

12 August 2003

Ms Helen Owens
Productivity Commission
Locked Bag 2 Collins Street East
MELBOURNE VIC 8003

Dear Ms Owens

INQUIRY INTO DISABILITY DISCRIMINATION ACT 1992

On behalf of the City of Melbourne Disability Advisory Committee I thank you for the opportunity to provide feedback and comments in relation to the inquiry of the Disability Discrimination Act 1992 (DDA).

It is acknowledged that the DDA has highlighted and contributed to the importance of all sectors of the community working toward ensuring society is inclusive of all members, irrespective of the individual's abilities. However, the City of Melbourne's significant challenges persist in accessibility.

The City of Melbourne and our Disability Advisory Committee, as part of our commitment to the Disability Discrimination Act, are committed to ensuring that our city is a welcoming and accessible place for everyone. Our *Disability Action Plan*, outlines strategies that seek to promote and ensure universal access in all aspects of life for people with disabilities including personal, community and civic opportunities.

We take pleasure in providing the following comments as outlined in the *Disability Discrimination Act Inquiry Issues Paper* and wish you well in the undertaking of this important review.

Yours sincerely

Cr Kate Redwood
Chair
City of Melbourne Disability Advisory Committee

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GENERAL ISSUES OF THE NATIONAL COMPETITION POLICY REVIEW OF THE DISABILITY DISCRIMINATION ACT (DDA) 1992

Please find the City of Melbourne's Disability Advisory Committee feedback on issues we are able to comment on, in sequence, as listed in Parts 2 and 3 of the Inquiry Paper.

Definitional Issues

The broad definition of disability as defined in the Act is supported. It is important that this definition continue to include all aspects of disability (visible or invisible) including whether a person currently has, has had, or will have a disability. Including 'associates' of the person with the disability is also of paramount importance as they too may experience direct or indirect discrimination due to barriers faced by a person with disabilities.

Effectiveness of the DDA

- The DDA has impacted significantly on prompting improvements to accessibility in all sections of the community - thereby enhancing community participation opportunities for people with disabilities.
- It is considered that there are merits in supporting the comments of the Aboriginal and Torres Strait Islander Commission's proposal for the Act to recognise the additional burdens experienced by Indigenous people with disabilities.
- The development of standards, building regulations and processes that address the needs of people with disabilities can be attributed to the DDA.
- However, the DDA is often referred to as 'aspirational legislation' - there needs to be a shift that illustrates the obligatory nature of the Objects *"accessibility is everyone's responsibility and the right of people with disabilities"*.
- Allegations of non-compliance with the DDA are complaint based. This means that the person who alleges the discrimination has the responsibility to prove that discrimination has or is taking place. A shift in the DDA is required to place responsibility and obligation of accessibility on all those responsible for the public domain.
- The existence of the defence of *unjustifiable hardship* and the granting of *exemptions* compound the complexity and compromise the integrity of the legislation. It is recommended that the granting of these sections of the legislation should only be employed in cases where accessibility to existing premises is deemed to be impossible. In circumstances where this is granted, it is further recommended that an Action Plan be submitted to HREOC with a tight timeframe and monitoring or progress reporting procedure implemented.
- The introduction of penalties for substantiated non-compliances to the DDA, and compulsory requirement to develop Disability Action Plans, would strengthen its effectiveness.

Ascertain whether the Objects of the DDA are being met

- Anecdotal reports indicate that there have been significant improvements in accessibility in the public domain of the built environment, information provision and public transport. However significant barriers persist in areas such as access to accommodation, education and to clubs, sports and entertainment venues. The phrase *"my disability is not my restriction"* accurately encapsulates life through the eyes of many people with disabilities.
- It is difficult to conclusively quantify attainment in the Objects of the DDA. There is currently no aggregated demographic or socio-economic data on people with disabilities,

where they live, work, study, their perceptions of accessibility or their need for support/s. Systemic collection of this data would provide an evidence base of current and future meeting of the Objects, and assist with identifying areas of weakness and service provision.

- It is recommended that the Commonwealth and State Funding Agreements make reference and support the Objects of the DDA. Direct and indirect discrimination impacts on people with disabilities, their partners, families or associates due to the lack of adequate supports and services. Demand for services far outweighs provision.

Promoting recognition and acceptance

- Significant and entrenched lack of knowledge exists in recognition and acceptance of the right of people with disabilities to equal access in all facets of life within society.
- It is suggested that a national community education campaign (similar to drink driving campaigns) would provide a proactive mechanism for increasing community awareness of the importance of universal access not only for people with disabilities but for older people and parent with prams.

Competition and economic effects

It is the opinion of the City of Melbourne Disability Advisory Committee that economic benefits result from the elimination of barriers that inhibit inclusion and participation of people with disabilities. Long term economic benefits far outweigh short term increases in cost (that address barriers). For example,

- A participant in an access seminar (Good Access is Good Business 14 July 2003) reported that the installation of an access ramp at the local fruit shop resulted in increased business and the cost of the ramp (\$400) being recouped within a month.
- The Victorian Office of Housing has found that the additional cost for building an accessible house is between 3%-8% (on average 4% equating to \$4,000 - \$5,000), whilst modifying an existing (non-accessible) house and providing a standard of accessible accommodation costs approximately \$25,000 to \$30,000.
- Improving access to public transport benefits not only people with disabilities but also parents with small children, older persons, and those with temporary disabilities. A study undertaken in Norway (Lyche & Hervik 2000) in relation to improving accessibility of public transport found that it is cheaper to implement accessibility measures by periodically purchasing new low floor buses (that include an access ramp) rather than modifying and/or reconstructing old equipment.

The Australian Bureau of Statistics estimates that 18% of the Victorian population has a permanent disability, and with the ageing of our community (by 2020 25% of the population will be aged over 65 years) it seems evident that business will benefit in the long term by ensuring access for people of all abilities (with disabilities, older, parents with prams, temporary disabilities) who may be potential customers or employees.

Regulations, standards and other instruments

- The development of standards in all specific activity areas in the DDA will clarify expectations, enhance public knowledge and provide guidance to assist / ensure compliance to the DDA.
- The City of Melbourne Disability Advisory Committee considers it essential that the gaps in building legislation and regulations that contribute to the absence of universal access in design and outlay of public premises be addressed and provision made to prohibit these loop holes.

Industry Self Regulation

- Adherence with the DDA is based on voluntary compliance except in cases where other forms of legislation (building) require compliance to specific standards or as a result of a successful complaint lodged with HREOC, Equal Opportunity Commission or Courts.
- Self-regulation, that is not guided and supported by a legal framework, will not address the significant discrimination and barriers that persist within our society.

Complaints and the Role of HREOC

- It is considered vital that a specialist body, such as the Human Rights and Equal Opportunity (HREOC) exist to receive and deal with complaints in relation to compliance with the DDA. The role of HREOC in the conciliation of complaints, community education and the development of standards is a vital component of the legislation. Although, the complaints process is time consuming and costly (both financially and emotionally) it is an important mechanism within the legislation that attempts to ensure provision of universal access within communities.
- The DDA stipulates that the complainant has the responsibility (onus of proof) for collecting and detailing evidence to prove that discrimination has taken place. It is recommended that support to assist individuals with the provision of this information would empower and demystify the process, enabling more people to lodge complaints. It is also considered important that the needs of Indigenous Australians with a disability are recognised within the complaints procedure.
- The City of Melbourne Disability Advisory Committee strongly advocates that the specialist role of the Disability Commissioner not be compromised as proposed in the *Australian Human Rights Commission Legislation Bill 2003*.

Looking to the Future

People with disabilities have the right to participate, make choices and have access to goods and services available within our society.

The objects of the DDA can be further supported through a national community education campaign that illustrates, supports and reinforces the importance of universal access as a basic human right and a necessary investment for creating a more equitable society in the future.

It is therefore recommended that it be considered that the legislation introduce sanctions for non-compliance.

In relation to the built environment, a proactive process whereby property owners, who feel they cannot provide equitable and dignified access to premises, are able to make a submission to HREOC on their positions and have their cases heard to obtain a ruling prior to the construction of the works warrants consideration. The implementation of such a process will avoid expensive legal costs and alterations costs to premises resulting from the current complaint based process.

RECOMMENDATIONS - Discrimination in Specific Areas of Activity

It is recommended that the specific area of activity within the legislation be maintained and strengthened to ensure compliance with the Objects of the DDA.

Specific recommendations in the following areas include:

- Employment - Development of standards including penalties for cases where discrimination has been substantiated.
- Education - The allocation of specific resources within budgets to ensure adequate provision of resources and teaching aids for people with disabilities.
- Access to Public Transport - Monitoring and periodic reporting on attainment of the Standards to be reported to HREOC and widely publicised.
- Goods, services and facilities - Compulsory development of Disability Action Plans should be a key requirement for providers of goods, services and all public facilities.
- Accommodation, land, clubs and sport - The progress on development of standards has been slow. The DDA should be amended to provide for development of standards for land, clubs and sports venues. The City of Melbourne Disability Advisory Committee wishes to highlight the importance of residential dwellings being accessible to all members of the community. Social participation and inclusion relies upon all members of the community having access and being able to visit, socialise and attend the homes of friends and relatives. Individual members of the City of Melbourne Disability Advisory Committee are aware of a lack of accessible housing within the community and therefore wish to advocate for the development of regulations or standards for accessible residential housing.
- Commonwealth Government laws and programs - The Commonwealth Government has chosen to develop and implement the Commonwealth Disability Strategy to put the DDA requirements into practice.