beyond the target group, for example affecting the labour market situation of non-participants through substitution and displacement effects.

Results confirm the existence of such indirect effects initially, with new labour force entrants displacing existing workers to some extent. These displaced workers add to unemployment numbers, as do new entrants who fail to find a job. In time, however, real wages adjust downward, leading to the creation of more jobs and the absorption of all new labour market entrants, so that the unemployment rate returns to its long term equilibrium. After 5 years, employment is predicted to exceed its base case value by 39 000 workers.

Lower labour costs lead to lower production costs, lower prices, greater employment and greater output. Five years on from the initial shock, real annual Gross Domestic Product is forecast to be 0.16 per cent higher than it would otherwise have been.

*Source:* Barrell et al. 2003.

It should be noted, finally, that the likelihood of substitution and displacement effects is considerably reduced in times of full employment and/or labour shortages. If, as is predicted, population ageing in Australia results in such shortages, it might be expected that the entry into the labour force of people with disabilities would increase GDP.

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Economy-wide benefits might also arise if people with disabilities achieve higher productivity as a result of the DDA's operation. This could be due to greater levels of human capital (broadly defined as educational attainment, professional skills and work experience) allowed by a reduction in discrimination in education. Greater human capital would also result from reductions in discrimination in employment that allowed employees with disabilities to gain experience and take advantage of training and promotion opportunities. In an example of a virtuous cycle, lower employment discrimination would result in greater returns to education for people with disabilities, which would encourage greater educational participation on their part, and to further increases in human capital.

The economy could also benefit where the quality of the match between job applicants and job openings improved as a result of the DDA's provisions. This would lead to an increase in labour market efficiency, which would translate into productivity gains.

Verkerke (2002) argued, in the context of the Americans with Disabilities Act 1990, that the duty of employers to accommodate workers' disabilities (especially those that are initially hidden) can alleviate labour market inefficiencies such as 'mismatching', 'churning' and 'scarring' (box 6.4).<sup>3</sup>

It is likely that Australian employers are sometimes confronted with the discovery of hidden disabilities in their employees. This likelihood is apparent from evidence presented by inquiry participants that people with mental illnesses often do not disclose their disability to their employers for fear of being discriminated against (Mental Health Council of Australia, sub. 150; Advocacy Tasmania, sub. 130; Mental Health Coordinating Council, sub. 84 and trans., p. 1460).

Given the existence of hidden disabilities in Australia, and the broad similarities between the employment provisions of the Americans with Disabilities Act 1990 and the DDA, it is possible that the DDA alleviates the unproductive churning of some workers with hidden disabilities, as hypothesized by Verkerke. This would result in greater labour market efficiency, and hence in greater income and output in the economy. It is difficult, however, to be definite about the likelihood and scale of these efficiency benefits.

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<sup>3</sup> 'Mismatching' occurs when jobs are not assigned to those workers who are best suited to them. 'Churning' occurs when an employee is laid off and moves from job to job, without the quality of the job match increasing. 'Scarring' occurs when employers rely on readily observable signals such as a blemished work history or lack of employment references to refuse work to someone whom they could employ profitably. Scarring is related to statistical discrimination (see chapter 7 and appendix A).

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**Box 6.4 Labour market efficiency under the Americans with Disabilities Act**

Verkerke argues that, because many disabilities are hidden, their effects on productivity can be observed only after the employee has been recruited. In these circumstances, employees and past employers have more information than has a new (potential) employer about the productivity effects of the disability. According to Verkerke, this information asymmetry would result in market failure and inefficiency without the reasonable accommodation provision of the Americans with Disabilities Act. The discovery that a hidden disability impairs productivity would lead to employees being dismissed. The process of hiring–discovery–firing would then repeat itself, leading to labour market mismatching, churning and scarring, thus reducing efficiency, productivity and output.

In Verkerke's analysis, the duty of employers to accommodate workers' disabilities helps reduce the occurrence of mismatching, churning and scarring. Even though the disability increases employer costs relative to worker productivity, the employer must retain the worker and accommodate their needs. This avoids a repeat of the above process, whereby each new employer wastes resources on screening, recruiting, training and firing the employee. Mandated accommodation avoids scarring of the employee and the risk of chronic unemployment of persons who could be employed productively.

*Source:* Verkerke 2002.

### *Demand-side effects*

Several inquiry participants suggested that the DDA produces (or has the potential to produce) economic benefits on the demand side of the economy, through increases in the amount of goods and services purchased by people with disabilities and the broader community. Three reasons were put forward in support of this view.

- Lower reliance, by people with disabilities, on government transfers such as the Disability Support Pension could mean that general taxation could be lowered, resulting in increases in aggregate demand (Physical Disability Council of NSW, sub. 78; Disability Rights Victoria, sub. 95; Disability Services Commission, Western Australia, sub. 44).
- By increasing employment of people with disabilities, the DDA could lead to greater household income and consumption levels (Parquod Victoria, sub. 77; Disability Services Commission, Western Australia sub. 44; National Disability Advisory Council, sub. DR358).
- Improvements in the accessibility of buildings, transport, and goods and services could result in expanded/more profitable markets for individual organisations, which could translate into increased consumption levels overall in the economy

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(Disability Services Commission, Western Australia, sub. 44; Paraplegic and Quadriplegic Association of Queensland, trans., p. 116; Office of the Director of Equal Opportunity in Public Employment, sub. 172).

The first of the demand-side benefits claimed for the DDA appears potentially well founded. Australian Government expenditure on the Disability Support Pension was \$6.4 billion in 2001-02 (Department of Family and Community Services, sub. DR362). By promoting the employment of people with disabilities and lowering the additional costs associated with disability, the DDA could lead to a reduction in income transfers and other subsidies required by people with disabilities. Although such savings would be of benefit to the Government, they are transfers from one sector of the economy to another. Social security expenditures funded by taxation do not add to or detract from the welfare of society overall, that is, to the value of goods and services being produced. However, lower government expenditure on disability programs could result in additions to welfare in two sets of circumstances.

- If government savings allowed a reduction in taxation. This would generate both efficiency and consumption benefits, through reductions in so-called 'deadweight losses' (the losses that arise from resources not being allocated to their most productive uses).
- If taxation remains unchanged, demand-side benefits could still arise as a result of lower government borrowing needs and/or debt servicing. Barrell et al. (2003) have shown that an influx of 5 per cent of disability pension recipients into the labour force would significantly reduce the interest payments the UK government makes to service its public debt. Lower public sector borrowing could in turn lead to falls in interest rates, and a rise in private sector investment (that is, to a reduction in crowding-out by government of private investment). As a result, aggregate demand in the economy would increase.

In relation to the second claim, while it is true that greater employment of people with disabilities would be likely to lead to higher income and consumption levels economy-wide, such increases would be moderated by taxation effects. Newly employed persons previously on income support would lose part or whole of their existing government entitlements (such as the Disability Support Pension or unemployment allowances). They would thus experience high marginal effective tax rates that would dampen the positive effects of greater employment on income and consumption. Moreover, it is inevitable that some of the people with disabilities who re-entered the labour force if they perceived employment discrimination to have diminished would spend some time in unemployment, while they search for jobs. Given that the financial value of unemployment benefits is less than that of the disability support pension, the income and consumption levels of those job seekers

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would fall, pending a successful job match. This would further detract from the economy-wide income and consumption benefits of less disability discrimination.

In support of the third claim and as noted earlier, a number of inquiry participants reported anecdotal evidence that catering for people with disabilities was good for business (see appendix D). However, benefits accruing to individual organisations might not translate into economy-wide benefits. Any market share advantage that is gained by one organisation through its disability-friendly policies will be to the detriment of its competitors that are inaccessible, with no net positive effect on the amount of goods and services consumed in Australia. Moreover, the advantage enjoyed by the first organisation might be short-lived. Overall demand for goods and services produced in Australia would increase only if greater accessibility gave Australian organisations a competitive advantage over their overseas competitors. However, that advantage might be offset if some competitor countries enjoyed lower costs due to the absence of disability discrimination legislation.

## **Conclusion**

To the extent that the DDA reduces levels of disability discrimination, it has the potential to generate widespread benefits for society. First and foremost, such legislation would improve the material, social and psychological situation of people with disabilities. For this group, the potential benefits of the Act would be compounded in cases where discrimination is reduced in several areas simultaneously. For example, the effects of reductions in discrimination affecting education and employment would be self-reinforcing, as would the effects of greater accessibility and employment.

People without disabilities, such as carers, older Australians or parents with young children, also stand to benefit from the DDA, as do organisations that comply with the Act.

Finally, the DDA has the potential to benefit the community in general, in two main ways. First, reductions in discrimination can lead to an increase in the productive capacity of the economy. For example, reducing discrimination can enhance the participation and employment of people with disabilities in the workforce. In turn, better employment prospects can provide incentives to students with disabilities to improve their educational outcomes, making them more productive members of the community.

Second, an effective DDA that improved the acceptance and integration of people with disabilities in society would benefit the community in less tangible but not less significant ways, by promoting greater trust and mutual cooperation.

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Notwithstanding these observations, it is difficult to provide a definitive assessment of the amount of benefits the DDA has generated to date. First, it is not known precisely how effective the DDA has been in reducing discrimination, overall and in separate areas (see chapter 5). Second, many of the links claimed between a reduction in discrimination and tangible economic benefits are often speculative, subject to methodological difficulties and only rarely backed by empirical evidence. Available studies, both in Australia and overseas, nonetheless suggest that the DDA has the potential to produce considerable tangible benefits for the economy in general and for some groups in particular. However, perhaps the most valuable benefits that a successful DDA can confer are intangible.

FINDING 6.2

*A reduction in disability discrimination arising from the Disability Discrimination Act 1992 has the potential to confer important tangible and intangible benefits on people with disabilities; to contribute to beneficial 'social capital'; and to generate widespread community benefits.*

## **6.5 Costs of the DDA**

This section examines the nature of the costs generated by the DDA, with particular emphasis on ways in which these costs might restrict competition and efficiency. Just as the DDA, because of its breadth and scope, can confer benefits on a variety of groups, it also has the potential to impose costs, directly and indirectly, and in tangible and intangible ways.

### **Direct costs**

The direct costs of the DDA fall mainly in two categories: the costs of administering, monitoring and enforcing the DDA (the 'costs of applying the DDA'), and the costs of complying with the DDA.

#### *Costs of applying the DDA*

At present, the costs of administering, monitoring and enforcing the DDA fall partly on HREOC, partly on people with disabilities and their carers, associates and advocates, and partly on other organisations. The role of HREOC is, among other things, to receive and investigate complaints, and to conciliate. It can also conduct DDA-related inquiries and research. As a budget-funded agency of the Australian Government, the burden of funding HREOC's operations rests with taxpayers generally.

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The role of monitoring the application of the DDA and enforcing its provisions rests mainly with people with disabilities and their advocacy groups. According to the Victorian Government:

Under the DDA and the [Victorian] Equal Opportunity Act, a significant proportion of the cost of monitoring compliance with the legislation falls on complainants who lodge and pursue complaints. (sub. DR367, p. 12)

The costs of lodging and pursuing a complaint under the DDA can be extremely high for people with disabilities and/or their representatives. These costs include learning about the complaints process, preparing a complaint, and securing legal representation (see chapter 13). In the event of a loss at court, costs can also include the legal costs of the opposing party. These tangible costs can be compounded by intangible costs, such as stress or family breakdown.

In some cases, some of the enforcement costs mentioned above are assumed by specialised agencies, such as Disability Discrimination Legal Services and legal aid commissions. This means that these costs can fall, in whole or in part, on taxpayers.

In the case of disability standards, finally, monitoring and enforcement might be built into mainstream processes, in which case some of the costs are borne by industry or government organisations. However, individuals would still bear the costs of making individual complaints under standards.

### *Costs of complying with the DDA*

Many of the obligations the DDA places on organisations can be expected to give rise to costs. Without being exhaustive, it is likely that regulatory costs will include the following:

- administrative costs (for example, time costs spent producing and updating action plans)
- equipment and infrastructure costs (for example, purchasing disability aids to accommodate the employment or education needs of people with disabilities)
- indirect adjustment costs (for example, reductions in innovation and flexibility due to the need to accommodate people with disabilities)
- transactions costs (for example, litigation costs arising from defending a DDA complaint through conciliation or in the courts)
- costs linked to uncertainty about the timing, nature and magnitude of all the other costs (for example, not knowing if and when a complaint is likely to come).



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The balance between various types of costs will differ depending on whether or not an organisation is complying with its obligations as an employer, a goods and services provider, or an educator. It might also depend on whether the organisation is covered by the general provisions of the DDA or by disability standards.

In the next section, factors influencing compliance costs imposed on individual organisations that face the general provisions of the DDA are examined. Following this, the case of compliance costs under standards is investigated in more detail.

### *Compliance costs under general provisions*

Compliance costs created by the DDA can vary greatly among organisations, depending on their commitment to the objectives of the Act, their degree of interaction with people with disabilities, and the success with which they meet their obligations. Under complaints-based enforcement, compliance with the DDA could be treated by some organisations as optional, to be enforced in the breach. Of those organisations that may not comply, some might manage to avoid detection, and hence incur no costs.

For some organisations, compliance might mean little more than being prepared to accommodate people with disabilities. If this results only in the adoption of an action plan, the organisation might incur relatively few costs. Compliance costs might rise if the organisation takes active steps to improve access. For example, the adjustment costs of replacing a set of stairs with a lift are likely to be high. On the other hand, revising job selection criteria so that they reflect the inherent requirements of a position more accurately is not likely to be costly.

Alternatively, adjustment costs might arise if they are triggered by interaction with people with disabilities (for example, when a university enrolls students with disabilities). The nature and magnitude of adjustment costs vary greatly, and no generalisation is possible, particularly given the lack of Australian data on such costs (box 6.5). Costs can be one-off capital costs (for example, ramps) or ongoing personnel costs (for example, teaching aides in schools). Also, costs can be ‘hard’, that is, involve monetary outlays, or can be ‘soft’, that is, involve non-measurable expenses. Soft costs include time spent searching for a technical solution, training personnel, restructuring work processes and/or applying for government funding. One inquiry participant argued that soft costs ‘are probably more troublesome for employers than the actual cost of any special equipment required’ (Ability Technology Limited, sub. DR295, p. 2).

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**Box 6.5 Adjustment costs under the general provisions of the DDA**

Evidence on adjustment costs is scarce and fragmented. The following is a selection of information on adjustment costs contained in appendices A, B, and D.

**Education**

Adjustment costs in education include ramps, teaching aides, speech therapy, staff training and specialist education services. One inquiry participant reported costs of between \$48 and \$80 per hour for adjustments benefiting school students with disabilities. Another reported spending an average of \$18,000 on assisting each school student with disability each year. At the university level, estimates of adjustment costs ranged from \$91 per annum on average for 'low support' students, to \$391 per annum for 'medium support' students, to \$1147 per annum for 'high support' students.

**Employment**

Adjustments in employment include ramps, hearing loops, AUSLAN interpreters, special furniture and voice activated software. The Productivity Commission did not receive detailed quantitative evidence on the costs of adjustment to Australian employers. Data quoted by DeLeire (2000) indicated that 51 per cent of accommodations made by US employers cost nothing. On the other hand, the median cost per accommodation was US\$500, while 12 per cent of accommodations cost more than US\$2000, 4 per cent cost more than US\$5000 and 2 per cent cost more than US\$20 000. In Australia, the average cost of workplace modifications made under the Australian Government funded Workplace Modifications Scheme between 1998 and 2002 was \$2200. During the same period, the 20 most expensive modifications (out of 1228) cost between \$7815 and \$14 636.

**Goods and services**

Overseas evidence suggests that the costs of adjustments imposed by disability discrimination legislation on goods and services providers (although they vary significantly) are often low or non-existent. Figures provided by Meager et al. (2002) on the average initial costs of adjustments carried out by UK providers ranged from zero for many adjustments to £12 167 (\$33 518) for lifts, hoists or evacuation chairs.<sup>4</sup> Average ongoing costs ranged from zero to £589 (\$1623) per year (excluding website maintenance).

*Sources:* Meager et al. 2002; Appendices A, B and D; DeLeire 2000; FACS, sub. DR362.

Although hard costs can occasionally be very high, they mainly consist of one-off expenses. On the other hand, soft costs are often ongoing, which means they can outweigh the hard costs in time.

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<sup>4</sup> Foreign exchange conversion at the average 2001-02 British pound sterling–Australian dollar exchange rate.

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On balance, based on the available evidence, it appears likely that the quantifiable costs of adjustments imposed by the general provisions of the DDA are mainly low. Only in a few cases are the costs of adjustments likely to be significant.

### *Uncertainty*

A problem for organisations covered by the general provisions of the DDA is that compliance costs of all types can be unpredictable. For an employer, for instance, the costs might be relatively minor until a person with a disability applies for a job. If that person is hired and does not have any special needs, compliance costs remain low. If, on the other hand, the new recruit's adjustment needs involve equipment, infrastructure and indirect costs, it might be some time before the employer realises the full magnitude of all the costs associated with that hiring decision. Moreover, many costs are additive, so that even small compliance costs could add up to material impacts on business profitability and viability if several job candidates with disabilities were to be hired.

Uncertainty and risk are heightened in the event that an organisation is the target of a complaint (and possibly court action). Then, an organisation might face additional monetary and non-monetary compliance costs that are largely unpredictable. The former would include legal costs associated with defending itself against the complaint (see chapter 13).<sup>5</sup> Non-monetary costs would arise from the disruption caused to the organisation's normal operations.

Although, in the absence of disability standards, action plans can provide limited 'insurance' against disability discrimination complaints, they cannot cancel that risk out completely (see chapter 4). As stated by the Allen Consulting Group, organisations cannot be certain about their compliance until they face a complaint:

... the DDA does not prescribe particular compliance approaches and compliance is only identified in the negative once a complaint has successfully been made ... the DDA is passive legislation, in that organisations may believe that they are compliant with the DDA, but can only ever be sure when challenged by parties seeking to rely on the DDA. (The Allen Consulting Group 2003a, pp. 24–5)

The uncertainty about the likelihood, timing and cost implications of a complaint is a problem for businesses. In commenting on legal decisions on indirect disability discrimination, the Australian Chamber of Commerce and Industry stated:

How could an employer have predicted the results when the courts themselves were thoroughly divided? How can employers quickly and accurately deal with such issues

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<sup>5</sup> Excluding any damages awarded against the organisation as these are, by definition, a result of courts finding non-compliance with the DDA.

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when the tribunals and courts themselves have so much difficulty in resolving them?  
(ACCI 2000, p. 3)

Apart from the costs that arise when an organisation has to defend itself against a complaint, uncertainty regarding compliance is likely to increase the organisation's ongoing transactions costs. Some organisations, for example, might retain specialised personnel to deal with such issues, or to monitor compliance (Equal Opportunity Commission Victoria, sub. 129). This regulatory burden is likely to be less onerous for large organisations with permanent legal personnel than for small to medium sized businesses which lack such specialist skills.

#### FINDING 6.3

*Under the general provisions of the Disability Discrimination Act 1992, the costs of adjustments incurred by organisations are mainly low. However, in some cases, they can be very high. These, and other compliance costs, can be unpredictable, especially where complaints are made.*

#### *Compliance costs under disability standards*

Since October 2002, most providers of public transport services have been covered by disability standards. Draft education standards are being considered by the Australian Government, and access to premises standards have been released for comment (see chapter 14).

In theory, the compliance costs imposed on individual organisations by clearly defined and adequately enforced disability standards are both more precise and more predictable than in the case of complaints. Thus, transport standards set precise requirements and a detailed implementation timetable for all organisations providing a particular type of service. For example, buses with more than 32 fixed seats must provide two designated wheelchair spaces. In the education sector, schools, TAFEs and universities will be able to refer to the detailed requirements in the proposed education standards, and to the standards' guidance notes, to check whether they are complying. Under the proposed premises standards, compliance of buildings with the DDA will be achieved by compliance with the Building Code of Australia. Through the implementation of standards, therefore, DDA compliance costs could become another, predictable 'cost of doing business', much like the costs of complying with building regulations and occupational health and safety regulations.

As illustrated by the consultation process preceding the draft education standards, organisations often have difficulty in determining the extent of their obligations under the DDA without standards (see appendix B). Although they can still be the

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target of complaints, those organisations that are subject to standards should experience greater certainty about how to comply and, hence, a reduction in litigation, compensation and other transactions costs. The question arises, however, as to whether lower transactions costs under standards are only achieved at the expense of higher compliance costs in other areas.

There is continuing debate about whether standards impose additional costs on the organisations they cover. Some have argued that the role of standards is merely to clarify and operationalise what is required under the DDA (Blind Citizens Australia, sub. DR269; Australian Building Codes Board, sub. 153; ACTU, sub. 134). Thus, by translating the Act's general duties into specific requirements and deadlines, standards might simply bring forward costs that would have arisen anyway in response to complaints. If additional costs arose as a result of the standards, it might be concluded that organisations were not previously complying with the DDA.

In some cases, standards might even lower compliance costs, by removing the need for retro-fitting of equipment (Anti-Discrimination Commission Tasmania, trans., p. 323), or by imposing less demanding specifications than would have been required following a complaint (Blind Citizens Australia, sub. DR269).

There are other circumstances, however, when standards might increase the costs of complying with the DDA for an organisation. First, having to incur costs earlier than would have been the case in the absence of the standards can increase an organisation's costs. The accelerated replacement of assets under the transport standards is an example. Implementation of these standards requires providers to meet accessibility targets at regular intervals over a period of up to 30 years. While a set timetable for implementation offers providers considerable certainty about the meaning of DDA compliance over time, it also means that providers might no longer be able to amortise an existing asset over its entire economic life. Nevertheless, the extended time scale for implementation should alleviate such costs. Moreover, transport providers continue to have access to the unjustifiable hardship defence, and they can seek temporary exemptions from the standards from HREOC. Finally, it is conceivable that courts might have ordered more rapid or costly transformations in response to a successful complaint.

Second, standards could impose unnecessary costs if they required organisations and individuals to make adjustments too soon or that are not required at all. This would create 'deadweight losses' in the economy, as resources would be wasted on producing goods and services that hold little value for society in general at a particular point in time. This is of particular concern given the high number of organisations required to make adjustments under standards.

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The issue of unwarranted costs and the need for prioritisation of expenditures was raised by the Victorian Government. It argued that the universal access objective in the transport standards was unjustified in the light of the costs involved, possible repercussions on other segments of society and the relatively low number of beneficiaries (sub. DR367). It stated:

... to achieve universal access to all train carriages would require the rebuilding of almost every station platform in the network, and hence, to minimise exorbitant costs associated with this, some stations might be closed, impacting on other disability groups or specific cohorts, for example, the aged, who would need to walk further to public transport. (sub. DR367, p. 12)

It is not clear that the transport standards require universal access and, in any event, the unjustifiable hardship defence is designed to account for disproportionate or unwarranted detriments to the community at large. Thus, it provides a safeguard against the occurrence of such deadweight losses under the transport and (proposed) education standards. But this defence would not be available to new buildings under the proposed premises standards (see chapter 8), nor would any building be able to claim a temporary exemption from the provisions of the DDA. This is of concern because it removes consideration of the balance between the costs and benefits of the standards as they apply to a particular construction project. This issue is discussed further in chapters 8 and 14.

#### FINDING 6.4

*The introduction of disability standards under the Disability Discrimination Act 1992 can reduce the costs of complaints and uncertainty for individual organisations, but has the potential to raise compliance costs across all organisations covered by standards.*

#### *Effects of general provisions on competition*

As mentioned in section 6.2, CPA legislation reviews require the identification of any restrictions on competition that the regulation imposes. It concluded that, *a priori*, the DDA could impose a number of restrictions on competition. It could, for example, restrict the ability of new competitors to enter markets, impose significant costs on business, or provide advantages to some firms over others.

However, for the combined effects of ‘voluntary’ compliance and complaints (under the general provisions of the DDA) to restrict competition, they would have to have a significant adverse effect on the factors that facilitate competition in the economy. It is generally not sufficient that the costs of a few organisations within an industry rise for the whole competitive environment in that industry to be adversely affected. This is particularly true if some low cost competitors are able to replace high-cost

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firms. Where competition might suffer is if regulations have a disproportionate effect on a large enough group of competitors so that competitive pressures in the remainder of the market are reduced.

At first glance, the general provisions of the DDA would appear to apply equally to all organisations in all sectors of the economy not covered by standards. Unlike equivalent legislation in the United States and the United Kingdom, for example, the DDA has no small employer exemption. From this, it might be inferred that the DDA has no or little competition effects. For example, the Disability Services Commission, Western Australia stated:

Within any one industry, any impact on competition is going to be neutral or at least minimal as all services will be required to make accommodation for the needs of people with a disability. (sub. 44, p. 6)

However, the fact that the requirements of the legislation are nominally the same for everyone does not mean that all organisations are affected in the same way or to the same extent. An organisation that faces the general provisions of the DDA has considerable discretion regarding its response to the legislation. It might intend to comply, but the opportunity might not have arisen because it has no employees and/or customers with disabilities. Or it might take anticipatory steps for the accommodation of future needs. Or, as noted earlier, it might not comply.

For organisations that comply voluntarily with the DDA, the costs of regulation can be expected to vary depending on their degree of commitment and on their level of interaction with people with disabilities. They might incur very significant costs or no costs at all.

For organisations that do *not* comply with the Act, the regulatory burden might also vary, because of differences in the probability of detection and of litigation taking place. They might escape detection and face no regulatory burden, or they might face conciliation or the courts, and possibly incur large litigation costs (and compensation and/or retrospective adjustment costs). If the expected value of litigation costs differs across non-complying organisations, then this is akin to them facing different regulatory costs.

### *The case of small business*

The relative cost burdens of complying with the DDA can vary according to the size of the organisations concerned. Smaller organisations may have less capacity to absorb large adjustment or litigation costs than their larger competitors.

Some inquiry participants argued that the costs of complying with the DDA were particularly damaging to smaller organisations (UnitingCare Australia and

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UnitingCare NSW.ACT, trans., p. 2973; Australian Chamber of Commerce and Industry, trans., p. 2125; Janet Hope in conjunction with Margaret Kilcullen, sub. 165; Australian Federation of Deaf Societies, sub. DR363). For example, Ability Technology Limited stated:

My second point in relation to costs to employers is that the burden of these is likely to be greater for smaller firms. This applies, not only in the obvious case of ramps and accessible toilet facilities, but even more so in the case of the hidden, managerial costs referred to earlier. (sub. DR295, p. 3)

There are arguments both for and against the view that the regulatory burden imposed by the DDA might weigh more heavily on smaller organisations. Smaller organisations might be less accustomed to interacting with employees or customers with disabilities and, therefore, might not be as familiar with their obligations under the DDA. This might mean that they are proportionately more likely to face a discrimination complaint.

On the other hand, size may increase the susceptibility of larger organisations to discrimination complaints if, as suggested by Jolls (2000), indirect discrimination is easier to prove in large organisations.

Smaller organisations might also be advantaged with regard to the application of the unjustifiable hardship defence. One inquiry participant argued that firms operating in competitive markets would stand a good chance of claiming unjustifiable hardship (Jack Frisch, subs 120, 196). Firms in such markets cannot charge a higher price than charged by their competitors, so have limited ability to pass on additional costs to their customers. The fact that smaller organisations typically operate in a more competitive environment than large firms might help them avoid the compliance burden imposed on larger organisations. Courts might be more inclined to equate size with market power and capacity to pay for adjustments.

If small and large organisations face different compliance burdens, it should be possible to detect systematic differences in the propensity to make adjustments of each category of firms. Meager et al. (2002) used statistical techniques to analyse the factors that influenced the propensity of UK establishments covered by part III of the UK Disability Discrimination Act (applying to the provision of goods and services) to undertake adjustments. Contrary to expectations, they did not find that factors such as the number of employees, belonging to the public sector, or being part of a larger organisation were significant influences. Instead, their results showed that an establishment's propensity to make adjustments was related to the extent of its interaction with people with disabilities, its awareness of its duties under the law and its awareness of ways in which to accommodate customers with disabilities.



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That these factors increased the likelihood of UK establishments making adjustments suggests some adjustments are undertaken voluntarily and not forced by anti-discrimination legislation only on those establishments with the requisite financial capacity. Had ability to pay been an issue, an establishment's structural characteristics might have been expected to play a greater role, with large organisations with many employees and customers better able to exploit economies of scale in making adjustments.<sup>6</sup>

Meager et al.'s findings regarding the importance of awareness as a determinant of the probability of undertaking adjustments appear consistent with a recent study by Pérotin et al. (2003). According to that study, 20 per cent of small-to-medium Australian workplaces (500 employees or less) provided specific facilities for employees with disabilities in 1995, compared to 36 per cent of larger workplaces. This gap might be interpreted as reflecting a differing ability to pay for adjustments. However, larger workplaces were almost three times as likely to have formal equal employment opportunity (EEO) policies in place than smaller ones (86 per cent against 32 per cent). This could indicate that awareness of EEO requirements (as reflected in the existence of a formal policy) is a significant influence on the decision to make facilities available. This seems confirmed by the fact that, when only workplaces with formal policies were compared, the percentage providing people with disabilities with facilities was virtually identical in both groups (36 per cent of smaller workplaces against 37 per cent of larger workplaces).

Pérotin et al.'s results therefore suggest that, while smaller and larger organisations differ in their awareness of EEO requirements, those that demonstrate their awareness by having formal policies in place might be equally prepared—whether small or large—to facilitate the employment of people with disabilities by making adjustments.

In summary, the incidence of costs imposed by the general provisions of DDA is likely to vary between organisations. Those organisations that face high compliance and/or litigation costs would experience reductions in their competitiveness and profitability. This has the potential to be inequitable, given that some firms that do not comply might avoid detection. However, the level of competition in the wider economy is unlikely to be significantly affected by the general provisions of the DDA. DDA complaints are few, compared to the number of organisations covered, and seem to fall in a relatively *ad hoc* way. It is unlikely, therefore, that the percentage of organisations affected within a given industry would be sufficient to

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<sup>6</sup> That said, Meager et al.'s results show that the probability of making adjustments increases when an establishment has employees with disabilities. Given that the chance of having employees with disabilities increases with establishment size, this may be regarded as an indirect effect of size.

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lower competitive pressures in that industry. Nor are there indications that voluntary compliance affects competition between large and small organisations. Overseas evidence suggests that disability awareness is the main determinant of voluntary compliance by organisations. This would be unlikely to be the case if complying with disability discrimination legislation was detrimental for competition.

FINDING 6.5

*The general provisions of the Disability Discrimination Act 1992 impose an uneven and inequitable regulatory burden on organisations. This could lead to the competitiveness of individual organisations being affected. However, the restrictions on competition appear to be negligible.*

*Effects of disability standards on competition*

The impact of the DDA is likely to be felt increasingly through the implementation of industry-wide disability standards. By definition, standards apply to all organisations in an industry.<sup>7</sup> Standards should, therefore, be more competitively neutral than the general provisions of the DDA. As stated by Melinda Jones:

... if all businesses make the same sorts of adjustments, then there's no competitive loss. (trans., p. 1522)

However, competition might still be affected by the implementation of disability standards if not all industries that compete with each other are subject to the standards. The transport standards, for example, do not apply to private motor vehicles or to small aircraft (Attorney-General's Department 1999). This means that, in some segments of the transport market, the standards might serve to alleviate the competitive pressures faced by organisations not covered by the DDA. For example, private transport might be at an advantage in the urban transportation market, compared to public transport. Or small regional aircraft operators might gain an advantage on large airlines.

The requirements of transport disability standards might also restrict competition by effectively imposing barriers to the (potential) entry of firms into the Australian transport market. For example, foreign airlines that do not comply with the standards are unable to compete in the Australian market with those that do.<sup>8</sup> On the other hand, new entrants might be advantaged by being able to enter the market with state-of-the-art accessible technology. By contrast, during the period of

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<sup>7</sup> With some limited exceptions, such as school buses in the transport standards (see appendix C).

<sup>8</sup> Overseas carriers are subject to Australian disability transport standards if they fly within Australia. However, many such carriers would be subject to their own national access requirements, which might mean that they comply with Australian transport standards as well.

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transition to a more accessible environment, retro-fitting or accelerated replacement of assets would impose higher costs on firms already in the market.

These observations notwithstanding, the transport standards are unlikely to have created significant restrictions on competition. These standards impose identical requirements on like organisations, and their implementation is subject to the defence of unjustifiable hardship (and the possibility of temporary exemptions).

Restrictions on competition could arise from disability standards where domestic organisations producing tradeable goods and services are subject to costs that overseas competitors are not. For example, Australian education providers might find their ability to attract overseas fee-paying students impaired if the proposed disability education standards were adopted. If this effect led to the exit of enough domestic providers from the market, Australian students might enjoy less choice in terms of quality, diversity and location. This would constitute a restriction on competition. However, the risk of such restriction occurring would be mitigated by a number of factors. First, many overseas education providers are subject to their own national access requirements. Second, domestic education providers have access to the unjustifiable hardship defence. Third, if the cost disadvantage were significant enough across the economy, the competitive position of local providers might be protected by exchange rate movements.

There is greater potential for restrictions on competition where the requirements of the standards differ between whole groups of domestic organisations within an industry. The draft access to premises standards, for example, would impose more stringent accessibility requirements on new than on existing buildings (ABCB 2004). Moreover, the unjustifiable hardship defence would only be available to existing buildings. Both provisions imply that the cost of new buildings would rise proportionately more than the cost of renovating existing buildings, leading to a rebalancing of the ratio of new to old stock in the economy, and to an increase in the rate of return on the existing stock of buildings (ABCB 2004).

As well as competition between new and existing buildings, the draft access to premises standards have the potential to restrict competition between groups of organisations of different sizes. Inflexible compliance requirements—such as installing a lift in buildings of two or more storeys—would raise construction/renovation costs relatively more for owners of small premises than for those of larger ones. For example, according to the RIS for the access to premises standards, the construction cost of a new two storey restaurant would increase by 41.5 per cent as a result of the standards. By contrast, accessibility requirements would only increase the costs of building a large, horizontal-spread shopping centre by 0.1 per cent (ABCB 2004).

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The RIS suggests that differential cost increases that weigh more heavily on small shops and offices ‘could significantly reinforce the long term shift away from local, “strip” shopping centres and toward large shopping and office mall complexes’ (ABCB 2004, p. 69). Such a shift could have implications for competition in the retail sector. If enough smaller organisations exit the market or are discouraged from entry, the market power of the larger remaining organisations might increase, at least in a regional sense. Competition would be further restricted if smaller organisations were an important source of product innovation and dynamic efficiency.

On the other hand, enough large organisations might be left in the market to sustain effective levels of competition and innovation. The crucial question, according to Bickerdyke and Lattimore, is how the market is defined. They state:

In some industries, markets are highly local—a particular region or even district of a city or town. In these contexts, while there may be many players across an aggregation of markets, there may be too few players to ensure effective competition in the micro-markets. (1997, p. 35)

It is not always easy to define what constitutes a market. Consumers might value the convenience of local businesses, and might not, for example, regard local restaurants as direct substitutes for those situated in shopping malls. However, they might not similarly distinguish between a local hardware store and one situated much further away in a regional shopping centre.

Given the uncertainties in defining markets, it is not possible to provide a definitive assessment of the extent to which the implementation of disability standards might impose restrictions on competition. Where the unjustifiable hardship defence is available, it will limit such restrictions and ensure that they produce net community benefits. Where it is not, the Productivity Commission considers that standards have the potential to reduce competitive pressures in some industries, and lead to less efficient outcomes.

#### FINDING 6.6

*Disability standards introduced to date appear to have had a relatively even impact on the costs of affected organisations and hence to have been competitively neutral.*

### **Other costs**

Legislation or regulation that imposes duties on organisations and individuals can sometimes generate indirect/unexpected costs. The DDA is no exception, with many of its provisions and associated regulations having the potential to create costs

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that are wider than at first thought. The following are examples in the areas of transport access, employment, education and premises.

- Requiring buses to be accessible to people with disabilities leads to a reduction in vehicle capacity and, thus, to an increase in operating costs per customer. This could have flow-on effects, such as fewer public buses, price rises, a decrease in public transport patronage and/or an increase in road congestion.
- Replacing standard taxis with wheelchair accessible ones might be to the detriment of people with other types of disability, such as vision impairments and mobility impairments, who might find such taxis impractical.
- Requiring employers to make costly adjustments to the workplace to accommodate the needs of employees with disabilities could result in reductions in the overall level of employment in the economy.
- Requiring educational institutions to include all children with disabilities could lead to disruption, and thus to lower educational outcomes for other children (although, as mentioned in section 6.4, there will be beneficial effects as well). Inclusion could also create more intangible costs, such as an increased incidence of stress related illnesses among teaching staff.
- Requiring new buildings to be fully accessible while allowing existing buildings to remain inaccessible (if not significantly renovated) could have unintended consequences. For example, it might mean that existing buildings remain unrenovated for longer periods, resulting in a loss of amenity for the general population.
- Requiring existing buildings undergoing extensive renovation to devote a greater amount of floor space to accessibility features (for example, accessible toilets) will lead to a loss in lettable space and, therefore, a fall in the return on such buildings.

Many of the costs above are diffuse and some are difficult to quantify.

## **6.6 Net benefits of the DDA**

Summing up the costs and benefits that the DDA and associated instruments impose on the community as a whole is fraught with difficulty. This is particularly the case where compliance with the DDA is either voluntary or enforced through complaints. In these circumstances, the overall quantum of costs and benefits necessarily depends on the break-down between non-compliance, voluntary compliance and enforced compliance. Even if that break-down were known for organisations and individuals, the costs and benefits would vary significantly from one organisation to the next, with little scope for generalisation.

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Quantifying the net benefits is somewhat easier where the DDA is enforced through disability standards. The costs of standards can be calculated more precisely, based on the number of organisations covered and the cost of compliance for each type of organisation. However, a number of difficulties arise when costing standards.

First, not all the costs imposed by standards are quantifiable. For example, the education standards RIS forecast that some private education providers would face increased litigation costs under the standards (see appendix B). However, those costs were not able to be quantified.

Second, as noted earlier, standards have the potential to restrict competition if they do not apply uniformly across organisations. Such restrictions could impose large costs on the economy, because they would mean that resources are not allocated in a way that maximises the value of the goods and services produced. However, such distortions are complex and not readily amenable to measurement.

Even if the costs of standards could be known precisely, they tell only part of the DDA compliance cost story, because they only include the *incremental* costs the standards create for organisations they cover. They therefore underestimate to a greater or lesser extent the total costs of complying with the DDA. Notwithstanding that the delineation between the costs of complying with the general provisions of the DDA and those of complying with the standards can be blurry, they are both costs of complying with disability discrimination legislation overall, as illustrated in the case of education (see appendix B).

For all the uncertainty governing costs, even greater uncertainty affects the measurement of the benefits of the DDA and its standards. As mentioned in section 6.3, inconsistent methodologies have been used to measure the benefits of some of the standards developed to date. This inconsistency means that different disability standards cannot be compared in terms of their costs and benefits, and there is a risk that a particular set of standards might be recommended on the basis of flawed methodology.

Taking all available evidence into consideration, however, the Commission considers that the DDA, as it currently stands, is likely to have produced a net community benefit. The only set of standards currently in operation (the transport disability standards) was estimated in its RIS to generate a net cost (except in its upper-bound benefits variant), but this estimate was based on suspect methodology.

Using the more valid approach that was subsequently used in the consultation RIS for the access to premises standards, the Physical Disability Council of NSW (PDCN 1998a) calculated benefits for the transport standards that were considerably higher than those appearing in the RIS (\$1040 million per annum compared with

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\$263 million at most in the RIS), and significantly outweighed the costs of implementation (\$187 million per annum, on average over twenty years). Even if the PDCN's estimate is overinflated, for reasons discussed in section 6.3, it is still likely that the benefits of the transport standards outweigh their costs. Organisations operating under these standards also have access to the unjustifiable hardship defence, which means that the potentially high costs that resource misallocation can impose on society would be constrained.

Moreover, the benefits of the current version of the DDA do not arise just from the transport standards. Indeed, it can be argued that the tangible and intangible benefits that arise from the general provisions of the Act are likely to outweigh those costs associated with applying, or complying with, the DDA (including adjustment and transactions costs). The sense of self-worth and inclusion that the Act affords to people with disabilities, although it defies conventional accounting, is undoubtedly of great value to people with disabilities, their carers, associates and the general community.

Therefore, it appears likely that the combination of the general provisions of the DDA and the transport standards satisfy the CPA requirements for legislation that is in the public interest. Any restrictions on competition that the Act imposes at present are most likely to be small or negligible, and outweighed by the net community benefits the current legislation produces.

FINDING 6.7

*The Disability Discrimination Act 1992, as it has been implemented to date, is likely to have generated a net community benefit.*

It is not possible to be equally confident about the capacity of the DDA to meet this aspect of CPA requirements if the two proposed disability standards were introduced. The proposed education standards would be unlikely to alter greatly the overall balance of benefits and costs. Although this has been disputed by some States and Territories, incremental costs created by these standards are likely to be small. Moreover, the standards are expected to produce benefits additional to the general provisions of the DDA, by making students with disabilities and their parents more aware of their rights and entitlements (see appendix B). The RIS concluded that 'the overall benefits of the standards exceed their associated costs' (The Allen Consulting Group 2003a, p. 57).

By contrast, the proposed access to premises standards have the potential to reduce the net benefits of the DDA. This is for several reasons. First, the costs of providing access to new and renovated buildings can be very high, both in absolute and relative terms. Unlike the public transport sector, these costs are imposed in full at

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the time, not spread out over a period. Second, owners of new buildings would not be able to claim unjustifiable hardship, thus removing an important safeguard against costs outweighing benefits. Finally, the requirements of the proposed standards might lower competitive pressures in some sectors of the economy, with negative consequences on the efficiency with which resources are allocated.

FINDING 6.8

*The future balance of costs and benefits generated by the operation of the Disability Discrimination Act 1992 will depend on the way in which the Act is implemented and enforced. Net benefits could be reduced if disability standards are not subject to appropriate safeguards.*

## 6.7 Conclusion

The application of the requirements for legislation reviews under the CPA is difficult in the case of the DDA. Many of the Act's benefits are intangible. Even when benefits and costs are amenable to quantification, there are important methodological issues that frustrate a traditional benefit–cost analysis. This, combined with the difficulty in measuring the effectiveness of the DDA in the eleven years of its operation means that any conclusion on the net benefits of the Act must inevitably be qualified.

Nonetheless, taking a broad view of all costs and benefits flowing from the Act, the Productivity Commission considers that the DDA is very likely to have produced a net community benefit in the period since its introduction. In the Commission's view, the restrictions on competition that arise from the operation of the current version of the Act are not sufficient to reverse this conclusion. Complaints are somewhat random and arbitrary in nature. One organisation might be forced to undertake costly adjustments or be involved in litigation, while another is able to avoid these costs. However, there are only a small number of complaints. Although the costs they impose might be inequitable (or 'unfair') and affect the competitiveness of the individual organisation involved, they are not likely to lower the overall level of competition. Regarding the only disability standards operating to date, the competition effects of the transport standards are minimised by the timetable for reaching full accessibility, and by the availability of the unjustifiable hardship defence to providers.

Whether the DDA continues to maintain a positive balance of benefits and costs into the future will depend on the way in which any new standards are implemented. The proposed access to premises standards could impose very large costs on the economy. The relative cost impacts of these standards would vary depending on



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whether the premises are new or existing, large or small. Where whole groups of organisations are treated differently from others, restrictions on competition can arise. Such restrictions would be minimised by making the DDA apply as uniformly as possible across and within all industry sectors, particularly with regard to safeguards.

This raises the question of whether alternatives to the general provisions of the DDA and its (proposed) standards exist, that would meet the objectives of the Act while imposing lesser (potential) restrictions on competition. This, the third and final question raised in CPA legislation reviews, is examined in the next chapter.