

ADVOCACY TASMANIA INC

SUBMISSION TO: NATIONAL COMPETITION POLICY REVIEW OF THE DISABILITY DISCRIMINATION ACT 1992

Introduction

This submission is informed by the individual advocacy casework and systemic advocacy work of three disability advocates, two Home and Community Care advocates and one mental health and one aged care advocate working statewide in Tasmania.

1.3 What is not included in this inquiry?

In relation to interaction between State Disability Services and DDA:

Page 9, State Community Equipment Scheme and State Disability Services Individual Options Packages: The lack of resources available in the state together with a first-come first-served approach in the Community Equipment Scheme and IOPs results in gross inequity between services provided to individual people with disabilities in the state. Some people get funded and some do not.

There is also the inequity of people living in Commonwealth-funded Nursing Homes and Hostels not being eligible to use the State Community Equipment Scheme. Although Nursing Homes and Hostels have a stated obligation to provide the equipment required - eg this can result in residents only having access to a shared manual wheelchair when they may require and individual motorised wheelchair.

It needs to be accepted that there is a “cost of disability” and if adequate continence aids, transport, and personal support cannot be provided by the state to the individual, there is no way that they can hope to participate in the workforce. The cost of these supports (to the client) is often more than they will earn in employment.

2 General issues of this inquiry

Definition of Disability:

As an advocacy agency, we certainly favour the continued broad definition of disability so that all people with disabilities are covered. However, it is important to note that with the broader definition comes a larger group of people with disabilities which require more resources to support. When Tasmanian Disability Services broadened their eligibility criteria, to all people with disabilities, this resulted immediately in a lack of resources to meet all client need.

2.2 Problems that the DDA seeks to address

Medical Model: Unfortunately, in Tasmania, the Medical Model is alive and well in some state-run and NGO facilities despite the closure of state institutions. The

establishing of social models of disability have been greatly delayed in areas where trained nurses are employed to support clients or manage services if there has been little or no training or emphasis put on such social models. Some families continue to support the medical model in the belief that this provides their family member with the best care.

Incidence and Impact of Disability

The issues that Advocacy Services have encountered which reduce equality of people with disabilities before the law are:

- Clients with disabilities and challenging behaviours: not having appropriate diversionary programs in place to ensure that clients do not inappropriately end up in the criminal justice system or being accommodated in prisons when supported accommodation is not available;
- Clients with disabilities having diminished or no capacity being able to instruct solicitors and plead before the courts in a way that is not in their own best interests and which results in a higher percentage of people with disabilities being represented in the prison population;
- A need for disability workers and those working in the criminal justice system to become better educated in the issues of diminished capacity and accessing advocates and public guardians to support clients or make appropriate decisions in the clients best interests; and
- More appropriate training of staff in the disability and criminal justice areas.

2.6 Regulations, standards and other instruments – Disability Standards

The successful implementation of Disability Standards of any type is problematic if there is not systemic regular monitoring by an independent authority with recognised and implemented sanctions. State and Commonwealth Disability Standards are broken regularly with impunity within Tasmania (and I am sure other states as well) resulting in clients rights being completely ignored in areas such as choice, consultation and access; and often poorly address in issues of abuse. It is felt that with no implementation of sanctions this practice will continue.

2.7 Complaints

The main reasons people with disabilities give for not wanting to make referrals to HREOC are:

- Addressing the issue itself is often hard enough for clients. Accepting any offered alternative is often easier than fighting the system. Therefore, making complaints needs to be easier and more accessible and seen to bring about improvements.
- If people have a mental health disability which is active at the time, they often find the stress of making a complaint to the Commission too stressful on top of

managing their mental health problems. Alternatively they are fearful that taking up a complaint will put too much stress on them and they may then become unwell.

- The inconvenience and costs of having to lodge their complaint outside their own state and travel to appear at hearings.
- Being unable to afford the costs of an action (even if they only have to pay their own costs).
- Reports that it takes a long time before cases come to hearing and are resolved.

It is strongly felt that the DDA should be amended to allow HREOC and/or other appropriate bodies to initiate complaints. This may allow or encourage important test cases to be mounted by organizations, which have the capacity to research and put a case where individuals are unable or unwilling to do so.

2.8 HREOCs education, public policy and inquiry roles

In the area of new public buildings, it is thought that it would be a very cost effective exercise for HREOC to do more education with local councils, builder's associations, architects etc regarding the standards requirements for disability. There have been quite a number of examples of very large additional costs and time delays having to be tolerated in new buildings due to substantial changes having to be made after initial construction. It would also be useful to promote that builders and architects routinely consult with access auditors as part of the planning process.

It is thought that there is huge scope with the greater use of inquiries to achieve systemic change. The content of submissions such as this or public consultations could provide examples of areas in need of change such as:

- Access to premises and public buildings
- Discrimination in access to services
- Discrimination in employment and education

3 Discrimination in specific areas of activity

3.1 Employment

In Business Services in Tasmania (funded by FACS), there is a primary focus on clients with intellectual/sensory disability and clients with physical disabilities have great difficulty in getting placements.

In open employment, the major area of discrimination our service has encountered is with clients with a mental health disability. Workers often choose not to disclose their

mental health disability but in a small community the information often leaks to their employer. Because of the negative attitudes towards mental illness, some employers then harass workers to leave work. Quite often, until that time, workers have been quite well. However, the stress of the harassment then makes them unwell and finally they have to take sick leave or workers compensation leave. The employer sometimes try to deter them returning to work. Often the workers primary goal is to recover and so they feel they cannot endure the additional stress of making a DDA claim, so they just leave work and go onto Newstart or the Disability Support Pension.

Many employers seem unaware that workers do not have to declare their disability if they are not seeking an “allowance” or their disability does not affect their ability to do their job. When their disability is revealed, often employers try and make the worker feel they have done the wrong thing by not declaring their disability. However, workers are well aware that when they do declare a disability (especially when it is a Mental Health disability) their employer may then not wish to employ them.

The general perception among many people with disabilities and in the sector is that employers “get away with” not having to make ‘reasonable adjustment’ by claiming ‘unjustifiable hardship’ when the adjustment could easily be made. It is believed that this results in fewer people with disabilities being employed.

3.2 Education

In Tasmania, there is a serious issue of people with disability who wish to train at TAFE or university to qualify them for employment. They can get “Educational Support” at TAFE or Uni, but often cannot get funded either by HACC or IOPs for any personal care support they may require in order to be able to attend education. This is resulting in people with disabilities not being able to take up TAFE or university courses and thus having lower levels of education, which seriously affect their opportunities for employment.

The issues of people with mental health disabilities wanting to access further education are very similar to those issues experienced by people with mental health disabilities in employment.

3.3 Access to public transport

- **What more remains to be done?**

In Tasmania, regional and rural areas receive greatly reduced transport services in regional and rural areas. Accessible transport in many of these areas is non-existent. Some of the regional centres do not have even one maxi-taxi.

The provision of accessible bus services is thought to be decades away due to the ability to claim ‘unjustifiable hardship’ on the grounds of economic viability.

Wheelchair accessible taxis in Tasmania charge a minimum fee of \$15 on week days and \$18 on week-ends (which it is understood that the State government is going to subsidise).

It is thought that the only way that accessible transport will be achieved in some regional and remote areas in Australia with low population levels is through some type of subsidisation.

3.4 Access to public premises

There have been a number of new public buildings opened in Tasmania recently, which have been found to not be accessible under the Standards. It is proposed that in order to ensure that all new buildings are accessible, there should be some provision made in regulations for compulsory Access Audits.

There have been a number of concerns with regard to male and female prisoners in Risdon Prison, which does not have accessible cells. The women's section had a number of sections which were separated by steps - temporary ramps have been erected to enable access for prisoners in wheelchairs or using walking aids, however, these ramps are not in accordance with the Standards so far as grading is concerned and have no hand rails.

One of the new public buildings of concern is the new Magistrates Court in Liverpool Street, Hobart. It is fully accessible to the public but not accessible from the Remand Centre to the courts and not accessible in the docks for defendants with a disability. A client of Advocacy Tasmania who was on remand in Risdon Prison and was in a wheelchair had to appear in the magistrates court for sentence. Custodial staff who were not trained in lifting, had to manhandle the defendant in and out of their wheelchair and up and down steps in order for them to appear in court. It is obvious that the magistrates court does not have an Action Plan of how to manage defendants with a disability - if they did this matter would have been heard via video-link.

The Supreme Court of Tasmania in Hobart does not have disabled access for the public or defendants.

There are a number of other buildings which could be classified as public buildings which do not have disabled access: One State Disability Services offices, Mental Health services, banks, supermarkets, a public library, cinemas, a health care provider and health spa/baths. Advocate and Access Auditors are endeavouring to address these issues by seeking Action Plans or referring the issue to HREOC.

3.5 Goods, services and facilities

Disability Services: The Disability Services offices in each region of Tasmania are not all physically accessible premises. The availability of Disability Services and how to contact the service is not well advertised or promoted throughout the state.

Psychiatric Services: It has been reported that the Department of Psychological Medicine and the Psychiatric Intensive Care Unit at Royal Hobart Hospital have written policies that refuse to accept patients with health, physical or surgical support needs as in-patients in their wards and that these patients have to stay in other hospital wards and this denies them the best psychiatric support.

Parking for the Disabled:

There are quite a number of referrals each year from people with disabilities complaining of people without disability using disabled parking spaces and the lack of policing of the use of disabled parking spaces (in carparks especially). They also report that some disabled parking spaces in carparks have time limits, which make it difficult for them to park, do their business and get back to their car in the allotted time.

3.8 Accommodation, land, clubs and sport

There is a desperate need for standards to be developed, especially in the area of accommodation (particularly hotel, motel, guest houses etc). It would be a great improvement if service providers had to comply with the standards before they could advertise accessible services. So many services say they are accessible but have no idea what that really means. For example, restaurants or function centres may think that if a wheelchair can get through the front door, then it is accessible - with no consideration of the size of wheelchairs, what a truly accessible toilet is, or the space a wheelchair might require in a venue. Within accommodation facilities, what services think they can offer as accessible is often ludicrous - they assume that a person with a disability will automatically have a carer to assist them and they have little or no understanding of what makes facilities truly accessible. They only think of whether disabled people can physically get into the building - they often do not even consider toilets, showers, beds etc.

Rebecca Thompson
Jane Blake
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