

29 January 2004

Disability Discrimination Act Inquiry
Productivity Commission
Locked Bag 2, Collins Street East
MELBOURNE 8003

Re: Draft Report Response
Specific To: Accommodation provided for Intellectually Impaired
Persons by their parents/guardians.

In my initial submission No 85, I highlighted the penalties and barriers placed by both State and Commonwealth Government on parents in providing accommodation for their intellectually impaired adult children if not purchased in a trust in the first instance i.e.:

STATE CHARGES

- No rebates or concessions on council rates, water and sewerage rates that are currently afforded to Aged Pensioners, Physically (legally able) Disabled Pensioners, Senior Card Holders and Commonwealth Card Holders.
- No land tax exemption that is currently afforded in Western Australia for land used for the following:
 - For primary production;
 - As a retirement village;
 - As a mining tenement;
 - For educational purposes;
 - For religious purposes;
 - By non-profit societies, clubs and associations.

Not receiving any concessions the current costs of the above in our case is \$2,600 per annum – an impost of \$1,600 above that which pensioners, seniors and Commonwealth Card Holders would have to pay.

- A cost of \$29,000 approx. (Capital Gains, Stamp duty and legal fees) to place in a trust to gain the concessions listed above, premises purchased for our daughter, in which she has been living for the last fourteen (14) years.

INELIGIBILITY FOR THE AGED PENSION

- The valuation of the property, purchased in 1988 now makes us, as parents, ineligible for the Aged Pension. Even if transferred to the trust under Centrelink Gifting rules, we would not be eligible for the aged pension for five (5) years – in my case 71 years of age.

I would appreciate if you would list on your website the following:

- Summary of my initial submission. **See attachment 1**
- Recent media article published on our situation i.e.
“Parents seek government Concessions “ by Gab Knowles.

See attachment 2

The above articles will help educate the community and bring about a realisation of the difficulties, impediments, barriers and inadequate legislation that parents of

children with intellectual impairment have to cope with in their efforts to accommodate their adult children.

My concerns highlighting this inequity/discrimination is also encompassed in the following submissions placed before the Inquiry

Submissions:

- 21 – CIPAIID Inc
- 112 – National Council on Intellectual Disability (NCID)
- 32 – Carers Australia – Queensland
- 11 – Justine Woore
- 91 – Public Advocate of Victoria

At this stage I would like to acknowledge the current inadequacies of the Implementation of the Act as outlined in the Draft Report.

The first paragraph in the Overview (page XXV) states – ‘**The Disability Discrimination Act 1992 (DDA) is about providing a fair go for Australians with disability...**’ however the draft recognises it’s ineffectiveness in the following statements;

- Key Point 4 (Page XX1V)
 - Overall, the DDA has been reasonably effective in reducing discrimination...
 - **People with physical disability have been helped more than those with mental and intellectual disabilities.**

Further acknowledgement is indicated in:

- (Page XXX11)
 - The DDA also appears to have achieved uneven results for different groups of people with disabilities. It appears to have been:
 - **more effective for people with mobility, sight or hearing impairment than for people with mental illness, intellectual disability, acquired brain injury...**
 - This is restated again in the Draft Findings 5.6.
This raises the question, why?
The question why needs to be fully addressed.
- Request For Information (Page 122)
 - The Productivity Commission seeks further comment on the desirability of developing an Accommodation Disability Standard and forms of accommodation...

In the first instance I wish to recommend that the Productivity Commission work on providing **SUBSTANTIVE EQUITY** (page XX1X) for parents/carers in their quest to accommodate their intellectually impaired sons and daughters.

I furnish the following summary of concessions/rebates granted on Council Rates/Water and Sewerage Rates, afforded to citizens in Western Australia during the 2002/2003 financial year. **See attachment 3**

This data was secured for me by Dr E Constable, MLA, through the parliamentary process on the 20 November 2003.

From this table it will be noted that approx.140,000 Western Australian Pensioners, (even if only receiving \$1.00 of the Aged Pension) are granted 50% or 25% concessions. A further 13,000 approx. Commonwealth Card Holders (Taxable Income of up to \$80,000 per annum) receive these concessions.

By **not** granting rebates or concessions to parents providing independent accommodation for their intellectually impaired adult children, the Government is effectively imposing on them:

- A 100% **surcharge** above the 134,000 residents who receive a 50% rebate.
- A 33.3% **surcharge** above the 13,000 residents who receive a 25% rebate.

This is **DISCRIMINATION BY DEFAULT** in legislation. It appears that Governments give very little consideration to people with intellectual impairment when they formulate or review current legislation.

RECOMMENDATIONS

I tender the following recommendations for your consideration:

- The establishment of an **Inquiry specific to the Intellectually Impaired and their parents/carers;**
- Properties held by parents on behalf of intellectually impaired adult children, in which the adult child resides, **not be counted as assets** under the Centrelink rules for the purpose of Aged Pension eligibility;
- Such properties also **be entitled to land tax exemption and Council and Water Rate concessions under State Legislation;**
- Greater cooperation between States and the Australian Government in reviewing legislation and providing **Substantive Equity** for the intellectually impaired and their parents/carers (page XXV11 and XX1X);
- To review and limit the practical limitations to achieving equity before the law for persons with cognitive disability.

Thank you for the opportunity to comment on the Draft Report.

Yours faithfully

Brian O'Hart
Parent

Issue for your consideration

BRIEF RESUME

[name withheld] Date of Birth [withheld] 1966

Medical Condition: Cerebral Palsy resulting in right sided spasticity,
Temporal Lobe epilepsy and intellectual impairment.

Allowances: Handicapped Childs Allowance – granted 1975
Disability Pension since [withheld] 1982
[withheld]

Parents: Brian O'Hart DOB [withheld] 1938 aged 64 years
[name withheld] DOB [withheld] 1941 aged 61 years

PROBLEM OUTLINED

- [name withheld] is legally disabled
- We purchased a duplex in 1988, in our names, at a cost of \$83,000 at 18%, for [name withheld] to live in independently. The address of this duplex is:
[withheld]
- To avoid [name withheld] being exploited or manipulated, Lawyers, Birman & Ride, recommended we leave the property to her in our will for 'Life Estate'. This we did.
- [name withheld] currently shares the house with another female person also on a disability pension.
- The cost, so far to my wife and I for providing an independent home for [name withheld], is approximately \$198,000.

CONSEQUENCES OF THE ABOVE ACTION

As the property is not in a **TRUST** we are denied rebates or concessions on:

- Local Government (Council Rates) -\$1048
- Water Rates -\$ 772
- Land Tax -\$ 713

This is denied under Clause 29, 1c of the Rates and Rebates Deferment Act – 1992. I have made considerable representation to the Commissioners – State Revenue Department and to Mr E Ripper, MLA, Deputy Premier, for consideration and legislative changes, but to no avail.

Ms McHale, MLA, Disability Services, has expressed her empathy with the problem.

I have estimated the current cost of forming a **TRUST**, would be approximately \$29,000, as a result of the incurred Stamp Duty, legal fees and Capital Gains Tax.

I have requested for Stamp Duty on the property be waived if placed in a **TRUST**.

I will also be seeking the waiving of Capital Gains Tax from the Commonwealth.

MAJOR IMPACT ON AGE PENSION ELIGIBILITY

I am now approaching 65 years of age and with this property jointly in my wife and my name, we hold an asset of approximately \$250,000. If I form a **TRUST** and transfer this property to [name withheld], under **Centrelink's Gifting Rules to a Trust**, this will deny me access to the Age Pension until I am at least 70 years of age.

(Recent property valuation - \$350,000 [25/6/2003])

CONCLUSION/OUTCOME

After 36 years of caring, nurturing and protecting our intellectually (legally disabled) daughter and endeavouring to remain independent and not be a burden on the State, the obvious conclusion that one reaches from the foregoing scenario is that parents in these circumstances, are rewarded by:

- not being awarded rebates/concessions on property in which their adult disabled child resides;
- being denied the AGE PENSION (part or full) because they have provided, at great expense, accommodation for their disabled child.

This is an **INJUSTICE** that must be addressed.

Parents: Brian and [name withheld] O'Hart

Address: [details withheld]

Phone/Fax: [details withheld]

Email: [details withheld]

Parents seek Govt concessions

by gab knowles

CITY Beach father Brian O'Hart is trying to prevent other parents suffering the financial problems he and his wife did when planning for their intellectually disabled daughter's future.

The O'Harts made sure their daughter would have independent secure accommodation for the rest of her life. Mr O'Hart bought a duplex in Wembley and in his will has left it to her as a life estate – meaning it is hers for life.

However, the O'Harts do not receive the same Government concessions on council rates, water rates and land taxes on that property that are available for many aged and disabled pensioners and they believe that is discriminatory.

Mr O'Hart has been fighting for three years to make the concessions available to parents and guardians.

Deacons law firm offered to help him and together they wrote a booklet called *Residential Property Ownership for Disabled Persons*.

A Carers WA grant covered some of Deacons' costs.



Brian O'Hart and his wife Jean have planned for their daughter's future.

"I want to stop this situation happening to more parents and then redress the legislation inequity," Mr O'Hart said.

He said the booklet offered advice for how to structure property ownership cost-effectively under current legislation.

Mr O'Hart bought his daughter the Wembley duplex, costing \$83,000, in 1988.

"Now the property is valued at \$350,000 but it is not an asset we

would sell," he said.

Mr O'Hart explained that because the property was not in a trust for their daughter, he and his wife were denied rebates or concessions on council rates, water rates or land tax.

However, he said if he formed a trust (which he believed would cost \$29,000) and transferred the property to his daughter, under Centrelink's Gifting Rules he would be denied access to the Age Pension until he was at least 70.

Mr O'Hart said he and his wife had wanted their daughter to have a permanent, secure home, where she could become independent and socially adept.

In the duplex, he also provides accommodation at minimal rent to another person with an intellectual disability, so both women have company.

"We have done everything we can to protect our daughter," he said.

Mr O'Hart said he was hoping for justice for parents in similar, or worse, situations.

"I am lucky that I am reasonably financially secure – some parents have to keep their adult children living with them because they cannot afford to provide separate accommodation for them."

Mr O'Hart said they and other parents were accepting responsibility to provide and make sacrifices for their children but they needed the same concessions as those for aged or disabled pensioners.

"Providing for her future takes a huge impost off the Government," he said.

Opposition Disability Services min-

ister Simon O'Brien said the Government relied on families and friends to look after people with disabilities.

"They should give incentives, encouragement and recognition to carers," he said.

Disability Services Minister Sheila McHale said she sympathised with Mr O'Hart.

She said she had raised the issue with the Treasurer Eric Ripper and the Government would continue to explore ways to help people in Mr O'Hart's situation.

Mr O'Hart hoped his repeated requests to address the inequity were finally getting through.

He said Premier Geoff Gallop and Ms McHale suggested he meet Disabilities Services Commission director-general Ruth Shean on October 3.

Copies of *Residential Property Ownership for Disabled Persons* are available from People with Disabilities WA in Nedlands or at www.pwdwa.org

Mr O'Hart said Centrelink and the Office of Public Advocate were using the booklet as a reference and accountants, lawyers and real estate agents were finding it beneficial for helping carers and guardians.

**WESTERN AUSTRALIA
REBATES AND CONCESSIONS 2002/2003**

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PENSIONER CONCESSION CARDHOLDERS

REBATE

<u>EBATE</u>				<u>FORWARD ESTIMATES 2003/2004</u>	
		No. of Cardholders	Cost	No. of Cardholders	Cost
50%	COUNCIL RATES	121,989	\$30,626,629	124,000	\$32,700,000
50%	WATER & SEWERAGE RATES	117,356	\$27,534,441		\$29,000,000
<u>SENIORS</u>					
25%	COUNCIL RATES	16,855	\$2,865,342	17,400	\$3,100,000
25%	WATER & SEWERAGE RATES	17,983	\$1,955,089		\$2,000,000

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SENIORS & COMMONWEALTH CARDHOLDERS

50%	COUNCIL RATES	12,542	\$3,993,237	12,960	\$4,300,000
50%	WATER & SEWERAGE RATES	13,073	\$3,598,451		\$3,600,000

SOURCE

Data secured by Dr. E. Constable M.L.A. from Mr.E.Ripper, Deputy Premier and Treasurer.
Through : Questions on Notice 20 November,2003

Eligibility

* Pensioner Concession Cardholders

** Seniors and Commonwealth Cardholders

Relevant legislation was last amended to take effect from 1 July,2001.