
15 Other issues

Inquiry participants raised many issues that affect equality of opportunity for people with disabilities. Some of these issues cannot be addressed through amendment to the *Disability Discrimination Act 1992* (DDA) in the same manner as the issues discussed in earlier chapters. They might nevertheless have an effect on the ability of the DDA to achieve its objectives. These issues include: funding arrangements for legal services and the Human Rights and Equal Opportunity Commission (HREOC) (section 15.1), and for disability services in education (section 15.2); employment assistance programs (section 15.3); access to disability and other government services (section 15.4); government procurement policies (section 15.5); and copyright arrangements (section 15.6). Some other concerns are outlined more briefly in section 15.7.

15.1 Funding of legal assistance and HREOC

Many inquiry participants noted inadequate levels of Government funding for legal assistance and HREOC as particular concerns limiting the effectiveness of the DDA.

Funding legal assistance

Adequate legal assistance for people with disabilities is essential to achieving equality before the law (see chapter 9) and can influence the ability of people with disabilities to access the DDA complaints system (see chapter 13). The level of Government funding of legal services is an important factor that affects access to legal assistance for people wishing to pursue complaints under the DDA. It affects both the costs incurred by people with disabilities and the availability of legal assistance. To the extent that the level of funding results in excess demand for subsidised legal services, people with disabilities may need to seek more costly legal options. In this circumstance, reviewing rules for the awarding of costs becomes particularly important (see chapter 13).

Disability Discrimination Legal Services (DDLS) in each State and Territory are the main source of legal assistance for people with disabilities, although other sources of legal assistance are also available (box 15.1). Anita Smith (sub. 127, p. 1)

observed that funding of the national DDLS network aims to ensure that the community is aware, and makes use, of the DDA.

Box 15.1 Legal assistance available to complainants

Various options for legal assistance are available for people wishing to complain about disability discrimination.

Disability Discrimination Legal Services are a national network of community legal services that specialise in disability discrimination law. They offer free information, advice and assistance to people with disabilities experiencing discrimination.

A small number of other **community legal services** also provide free legal advice and assistance, but few have specialised knowledge about disability discrimination law and most prefer to concentrate on other areas of expertise.

Advocacy groups do not generally provide legal assistance. Advocacy groups and service organisations often form cooperative ventures with Disability Discrimination Legal Services on systemic complaints. The advocacy group refers the case, and might then support the complainant while the Disability Discrimination Legal Service provides legal assistance. A small number of other disability sector organisations provide legal advocacy on disability discrimination matters, but they have very limited resources for doing so.

Pro bono assistance is sometimes available from law firms. The expression comes from the Latin phrase *pro bono publico* meaning ‘for the public good’. While most lawyers who undertake *pro bono* work in Australia contribute their time at no cost to the client, some *pro bono* work is not free, but is done at a substantially reduced fee. *Pro bono* schemes are often run through legal aid agencies or the courts.

Legal aid commissions provide legal advice and legal aid, and can represent eligible complainants in court on a broad range of matters. Legal aid is not necessarily free—the person assisted may be required to make a contribution. Because the demand for legal aid greatly outstrips supply, legal aid commissions generally apply a means test and look at the merits of each case. Many DDA cases do not qualify for legal aid.

Under the *Human Rights and Equal Opportunity Commission Act 1986* (s.46PU), a complainant (or respondent) can apply to the **Attorney General** for legal or financial assistance for proceedings in the Federal Court or the Federal Magistrates Court on the basis of facing hardship.

HREOC cannot assist complainants in the federal courts, apart from helping them to prepare the forms required to apply to the court. HREOC’s role is limited to shaping the interpretation of the law as *amicus curiae* (friend of the court). In this role, HREOC may assist the court on points of law but it is not a party to the proceedings.

Source: adapted from Rush Social Research 1999.

A 1999 review of the DDLS found that they ‘attempt valiantly to keep up with demand, and identify a high level of unmet need for assistance’ (Rush Social

Research 1999, p. 16). Most tried to control their case loads by prioritising cases, focusing on systemic or test cases, and balancing other work such as community development and legal education.

Several inquiry participants commented on continuing perceived underfunding and understaffing of the DDLs. Disability Action Inc. suggested the South Australian service was ‘stretched to capacity’ (sub. 43, p. 3) and Trevor Oddy commented that the ACT service ‘cannot even staff their office on a regular basis’ (sub. 58, p. 4). Blind Citizens Australia noted that heavy demand on resources limits the extent to which the services offer ‘actual support and representation’, rather than basic advice (sub. DR269, p. 27). The Victorian DDLs, which receives some funding from the State Government in addition to its federal funding, commented that resource constraints meant it sometimes turned people away, although it ‘will always try and refer them to another organisation so that they are given assistance’ (trans., p. 1756). It noted further that its:

... capacity ... to assist in a greater number of cases would be enhanced by funding levels, which accurately reflected the level of need ... and the level of funding required ... to offer a comprehensive Statewide service. (Disability Discrimination Legal Service, sub. 76, p. 3)

Victoria Legal Aid (sub. DR290) referred to problems in the resourcing of other specialist legal services for people with disabilities, and the reluctance of the private legal profession to accept DDA cases on a ‘no-win, no-fee’ basis. Legal aid grants currently can be made for DDA cases only if the case has strong prospects of providing substantial benefit both to the applicant and to the public or a section of the public. According to Victoria Legal Aid, these ‘narrow’ guidelines restrict its capacity to provide legal assistance, with the public interest requirement ‘primarily responsible’ for it making only three grants of aid for DDA cases in the last two years (sub. DR290, p. 7). It argued that this requirement should be removed to improve access to legal representation (in line with a recommendation of a 1998 review by the Senate Legal and Constitutional References Committee). It suggested further that:

... legal aid services to people with disabilities should be provided by the Commonwealth Government providing additional funding for that purpose to organisations like [Victoria Legal Aid], community legal centres and specialist legal services such as the Disability Discrimination Legal Service. (sub. DR290, p. 6)

It also suggested that additional funding be provided for essential services not involving legal aid grants, such as the provision of seminars and publications, telephone and duty lawyer services and minor casework.

The apparent limited availability of other legal assistance options for those wanting to bring a case under the DDA makes the role of the DDLs particularly important.

However, the need for these (and other legal services) to prioritise cases does not automatically mean that current funding levels are inadequate or that an increase in resources is justified. The Productivity Commission agrees, however, with the general principle that resources allocated to the legal services should reflect the responsibilities that the services are expected to assume.

In terms of legal aid, the application of funding criteria to the granting of aid is necessary to provide a transparent and consistent allocation of funds across cases. Including a ‘public interest test’ among these criteria is likely to be efficient in the context of general resource constraints—potentially increasing the overall benefit to the community. However, the public interest is not necessarily limited to cases with systemic implications. There is also a public interest in assisting individuals, especially the most vulnerable, to protect their rights—particularly in cases of serious discrimination, where individuals lack the resources or capability to mount without support what may be a complex case.

The Productivity Commission recognises that, where general resources are severely constrained, allocating funds across these cases involves a difficult balancing act. It is important, however, that the public interest test not be applied so narrowly that it prevents ‘socially worthy’ cases being taken on—such as those involving people with severe disabilities, difficult cases or those involving complex legal considerations. In practice, broadening the criterion may have little effect without appropriate financial underpinning. To the extent that the criterion is currently so narrow that it prevents cases being taken on even where resources would be available, broadening the criterion may not require significant additional funding. Whether increased funding for legal services is justified needs to be assessed in a broader context, including the relative role of the various providers of legal assistance for DDA cases. Nonetheless, given the importance of complaints in enforcing the DDA, inadequate legal support for people with disabilities could undermine the effectiveness of the DDA in achieving its objectives, particularly in pursuing equality before the law and addressing discrimination (see chapters 9 and 13).

FINDING 15.1

The Disability Discrimination Legal Services make an important contribution to the effectiveness of the disability discrimination complaints process, and to ensuring equality before the law for people with disabilities. Inadequate funding of these services could undermine the effectiveness of the Disability Discrimination Act 1992.

Adopting a public interest criterion for granting legal aid is likely to be efficient given funding limitations. However, the ‘public interest’ should be broad enough to include circumstances where discrimination is serious and individual complainants lack the resources or capability to mount a case.

Funding of the Human Rights and Equal Opportunity Commission

Many inquiry participants commented on the resource constraints faced by HREOC, with some suggesting these were among the main factors limiting the effectiveness of the DDA. The Disability Council of NSW, for example, argued:

While HREOC is seen to have an educative role it is under-staffed and under-resourced. The lack of resources and the lack of power to enforce compliance with the legislation are two major factors affecting the effectiveness of the DDA. (sub. 64, p. 20)

A number of inquiry participants referred specifically to the impact of cuts to HREOC’s budget. Anita Smith, for example, commented on the impact of budget cuts in 1997-98 on the scope of HREOC’s work, saying they ‘had the effect of really removing most of the ... policy development areas and ... skimmed HREOC right back to just its legal complaints handling role’ (trans., p. 301). Some, such as the Law Institute of Victoria (sub. 81, p. 1) and the Anti-Discrimination Commission Queensland (sub. 119, p. 7), suggested the need to restore funding to at least the levels prevailing before 1997-98.

One reason for budget cuts that year was anticipation of the removal of HREOC’s hearings functions (see chapters 4 and 13). HREOC also faced problems with cooperative arrangements with the States and Territories, which it considered added to complaint handling costs. HREOC closed off these arrangements.

The Productivity Commission notes that HREOC needs sufficient resources to perform the functions expected of it. Many findings and recommendations in this report—such as those relating to HREOC’s role in education and awareness (see chapter 10), reviewing legislation for consistency with the DDA (see chapter 9), and cooperation with the States and Territories (see chapter 13)—have potential resource implications. The increased use of disability standards (see chapter 14) and introduction of a reasonable adjustment duty (see chapter 8) may also have implications for HREOC’s complaints handling role, although their net impact is unclear. On one hand, a reasonable adjustment duty creates another potential ground for complaint. On the other, standards may decrease the need for individual

complaints. However, complaints about breaching standards can still be made, and they may divert complaints from the State and Territory systems.

More effective use of existing resources, such as enhanced links with other organisations, can moderate the extent to which additional resources are required for any additional work. That said, as noted in this section (and chapter 10), inquiry participants suggested that resource constraints have undermined HREOC's effectiveness in some areas. Any significant additions to its responsibilities are, therefore, likely to require additional resources for it to undertake them effectively, particularly given its ongoing role in handling complaints. As noted in chapter 13, the Productivity Commission's preferred approach to reforming the DDA and HREOC's complaint handling process may also have implications for the administration of other federal anti-discrimination Acts. The full impact of the Commission's recommendations on HREOC's resources needs to be assessed in this broader context.

FINDING 15.3

The Human Rights and Equal Opportunity Commission needs sufficient resources to match its responsibilities if it is to undertake its functions effectively. Insufficient funding could undermine the overall effectiveness of the Disability Discrimination Act 1992.

15.2 Government funding for students with disabilities

The number and proportion of students identified as having a disability increased significantly in all education sectors in the 1990s (see chapter 5 and appendix B). Many inquiry participants' concerns about disability discrimination in education related to government funding arrangements for students with disabilities in mainstream schools. Concerns were also expressed about the availability of assistance for tertiary students with disabilities.

Disability funding in schools

Government funding arrangements for students with disabilities attending Australian schools are complex. They involve mainstream and special schools, at both primary and secondary level, that are operated by three major school sectors (government, Catholic and other non-government) and funded by two levels of government (box 15.2).

Box 15.2 **Disability funding arrangements in schools**

Special funding to assist and support students with disabilities in mainstream schools is provided by Australian, State and Territory governments through various programs. The amount of government funding available to assist students with disabilities and their schools can depend on a range of factors, including: the type and severity of the disability; State or Territory of residence; school sector (government, Catholic or other non-government); regional or remote location; socioeconomic status; and other sources of disadvantage that are relevant to school funding programs.

The Australian Government assists schools with students with disabilities on a per capita basis with the Strategic Assistance Programme. Other Australian Government programs that are not directly earmarked for students with disabilities can also be used (DEST 2003; Australian Association of Christian Schools, sub. DR268, att. 1, p. 3). The Australian Government recently announced additional funding for students with disabilities and other disadvantaged school students through a new Special Learning Needs Programme (Nelson 2004).

State and Territory governments operate government schools and provide resources to non-government schools. The level and distribution of resources for students with disabilities varies considerably across States and Territories. This variability is due partly to different eligibility criteria, and partly to different levels of education funding more generally. It is also evident in funding for students without disabilities (SCRGSP 2004).

There is much debate about the level and distribution of government funding to assist school students with disabilities. Funding arrangements for school students with disabilities were considered, among other issues, by the Senate Inquiry into Education of Students with Disabilities in 2002 (Senate 2002). That inquiry recommended the introduction of national disability standards for education, with all governments to contribute to the cost of implementation. It also recommended that the Department of Education, Science and Technology explore a scheme to assist students to purchase assistance equipment. It did not, however, recommend changes to the level or distribution of Commonwealth funding for disability programs or services in schools or other education institutions (Senate 2002).

School funding arrangements elicited comments from many inquiry participants, especially those from the non-government schools sector. Inquiry participants were highly supportive of integrated, mainstream education for school students with disabilities (see appendix B), but were concerned that their integration has not been supported with adequate resources, staff training and specialist education assistance (Australian Education Union (AEU), sub. 39; Action for Community Living, sub. DR330, p. 1; People with Disability Australia, sub. DR359, pp. 11–12, trans., p. 2477; and submissions from various non-government schools associations).

More specific disability funding issues in schools for inquiry participants included:

- the level and distribution of special funding for students with disabilities in non-government schools, relative to government schools, with several participants arguing that students with disabilities in non-government schools receive less financial assistance from governments than if they attended a government school (Association of Independent Schools of South Australia, sub. 135; Association of Independent Schools Victoria, sub. 99; Australian Associations of Christian Schools, sub. 148; National Council of Independent Schools Associations, sub. 126; National Catholic Education Commission, sub. 86; Association of Independent Schools Northern Territory, Alice Springs visit notes)
- the advantages of ‘earmarked’ government funding for students with disabilities relative to general purpose education funding (including capital works or building maintenance grants), some of which may also be used to make adjustments for students with disabilities, but may be less transparent than ‘earmarked’ funding (Australian Education Union, sub. DR313)
- different government funding levels across States and Territories for school students with similar disabilities—the Australian Association of Christian Schools claimed, for example, that a profoundly disabled student in a non-government school in Western Australia would have received \$17 000 in 2001, while in other States, a student with a similar level of disability ‘would have been fortunate to attract \$5000’ (sub. 148, p. 5)
- the extent to which students with disabilities (in both government and non-government schools), their families and their schools must meet their own adjustment and support costs—the Association of Independent Schools of Victoria claimed, for example, that in its member schools in 2002 the State Government paid 38 per cent of disability assistance costs and ‘parents and schools contributed the remaining 62 per cent’ (sub. DR320, p. 2)
- shortages in regional areas of accessible school transport, teaching aides and specialist teaching staff in both government and non-government schools (AEU, sub. 39; see also Senate 2002; DEST 2003; Royall 2003).

Effects of funding arrangements on school students with disabilities

Inquiry participants said these education funding issues have had adverse effects on school students with disabilities. Schools associations, disability groups and individuals suggested that the unequal distribution of government resources decreased the educational choices available to students with disabilities, relative to the choices available to students without special education needs. Participants said students with disabilities are encouraged to enrol in government schools, despite

their preference for a non-government school, due to uneven funding arrangements. The Royal Institute for Deaf and Blind Children (sub. 97, p. 5) said its biggest issue in education ‘is the inadequacy of funding support ... to allow students with disabilities ... to opt for integrated education in non-government schools’. Tom Byrnes (sub. 46, p. 2) similarly commented that although students ‘are not denied the right of choice under the present funding arrangements ... they are certainly severely penalised’ if they attend a non-government school.

The consequences for disability discrimination of uneven funding arrangements were highlighted by Queensland Parents for People with Disability, which stated:

... the non-government sector uses the lack of resources to exclude students with disabilities. ... even students with modest support needs are being refused enrolment. ... Some non-government schools actively discourage parents from enrolling by informing them that they cannot afford to support their son or daughter. (sub. DR325, p. 2)

Many participants also complained about more general effects of resource shortages for school students with disabilities. They said these shortages have put pressure on the resources schools can devote to other students or demands (such as upgraded facilities for all students), which can cause tension within school communities. They can also limit the extent to which the educational needs and preferences of students with disabilities can be met, regardless of a school’s obligations to make adjustments or provide assistance under the DDA or under education regulations (Association of Independent Schools of South Australia, sub. DR357; AEU, sub. 39; see appendix B). As a result of shortages in specialist resources and professional skills, the National Council of Independent Schools Associations suggested:

... it may not be appropriate that every individual school be expected to meet the needs of students with disabilities, especially those requiring very specialist assistance. (sub. 126, p. 5)

Conclusions on funding arrangements for school students with disabilities

Funding arrangements for disability support in Australian schools are outside the direct scope of the DDA—that is, the DDA cannot be used to make a complaint about them (section 15.4). Rather than involving disability discrimination *per se*, many concerns described by inquiry participants about disability funding in schools appear to arise from: differences in funding levels across school sectors; differences in funding across States and Territories; and, especially in regional locations, shortages in education resources and skills more generally. These differences in access to government resources appear to be reducing education choices and participation for school students with disabilities, in a way that does not affect other school students.

Nevertheless, school funding arrangements can have indirect implications for the operation of the DDA. They may, for example, expose schools to claims of disability discrimination, to the extent that insufficient resources limit schools' ability to make adjustments for, or supply adequate services to, students with disabilities. On the other hand, funding arrangements may mean that some schools are more likely to be able to argue legitimately that providing adjustments or assistance for students with disabilities would cause unjustifiable hardship. The affected schools would then lawfully be able to exclude those students from enrolment or certain activities (see chapter 8). In these cases, government funding arrangements may contribute to incidences of (lawful) disability discrimination.

The Productivity Commission considers that government education funding arrangements should aim to ensure that school students with disabilities have the same range of education choices as do other students. Their choice of school should be influenced by the same factors—such as location, income, culture, religion and education needs—as for other students. This objective could be assisted by linking a greater proportion of special education funding to individual students, rather than to the school or the sector. In this approach, schools could still receive the special funding, but the funding would 'follow' an individual student with a disability if he or she changed schools (see also the discussion of portable access grants in employment—section 15.3). This would require a degree of flexibility in funding levels and in distribution mechanisms (to allow, for example, for changes in the number and assistance needs of eligible students as they move schools).

On the other hand, it seems more efficient to allocate funding for 'one-off' adjustments (such as to buildings and facilities) to schools or sectors as needed, rather than to individual students. In its response to the Senate (2002) inquiry report, the Australian Government noted that these and other disability funding issues need to be considered within the broader context of education planning, and the many competing demands across all areas of schools education.

FINDING 15.4

To the extent that insufficient resources limit their ability to make adjustments for students with disabilities, schools could be exposed to claims of disability discrimination. Insufficient resources could also contribute indirectly to disability discrimination by leading some schools to claim unjustifiable hardship under the Disability Discrimination Act 1992.

Disability funding in tertiary education

As with schools, funding arrangements in tertiary education involve many education providers (Technical and Further Education (TAFE) colleges, universities and some private colleges) and two levels of government. Most government funding for tertiary students with disabilities is paid to institutions rather than to individual students (Selby-Smith and Ferrier 2003) (box 15.3).

Box 15.3 Disability funding arrangements in tertiary education

Funding for individual students with disabilities. Eligible students with disabilities can receive a Disability Support Pension while studying. If their course of study is approved by Centrelink, they are also eligible for a Pensioner Education Supplementary Allowance, subject to income and assets tests (Centrelink 2004).

Funding for vocational education and training (VET) providers. National programs aimed at improving VET opportunities for people with disabilities include 'Bridging Pathways', the Equity Development and Training Innovation Programme, Disability Coordination Officer Programme, Disabled Apprenticeship Wage Support Programme (which provides wage supports to employers taking on an apprentice with a disability), and the New Apprenticeships Access Programme (which assists disadvantaged jobseekers, including those with disabilities, undertake apprenticeships) (DEST 2003; Gillies and Knight 2001). State and Territory governments also provide 'a mixture of base funding to institutions, together with additional funding for special purposes' and students with high support needs (Selby-Smith and Ferrier 2003, p. 4).

Funding for universities. The Higher Education Equity Program targets six equity groups, including people with disabilities (James et al. 2004). Around 10 per cent of this program's funds are spent on Disability Liaison Officers, support services and equipment for students with disabilities (DEST 2003; Devlin 2000). The Additional Support for Students with Disabilities Programme commenced in 2001 to support university students with 'high support needs' (DEST 2002b, p. 94).

Education adjustment costs are typically divided into systemic and individual costs. Institutions typically meet systemic and one-off costs (such as disabled car parking, staff training and building access) from their general budgets. Ongoing support costs for individual students are met by special government programs paid to institutions, by students and by community organisations (in the form of free or reduced cost assistance services) (Andrews and Smith 1992; Jones 1994; Devlin 2000).

Concerns about these various forms of support for tertiary students with disabilities have long been noted. In 1999, a small-scale survey of university students with disabilities found two-thirds of them had difficulties obtaining assistive technologies due to 'lack of resources and the [high] cost of the devices'. Similar

inadequacies have also been noted for disability resources in surveys of TAFE staff and students (Leung et al. 1999, cited in Devlin 2000, pp. 17–19; see appendix B).

Fewer comments were received from inquiry participants about tertiary education than about schools. But, as with schools, participants commented on the resources and support services available to tertiary students, rather than on incidences of discrimination *per se* (People With Disability Australia, sub. DR359, p. 12; ParaQuad Tasmania, sub. 106, p. 3; Janet Hope in conjunction with Margaret Kilcullen, sub. 165, p. 6; see appendix B). Peter Young (sub. 199, p. 1) questioned the transparency of disability funding paid to tertiary institutions, which he claimed ‘comes in a non-transparent packet’.

Some students with disabilities qualify for a supplementary education allowance (box 15.3). ParaQuad Tasmania suggested an additional ‘physical disability cost of living allowance’ and a ‘home computer/software/Internet package’ to help people with physical disabilities cover their additional costs (such as for transport and assistance equipment) in education (sub. 106, p. 3).

Disparities in resources for adjustments across tertiary education institutions also appear to be of concern to education staff. Universities that develop a reputation for making adjustments and providing good support services have tended to attract more students with disabilities (‘on the bush telegraph’) but have not necessarily attracted additional government funding to meet additional support costs (Devlin 2000, p. 21; see appendix B).

As noted in relation to funding for schools, funding for ongoing tertiary education support services might promote equality of choice for students with disabilities more effectively if it were more closely linked to the needs of individual students (for example, in the form of a portable access grant). For other types of adjustment and support costs (typically those that are ‘one-off’ or that can be effectively pooled), it seems more effective for special funding to be paid on a ‘per institution’ basis. Both types of funding arrangement—individual and institutional—are currently in place (box 15.3). The Productivity Commission also notes the significant impact that funding for tertiary students with disabilities can have on those students’ employment prospects.

15.3 Government employment assistance programs

Governments attempt to improve employment opportunities for people with disabilities in several ways—providing assistance to (potential) employees with disabilities and/or to employers of people with disabilities—in both open

employment and business services.¹ This can complement anti-discrimination legislation by overcoming information failures and partly offsetting the adjustment costs required to allow people with disabilities to take advantage of employment opportunities. The Australian Government currently has several employment programs relating to people with disabilities. There are three sources of assistance for job seekers and/or workers with disabilities—Disability Employment Assistance (DEA) services, Vocation Rehabilitation Services (VRS) and, for those not eligible for either of these, mainstream Job Network services (which also provide some specialist disability services) (box 15.4).

Box 15.4 Employment assistance provided to people with disabilities

The Department of Family and Community Services (FACS) provides funding under the *Disability Services Act 1996* for two types of employment services provided to people with (moderate to severe) disability, with access provided through Centrelink.

- Disability Employment Assistance (DEA) services (provided at more than 850, mainly non-profit outlets, Australia-wide) assist people with disabilities to gain and/or retain paid employment in the open labour market (open services), or provide support and employment to people with disabilities in business services. In 2002-03, FACS allocated \$303.71 million to these services.
- Vocational Rehabilitation Services (VRS) (provided by CRS Australia through 160 sites nationally) provide vocational rehabilitation programs to help people with disabilities, whose work capacity has been affected by work injuries, to gain/regain unsupported paid work. FACS allocated \$113.2 million to these services in 2002-03.

Those not eligible for DEA or VRS can seek assistance through the Job Network, funded by the Department of Employment and Workplace Relations. It provides mainstream employment assistance, as well as services targeted to 'special needs groups', including people with (low to moderate) disability. Individualised Intensive Support can be provided, if needed, with specialist disability Intensive Support providers operating in 27 (of the 1160) sites. Those eligible for Intensive Support may be able to access funding through the Workplace Modifications Scheme (box 15.5) when placed in a job, and can also be referred to complementary programs (including some targeting people with disabilities) provided by Australian and State and Territory governments. People with disabilities comprise around 14 per cent of those receiving Intensive Support. The Job Network is currently helping about 63 000 job seekers with a disability, most of whom have physical disabilities. In 2002-03, almost half those with disabilities were in employment or education/training three months after participation in employment services, but positive outcomes were lower than for job seekers generally.

Sources: Department of Employment and Workplace Relations, sub. DR299; FACS, sub. DR362 and att. 1.

¹ 'Business services' (previously known as 'sheltered employment') provide government subsidised employment for people who are unlikely to obtain employment in the open market.

There is also an Employer Incentives Strategy—incorporating a Workplace Modifications Scheme (WMS), Wage Subsidy Scheme (WSS), Supported Wage System (SWS), and Disability Recruitment Coordinator (DRC) service—to help offset, at least in part, costs faced by employers of people with disabilities (box 15.5).

In addition, the Australian Government provides financial and practical assistance to employers wishing to employ apprentices with disabilities (box 15.3). Overall, the Department of Family and Community Services (FACS) allocated over \$400 million in funds to the DEA and VRS in 2002-03, and \$7 million to the programs operating under the Employer Incentives Strategy (boxes 15.4 and 15.5). State and Territory governments also operate their own schemes to facilitate public and/or private employment of people with disabilities.

Outcomes of current programs have been mixed. In 2001-02, DEA service providers, CRS Australia and the Job Network helped about 245 000 people with disabilities find jobs and stay in the workforce (FACS, sub. DR362, att. 1). This represented a relatively small proportion of the total labour force with a disability (which was about 1.1 million in 1998 (ABS 1999b)).

A review of the Employer Incentives Strategy (FACS, sub. 362, att. 1) found employers appreciated the single point of contact provided by recruitment coordinators, and were particularly supportive of the WMS and SWS. ACE National Network referred to the SWS as ‘an excellent affirmative action initiative ... that has open[ed] up doors to integrated mainstream employment for over 5000 workers with more significant disabilities’, and saw it as a ‘viable alternative to segregated employment through Business Services’ (sub. DR361, p. 3).

Various perceived problems with the current arrangements have been highlighted in this inquiry and in other reviews. These include:

- apparent unwillingness of CRS Australia to help an actor with a disability search for employment ‘because I’m in the too-hard basket’ (Media Entertainment and Arts Alliance, trans., p. 2288)
- cases where specialist disability employment agencies and Job Network services have refused to pay for Auslan interpreters for deaf clients, meaning that some deaf people continue to use specialist employment services offered by Deaf Societies instead (Australian Federation of Deaf Societies, sub. DR363)
- lack of expertise of mainstream employment service providers in relation to people with disabilities, and the lack of resources to provide them with those expertise (ACE National Network, sub. DR361)

Box 15.5 **The Employer Incentives Strategy**

FACS provides funds (\$7.0 million in 2002-03) for a range of employer incentive schemes to help with the additional costs of employing people with disabilities. These are available to all employers, including Australian Government organisations.

The **Workplace Modifications Scheme** (WMS) reimburses employers for the costs of modifying the workplace or of buying special equipment for new workers with disabilities. A cap of \$5000 applies, but this can be varied. Between 1998 and 2002, \$2.7 million was paid to 1096 employees, involving 1006 employers (mainly service providers). The average reimbursement per modification was \$2200; the highest 20 ranged from \$7815 to \$14 636. This average varied across disabilities—the highest being for workers with visual impairments, followed by those with psychiatric disabilities. People with visual impairments received the most approved applications between 1998 and 2002, followed by those with physical disabilities. The number of approvals has decreased over time; 25 per cent of applications were rejected in 2002.

The **Wage Subsidy Scheme** (WSS), started in January 1998, provides financial incentives for employers to employ workers with disabilities under normal labour market conditions. It allows the wages of a worker with a disability to be fully or partially subsidised for 13 weeks, to a maximum value of \$1500. The WSS has helped about 12 400 workers, with over 40 per cent having an intellectual disability. Funding of \$2.1 million provided around 2000 job placements at \$1088 per worker in 2001-02. Subsidies represented about half the worker's average weekly wage on average. Scheme use and expenditure have decreased over time. Businesses with fewer than 20 employees are most likely to access the scheme.

The **Supported Wage System** (SWS) enables people with disabilities to be paid according to their level of workplace productivity in the open workforce. Eligible workers undergo an independent assessment to measure their productivity relative to other workers in the workplace who undertake the same or similar job. Employers pay a wage commensurate to the assessed productivity. Between 2002 and 2003, 3010 employees were involved in the SWS, most having an intellectual disability (people with physical disability and acquired brain injury being the next most represented groups). Most were employed as labourers or factory hands but there are increasing positions in service industries. Overall demand for the SWS is increasing.

The **Disability Recruitment Coordinator** (DRC) service helps companies with 100 or more employees to employ people with disabilities. DRCs work across several employers, linking them with a number of DEA providers. They broadcast information about employers' vacancies to DEA providers, pool and quality check applications, refer applications to employers, and work with mainstream recruiters to increase their awareness of job seekers with disabilities and to change recruitment processes. There is a DRC in five States—NSW, Queensland, SA, Victoria, WA. Each uses different methods to achieve contracted outcomes but some work together to meet the needs of national companies. In the two years to 2003, DRCs, funded by \$2.2 million, exceeded their 900 contracted placements (no extra funds are provided for exceeding targets).

Sources: FACS, sub. DR362 and att. 1.

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- inconsistencies in funding approaches across programs—ACE National Network argued, for example, that applying a cap to the DEA program but not to the Job Network means the Australian Government is treating ‘disabled jobseekers who need additional support less favourably than non-disabled jobseekers who have an entitlement to an appropriate employment service’ (sub. DR361, p. 5)
 - lack of awareness of the various schemes among employers (Australian Chamber of Commerce and Industry, sub. DR288; Australian Industry Group, sub. DR326; ACE National Network, sub. DR361)
 - lack of an integrated approach to the various programs (ACE National Network, sub. DR361; FACS, sub. DR362, att. 1)—the review of the Employer Incentives Strategy noting it was not designed as an integrated package, the components originating ‘at different times to fulfil specific needs’ (FACS, sub. DR362, att. 1, p. 3)
 - concerns about the administration of, and access to, the WMS and SWS, and about the quality of SWS productivity assessments (FACS, sub. DR362, att. 1).

Various suggestions to overcome these perceived problems have been made, involving a more integrated approach to program provision, collaborative research and program design, improved marketing and information provision, and improved processes within particular programs (Australian Chamber of Commerce and Industry, sub. DR288; Australian Industry Group, sub. DR326; ACE National Network, sub. DR361; FACS, sub. DR362, att. 1).

A number of inquiry participants also referred to the need to change program funding arrangements (box 15.6). The Anti-Discrimination Commission Tasmania (sub. 136), Job Watch (sub. 215), Blind Citizens Australia (subs 72, DR269) and UnitingCare Australia and UnitingCare NSW.ACT (sub. DR334) were in favour of increased government funding of workplace adjustments, especially in small-to-medium businesses. Janet Hope in conjunction with Margaret Kilcullen (sub. 165), Anti-Discrimination Commission Tasmania (sub. 136), Blind Citizens Australia (sub. DR269) and Ability Technology Limited (sub. DR295) supported the introduction of portable access grants (discussed below).

Increasing resources for disability employment programs might also improve employment opportunities for people with disabilities, but significant funding increases would be required to make substantial inroads into overall unemployment. Although funding of these programs is likely to be a helpful complementary exercise, it might not be effective if people with disabilities continue to face discrimination in the labour market. Moreover, increasing resources in areas such as business services would produce very different outcomes to those that would result from lowering discrimination in mainstream employment. Nonetheless, to maximise

the potential impact of these programs, it is important that they operate as effectively as possible (which may or may not involve increased funding).

Box 15.6 Inquiry participants' views on funding workplace adjustments

The broad Government role in funding adjustments

- To avoid delays in provision, governments could fund adjustments based on an estimate of their cost, with the onus on the employer to justify any cost overruns subsequently. (Jobwatch, sub. 215)
- Government funding has the advantage of encouraging employees with disabilities to reveal any adjustment needs they have at the hiring stage. At present, candidates might refrain from doing so for fear of missing out on the job, with detrimental consequences on productivity. (Blind Citizens Australia, sub. 72)

A portable access grant

- 'If you are bringing equipment with you, rather than the employer suddenly having to fund it, then you're much more likely to get a job ... than you are if they're going to have to worry about questions of unjustifiable hardship and all the things that come up later' (Janet Hope in conjunction with Margaret Kilcullen, sub. 165, p. 7).
- Grants should be made available prior to a person with a disability entering the workforce, so the productive potential of a job candidate can be adequately assessed by employers. This would increase both the demand for the labour of people with disabilities—because of greater demonstrated productivity—and the supply of such labour. (Ability Technology Limited, sub. DR295, trans., p. 2307).

The Productivity Commission sees particular merit in government programs that offset, at least in part, the costs to employers of adjustments that might be needed when employing people with disabilities (see chapters 6 and 8). These programs increase efficiency, equity and the opportunities for people with disabilities to participate as equals in society. However, problems with the scope, coordination and awareness of current programs hinder their effectiveness and create uncertainty among employers about the benefits and costs to them of adjustments.

Improving the operation and awareness of these programs is, therefore, vital. Collaborative approaches—such as in research, policy design and implementation—are likely to be particularly effective (see chapter 10).

Changes to program funding also need to be considered. Current arrangements appear heavily skewed to funding job placement activities rather than employers' adjustment costs. Notwithstanding the importance of job placement assistance, the Productivity Commission considers that more emphasis could be given to adjustment cost funding to address problems people with disabilities face in

employment. This is especially the case given the influence employer (mis)perceptions about cost appears to have on their decision to employ people with disabilities (see chapter 10). Merely shifting the emphasis to funding adjustment costs is not sufficient, however. The effectiveness of any arrangements depends vitally on how the funds are allocated—to the employer once an employee is hired, or to an employee prior to employment, for example.

The provision of a portable access grant to individuals prior to their seeking employment could have several advantages. First, it would allow people with a disability to familiarise themselves with adaptive equipment prior to entering the labour force. Thus, when applying for a job, they would be able to be assessed on their full productivity. Second, it would remove any incentives that might exist for job candidates not to seek adjustments because they foresee an employer's negative response. Third, it would reduce delays in the employee reaching full productivity. Finally, portable grants would encourage employee mobility and thus enhance the quality of job matches in the labour market.

The portable access grant would need to be adjusted for the type and severity of the disability requiring adjustment. Where adjustments need to be tailored to a particular workplace, the person with the disability could opt to transfer the money to the employer, to be used in a way that is mutually satisfactory. This could be especially attractive to organisations that specialise in recruiting people with disabilities and have, thus, already made adjustments benefiting a particular type of disability (for example, the purchase of a site licence for a voice-activated typing package). Such organisations could accumulate individual grants to offset the cost of their investment.

Portable access grants might also be effective in education (section 15.2), and other areas.

RECOMMENDATION 15.1

The Australian Government should review the effectiveness of the various schemes it uses to subsidise the costs to organisations of adjustments needed by people with disabilities. This review should consider the merits of portable access grants that would contribute to the costs of adjustments required for participation in employment and education.

The possible role of government procurement policies in promoting employment of people with disabilities is discussed in section 15.5.

15.4 Access to disability and other government services

Many inquiry participants criticised arrangements governing the establishment, eligibility criteria, adequacy and appropriateness of services provided specifically to people with disabilities. Specific concerns raised included the sexual abuse of people with disabilities in institutions, the availability of respite care to alleviate the pressure on families and carers, and institutional and community accommodation for young people with disabilities. UnitingCare Australia and UnitingCare NSW.ACT and Dorothy Bowes (ASEHA Queensland), for example, commented on the impact of housing young people with disabilities in nursing homes, due to a lack of accommodation options specifically for people with disabilities. Dorothy Bowes noted the distress this can cause people with disabilities (trans., p. 1992), while UnitingCare Australia and UnitingCare NSW.ACT commented:

... 2 per cent of the residents of our aged care nursing home facilities are indeed younger people with impairments, [so] we have to do something about making it possible for those people to have community networks and links which overcome their existing loneliness and isolation ... (trans., pp. 2969–70)

The Commonwealth State/Territory Disability Agreement (CSTDA) (the third in a series of such agreements) provides a framework for the provision of specialist disability services, defining the roles and responsibilities of the Australian, State and Territory governments in the provision of certain services to people with a disability. The Australian Government is responsible for the provision of specialist employment services for people with disabilities, while the States and Territories are responsible for all other specialist disability services funded under the agreement, including accommodation support services, respite care services, and community access programs such as day programs (CSTDA).

Among other things, the CSTDA recognises ‘that people with disabilities have rights equal with other members of the Australian community, and should be enabled to exercise their rights or be accorded these rights’ (CSTDA, p. 2), and it contains measures to protect these rights. The National Disability Services Standards have been adopted by all jurisdictions as the basis of quality assurance for disability services (box 15.7), and the CSTDA requires each jurisdiction to ensure these standards are ‘upheld and monitored’ (ss.6(3), 6(5)).

There is no automatic right of access to services under the CSTDA. Eligibility for services is assessed on the level of disability and the need for services, and access is often subject to the availability of places. The Australian Institute of Health and Welfare estimated unmet need in 2001 of:

- 12 500 people needing accommodation and respite services
- 8200 places needed for community access services

-
- 5400 people needing employment support (AIHW 2003b).

Box 15.7 National Disability Services Standards

First adopted by all jurisdictions in 1992-93, the National Disability Services Standards were amended in 1997. The current standards are as follows.

1 Service access. Each consumer seeking a service has access to a service on the basis of relative need and available resources.

2 Individual needs. Each person with a disability receives a service which is designed to meet, in the least restrictive way, his or her individual needs and personal goals.

3 Decision making and choice. Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the services he or she receives.

4 Privacy, dignity and confidentiality. Each consumer's right to privacy, dignity and confidentiality in all aspects of his or her life is recognised and respected.

5 Participation and integration. Each person with a disability is supported and encouraged to participate and be involved in the life of the community.

6 Valued status. Each person with a disability has the opportunity to develop and maintain skills and to participate in activities that enable him or her to achieve valued roles in the community.

7 Complaints and disputes. Each consumer is free to raise and have resolved, any complaints or disputes he or she may have regarding the agency or the service.

8 Service management. Each agency adopts sound management practices which maximise outcomes for consumers.

9 Employment conditions. Each person with a disability enjoys comparable working conditions to those expected and enjoyed by the general workforce.

10 Training and support (former standards 10 and 11 amalgamated). The employment opportunities of each person with a disability are optimised by effective and relevant training and support.

11 Staff recruitment, employment and training. Each person employed to deliver services to the service recipient has relevant skills and competencies.

12 Protection of human rights and freedom from abuse. The agency acts to prevent abuse and neglect and to uphold the legal and human rights of service recipients.

The National Disability Service Standards apply to all services receiving funding under the CSTDA. Jurisdictions can impose standards over and above these. Most jurisdictions enter service agreements with providers and link funding to the attainment of objectives closely related to the standards. All federally funded employment services are to be certified against the standards before 31 December 2004.

Source: FACS 2003, pers. comm., 9 September.

The Productivity Commission recognises the importance of access to disability services, which play a significant role in enabling people with disabilities to take advantage of opportunities to participate in the life of the community.

The provision of such services can involve difficult decisions about the allocation of resources. The Productivity Commission considers that the CSTDA arrangements provide a transparent mechanism by which governments determine eligibility criteria and the nature of services to be provided for people with disabilities. The CSTDA's objective (s.4(1)) recognises that government resources are limited and that services must sometimes be rationed, by affirming the governments' 'commitment to the principles and objectives of the *Disability Services Act 1986* (Commonwealth)'. Section 3(2) of that Act refers to the need to have regard to limited resources and to 'consider equity and merit in accessing those resources'.

The Productivity Commission considers that it is not appropriate to require courts to second-guess government resource allocation decisions by expanding the scope of the DDA to cover questions of the establishment, funding or eligibility criteria of disability services (although the DDA should apply to the administration of these services—see chapter 12). Apart from the issues allowing this would raise—such as who would bring the complaint, and who would assess what 'needs' were and whether they were met (essentially political decisions about competing social policies)—there are existing complaint mechanisms for disability services, including State and Territory disability commissions and ombudsmen (see chapter 13).

As well as concerns about the nature and funding of disability services, a number of inquiry participants cited problems in how mainstream government services and programs are administered. Some of these problems related to difficulties meeting standard requirements for social services. These included:

- problems for some people with complex communication needs, who can find it difficult to provide information in particular (for example, written) formats or to meet time limits applied to appointments with agencies such as Centrelink (International Society for Augmentative and Alternative Communication, Australian Chapter, sub. 182, p. 4)
- problems for some people with mental health conditions in meeting activity or participation requirements for welfare payments (Mental Health Council of Australia, sub. 150, pp. 17–18).

Other concerns related to the impact of certain requirements on carers, such as the need to repeat paperwork every few years to ensure payments continue, even for those with 'permanent' disabilities (Jean Young-Smith, trans., p. 84), and a lack of

help to fill in forms, which can be a particular problem for carers from non-English speaking backgrounds (Disability Coalition, trans., pp. 826–7).

The Productivity Commission acknowledges the need to have some standard processes and eligibility criteria for these services and payments. It may not be possible to eliminate the problems that these processes can create in particular cases. Attempts to do so can be made difficult by people’s non-disclosure of their disabilities. However, it seems desirable that some flexibility be incorporated into processes to address the particular needs of these groups. In some cases, it may not only be desirable but also an implied obligation under the DDA to make such adjustments, given that it covers the administration of Commonwealth laws and programs (see chapter 4). This obligation would be strengthened by some recommendations of this inquiry—specifically, that decisions made under other laws that have a discriminatory effect (and are not subject to a specific exemption) could be subject to a DDA complaint (see chapter 9), and the introduction of an explicit reasonable adjustment duty (see chapter 8).

FINDING 15.5

It is the role of governments, not the Disability Discrimination Act 1992, to determine the establishment, eligibility criteria and funding of disability services. It is, however, appropriate for the Act to apply to the administration of disability services.

15.5 Government procurement policies

Some countries have used government procurement policies to try to improve outcomes for particular groups that face discrimination (ILO 2003). Such policies can be used to influence the supply of goods and services (accessible technologies, for example) or the behaviour of vendors as employers.

Influencing the supply of accessible goods and services

Government procurement guidelines are issued by the Department of Finance and Administration and were last updated in February 2002 (DOFA 2002). Their purpose is ‘to provide a policy framework to assist and ensure that Government agencies achieve value for money in their procurement activities’ (DOFA 2002, p. 4). One section of the guidelines identifies ‘additional Commonwealth legislation and policies that may have an impact on procurement decisions’, which agencies ‘should consider applying ... to their outsourced service providers on a case-by-case

basis'. It is noted that 'agency officials must have regard to the Commonwealth Disability Strategy in their procurement decisions' (DOFA 2002, pp. 17–18).

Some see the current approach as inadequate—Jolley (2003, p. 53) noting 'such a tentative first step towards an inclusive procurement policy has been frustrating for consumer advocates'.

This view was echoed by some inquiry participants, who suggested the Australian Government adopt a procurement policy for information and communication technology similar to that in place in the United States and proposed in some other countries (box 15.8) (National Information and Library Service (NILS), sub. 206, pp. 1–2, trans., p. 1942; TEDICORE, sub. 122, pp. 2–3). Jolley (2003, p. 100) noted that the US government 'uses the federal procurement process to ensure that technology acquired by the federal government is accessible', and recommended:

... HREOC ... initiate discussions with the Department of Finance and Administration, and with other relevant organisations, towards an inclusive Federal Government public procurement policy, modelled on section 508 of the Rehabilitation Act in the United States. (Jolley 2003, p. 53)

It has been argued that such a policy would improve outcomes for people with disabilities in the public sector, and have various flow-on benefits. As governments are large purchasers of goods and services (although less so in Australia than in the United States), they can exert significant market influence—on the development of accessible technology, and by indirectly encouraging private sector demand for these technologies—through their procurement policies (HREOC, sub. 143; NILS, trans., pp. 1939, 1942; Jolley 2003).

Other suggested benefits include:

- the potential to increase the productivity of people with disabilities in, and the number with access to, employment (TEDICORE, sub. 122, p. 3)
- improved outcomes for people with sensory and physical disabilities in areas such as education, telecommunications and personal computing (Jolley 2003)
- facilitation of more rapid systemic change than would reliance on a complaints-based system (HREOC, sub. 143; NILS, trans., p. 1940)—HREOC suggested this would also be at potentially lower cost 'since it is generally cheaper if accessible equipment is acquired at the outset' (sub. 143, p. 81)
- preventing 'dumping' of 'substandard equipment or systems' in Australia, given that other countries are adopting inclusive procurement policies (HREOC, trans., p. 1156)

-
- encouraging smaller companies to develop accessible technologies for the domestic market (where they might tend to focus initially), with subsequent impacts on their international competitiveness (NILS, sub. 206, trans., p. 1938).

Box 15.8 Overseas public procurement policies

United States. In 1998, the US Congress amended the Rehabilitation Act 1973, strengthening the access requirements for federal government electronic and information technology (EIT) (s.508). It covers technology such as office equipment, desktop computers, telecommunications equipment and software, and requires that, unless an undue burden would be imposed:

- federal agencies develop, procure, maintain or use EIT that allows employees with disabilities to have access to, and use of, information and data that is comparable to the access and use afforded employees without disabilities
- members of the public with disabilities, who seek information or services from a federal agency, have access to, and use of, information and data that are comparable to that provided to those without disabilities.

The legislation directs the Access Board to develop access standards to form part of procurement regulations. Standards were adopted in 2000, based on the final report of the board's EIT Access Advisory Committee.

An increasing number of US State and local governments are adopting these standards. Perceived benefits include: its influence on change in the information and communication technology sector, particularly given the purchasing power of the US Government; its promotion of awareness of what 'inclusive design' means, including in the private sector; and its potential worldwide flow-on effects.

Other countries. Inquiry participants commented that several other countries are working towards accessible procurement standards. In Europe, however, the Commission of the European Communities rejected amendments proposed by the European Parliament to include accessibility considerations for people with disabilities. Among other things, it stated 'the public contracts directive, the purpose of which is to coordinate procedures, is not the proper instrument for imposing an obligation to prescribe such features'.

Sources: CEC 2003; Jolley 2003; HREOC, sub. 143; NILS, sub. 206; TEDICORE, sub. 122.

The desirability of strengthening Australian Government procurement policies for accessible technology depends on several factors, including:

- the effectiveness of the current approach
- the extent to which changing the current approach would lead to positive changes, relative to the costs of doing so
- the range of other mechanisms through which these objectives could be achieved, such as voluntary action plans, industry codes or industry standards

-
- the type of technology that would be included in the policies
 - whether the policies should apply more broadly than the public sector
 - the role of HREOC, if any, in the change process.

These issues are largely beyond the terms of reference of this inquiry. The Productivity Commission notes, however, several potential issues with this type of approach. First, Australia tends to be an importer of information technology, and the Australian Government is not a large purchaser of these products by world standards. Its ability to influence the overall market through its purchasing decisions is limited. Australia could, instead, benefit from the increasing development of accessible technologies abroad (despite some concerns about the ‘dumping’ in Australia of inaccessible products). Moreover, the development of accessible technologies in Australia might be stimulated by the proposed Australia–United States Free-Trade Agreement (an agreed text for which was released in February 2004), which, among other things, would open the (much larger) US government procurement market (for contracts above a certain value) to Australian firms. In any case, there is a danger that using procurement policies to promote social goals could become *de facto* industry assistance. Even viewed through an industry assistance perspective, encouraging local companies to develop products for the domestic market is not necessarily going to improve their international competitiveness. Finally, procurement policies may not be the best instrument with which to impose accessibility requirements, as the Commission of the European Communities noted (box 15.8).

The Productivity Commission considers that government procurement policies are not generally the most appropriate instrument for trying to improve the supply of accessible technologies for people with disabilities. Making better use of the DDA—through existing provisions or through an explicit reasonable adjustment duty (see chapter 8)—or encouraging the development of industry codes (see chapter 14) are likely to be more effective overall approaches.

HREOC could, however, as suggested by NILS (trans., pp. 1941–2), play a role in raising awareness about the potential impact of procurement decisions, both in the context of DDA obligations and in encouraging dialogue among various interested parties. The ultimate decisions on whether and how such policies are implemented are for governments to make, after consideration of relevant issues and problems.

Influencing the behaviour of vendors as employers

Melinda Jones commented that ‘all government contracts should require compliance with the DDA [and] ... all tender documents should state that this is one of the

things that is being looked for' (trans., p. 1527). Other inquiry participants did not comment on the potential use of procurement policies to influence the recruitment and other employment practices of vendors.

Such policies can take a number of forms, according to the nature of the requirement or preference to be encouraged, the type of contract or company to which they apply, the mechanisms through which they operate, and the stage of the tendering process at which they apply (Erridge and Fee 2001, p. 54). The Minister for Revenue and Assistant Treasurer, Senator Coonan (2003), has suggested that legal firms 'undertaking government or agency work could be required, as a condition of getting this work, to abide by an equal opportunity briefing policy', commenting that 'nothing induces behavioural changes like incentive'. In the United Kingdom, amendments in 2000 to the Race Relations Act 1976 outlawed discrimination in all functions of public authorities (including procurement). The amendments imposed a positive duty on public authorities to eliminate discrimination, and race equality considerations had to be built into procurement decisions (Commission for Racial Equality nd). The Canadian Government has introduced the Federal Contractors Programme, which:

... requires contractors to implement employment equity measures to necessitate the identification and removal of artificial barriers to the selection, hiring, promotion and training of the designated groups. Further, contractors will take steps to improve the employment status of these designated groups by implementing special programmes and making reasonable accommodation to achieve appropriate representation of these groups in all levels of employment. (Erridge and Fee 2001, p. 58)

There are mixed views about the merits of such policies, in theory and practice. Erridge and Fee (2001, p. 53) suggested that 'contract compliance', as it is called in the United States, is 'an effective instrument of policy for bringing about significant improvements towards equality'. Suggested benefits to vendors include influencing organisational change, access to a broader range of skills, enhanced employee morale and improved corporate image (Erridge and Fee 2001, p. 59). However, concerns have also been expressed, relating to compliance and administrative costs, and potential problems in finding suitably-qualified workers from specified groups (potentially leading to 'bad' procurement decisions) (Erridge and Fee 2001, p. 60).

The way in which such policies are implemented can significantly influence their effects. However, it has also been suggested that few of the factors necessary for the success of such a policy—such as sufficient time and resources; understanding of, and agreement on, objectives; and perfect communication and coordination—are likely to be met in practice (Erridge and Fee 2001, pp. 65–6). Resource problems appear to have been a factor in Canada, for example, where a five-step process operates (certification, implementation, compliance review, appeal and sanctions). In Ontario, the cycle of winning a contract and doing a compliance review and audit

is supposed to take two years, but takes three years, with resource constraints cited as a factor (Erridge and Fee 2001, p. 62). The effectiveness of the Canadian policy has also been questioned, with groups representing Canadian people with disabilities claiming it did not lead to significant progress for their members in its first few years (Erridge and Fee 2001, p. 60).

The Productivity Commission considers that using procurement policies to influence the behaviour of vendors as employers does not appear to be the most appropriate way to improve employment outcomes for people with disabilities. Their use leads to issues such as the selection of disadvantaged groups to which the policy should apply, and the weight that would be given to particular disadvantaged groups. In addition, these policies can be costly and time consuming to administer, involve other costs (such as compliance costs for vendors), and might not even produce desired equality outcomes.

15.6 Copyright

The availability of information in accessible formats is a particularly important issue for people with vision impairments and other print disabilities, and it is vital in various areas of life (see appendix D). A particular concern relates to the timely availability of accessible course material in education, especially tertiary education. Problems in this area have been cited as contributing to course withdrawals, stress, depression and loss of self-esteem among people with vision impairments (HREOC 2002g; Blind Citizens Australia, sub. 72, p. 21). As noted in section 15.2, outcomes in education can also influence employment opportunities.

The *Copyright Act 1968* contains provisions to facilitate access to material by people with print (and intellectual) disabilities (box 15.9).² HREOC (2002g) and some inquiry participants suggested, however, that aspects of the current copyright arrangements affect the availability of accessible material in tertiary education. The need to search for existing accessible versions of a particular text, for example, is said to be made more time consuming by the lack of a single national database of accessible tertiary materials (HREOC 2002g). HREOC (2002d) suggested the lack of a database was likely to be leading to duplication of effort, as well as delaying delivery of accessible materials.

² Print disability is defined in the *Copyright Act 1968* to mean a person without sight, a person whose sight is severely impaired, a person who cannot hold or manipulate books or focus or move his or her eyes, or a person with a perceptual disability (s.10).

Another perceived problem is the lack of a formal mechanism to allow access to material in electronic formats, from which to produce accessible versions. HREOC noted that although it:

... understands publisher concerns regarding protection of intellectual property, direct access to digital material (from which in most cases print material is subsequently generated by publishers) would clearly be more efficient as a means of meeting the needs of many people with a print disability than existing systems using permission under the Copyright Act to scan print materials into computer formats. (sub. 219, p. 41)

Box 15.9 Selected features of the Australian Copyright Act 1968

- The statutory licence scheme under Part VB of the Copyright Act allows copyright material to be copied and communicated by institutions assisting people with disabilities, without the prior approval of the copyright owner, upon payment of 'equitable remuneration' to Copyright Agency Limited (CAL), the body that administers the Act. The *Digital Agenda Act 2001* extended these licences by allowing electronic copying and communication of the material. A three-year review of the Digital Agenda Act amendments, including this provision, was flagged in the second reading speech of the Bill.
- As well as various reporting requirements, one condition of a statutory licence is that 'the person who makes the reproduction must be satisfied, after reasonable investigation, that no new version in the form being copied can be obtained within a reasonable time at an ordinary commercial price'.
- Part VB does not prevent a voluntary licence arrangement between a copyright owner and institution to allow copyright material to be copied or communicated without infringing copyright.
- The Act also establishes a legal deposit scheme, whereby a hard copy of any work published in Australia must be deposited with the National Library of Australia and the relevant State library. This requirement does not apply to electronic materials.

Sources: Cordina 2002; HREOC 2002g; NLA 2003.

As a result of these and other issues, inquiry participants suggested the need for reform. The Association for the Blind of WA noted:

... the intent of the DDA could be enhanced by specific provisions within the Copyright Act requiring publishers to make all their publications available in electronic or other accessible formats. (sub. 83, p. 4)

It also called for the establishment of a central repository of electronic formats of books (trans., p. 795).

As well as resulting in significant time and cost savings in the production of accessible material (see, for example, NILS, trans., p. 1944), the Association for the

Blind of WA suggested a further benefit of a central (legal) deposit system for electronic copies would be:

... where a book may not be a current edition and the publisher wipes routinely its electronic publication files. They don't hang onto them necessarily ... a legal deposit system would get around that because there would always be a copy. (trans., p. 798)

It does not appear that such a system would impose a significant additional burden on publishers. They are already required to lodge hard copies of any work under the legal deposit scheme (box 15.9) and, as noted by HREOC (sub. 219), most of their printed material is already generated from digital formats. The major required change might be to the file format used, if a standardised format—as is proposed under the Bill of the US Instructional Materials Accessibility Act—were required.³

As observed by Lingane and Fruchterman (2003), however, 'country-specific laws do not allow for distribution of material between countries to individuals with qualifying disabilities'. Thus, changes to the Copyright Act would only influence processes of Australian publishers. This may change in the future, given that:

The World Blind Union (WBU) and [the International Federation of Library Associations and Institutions'] Section of Libraries for the Blind (SLB) have been lobbying the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), and other key international bodies to move forward the agenda of enabling access to accessible material across international borders by people with disabilities ... recognizing that agreements at the international level are necessary for such changes to take place. (Lingane and Fruchterman 2003)

To the extent that international cooperation occurs, the benefits to Australia are likely to be substantial, by potentially greatly increasing the range of accessible materials available. Australia's inclusion in such efforts would require Australian accessibility requirements to be similar to those in the other countries involved.

Changes to the Copyright Act are beyond the scope of this inquiry. The Productivity Commission notes, however, that the potential benefits of a central electronic book repository could be substantial, without necessarily imposing significant additional burdens on publishers. Any additional administrative costs involved could be reduced by using the framework of the existing national deposit scheme for hard copies. Further, as noted by HREOC (2002g), potential solutions could involve

³ Under the US Bill of the Instructional Materials Accessibility Act, publishers are required to prepare instructional materials (for elementary and secondary schools) in a uniform electronic file format, and provide a copy of each textbook in this format to a central repository (a national instructional materials access centre). This would enable State and local agencies, publishers, schools and others to acquire these materials more quickly (American Foundation for the Blind 2002; Richert and Siller 2002). Twenty-six US States already require the provision of electronic copies of textbooks, but there is no agreed file format (Petri 2003).

voluntary codes of practice or best practice guidelines by the publishing industry. These approaches may be more effective than legislative approaches (see chapter 14), and also need to be considered. Pursuing international solutions may also be beneficial. Among other things, this would potentially broaden the range of accessible material available to Australia.

The Productivity Commission also notes HREOC's efforts to encourage progress in this area, such as through roundtables and forums. HREOC has also held discussions with Copyright Agency Limited, which then began developing a database of material produced under the statutory licence provisions of the Copyright Act (HREOC 2002g). Such initiatives, and others that may result from the recommendations of HREOC forums (HREOC 2002d), can be effective ways of facilitating change in this area. The Association for the Blind of WA, for example, noted that a similar process undertaken in the United States resulted in the Bill incorporating changes for educational publishing and electronic depositories (trans., p. 795). The general benefits of cooperative approaches were noted in chapter 10.

FINDING 15.6

There appears to be merit in investigating further an Australian electronic book repository for educational (and other) publications.

15.7 Other concerns

Several other concerns, which are not addressed through the DDA, were raised by inquiry participants. These covered a broad range of issues.

Jan Hammill (sub. 116, sub. DR341) commented on foetal alcohol syndrome in Indigenous communities. She noted that children with the syndrome display hyperactivity, attention and cognitive defects, learning disabilities, language problems and poor impulse control, but cannot access disability services because they have not been diagnosed with a disability (and parents often do not have the resources to cope with these problems). She noted that the lack of diagnosis and treatment, and behavioural problems that result, lead these children into trouble with the law later in life. According to her, contributing to this problem was the fact that:

Health authorities have no data on prevalence rates and there are no cross disciplinary teams to perform basic screening and assessment for FAS/E [Foetal Alcohol Syndrome/Effects]. Likewise, there are no management strategies or structures across the various service agencies to ensure that children with FAS/E are positioned to reach their maximum potential. (sub. 116, att. 1, p. 1)

K.F. Pennefather (trans., pp. 2203–5) pointed to problems with the (over)allocation of disability carpark permits (logos) in Tasmania. Holders of the logos can place them on their car dashboards, allowing them to use parking spaces reserved for people with disabilities. The problem highlighted with the scheme related to the allocation of logos to people with temporary medical conditions (such as a broken leg), and the inadequate system to reassess the need for the logos and revoke them once such recipients have recovered. It was suggested that this limited access to shopping and other facilities for those in genuine need of parking close to services (trans., p. 2204). K.F. Pennefather suggested issuing different temporary (renewable when needed) and permanent logos as a potential solution to the problem, but argued that short term cost considerations prevented this type of system being implemented (trans., p. 2205).

Blind Citizens Australia (sub. 72; trans., pp. 1690–3) and the Association of Independent Schools of Victoria (sub. DR320) commented on the implementation of cost recovery by NILS for Braille transcription services in education, which has significantly increased the fees charged for the services. The subsequent negative impacts on students with visual impairments, who face diminished access to Braille material, were highlighted. Financial pressures on NILS were said to have prompted the move to cost recovery (NILS, trans., pp. 1949–51). The Association of Independent Schools of Victoria (citing the experience of a student who moved from a government to an independent school, sub. DR320) suggested these problems have been compounded for students attending independent schools, who cannot access Victoria’s Statewide Vision Resource Centre, which is available to those in government schools.

In New South Wales, Dare to Do Australia (sub. DR308) pointed to a lack of competition in the financial management of trusts handling compensation payments of children who acquire disabilities in accidents—claiming an ‘unacceptable monopoly’ held by the Office of the Protective Commissioner (OPC). Problems attributed to the OPC’s service included a lack of support for negotiating an adequate insurance settlement, failure to maintain adequate communication, restriction of care choices, disinterest in clients, failure to manage conflict, and a lack of transparency. In the case cited, the guardian was not allowed to take on a different fund manager, even if it could have provided better outcomes, prompting the comment that:

It is appalling that ... [a] ... once only payment and ... lifetime capital should be depleted by legal proceedings that are seeking to save him money and in circumstances where a poor performing entity ... has unjustified precedence. (sub. DR308, p. 6)

It was, therefore, suggested that:

The law concerning disability discrimination must be changed to ensure existing and

future trustee relationships are flexible so that the most vulnerable people in our Australian society are protected from victimisation and provided with choice. This change would deliver that simple protection and freedom to choose. (sub. DR308, p. 6)

Broader issues relating to the management of financial trusts for people with disabilities are discussed in chapter 9.

Brian O'Hart (subs 85, DR293, trans.) highlighted the disadvantages faced by parents who purchase housing for their adult children with disabilities, if the accommodation is not placed in trust at the outset. He and his wife face restricted pension eligibility, and have been denied various rebates and concessions normally available to disability and aged pensioners, because holding the house in his name means it is included in asset tests. He would, however, incur significant stamp duty and capital gains liabilities if he now transferred the property into trust. As a result of his experiences, he prepared an information booklet with a law firm, but has not had his particular issue resolved.

15.8 Conclusions

Many of the issues raised in the context of this inquiry and discussed in this chapter are, strictly speaking, beyond the terms of reference for the inquiry. These issues can, nonetheless, significantly affect outcomes for people with disabilities in various important areas of life, and the Productivity Commission views them as sufficiently important to have warranted comment here.

Making changes to the DDA, as recommended in this report, will help improve the experiences and opportunities of people with disabilities.

Just fixing the DDA is not, however, going to be enough to address the range of serious issues that continue to affect outcomes for people with disabilities. Regardless of whether these issues are areas of State/Territory or federal responsibility, it is vital that they be addressed—whether this be through cross-jurisdictional mechanisms, such as the Council of Australian Governments or the CSTDA, or by measures within jurisdictions. Making progress in these areas is, therefore, an important complement to the reforms to the DDA recommended in this report. This multifaceted approach will allow true progress be made—both in improving the quality of life and opportunities for people with disabilities, and in making Australia a more productive, inclusive and diverse community in which to live.