

## CHAPTER 3

### EQUALITY – THE LAW AND PUBLIC PERCEPTION

3.1 Access and participation can be affected by a range of factors, some of which are shared by other members of the wider community. Access, participation, and equality are also limited by community attitudes, and by the application of these attitudes by a number of community sub-groups.

3.2 Attitudes are a reflection of the beliefs held by different members of the community and, as one witness stated, 'the government can't legislate on attitude'.<sup>1</sup> In considering the range of beliefs held about people with disabilities, and the responses of people with disabilities to these, it is nonetheless necessary to note that legislation has helped to change beliefs in the short and the long term, and that information and education programs have also been crucial to a better understanding by the broader community of people with disabilities. Commonwealth legislation is extensive<sup>2</sup>, although constitutional limitations affect the extent of power to have certain forms of discrimination declared illegal; some State governments have also developed legislation which protects people with disabilities from some forms of discrimination.

3.3 Those who may benefit most from these relatively recent developments are people with disabilities in younger age groups, although this in itself will not necessarily or directly enhance employment opportunities. While there has been considerable development of services for younger people, it is also important to ensure that there is both sufficient 'transition' service provision<sup>3</sup> and parent awareness of such services and their importance. Greater expectations, and enhanced confidence may result from a more understanding society, but the level and type of disability and the influence of disadvantaging factors will also operate against effective participation. The absence of appropriate services for young people will also mean that their expectations will not be met, and their confidence may decrease rapidly. For people with disabilities in older age groups, long experience of both subtle and more obvious forms of discrimination (including poor education, limited community contact during employment experience or a lack of involvement with the community for a number of years) may be major factors in limiting access to more open employment options. Again, this will vary between individuals, but increased participation may be possible only through specific programs which meet needs based on past experience. For example, programs may need to provide self

---

1. Submission No. 29, p. 2 (Mrs I. Kwong).

2. Planned Commonwealth anti-discrimination legislation for people with disabilities was announced in June 1991. See below, Paragraphs 3.5, 3.10.

3. See above, Paragraph 2.62 and below Paragraphs 4.38-4.77.

confidence *before* actually trying to overcome specific problems such as lack of literacy and numeracy.

3.4 As suggested above, people with disabilities require access to greater self-determination in order to avoid being marginalised and deprived of participation in the community. In particular, they need the protection of the law and access to the equality that is afforded under the law to all citizens, but so far legislation relating to people with disabilities has been unable to provide this protection. Four States<sup>4</sup> have legislation relating to discrimination on the basis of disability. State/Territory governments will also be developing legislation which complements the *Disability Services Act*, under the Disability Services Agreement signed in July 1991.

3.5 Broad Commonwealth anti-discrimination legislation which was an issue discussed in the first Ronalds report<sup>5</sup>, has been considered in some detail. Such legislation will operate independently of State/Territory disability services legislation. Where provisions exist, State and Territory anti-discrimination legislation would apply. For issues or matters where State and Territory legislation did not have appropriate provisions, Commonwealth legislation would apply. The Commonwealth legislation proposal was further developed by the publication in July 1991 of a paper *National Disability Discrimination Legislation*, which was followed by extensive consultations in July and August 1991. The results of these discussions were published at the end of 1991.<sup>6</sup> On 5 December 1991 the Minister for Health, Housing and Community Services, the Hon. Brian Howe, and the Attorney-General, the Hon. Michael Duffy, announced that 'the Government had agreed to the drafting of legislation which would make it unlawful to discriminate against people with disabilities'.<sup>7</sup>

## Human Rights

3.6 Human rights are, by definition, those to which all people are entitled by virtue of their status as human beings. Human rights should be universal, applying to 'all people at all times in all situations'.<sup>8</sup> They are rights one can assume from basic humanity, irrespective of social and other status, and consequently, people with disabilities have human rights. Such rights are not always enshrined in national legislation, but several countries have entered into international treaties and

---

4. New South Wales, Victoria, South Australia, Western Australia, Queensland, Tasmania, the ACT and the Northern Territory are considering similar legislation.

5. C. Ronalds, *National Employment Initiatives for People with Disabilities*, 1990 (hereafter cited as *Ronalds Report*), p. 99.

6. DACA – *National Disability Discrimination Legislation*. Report of the National Consultancy with People with a Disability, AGPS, 1991.

7. Attorney-General, Press release 'Disability Discrimination Legislation', 5 December 1991.

8. Peter Bailey, *Human Rights: Australia in an International Context*, London, 1990, p. 2.

agreements of a quasi-legal nature which obliges them to abide by certain minimal 'rights' standards is the conduct of their national affairs.

3.7 The United Nations is largely responsible for the promotion and awareness of human rights, and the 1948 Universal Declaration of Human Rights (UNDHR), the International Covenant on Civil and Political Rights (the ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976 are considered to comprise the 'definitive international statement on the scope of human rights'.<sup>9</sup> Countries which ratify UN covenants or conventions, or which pass UN declarations, enter into certain international obligations with respect to these instruments. Although some of these obligations may, strictly speaking, not be legally binding in international law, countries are nevertheless bound to honour them, as good international citizens, and they are held accountable for them by the international community.

3.8 Australia is a signatory to a number of United Nations covenants, conventions and declarations on human rights, some of which have particular relevance to the human rights of people with disabilities. These instruments include the International Covenant on Civil and Political Rights (ICCPR), ILO Convention Numbers 111 and 159, the 1948 Universal Declaration of Human Rights (UNDHR), the 1971 Declaration on the Rights of Mentally Retarded Persons, and the 1975 Declaration on the Rights of Disabled Persons.<sup>10</sup> Australian legislation is linked to these international agreements under the foreign affairs power of the Constitution.

### UN Declarations

3.9 Australia has assented to a number of UN Declarations which have provisions relating to the human rights of people with disabilities. Unlike Covenants and Conventions, declarations have no binding force in international law<sup>11</sup>, but the principles they embody may be viewed as international standards of acceptable practice in this arena. In fact, some human rights declarations (those concerned with the rights of the mentally retarded, the child, and the disabled) have virtually attained the international legal status of covenants.<sup>12</sup> The Human Rights and Equal Opportunity Commission (HREOC) gives these declarations the status of covenants, and this is signified by their appendage, together with the ICCPR, to the 1986 HREOC Act.<sup>13</sup>

---

9. *ibid.*, p. 1.

10. See Appendices 9-12.

11. Bailey, *op. cit.*, p. 111.

12. See Appendix 9.

13. Bailey, *op. cit.*, p. 111.

## Federal Legislation

3.10 At June 1991 when the Attorney-General and the Minister for Health, Housing and Community Services announced that new legislation would be considered, Australia had no comprehensive anti-discrimination or equal opportunity legislation which had been specifically devised for the protection of the rights of people with disabilities, comparable to that relating to sex and race discrimination. However, some protection was provided by various federal laws, which include the *Human Rights and Equal Opportunity Commission Act 1986*, and the *Public Service Act 1922*. In the context of this inquiry it is also appropriate that the *Disability Services Act 1986* be considered, for, although it was not designed to legislate for the direct provision of human rights for people with disabilities, the principles which inform the Act are clearly in the domain of human rights, and issues surrounding the implementation of this Act are the basis of this inquiry.

### The Human Rights and Equal Opportunity Commission Act 1986

3.11 This Act established the Human Rights and Equal Opportunity Commission (HREOC) as an independent, statutory body with particular functions in the human rights and EEO arena.<sup>14</sup> Specifically, HREOC's authority has related to functions conferred on it by the *Sex Discrimination Act 1984*, and the *Race Discrimination Act 1975*, but the Commission has enjoyed fairly broad power to investigate allegations of discrimination in the workplace, and it has played a central role in raising the level of community awareness in the domain of human rights.

3.12 The original HREOC Act formally gave the Commission authority to investigate complaints of discrimination on certain grounds, which included race, colour, sex, religion, political opinion, national extraction or social origin. Although the original Act made provision for the Commission to investigate complaints based on 'other grounds', and the Commission did this, regulations which came into effect on 1 January 1990 formalised the Commission's authority in the domain of disability by extending the Act's definition of 'discrimination'. The formal definition of discrimination in subsection 3(1) of the Act includes 'any distinction, exclusion or preference made on the ground of . . . impairment . . . mental, intellectual or psychiatric disability . . . physical disability'. 'Impairment' is defined in the regulations, as: (a) total or partial loss of a bodily function, (b) the presence in the body of organisms causing disease, (c) total or partial loss of a part of the body, (d) malfunction of a part of the body, (e) malformation or disfigurement of a part of the body.

3.13 However, the HREOC Act does not make discrimination on the grounds of disability unlawful and the Commission does not have the power to make enforceable orders against bodies, including Commonwealth authorities. While sexual and racial discrimination are outlawed by the *Sex Discrimination Act* and the *Race Discrimination Act*, respectively, discrimination on the grounds of disability can only be pronounced illegal through new legislation. The Commission is empowered to

---

14. *Ronalds Report*, p. 85.

'inquire into any act or practice that may be inconsistent with or contrary to any human right', and, where the Commission considers it appropriate to do so, to 'endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry'. The Commission is further empowered, where it 'has endeavoured without success to effect . . . a settlement, to report to the Minister in relation to the inquiry'. The Commission has undertaken an inquiry into psychiatric disability which had not been finalised by the time this report was published.

### **The Public Service Act 1922**

3.14 Under the EEO provisions of this Act, Federal government departments are 'responsible for eliminating unjustified discrimination against people with disabilities'.<sup>15</sup> Section 7 of the Act specifically includes people who are physically or mentally disabled in the designated groups for which EEO programs must be devised. Section 22B(2) of the Act sets out the requirements for EEO programs, and EEO Guidelines have been developed to assist departments in the formulation of these. Basically, government departments are required to make 'reasonable adjustments' to the work environment, to facilitate the integration of people with disabilities. However, it is justifiable to not make 'reasonable adjustments' whenever 'undue hardship' can be demonstrated.<sup>16</sup> According to the provisions of this Act, departments are obliged to collect data to enable evaluation of the operation of their EEO programs, and to 'inform . . . of the results of any review of the program . . .'.

### **The EEO (Commonwealth Authorities) Act 1987**

3.15 The provisions of this Act were designed to protect the interests of certain 'designated groups', including people with disabilities, in Commonwealth statutory authorities. 'Authorities are required to lodge an annual report covering the development and implementation of their EEO program with either the relevant Minister or with the Public Service Commission.'<sup>17</sup>

3.16 There is currently no legislation which protects the rights of people with disabilities working in the private sector; private sector employers are not obliged to produce EEO programs for people with disabilities, although larger employers must devise them for women in their employ.<sup>18</sup>

---

15. *ibid.*, p. 93.

16. *ibid.*, p. 93.

17. *ibid.*, p. 94.

18. *ibid.*, p. 93.

## *The Disability Services Act 1986*

3.17 The *Disability Services Act* (DSA), proclaimed on 5 June 1987, is concerned with the funding of services for persons with disabilities. As the then Minister for Social Security, The Hon. Brian Howe, said in an address to the Human Rights Congress in September, 1989: 'The *Disability Services Act* provides an integrated set of arrangements for employment, training, rehabilitation, and accommodation based on the objectives of promoting competence, self-reliance, consumer choice and a positive self image for those using them'.

3.18 Section 5 of the DSA states that the 'Minister may formulate principles and objectives to be furthered, and guidelines to be complied with, in the administration of this Act'. These have been articulated in a document, entitled 'Principles and Objectives Formulated Under the Disability Services Act 1986', which was published in the Commonwealth of Australia Gazette No. S118, Tuesday, 9 June 1987.<sup>19</sup> The seven principles refer to the inherent right of individuals with disabilities to respect for their human worth and dignity, and to the same basic human rights which are the entitlement of other members of society. Principle 3 states that people with disabilities have the same rights as other members of Australian society to 'realise their individual capacities for physical, social, emotional and intellectual development', and Principle 4 that they have the 'same right as other members of Australian society to services which will support their attaining a reasonable quality of life'. Principle 5 states that people with disabilities 'have the same right as other members of Australian society to participate in the decisions which affect their lives', and Principle 6 that these same people have the 'same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities'. Finally, Principle 7 argues that people with disabilities have the 'same right of pursuit of any grievance in relation to services as have other members of Australian society'.

3.19 The *Disability Services Act* will be amended in 1992 to allow a number of changes, announced at the end of 1991, to be implemented. Some of these changes are outlined below.<sup>20</sup>

### State legislation

3.20 As noted above, four States have anti-discrimination legislation relating to certain disabilities, and this is discussed briefly in Appendix 8. The other States and Territories are also considering the introduction of such legislation. In addition, the Disability Agreement signed in July 1991 in respect of the transfer of accommodation and related services to the States/Territories, and the maintenance by the Commonwealth of employment services, will require legislation complementary to the DSA.

---

19. These principles are reproduced in Appendix 13.

20. See Paragraphs 6.294-6.297.

3.21 However, proposed amendments to the DSA in 1992 will include a section under which the Minister is able to approve a disability service currently funded under another Commonwealth, State or local government program as a prescribed service. This amendment will facilitate the implementation of the Commonwealth/State Disability Agreement.

### Affirmative action and quotas

3.22 More effective anti-discrimination legislation is crucial. Many people with disabilities employed in mainstream, open employment are not covered by any anti-discrimination legislation making it illegal for them to be discriminated against in the workplace.<sup>21</sup> Many witnesses argued for the enactment of comprehensive, anti-discrimination legislation to protect the human rights of employees with disabilities.<sup>22</sup> It would be far better to prevent the occurrence of discriminatory acts, and, in this sense, anti-discrimination legislation is always an after-the-fact redress. However, given the level of harassment that employees with disabilities have experienced in some workplaces, the development of uniform suitable, strong legislation is a major achievement.

3.23 A number of witnesses and submissions to this Committee discussed the issue of quotas and affirmative action in relation to employment opportunities for people with disabilities.

### Quotas

3.24 Opinions on the value of quotas varied. Some people believed that a quota system could be useful in that it could actually get people with disabilities into the workforce. 'I think the Government has to make some sort of stand on actually giving people opportunities for jobs.'<sup>23</sup> The National Council on Intellectual Disability (NCID) was opposed to the use of quotas on the grounds that it was a negative approach, indicating the end, rather than the beginning or continuation, of a person's opportunities in employment.

There are countries in this world where an attempt has been made to produce equal opportunity through quotas, and it is our belief that it has not worked and we do not believe that it is at all appropriate in Australian society to think about employment quotas or to think about proportion of people who should be in the work force I guess some of it comes down to simply going as far with individuals as is possible to go. The view that says, "Okay; this is okay for this person, this is

---

21. *Transcript of Evidence*, p. 3682 (The New South Wales Council for Intellectual Disability). See above Paragraph 3.13.

22. See, for example, Submission No. 122 (Australian Down's Syndrome Association Incorporated), Submission No. 206 (Human Rights and Equal Opportunity Commission), and Submission No. 168 (Disabled Peoples' International).

23. *Transcript of Evidence*, p. 56 (South Australian Government).

where we must stop with this group of people”, is not one that National Council supports. We believe that it is possible – again it is the consensus view – within the framework of the Act for a wide variety of competitive, open and supported employment options to be carried forward; that much of the work that is currently being done by those organisations will move, over time, very comfortably into a supported employment role.<sup>24</sup>

**3.25** The use of quotas was seen as having a number of problems, all of which would have to be addressed if the system was to be effective rather than just window-dressing. It was believed, for example, that departments/agencies could simply meet requirements by employing people but taking little interest in skills development – a point which is essentially that of NCID representatives. Quotas had to be part of an active, involved strategy, and should not be a matter of meeting a target but paying no attention to the individuals concerned and their abilities.

... the jobs that are provided have to be worthwhile. They have to increase the dignity of people. I have seen instances where, when you have a compulsory percentage, a person is taken on and they are given a broom and stood down at the far end of the building and they do not play any part in that industry whatsoever.<sup>25</sup>

Another witness stated that:

... where employers had been required to take on people with disabilities it had more negative effects than it had positive effects. That was the gist of the point: it was open to tokenism; it was open to resentment. The person who was placed there was devalued by the fact that they had to be there and that seemed to outweigh the benefits of the requirement.<sup>26</sup>

**3.26** Another problem that had to be faced was the level of disability of people employed under quotas. It was believed that people with very mild levels of disability<sup>27</sup> might be deliberately taken on in order to meet a quota with the minimum inconvenience to the employer. People with more severe disabilities would not be assisted under such a scheme, although one witness referred to a quota program where companies took either larger numbers of people with mild

---

24. *Transcript of Evidence*, pp. 1329-30 (National Council on Intellectual Disability).

25. *Transcript of Evidence*, p. 3724 (The New South Wales Council for Intellectual Disability).

26. *Transcript of Evidence*, p. 5299 (Mr B. Blakeman).

27. *Transcript of Evidence*, p. 3724 (The New South Wales Council for Intellectual Disability), pp. 4305-6 (The Queensland Spastic Welfare League).



disabilities, or smaller numbers of those with more severe disabilities.<sup>28</sup> Consequently, the fact that the system could be abused 'should not stop organisations and governments from proceeding'.<sup>29</sup>

3.27 To overcome the difficulty of only taking people with mild disabilities it was suggested that a 'standardised scheme for the assessment of handicap for employment and the degree of handicap in relation to work opportunities' be established.<sup>30</sup> This would have the effect of giving some priority to people with more severe disabilities (though it should always be remembered that a number of people in this category may not wish to be seen as having a disability or as being adversely affected by it).

3.28 Some consideration was given also to a blanket quota system which might take limited account of an employer's capacity to take on staff with disabilities.<sup>31</sup> It was believed there would be no point in expecting all employers to take on a number of people with disabilities, as many employers would not be in a position to do so.

3.29 The European (including the United Kingdom)<sup>32</sup> system of quotas does not appear to have been particularly successful<sup>33</sup>, although this system has had some useful residual benefits. Companies which decided to avoid taking on staff with disabilities were obliged to pay a fine<sup>34</sup>, and this money went into a fund, part of which was used to provide services for people with disabilities. The objective of providing employment opportunities for people with disabilities, however, is presumably of sufficient importance to make the option of a fine unacceptable; the point is to change the attitudes of employers so that people with disabilities are not perceived as too unproductive to be accommodated in an extremely sophisticated workforce (for example, in former West Germany) and, with other 'non-productive' groups, marginalised and supported by a relatively small workforce.

- 
28. *Transcript of Evidence*, p. 4307 (The Queensland Spastic Welfare League), p. 4483 (Australian Red Cross Society, Queensland Division).
  29. *Transcript of Evidence*, p. 4306 (The Queensland Spastic Welfare League), p. 4483 (Australian Red Cross Society, Queensland Division).
  30. *Transcript of Evidence*, p. 454 (Messrs Rothwell and Smith, Cumberland College of Health Sciences).
  31. *Transcript of Evidence*, pp. 84-5 (Self Advocacy for Intellectually Disadvantaged People in S.A. Inc.), p. 1329 (National Council on Intellectual Disability).
  32. See Joan C. Brown, *Victims or Villains. Social Security Benefits in Unemployment*, London, 1990, pp. 145-7.
  33. *Transcript of Evidence*, p. 56 (South Australian Government), p. 4208 (Epic Employment Service, M.O.R.E. Inc.).
  34. *Transcript of Evidence*, p. 56 (South Australian Government), p. 4208 (Epic Employment Service, M.O.R.E. Inc.).

**3.30** As was indicated very clearly by one witness, the real point was not merely to talk about quotas or affirmative action, but to see why such measures were in fact being discussed. There was a need for more active intervention to assist people with disabilities at an earlier age<sup>35</sup> and resources should be directed towards such intervention.

If you take that back one step further and you start to say, "Why are we not getting these people under the normal process, what is going wrong there", and look at why people are not just presenting themselves in that sort of proportion in any case, then I think you are really starting to do some sort of service. That would mean that you would have to get out there and find out what is going on in the education system; you would have to find out why it is that in some of the tertiary areas you are not receiving those people coming in as the normal part of the process. If we followed that sort of a system it might in fact act as a monitor for us to go back and discover the problems very early on in the day.<sup>36</sup>

**3.31** One organisation which believed that quotas could work, also emphasised that quotas should be used in conjunction with education/information systems.

A lot of people have made the point that this does not work. My experience overseas is that, where it is backed up with a package of information giving employers advice about how they can employ disabled people and what jobs they can employ them in, etcetera, it has tended to work in Japan and West Germany not so much in the United Kingdom. The point is that employers have generally received this sort of scheme quite favourably, and it has actually shown them that people with disabilities can do a lot of work that prior to that they did not think they could do. It has had a positive effect in that way.<sup>37</sup>

**3.32** It has been stated that organisations in some European countries include workers' compensation cases in their statistics of people with disabilities in their employment; that they count a person with low levels of disability such as minor hearing loss; and that they prefer paying a higher tax to employing people with disabilities. The Chair of the Committee was advised by senior government officers from the Department of Employment in Bonn and Nuremberg that the quota system had not been as effective as had been hoped or, sometimes, claimed.

---

35. As is discussed in Chapter 4.

36. *Transcript of Evidence*, pp. 56-7 (South Australian Government).

37. *Transcript of Evidence*, pp. 460-1 (Messrs Rothwell and Smith, Cumberland College of Health Sciences).

## Affirmative action

3.33 Most organisations and individuals who discussed quotas and affirmative action appeared to be in favour of either a quota system (to get people into employment) in conjunction with affirmative action (which helped them to move into other positions)<sup>38</sup> or of affirmative action itself. A number of witnesses clearly meant affirmative action even though they referred to quotas. Disabled Peoples' International (Queensland) noted that affirmative action was necessary 'to redress past imbalances'.<sup>39</sup> However, it was not clear if this opinion was based more on a belief in the psychological boost this might provide than on the belief that previous lack of access required specific training/education to overcome lack of experience.

3.34 Other witnesses considered that affirmative action would be useful both in the short and the long term. Attitudes, they believed, were not changed by legislation only, but by education and information, and by practical experience.<sup>40</sup>

We have talked about positive discrimination as being something that we would argue in favour of for that very reason because if employers across the board are not in contact to some degree with disabilities it is very difficult to be educated about disabilities. If we see somebody in a wheelchair we may assume that they cannot do something without actually looking at the job, and saying, "What are this person's abilities in relation to this job?" There is a big area there of not so much employer attitude as if positive discrimination was something that was across the board, people would automatically be exposed to looking at abilities and not disabilities.<sup>41</sup>

3.35 Affirmative action legislation was seen as a more positive and active process than equal employment opportunity which was considered 'passive'.<sup>42</sup>

I would like to go further as women have done with the affirmative action program so that employers actively look at all of their structures – their policies, practices and procedures – to see in what way they can actively encourage disabled people to apply and to get those people into the appropriate training programs so that they can then take up positions at different levels within the organisation.<sup>43</sup>

---

38. *Transcript of Evidence*, p. 56 (South Australian Government).

39. *Transcript of Evidence*, p. 4440 (Disabled Peoples' International, Queensland Branch).

40. *Transcript of Evidence*, p. 4209 (Epic Employment Service, M.O.R.E. Inc.).

41. *Transcript of Evidence*, p. 4305 (The Queensland Spastic Welfare League).

42. *Transcript of Evidence*, p. 1364 (Disabled Peoples' International (Australia)).

43. *Transcript of Evidence*, p. 1363 (Disabled Peoples' International (Australia)).

3.36 Affirmative action was favourably considered because it offered the opportunity of 'genuinely equal access'. In the context of equal skills and abilities as the basis of choice, it must be noted that a substantial number of people with disabilities have not had the opportunities to gain skills and experience commensurate with, for example, their age and abilities. As is indicated elsewhere in the report<sup>44</sup>, people with disabilities often are affected by a range of factors – discrimination, lack of confidence, lack of motivation, lack of experience – which all mitigate against their effective operation in the workforce and often in the community generally. In such instances, it is likely that affirmative action would be a very long-term process in terms of changing community attitudes. In the short-term affirmative action could mean that those people with disabilities who had experienced fewer disadvantaging factors<sup>45</sup> than other people with disabilities might have greater success than those with more substantial needs – for example, in areas such as support, self-confidence, etc. This could mean that those who currently had the least difficulties with access could continue to be advantaged over other people with disabilities, at least in the short term.<sup>46</sup>

3.37 Other witnesses indicated that they would be in favour of affirmative action legislation, though they did not necessarily consider whether this would be a part of anti-discrimination legislation. One of the benefits of such legislation, one organisation believed, would be that it would help to educate the community.

While it might be unrealistic to expect that legislation would actually be totally effective, it certainly would make a contribution, I am sure. Secondly, if it achieved nothing else it might let the general community have a greater knowledge of people with disabilities. The general community, as far as I can see, does not have a great knowledge of who actually is a person with a disability or disability issues. It is only really when a person is actually touched by knowing somebody with a disability or actually looking at issues, that they really have any knowledge of that. Maybe legislation might help to achieve that.<sup>47</sup>

3.38 Affirmative action legislation was seen as potentially beneficial because it suggested an active strategy:

EEO is very passive. It means that employment panel people can sit there and just let anyone come before them and whoever turns up, they will then select the best applicant based on EEO principles. What

---

44. See Chapters 2, 5 and 6.

45. See above, Chapter 2, Paragraphs 2.47-2.48; see also Chapters 5 and 6.

46. See especially Paragraphs 6.326 and 6.329.

47. *Transcript of Evidence*, pp. 4209-10 (Epic Employment Service, M.O.R.E. Inc.).

we are looking at is before they get to the interview and what happens to the person.<sup>48</sup>

Affirmative action, by contrast:

will take positive steps to encourage those people to apply, and to provide them, if necessary, with separate training so that they can get up to the level where they can compete equally.<sup>49</sup>

### Anti-discrimination legislation

3.39 Anti-discrimination legislation was discussed by a number of witnesses to this Committee who identified that it would be useful – though perhaps as part of a package, including information/education, rather than as an isolated measure.

Our view is that the legislation would be only one part of a continuum, a bigger package, which is the same sort of thing that has happened in regard to sexual harassment, for example. It has been a long process to get people to even understand that there is such a thing as sexual harassment and then to bring in the protections, through legislation, which are not always resorted to but which we know are there. It is a legal thing to say that it is not okay to do that, and then that should be joined with education. We do not think that the discrimination legislation on its own would be an answer.<sup>50</sup>

### Recommendations

The Committee RECOMMENDS:

1. That Commonwealth anti-discrimination legislation incorporates affirmative action principles<sup>51</sup>, whereby Commonwealth departments and statutory authorities apply affirmative action principles in the employment of people with disabilities.
2. That Commonwealth anti-discrimination legislation provides strong penalties for both open and systemic discrimination, including penalties for harassment in the workplace.
3. That Commonwealth anti-discrimination legislation highlights the responsibilities of Commonwealth departments to take all steps possible to

---

48. *Transcript of Evidence*, p. 1364 (Disabled Peoples' International (Australia)).

49. *Transcript of Evidence*, p. 1364 (Disabled Peoples' International, (Australia)).

50. *Transcript of Evidence*, p. 574 (Mental Health Co-ordinating Council).

51. Affirmative action principles – see Glossary.

ensure improved access of people with disabilities to employment and related services.

## Attitudes

**3.40** As a number of witnesses noted, legislation has resulted in some changes. However, for people with disabilities, as for other groups of disadvantaged people, there is a need for continual monitoring of access in order to ensure that there is continual development of legislation, policy and attitudinal changes, and implementation of appropriate services. The process of change is neither easy nor short, nor is there always general agreement either as to content or rate of change.

**3.41** Certainly, there is a now greater acceptance of involvement and participation by people with disabilities in decision-making processes and, indeed, in other aspects of life which relate to obtaining power and independence, but the perceptions held about people with disabilities are still often negative and little attention is paid to the effort which is required of people with disabilities to survive, to establish a measure of independence. The daily work each person with a disability (and/or carers) carries out in order to cope with the community and 'the system', and to demonstrate their abilities, is often unrecognised. The central issue of self-management, and of the need for individuals and supporters to obtain greater control over their environment, is one which has been acknowledged, but it is rarely seen in terms of being a matter which takes up a considerable amount of time, to the point of being a form of employment.<sup>52</sup>

**3.42** In any study of the capacities and skills of persons with disabilities, the costs of educating and informing one's self and others is high in personal terms and requires a more formal recognition. It is through this interaction with the community, and specific groups within it, that people with disabilities have managed to obtain some measure of autonomy and control. However, the nature of the contact in many cases suggests that acceptance of the independence and equality of people with disabilities is not universal, and that discrimination continues in a number of areas.

**3.43** Discrimination can be direct or indirect. Direct discrimination occurs 'when a person acts, either deliberately or unintentionally, to discriminate against another on the grounds of stereotyped attitudes or beliefs', and indirect discrimination occurs 'when policies, practices or rules, although [apparently 'neutral'], result in discrimination against a particular group of persons'.<sup>53</sup> Discrimination can be demonstrated in ways which are not necessarily as obvious as is a verbal insult, for example, and can occur when policies and practices are inappropriate for a particular group of people, and when certain people's needs are overlooked in policy

---

52. Submission No. 84, p. 9 (Ms B. Saxby).

53. Human Rights Australia, *The Rights of People with Disabilities: Areas of Need for Increased Protection: A Discussion Paper prepared for the Human Rights and Equal Opportunity Commission*, (undated), p. 6.

formulation and implementation. Discrimination, therefore, can be as much a matter of omission as of commission.

We consider that [the current] employment initiatives for people with disabilities, are not sufficient for people who have had a traumatic head injury. This is so for many who have otherwise achieved moderate to good social recovery but who are unable to access employment opportunities under these current employment structures. If the specific needs of people with a traumatic head injury are addressed, then there will be a distinct possibility that many more people will successfully return to work following a traumatic head injury. Increased feelings of personal worth and self-esteem will result in an enhanced role in the community.<sup>54</sup>

**3.44** During this inquiry reference was made particularly to discrimination against people with disabilities, to the violation of human rights to dignity, respect, security, choice, and development, and to lack of equal access to all of the opportunities normally accorded members of society. Some of these violations were instances of direct discrimination, but more often than not, the nature of the discrimination which occurred was indirect, and much of it is inbuilt and unthinking, indicating that there are problems of image of people with disabilities.

### The Community

**3.45** The effort made by people with disabilities to establish a positive image has been carried on for many years, both in the broad community and in more specialised groups such as employers, governments and organisations.

**3.46** A number of witnesses indicated that, although there had been changes in public attitudes, these had been slow – ‘I think it is all for the better. It is slow; we are a bit impatient’<sup>55</sup> – and that a lot of work needed to be done still:

The general community, as far as I can see, does not have a great knowledge of who actually is a person with a disability or disability issues.<sup>56</sup>

**3.47** Acceptance was sometimes superficial, and acceptance itself could not be legislated for<sup>57</sup>; there was still a belief that people with disabilities were different and that it was difficult to find the right way to express both their needs and the fact that they were part of society. ‘Consciously or unconsciously’, noted the Intellectual Disability Rights Service, others develop the attitude ‘that people with

---

54. *Transcript of Evidence*, p. 4104 (Headway NSW).

55. *Transcript of Evidence*, p. 4432 (Queensland Association for Mental Health).

56. *Transcript of Evidence*, p. 4209 (Epic Employment Service, M.O.R.E. Inc.).

57. *Transcript of Evidence*, p. 4208 (Epic Employment Service, M.O.R.E. Inc.).

disabilities are different and that they have fewer rights'.<sup>58</sup> Another witness stated that there had been apparent change, but that one had to be careful not to see this as meaningful acceptance:

Outwardly, yes, [public opinion] . . . has changed, but if it comes to a position of someone needing to be retrenched, the person with the disability will always be chosen first over an able-bodied person, if you have to make that choice. There is still a stigma attached to disability. The attitude of many people is that disability is fine and the person with the disability working in employment is fine as long as they do not work next to me, or so long as I do not have to do something for them.<sup>59</sup>

### Employers/employees

**3.48** This lack of understanding and of empathy clearly creates difficulties for people with disabilities in all aspects of everyday life. In relation to employment, it puts particular strains on an individual's capacity to cope and to find satisfactory ways of establishing links with the community. Many people with disabilities gain particular support from their disability organisations.<sup>60</sup>

. . . the help I got from working with them was expert, kind and patient and I never learnt so much in a short period of a year in my life before that. My ability to integrate on a more meaningful level with people like myself developed greatly because of this experience and I began to [accept] my own disability instead of fighting it all the time and losing the battle. I felt I was part of a broad spectrum of a group, instead of being just mentally ill in a hopeless and meaningless way. I believed more in the reality of my own illness, and thus was able to tackle it forthrightly, instead of fighting it.<sup>61</sup>

**3.49** Nonetheless, there is a strong desire to be accepted at the social and work level in a more open environment. The lack of general understanding of both the needs and the skills of people with disabilities were matters which were raised by witnesses and in written submissions. It was felt that there was little understanding of the abilities of persons with disabilities, a fact which in part indicates a lack of effectiveness of information/education campaigns directed to the community in general. Concerns which are specific to employers, however, are also worth detailing

---

58. *Transcript of Evidence*, p. 4029 (Intellectual Disability Rights Service); see also p. 4205 'there is a reluctance on the part of people to accept and treat some people with disabilities "like other people"'. (Epic Employment Service).

59. *Transcript of Evidence*, pp. 4446-47 (Disabled Peoples' International, Queensland Branch).

60. Submission No. 2, p. 1 (Miss L. Roberts).

61. *ibid.*



because they highlight areas where particular recommendations/solutions might profitably be applied.

**3.50** The Queensland Spastic Welfare League listed the major difficulties for people with physical disabilities attempting to enter open employment:

A serious and detrimental aspect to the growth and development of employment options for people with disabilities is the ambivalent attitude that many of the public seem to have about persons with disabilities. In our experience, we have found that many employers are reluctant to employ disabled people. They regard them as too slow to keep up with the work pace. They doubt their ability to maintain a good work record and fear they will have too many sick days. They see them as creating social problems and inconvenience by requiring special privileges denied to other employees.<sup>62</sup>

**3.51** Even when potential employers were willing to consider the possibility of employment, they were not always in receipt of enough advice about what was required – 'I feel there is a big gap between what is put across and the employer's perception of a disability'<sup>63</sup>, said a witness from the League. While there were many employers who were informed and realistically aware of difficulties that had to be addressed as well as benefits to be gained, many of these had gained their knowledge either through knowing (including being related to) someone with a disability, or over a period of time when various placements had been successful.

#### Employer incentive

**3.52** Some submissions/evidence suggested that employers be given an incentive to increase the likelihood of their offering jobs to people with disabilities.

If they take on a person with mental disability who is not producing the same amount of work but who is still paid the normal rates of pay, then unless there is either a government subsidy, which currently exists, or something else you are not going to get people taken on.<sup>64</sup>

**3.53** On the evidence given, there was limited consideration of the reasons why an employer *should* automatically receive an incentive in order to employ a person with a disability. There is an assumption that people with disabilities are too awkward to fit into the ordinary workplace and will require additional support, workplace modification, or supervision. This is similar to the belief that people with disabilities will invariably produce less and hence should receive lower wages. However, this is

---

62. *Transcript of Evidence*, p. 4288 (The Queensland Spastic Welfare League).

63. *Transcript of Evidence*, p. 4305 (The Queensland Spastic Welfare League).

64. *Transcript of Evidence*, p. 5026 (Australian Down's Syndrome Association Incorporated).

not invariably the case, and a number of people with disabilities may require no support or support only for a relatively short period.

The social stereotyping of disability reinforces a view that disability prevents most people with disabilities from working in all but the most menial of jobs. The facts are that many people with disabilities, and that many disabilities, pose practically no limitation at all on the ability to perform a large variety of work tasks. In other cases, a very small and inexpensive adjustment to the work environment can render many jobs suitable to people having a large range of disabilities. . . . Until now the emphasis has been on changing people or people with disabilities to suit the environment. We are suggesting more emphasis on the introduction of measures to encourage the community in general, and employers in particular, to give more consideration to people with disabilities.<sup>65</sup>

**3.54** Any incentives that may be offered, therefore, would need to vary according to circumstances; otherwise, the difficulties of integration may only be emphasised with the disability, rather than the ability, of the individual concerned being the major focus. It should also be noted that in many cases incentives already exist through the provisions of training and labour market programs<sup>66</sup>, the changes that were proposed in the 1990/91 Budget to increase payment for workplace modifications and special equipment<sup>67</sup>, and through the support available to workers through a number of new employment options.

**3.55** The Director-General of the Confederation of Australian Industry, Mr Bryan Noakes, also advocated the need for an incentive to the employer.

Firstly, it has to be recognised that in many cases the productivity of disabled persons, and therefore their value to the employer, will be less than that of non-disabled persons and that has to be taken into consideration. The need to provide an inducement for the employer to employ disabled persons in those circumstances needs to be taken into account; the need to secure an adequate remuneration, if I could put it that way, for the disabled person in the work force needs to be taken into account; and the need to provide some incentive over and above the payments made to a disabled person not in the work force needs to be taken into account.<sup>68</sup>

---

65. *Transcript of Evidence*, p. 456 (Messrs Rothwell & Smith, Cumberland College of Health Sciences).

66. See especially Paragraphs 5.59-5.113.

67. See Paragraphs 5.69, 5.99.

68. *Transcript of Evidence*, pp. 5724-5 (Confederation of Australian Industry).

3.56 There was also consideration of the fact that there should be no *disincentive* to employers to participate in a skills-based wage system. Some participants in the discussion on the first Ronalds report believed that any further work which employers felt they had to undertake (for example, additional paperwork) would be used as a reason for not participating. This was considered in the context of whether the employer should receive any wage subsidy and then pass it on to the employee, or whether this subsidy should go directly to the employee.<sup>69</sup> Given that employers were considered to be one of the required parties in any assessment process<sup>70</sup> the minimisation of employer effort was clearly important.

3.57 A number of witnesses also suggested that those who employed people with disabilities should have access to reduced payroll tax<sup>71</sup>, or to reduced company tax, or a tax credit<sup>72</sup>, or in short, that there should be tangible benefits available to employers. Other witnesses, speaking more perhaps from the employee's point of view, disagreed. One was reluctant to support the idea of a reward for employers.

The area of awards is one which in a sense is often seen as an alternative to providing models which actually increase a person's performance and skill within a given workplace and systems which actually support the worker in the workplace. Those are the sorts of models that we would be much more in favour of. We would promote the model that enables workers to be supported within the workplace, rather than in a somewhat superficial sense rewarding employers who employ the most people with disabilities or that sort of approach.<sup>73</sup>

3.58 This organisation was more concerned to move away from any hint of paternalism and rather to encourage the standing of people with disabilities and, indeed, of employers, by emphasising the fact that the employee was providing a service and should not be seen as dependent.

... there is a lot of danger associated, I suppose, with the whole ethic of being charitable and that kind of thing. That is not a neutral thing; it is a really bad thing. It is a very negative approach to the employment of people with disabilities. We are not talking about charity here, we are talking about people doing a fair day's work for a

---

69. Report of the National Consultations with People with a Disability, 1991, p. 27 (4.12) (hereafter referred to as *Ronalds 2*).

70. *ibid.*, p. 22 (4.6). See also *Transcript of Evidence*, p. 5725 (Confederation of Australian Industry).

71. *Transcript of Evidence*, pp. 5258-9 (West Australian Special Schools Parent Action Group), p. 5274 (Developmental Disability Council of Western Australia (Inc.)).

72. *Transcript of Evidence*, p. 434 (Spastic Centre of New South Wales).

73. *Transcript of Evidence*, p. 5611 (DEAC - Disability Employment Action Centre).

fair day's pay, being successful in their employment and getting access to the opportunities to do just that.<sup>74</sup>

**3.59** However, insofar as this may be the case only for people with other than severe disabilities, it is not necessarily realistic. While it is important for employers to be aware of, and sensitive to, the different needs of people with disabilities<sup>75</sup>, it is also the case that many employers will need some assistance or support (financial, technology, leave, wage subsidy) in order for them to be able to employ people with other than minimal disabilities or low support needs. This was noted by the Spastic Centre of New South Wales which was particularly concerned to obtain opportunities for people with severe disabilities.<sup>76</sup>

**3.60** The Centre was aware that a number of people using its services, were currently 'unemployable by us' but that 'given sufficient capital outlay on electronic equipment or, whatever, the situation could change'.<sup>77</sup> While this statement is related to the funding limitations of services, it also suggests that some capital for equipment would need to be available in order to help people with severe physical disabilities obtain employment. Employer incentives could take this into account, and there is some indication that this will be effected at least for small numbers of people, in new employment/work experience options.<sup>78</sup>

**3.61** Education for employers on disabilities was considered particularly useful. One witness from Victoria's Office of the Public Service Board told the Committee:

We run disability awareness seminars for both the personnel managers, placement officers and also line managers, where we actually go through and talk about the issues involved in employing people. We have found that our placement rate has been very high after running those particular seminars. In fact, agencies where we have run seminars do have a good record in terms of placement of people with disabilities.<sup>79</sup>

**3.62** The Australian Public Service Commission released a strategy for managers which outlines the advantages of employing people with disabilities<sup>80</sup>, and the Human Rights and Equal Opportunity Commission (HREOC) is committed to

---

74. *Transcript of Evidence*, pp. 5611-12 (DEAC – Disability Employment Action Centre).

75. *Transcript of Evidence*, p. 576 (Mental Health Co-ordinating Council).

76. *Transcript of Evidence*, p. 434 (The Spastic Centre of New South Wales).

77. *Transcript of Evidence*, p. 438 (The Spastic Centre of New South Wales).

78. See Paragraph 5.69.

79. *Transcript of Evidence*, p. 5444 (Victorian Government).

80. *Transcript of Evidence*, p. 5658 (Westwork Industries (Wesley Central Mission)).

education work of this type<sup>81</sup>; HREOC has established a national advisory committee which will focus particularly on ways of 'securing greater cooperation from employers' in relation to the employment of people with disabilities.<sup>82</sup>

**3.63** For employers, more direct information was seen as the most important and immediate need and possibly the basis for later co-operative projects on information/education. 'As employer groups we would certainly accept that we have a role to play, but I would not pretend that it is an easy task' noted the Director-General of the Confederation of Australian Industry, Mr Bryan Noakes.<sup>83</sup>

**3.64** The Committee is aware of initiatives undertaken in employer information/education under the auspices of the DHH&CS and other departments. Bearing in mind the constraints of a recessionary environment, emphasis needs to be placed on the provision of assistance and incentives to employers to provide opportunities for people with disabilities.

### Recommendation

The Committee RECOMMENDS:

4. That a number of information programs for employers be developed by relevant departments, emphasising the different skills, abilities and potential of workers with disabilities. Such programs should be developed for different employment markets and should include information on assistance available to employers, the possible training needs of employees, and the importance of access to promotion and other benefits.

**3.65** One of the benefits of producing material specifically for employers may be that there is a more honest and realistic portrayal of the needs of people with disabilities, as well as the advantages which they have to offer an employer. Employment is likely to be more successful for both parties when this is the case, as was stated by the Paraplegic and Quadriplegic Association of South Australia's representative:

... we have had a little bit of experience as an association in supporting people's applications for jobs. . . Employer education is a very important area and an area which may not necessarily be best served by throwing huge amounts of money at it.<sup>84</sup>

---

81. *Transcript of Evidence*, p. 5727 (Confederation of Australian Industry).

82. *Transcript of Evidence*, pp. 5723-4 (Confederation of Australian Industry).

83. *Transcript of Evidence*, p. 5728 (Epilepsy Foundation of Victoria).

84. *Transcript of Evidence*, pp. 5099-5100 (The Paraplegic and Quadriplegic Association of South Australia Inc.).

**3.66** Another advantage of this approach may be that the chance of developing an employer/employee relationship may be increased, rather than the potential or actual employee feeling he/she owes a debt of gratitude because of being employed. As many persons with disabilities have indicated, a substantial responsibility is placed on them *as individuals* to address issues and to prove themselves, like members of other disadvantaged groups, against a standard (which in fact may not be met by other employees). People with disabilities:

spoke of the dilemma they faced in deciding whether to mention their disability in application letters or phone calls. Some felt that so doing may reduce their chances of getting to the interview stage. Having to compete with non-disabled people for jobs was seen as a significant problem. A further difficulty was feeling that because of having a disability, you had to work harder than others doing the same job to prove yourself.<sup>85</sup>

**3.67** The emphasis which is placed by organisations and individuals on the employability of people with disabilities or people with particular disabilities may also require careful monitoring. The nature and level of the jobs which some groups of people with disabilities are undertaking is looked at in Chapters 5 and 6. In the context of images of people with disabilities, however, it is questionable if stressing reliability, punctuality, capacity to do repetitive jobs, has a beneficial effect in the long run. In the short term, this way of presenting people with disabilities may expand the employment market for some – for example, people with intellectual disabilities. However, since the image presented differs markedly from the supposed standard expectations of workers, it may serve only to accentuate differences.

**3.68** The extent to which the individual and any supporting organisation needs to take the initiative in overcoming preconceptions as well as particular real problems (for example, the need for equipment or for 'special' leave, etc.) demonstrates the additional demands which people with disabilities have to face in order to become or stay employed, as well as to maintain good working relations with colleagues or superiors.

**3.69** There may be a role for the support by work colleagues of persons with disabilities<sup>86</sup>; this may need to be carefully managed with a possible option being paid rather than voluntary assistance for any long-term or permanent arrangement relating to meeting needs during working hours. It is likely that working relationships operate effectively only when the person with a disability is seen as an equal rather than as someone for whom other people have to assume responsibility or part-productivity. As was noted by the New South Wales Council for Intellectual

---

85. *Transcript of Evidence*, p. 4288 (The Queensland Spastic Welfare League). See also p. 4305.

86. See Paragraphs 3.98, 3.106. See also below, Paragraphs 5.246-5.248.