Independent Living Centre NSW Inc

Submission to the Inquiry into the Disability Discrimination Act

The Independent Living Centre NSW Inc provides information, advice and education services regarding assistive equipment and technology, home modifications and accessible environments. Information is disseminated throughout the community – to individuals and their carers, health professionals, designers, construction industry personnel, and insurance providers. The Centre was established in 1981 and receives funds from the NSW Department of Ageing Disability and Home Care to provide information services.

Our submission is largely from the perspective of the built environment, as this is our area of greatest expertise related to the DDA. Whilst we have an understanding of other issues such as transport and accommodation, we assume that other organisations are better placed to provide input into the Inquiry.

We are actively engaged in the development of Australian Standard 1428, 'Design for Access and Mobility', and keep abreast of industry developments, including changes to the Building Code of Australia that calls up AS 1428 – 2001.

We were commissioned to work on many of the Olympic sporting venues, including Stadium Australia, to ensure complete accessibility. We have been providing access advice and audits for the last nine years for many of the major developments in Sydney.

This submission is not researched or referenced, but we hope to provide some insights from our organisation's perspective. Not all points are addressed, but are generally in progressive order according to the issues paper.

Would an alternative definition of disability be more appropriate?

The term "disability" is a socially constructed concept and since it is labelling, it is marginalising. Discrimination occurs when groups/people are marginalised. The purpose of the Act is to make services and environments inclusive. The name of the Act is therefore self-defeating.

Given that very few people are "perfect", "disability" occurs in almost everyone's life at some time, most often as they get older. Broken limbs, arthritis, and medical conditions are experienced throughout the population. "Disability" does not equal "wheelchair user" – it is much broader. However, the wider community tends associate 'disabled' with 'wheelchair'.

When the general public hears or reads the word disability, or sees the international sign that looks like someone is sitting in a wheelchair, they immediately think of a wheelchair user. In particular, older people with reduced functioning do not consider themselves disabled and do not relate to the term; they are just not able to do the things they used to.

Any alternative definition would need to be discussed widely as it could impact on the naming of government programs, such as “Disability Services” and indeed, the NSW Department of Ageing, Disability and Home Care.

The World Health Organization’s International Classification of Impairments, Disabilities and Handicaps (1980) has been reviewed. The Australian Institute of Health and Welfare conducted a series of national studies. The suggested terms contained three “dimensions”: Impairment, Activity (and Activity Limitation) and Participation (and Participation Restriction). This was an attempt to reflect the shift away from negative terminology, and to avoid confusion with the many meanings of “disability”. Refer to Australian Institute of Health and Welfare, *Disability Data Briefing* (1997) for more information on the progress of this review and the current status.

“Disability” is a misleading term and should be eliminated from the name of the Act and a more positive term used. For example, Equal Opportunity in Employment Act is a more pro-active name than Employment Discrimination Act. Perhaps “Equal Access Act” or, “Equity of Access Act” are better names?

Disability is the inability to interact with the environment in a way that allows fulfilment of goals normally afforded the general (non-disabled?) community. These are day to day activities such as going to school, getting a job and going to work, using public transport, visiting friends and participating in recreational pursuits. Even at home it is about reaching the tap, turning on lights, cooking a meal, and having a shower.

With inclusive environmental and technological designs, many more people can interact successfully with their environment and are therefore no longer “disabled”. Barriers in the environment more often disable people than their apparent lack or loss of function. Assistive equipment and appropriate designs have the potential to minimise or overcome functional loss, but not to overcome attitudinal and constructed barriers to participation.

Reducing barriers to participation benefits everyone in the end. For example, our experience at the Independent Living Centre NSW is that built environments suited to wheelchair users are enhanced for everyone. This is particularly so for parents with children in strollers, people manoeuvring goods and parcels, and people with temporary injuries or medical conditions.

Unjustifiable hardship

Creating a future where barriers to participation are eliminated begins with understanding what real hardship is. In some cases, business owners and managers consider that being forced to accommodate the needs of a greater cross-section of people is discriminating towards them. Often they do not see the advantages to their business, or to the general community. Many times they do not see that, for example, creating wheelchair access, also creates access for goods delivery, parents

with children in strollers, older people with walking sticks and walking frames. Kneeling buses are good for everyone – they are safer, especially for children and older people, and people carrying large parcels.
In some ways, this is a chicken and egg argument – it was not until improvements to built environments occurred that other members of the community benefited, so it is not always known what the unintended consequences, negative or positive, will be. It is arguable that for each negative consequence of a disability discrimination decision in favour of the person with a disability, there will often be a positive consequence for the general community. Best practice programs should be developed in the same way as the disbanded Affirmative Action Agency tried to work until it was disbanded.

Included in the hardship clauses, should be the cost to the community of all the disability advocacy groups, working away behind the scenes to get things changed. These are government funded bodies, whose specific aim is to gain improvements in all areas of life. If those improvements were already in place, the need for such groups would diminish significantly. There is a "disability industry" fighting for the rights afforded to people labelled as "disabled". It should be the aim of the DDA to basically eliminate the work of these groups.

If and only if DDA compliant building designs, were presented to property owners, they would not have a comparison for a "cheaper" option. For example, designs that do not comply with fire safety standards are not presented to clients, therefore they do not know how much "extra" they are paying for this compliance.

Reasonable adjustment

This clause should be included in the Act. The Independent Living Centre's experience of "hardship" for property owners mostly relates to existing buildings rather than new developments. We work with many architects, designers, and property owners to solve the issues of compliance with the DDA. In most cases, cost-effective, yet compliant compromises can be achieved, but this is not always the case. Some room for adjustment and a plan for ongoing improvement would be welcome.

The concept of reasonable adjustment allows existing environments to evolve. We currently have "islands" of accessibility in cities. That is, the number of individual public buildings with improved access have increased, yet the paths of travel between them are inaccessible at worst, and difficult at best. The DDA should encourage a stepped program of compliance in the same way as the Transport Standards in NSW.

Description of the social, environmental and economic problems

The Act adequately describes these concepts. The Independent Living Centre believes that the Act has influenced attitudes which are, in turn, changing behaviours for the better. Many more people understand that "disability" applies more broadly than "wheelchair user" and that they, and their family, may need the benefits of this Act one day. The ageing population is probably affecting this shift in attitude too.

Costs and benefits of the DDA

Many people with a disability are unemployed. This poses a direct cost burden on the general community. The indirect costs are those associated with people who are not part of the workforce and contributing to the economy – health and welfare services usually provide higher levels of service to this group than the general community. Apart from attitudinal barriers to participation, many sections of the physical environment are not accessible. Savings may also be made in reducing the provision of government funds to disability advocacy services – if the rights of people with disabilities were enacted, the need for these groups would be diminished. They are de facto enforcers of the Act.

The argument that others in the community may bear indirect costs is offset by the argument that they receive the indirect benefits of accessible environments and services. Most people belong to a family. It is difficult to believe that within that family there is not, nor will be, a member who experiences a disability of some form. The argument of higher prices is a difficult one to sustain in light of all the other rules and regulations to which businesses have to comply that have a cost factor.

Disability standards, independent monitoring

The DDA should be amended to allow disability standards to include monitoring and enforcement. The complaint mechanism requires the individual to commit to a process of maintaining an assertive stance. Some people with a disability require all their personal resources just to undertake daily living activities, and there is little energy left for legal action. The complaints mechanism is asking a disadvantaged group to fight for their rights. Rights should be delivered, not fought for.

As mentioned above, disability advocacy services that use the complaints mechanism would no longer be de facto enforcers of the Act.

Guidelines and advice

The disadvantage of guidelines is that they are not enforceable and may be ignored. For example, in our experience, some owners of buildings are prepared to take a risk that a complaint will not be lodged about non-compliance with the DDA, and that they will therefore not be found out. They actively choose to flout the Act.

Voluntary action plans

There are no sufficient incentives to submit voluntary action plans, as there is a lack of awareness and motivation to do so. Exemptions may be one mechanism to initiate awareness and motivation and could link with the hardship clause.

Barriers to making a complaint

As mentioned earlier, the main barriers are personal resources – confidence, energy, finances, ability to communicate and articulate. Many people lodging complaints do so with the help of an advocate, and/or a disability advocacy service who provide the resources.

It would be advantageous if the DDA was amended to allow HEROC and/or others to initiate complaints as it would be less intimidating for individuals and would be a more powerful process.

The current complaints mechanism does little to improve the attitudes of the wider society, which is the biggest barrier of all to access to services, buildings and employment. The complaints mechanism makes a monster out of the complainant, not the offender.

Future changes

There will be more people with reduced physical, sensory and cognitive functioning living within the community in the future. Much has been said publicly about the ageing population and the various policies for ageing in place (at home). By the time the "baby boomer" generation has passed on, it will have become apparent that the DDA was an important piece of legislation and should not have been compromised. The demand for access to services and environments will have been well and truly argued.

The DDA will be better placed to meet future challenges by the baby boomer generation and younger people with disabilities by changing the complaints-based nature of the Act. More enforcement is needed.

Adaptable housing and accessible housing should be included in all residential developments. This is happening in some local government areas, but not all. People who need to live in an accessible home, also like to visit their friends and not get stuck at the front gate.

Public transport

In NSW, accessibility of public transport has improved on state transit buses and some train stations with newly installed lifts. However, this is not the case with privately owned buses that operate outside the inner metropolitan area of Sydney. where the majority of the population live. The process is very slow. Twenty years is too long to wait – faster changes are required to keep up with community demand. Taxis are available, but not reliable. People who need an accessible taxi are never guaranteed of its arrival, let alone arrival on time. It is very difficult to organise your life with such uncertainty built into your daily program.

Public transport is a very good example of how access for wheelchair users has enhanced travel for others. Parents with baby strollers, people with large parcels, people with walking frames and/or poor mobility have all benefited from better access to train stations. No longer should we see mothers struggling up and down steps with bags, a baby and a stroller, nor struggling up the steps of a bus.

Public premises

The DDA has improved access to public premises. We deal with architects and building designers and owners on a regular basis as part of our access auditing service. In the last five years much has improved, but only because we use the provisions of the DDA and assert that compliance is required. The Building Code of Australia, and the relevant Australian Standards that it calls up, are insufficient in

themselves to provide compliance with the DDA. Our regular clients are now well versed on the issues and do not consider non-compliance, and their designs now automatically incorporate accessible design features. The Act has served the community well in drawing attention to the issues, but more needs to be done to ensure compliance.

HEROC should be given the authority to designate unjustifiable hardship. It has been difficult to apply this concept to premises because what is costly in one situation or environment may not be as costly in another. However, the benefits in one situation may be greater than in another. Unjustifiable hardship is a socially negotiated concept and needs an arbiter with experience of many situations from which to judge the hardship claim.

The owner of the premises, or the owner of the business in rented premises, should bear the cost. (This of course will be passed on to the customer). In time, if the Act continues and compliance is enforced, owners of businesses will seek out accessible premises, so in the end it will come back to the building owner. Building owners need to make sure the designer complies with the DDA, especially for new buildings, and if it does not, the owner should pay. The aim is to get all new and existing buildings designed for accessibility without exception in the same way as they are designed for fire safety standards. Equity is the issue – for people, for premises, for businesses.

Guidance to local councils on compliance with the DDA would be helpful and necessary if the Act becomes enforceable.

Goods, services and facilities

The DDA has been very limited in eliminating discrimination in existing premises/facilities. In our experience, only when the need to comply is brought to the designer's or owner's attention, and the point pressed, does compliance occur. When the client finds that the consequences for non-compliance, are dealt with by a complaints-based system, some are prepared to take the risk of a complaint, and go ahead with non-compliant designs. The main reason for any compliance to date, is the demand by local councils to have development applications audited by an access consultant.

Accommodation, clubs and sport

In our experience, some registered clubs are motivated to seek designs for accessible premises as their board members age or experience a medical condition, not for the inclusiveness of their members. Fortunately, many registered clubs receive significant incomes from gambling machines and are financially able to make the necessary adjustments in design when they next refurbish their premises. In these situations it would be difficult to argue the hardship clause, especially as clubs encourage the use of their facilities by older people as evidenced by specially priced meals for "seniors" and daytime activities.

Disability standards should be developed for accommodation, especially public housing, and multi-dwelling developments. The existing Australian Standard for Adaptable Housing is a good start. Again, local councils are driving this compliance.

With so many assistive devices and other items equipment on the market designed to assist people with various types of functional loss, there is no reason why people with a disability cannot be involved in clubs and sports activities. Standards would provide the guidance needed to bring equity into this area.

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