



Submission to
The Productivity Commission
Inquiry into the Disability
Discrimination Act (1992)

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UnitingCare Australia

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UNITINGCARE AUSTRALIA AND UNITINGCARE NSW/ACT

UnitingCare Australia is the national body for community services in the Uniting Church, providing a link between the caring role of community services and the political action and advocacy of the Uniting Church. UnitingCare Australia's role is defined by its mandate, which is shaped by a strong desire for social justice and based on clearly articulated theological and philosophical foundations. UnitingCare Australia supports service delivery and advocacy for children, young people, families, people with disability and older people. In particular, UnitingCare Australia develops, reflects on and refines policies and practices in community services and related public policy matters.

UnitingCare Australia represents hundreds of community service agencies and programs which provide residential and community care to many individuals and groups. The work of the agencies is based on an ethos of honouring the dignity of all people, working towards social good in community, restoring human relationships and advocating for those most disadvantaged in society.

UnitingCare NSW.ACT is an agency of the NSW Synod of the Uniting Church in Australia. It has responsibility for assessing issues of public policy in which the church has an interest and is the peak body for all community services, chaplaincy and social justice and advocacy activities of the Uniting Church in New South Wales.

Informed by their extensive networks and working in close co-operation with other national agencies, churches and peak bodies, UnitingCare Australia and NSW.ACT are well positioned to be leaders in public policy debates in Australia.

The following comments and proposals are postulated on:

- Expert input from the UnitingCare Australia Disability Advisory Committee; UnitingCare policy advisors and the Policy and Research Unit of UnitingCare NSW.ACT
- Feedback and commentary from UnitingCare community services agencies in the areas of aged care, child care, services for children and young people who are at risk and their families, disability support service providers and tenants' services.

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- Feedback and commentary from individuals involved in national and state based campaigns to improve access and participation of people with disability within the worship and community life of the Uniting Church.

**OPENING COMMENTS ABOUT THE PRODUCTIVITY
COMMISSION 2003, *REVIEW OF THE DISABILITY
DISCRIMINATION ACT 1992 DRAFT REPORT (Melbourne)***

The Productivity Commission 2003, *Review of the Disability Discrimination Act 1992 Draft Report (Melbourne)* is an impressive document that canvasses the philosophical underpinnings, intentions, design and ten years of operations of a significant piece of social legislation. UnitingCare Australia and NSW.ACT commend the Productivity Commission for the scope and quality of its work, the clarity of its findings and the perspicacity of its recommendations. Further, UnitingCare Australia and UnitingCare NSW.ACT welcome this opportunity to offer comments and insights on a small selection of the many issues raised in the Summary of Findings, Recommendations and Requests (XLIII-LXII)

SUMMARY OF RECOMMENDATIONS

Recommendation #1

UnitingCare Australia and NSW.ACT support the necessity for regulatory mechanisms to bolster these operations including standards, integration of State and Federal initiatives in accommodation, access to buildings, education, health and indigenous policy.

Recommendation #2

UnitingCare Australia and NSW.ACT support the retention of the roles of HREOC in education, research, public inquiries, development of standards, registration of voluntary action plans, education in schools, and cooperation with States and Territories.

Recommendation #3

UnitingCare Australia recommends that the potential for and perception of conflicts of interests and duties be taken into account when considering a possible future balance of roles for HREOC.

Recommendation #4

Consistent with a need for the operations of the DDA to be understandable and accessible, UnitingCare Australia and NSW.ACT supports the proposal in Rec 11.1 to establish a shop front presence in cooperation with anti- discrimination bodies in each State and Territory.

Recommendation #5

UnitingCare Australia and NSW.ACT proposes that further funding be provided to HREOC to enable it to expand its community education role.

Recommendation #6

UnitingCare Australia and NSW.ACT recommend that further research be carried out to establish the success or otherwise of affirmative action policies such as employment quotas for people with disability, particularly in public sector and non-government agencies; and the feasibility of a set of employment standards.

Recommendation #7

UnitingCare Australia and NSW.ACT support the development of accommodation standards phased in over time.

UnitingCare Australia and NSW.ACT support the moves for Universal Housing Design Principles to be reflected in standards currently being promoted by an Australia wide network of people with disability, service providers and advocates. This will have a direct impact on the Building Code of Australia and influence new domestic and residential buildings and modifications to existing buildings.

UnitingCare Australia and NSW.ACT support moves by State/Territory governments to benchmarks levels of social housing to be adaptable eg The NSW Department of Housing has set a benchmark of 10% of all new social housing to be adaptable, and also responds to individual needs for retrofitting. Ideally, the level of provision of physically accessible public housing should at least reflect the proportion of tenants, and anticipated future tenants, with physical disabilities.

UnitingCare Australia and NSW.ACT support the use of Regulatory Impact Studies in the development of policy in this area.

Recommendation #8

As a network of human service agencies, UnitingCare Australia and NSW.ACT support the ongoing development of agency based mechanisms to counter and remediate harassment and vilification.

As part a large Church organisation, UnitingCare Australia and NSW.ACT support the educational role of HREOC.

UnitingCare Australia and NSW.ACT believe that much more research is needed to establish the efficacy of anti-vilification legislation and that any legislative provisions in this area need to be consistent with other anti-vilification legislation.

Recommendation #9 (see Recommendation #6)

UnitingCare Australia and NSW.ACT propose that the introduction of a limited positive duty on employers (or quotas or standards see Recommendation #6 above) could substantially improve the employment prospects for people with disability. This duty could be taken up as a partnership which reflects a formula such as:

- *The employer meets the costs of recruitment; modification of job design; some training costs; a share of modification of workplace facilities.*
- *The government as the second party contributes to some modification of workplace facilities; some training costs; on the job support and personal care.*
- *The employee with disability contributes to some training costs (consistent with ways that other workers meet their education costs) and very limited costs in modification of the worksite.*

GENERAL COMMENTS ABOUT THE DDA AND ITS OPERATIONS

The DDA employs three (3) broad strategies aimed at reducing discrimination and protecting the rights of people with impairments.

1. Social and policy change
2. Leading community acceptance
3. Resolving complaints

This submission looks briefly at these operations and then canvasses some specific issues.

Social and Policy Change:

The DDA in a wider policy environment

Ref: Draft findings 5.2; 5.3;5.4

Evidence from within UnitingCare Australia's and NSW.ACT's networks confirms the overall impression of the Productivity Commission that the DDA most effectively reduces discrimination against people with disability when it operates in wider and more coherent policy milieu. This goes beyond a mere policy intention i.e. that we will all treat people with disability better and into much more concrete outcomes. The DDA operates most powerfully when supplemented by other inclusion policies eg in education; transport standards and the ever-widening discussion about physical and sensory access to public and private spaces.

Recommendation #1

UnitingCare Australia and NSW.ACT support the necessity for regulatory mechanisms to bolster these operations including standards, integration of State and Federal initiatives in accommodation, access to buildings, education, health and indigenous policy.

Leading Community Acceptance

Public Education, research and Awareness

Ref: draft findings 7.1 to7.12

The operations of the DDA in the non-complaint initiated areas are very important for working in a large, structurally complex national scene such as the Uniting Church and its agencies. This is most clear in an emerging national focus and three state-

based strategies on access and participation, where advocates have been able to use the spirit of the DDA and mechanisms such as voluntary registration of access plans (Victorian Synod) to raise the issues in a non-threatening and educative manner with congregations and other church bodies. It is the clear view of these advocates that without the DDA these developmental advances would not have been achieved.

Recommendation #2

UnitingCare Australia and NSW.ACT support the retention of the roles of HREOC in education, research, public inquiries, development of standards, registration of voluntary action plans, education in schools, and cooperation with States and Territories.

Complaints initiation and handling

Ref: Draft Recommendations 11.1 & 11.4

The Productivity Commission requests further input on the suitability of HREOC acting as a complaints initiator, not solely carrying out investigation and disputes resolution of complaints initiated by individuals.

UnitingCare Australia understands that the balance and nature of roles in complaints handling raise issues of principle and of practice.

1. Community legal practitioners in the area report a high level of role confusion amongst clients of HREOC and at times sections of the bureaucracy. This would indicate a clear need to clarify roles and responsibilities – including those roles that require partisanship (advocacy) and neutrality (mediation and conciliation)
2. It is clear that HREOC, through its work with individuals and its inquiry roles, is able to discern patterns of discrimination in certain human services, industries and community organisations. Relatedly, no clear mechanism currently exists to raise complaints on a group or industry base.

As a matter of principle and perception, UnitingCare Australia believes that it remains vitally important to keep the functions separate. This is important to encourage all parties to the complaints to enter freely into mediation and conciliation as well as to safeguard the implementation of conciliated agreements. However, it is also important that complaints are made and selected in a way that advances the interests of the individual(s) concerned but also advances the goals of the DDA.

It appears that there are at least three (3) possible ways to do this:

1. To confer complaints initiation on HREOC but to maintain a clear internal separation from other functions
2. To establish a new or appoint an existing national agency related to and able to receive referrals from HREOC but at arms length from HREOC. That this agency be provided with public funds to research, prepare, proceed with and defend complaints under the DDA.
 - That this agency have ready access to advocacy and legal support for complainants
 - That this agency be also empowered to explore the possibility of class-actions, arising from commissions of enquiry and other public forms of research and testimony-gathering
3. The partisan roles of complaints initiation, selection, investigation, prosecution etc become expanded roles for HREOC and the neutral roles of mediation and conciliation be outsourced to mediators and conciliators (both generic and specialist)

Recommendation #3

UnitingCare Australia recommends that the potential for and perception of conflicts of interests and duties be taken into account when considering a possible future balance of roles for HREOC.

Recommendation #4

Consistent with a need for the operations of the DDA to be understandable and accessible, UnitingCare Australia and NSW.ACT supports the proposal in Rec 11.1 to establish a shop front presence in cooperation with anti- discrimination bodies in each State and Territory.

Recommendation #5

UnitingCare Australia and NSW.ACT proposes that further funding be provided to HREOC to enable it to expand its community education role.

SPECIFIC ISSUES

Access

Ref: Draft findings 5.3;7.6

UnitingCare Australia and NSW.ACT greet with optimism the recent advances in bringing coherence to the provisions of the DDA and the Building Code of Australia. The provisions about access to public buildings are particularly important for a church that owns many buildings open to the public for worship, community based activities, human services delivery and employment. The most obvious impact will be in developing new buildings. However where the state-based Synods have made clear commitments to improve access in existing buildings the proposed standards regulated in the BCA could substantially contribute to improved access if groups adopt them voluntarily or formally under their action plan. Otherwise, existing buildings are exempt - a serious inadequacy that will require a dedicated strategic response.

Employment

Ref: Draft Finding 5.1

UnitingCare Australia and NSW.ACT note with concern the finding that employment of people with disability has declined over the last 10 years and that discrimination in employment remains a significant issue. This relates to two main areas of work in the Uniting Church.

1. Employment support services offered by UnitingCare agencies struggle with negative community attitudes that suggest people with disability are dependent members of society, not contributors; resource constraints; potential employers' concerns about costs and productivity; low levels of training and other life-supports eg transport, personal care for clients with disability; and inflexible income security policies and practices. This highlights the need to entrench the DDA in a wider policy milieu that is aimed at overcoming those barriers that are clearly not solely related to discriminatory attitudes.
2. Employment of people with disability in all areas of the life and work of the Uniting Church. It is acknowledged by disability advocates that significant

improvement in the levels of employment of people with disability throughout the Uniting Church and its agencies is required. Recent experience with a funded and targeted indigenous employment strategy in South Australia suggests that increased and sustained participation throughout all levels and activities of the church is not only possible but can produce some surprisingly positive outcomes for employees and employers alike.

Recommendation #6

UnitingCare Australia and NSW.ACT recommend that further research be carried out to establish the success or otherwise of affirmative action policies such as employment quotas for people with disability, particularly in public sector and non-government agencies; and the feasibility of a set of employment standards.

Accommodation

Request for information: The Productivity Commission requests further information on the desirability of developing an accommodation disability standard, and the forms of accommodation such a standard should cover, (for example, private rental accommodation, supported accommodation and/ or institutional accommodation).

Recent discussions with senior service providers in aged care and some residential disability care raise these concerns about accommodation.

1. In many cases people with disability live in substandard conditions eg boarding houses and private hostels that do not meet basic access requirements. Where the boarding house sector has been regulated eg in NSW by the Department of Ageing, Disability and Home Care some boarding houses have closed. Although it appears that the residents with disability were appropriately rehoused, workers in the sector remain concerned about a net loss of 'affordable housing' able to cater to people with disabilities.
2. Inaccessible public and private housing stock restricts opportunities for individuals with impairments and their families to live well in their community of choice. Recent moves to find community based housing for young people resident in aged care facilities highlight the difficulties in this area.

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3. The allocation of bedsits to people with mental health problems has long been criticized by the non-government sector along with concerns about the lack of processes to enable people with mental illness to maintain their public tenancy.
 4. Recent developments in aged care to develop accredited premises whilst leading the way into far superior accommodation have also produced unintended negative consequences, namely: high costs for compliance and documentation; the emergence of a two tier system of elite and inferior accommodation; and an atmosphere of inflexibility.

Given these concerns, and recognising that standards will not be the total answer with other mechanisms needing to be explored over time, UnitingCare Australia and NSW.ACT assert that standards in these areas would clearly be desirable to achieve the objectives of the DDA.

Recommendation #7

UnitingCare Australia and NSW.ACT support the development of accommodation standards phased in over time.

UnitingCare Australia and NSW.ACT support the moves for Universal Housing Design Principles to be reflected in standards currently being promoted by an Australia wide network of people with disability, service providers and advocates. This will have a direct impact on the Building Code of Australia and influence new domestic and residential buildings and modifications to existing buildings.

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UnitingCare Australia and NSW.ACT support the use of Regulatory Impact Studies in the development of policy in this area.

Harassment and Vilification

Ref: Request for Information

UnitingCare agencies in receipt of government grants are obliged to develop anti-harassment policies and practices that have in turn emerged from a pervasive culture of respect for people with disability. As part of this culture the agencies are quick to act where they perceive any harassment and so support the place of corrective safeguards in this area. Agencies are encouraged to develop policies that strongly sanction harassment and vilification.

UnitingCare Australia and UnitingCare NSW.ACT remain very concerned about the perpetuation of extremely negative media images of people with disability generally and some subgroups of people, especially those with cognitive impairments and psychiatric conditions. All UnitingCare agencies aim to promote positive images of people with disability and to countering negative attitudes where they arise in political debate, the media, congregational and community settings.

Recommendation #8

As a network of human service agencies, UnitingCare Australia and NSW.ACT support the ongoing development of agency based mechanisms to counter and remediate harassment and vilification.

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UnitingCare Australia and NSW.ACT believe that much more research is needed to establish the efficacy of anti-vilification legislation and that that any legislative provisions in this area needs to be consistent with other anti-vilification legislation.

Costs

Request for information; draft findings 8.1; 8.2

Consistent with The Productivity Commission Draft Finding 8, UnitingCare Australia and NSW.ACT agree that the costs of compliance will need to be met by shared contributions from organizations, consumers and governments.

1. Places of worship and other church buildings

The Review report correctly suggests that the costs of compliance in access can be minimal in many cases. This is supported by a recent informal survey of parishes throughout South Australia. Recently built church buildings have complied with accessibility requirements as part of the overall construction costs. Many existing buildings have been simply and inexpensively modified to provide physical and sensory access for increasingly ageing congregations. Recently a state-wide trust fund was set up in Victoria to provide matched funds for parishes undertaking access related renovations of existing church buildings. This will see an excess of \$2million being spent over the next few years. Similar schemes are currently being explored in other states. It is appropriate that these costs be met by church funds.

2. Residential services

The costs of adapting existing residential accommodation are not able to be met solely by the service provider. However any contribution from government must be based on a thorough analysis of policy directions away from congregate care; a detailed audit of existing stock; and a planned and balanced approach that places living in the community as a primary goal.

3 Employment

The costs of dealing with exclusion from employment may not be fully met within existing funding sources. Recruitment expenses; modification of work places; subsidised productivity; subsidised training; workplace support and personal care are ongoing costs that are additional to the grants to operate services. Given these constraints, it is reasonable to expect that these costs be met in large part by government and in very small part by the employer and employee.

Recommendation #9 (see Recommendation #5)

UnitingCare Australia and NSW.ACT propose that the introduction of a limited positive duty on employers (or quotas or standards see Recommendation#5 above) could substantially improve the employment prospects for people with disability. This duty could be taken up as a partnership which reflects a formula such as:

- The employer meets the costs of recruitment; modification of job design; some training costs; a share of modification of workplace facilities.*
- The government as the second party contributes to some modification of workplace facilities; some training costs; on the job support and personal care.*
- The employee with disability contributes to some training costs (consistent with ways that other workers meet some of their education costs) and very limited costs in modification of the worksite.*

4. Children's Services

Children's Services throughout most parts of Australia admit children with disability on a case by case basis. Some additional funding is available at a State and Federal level to assist in meeting the needs of children with disability in mainstream childcare, but it is not enough and requires high levels of administration.

CONCLUSION

This submission looks at complexities in and obstacles to the implementation and operation of the Disability Discrimination Act (1992), including costs. However, UnitingCare Australia and NSW.ACT wish to stress a strong commitment to human rights legislation of this kind.

First, UnitingCare Australia and NSW.ACT believe that the elimination of all forms of discrimination against people with disability is a worthwhile and attainable social goal requiring the commitment of and concerted effort from all levels of government, the not-for-profit sector and business and industry. We therefore accept that the Uniting Church and its agencies must work with all those who share this goal and bend over backwards in all its practices to ensure that people with disability do not experience discrimination in our corporate life.

Secondly, the elimination of all forms of discrimination against people with disability can only bring mutual benefit to individuals with disability and their families and to the wider community. Uniting Church disability service agencies and congregations throughout Australia regularly share in these benefits as they stand beside increasing numbers of people with disability taking their place as full citizens in Australian society. And *that* is cause for celebration!