

Background: Leichhardt Council's Access committee was one of the first to be established anywhere in Australia in 1970, and has achieved a great deal in relation to improvements to access in the Municipality.

The DDA Act 1992, was the impetus for Council to address the existing access problems of operating from heritage buildings built in the 1880's. Council adopted a DDA Act Action Plan, see enclosed in 1997, and has almost completed all of the Priority 1&2 recommendations as well as further improvements to access not anticipated at the time.

The strength of the DDA legislation, together with the administration of complaints by HREOC has seen great improvements to access in this Municipality, which might not have happened, had the legislation and HREOC (in its present form) been in place.

In addition, the DDA Act has been used by the community to create change, either by making complaints of discrimination or by using the law as a basis for negotiating broad social change or educating organisations (including this Council) on their responsibilities.

Issues to be addressed:

- 2.1 Definitional Issues:** Council supports the present broad definitions of the DDA Act. The particular areas of activity are *access to premises used by the public (including public transport), employment, activities of clubs and associations and sport*. A small addition, Sport **AND RECREATION**, would enhance the legislation and encourage better access to recreational activities, not generally considered sport, eg walking and cycling trails, libraries etc.

"Unjustifiable hardship": Council has welcomed this clause in cases where a school could not in the short term offer full access to water activities taking place down a steep cliff, but where alternative programs were found to more than compensate students with disability. However, we did not allow this as an excuse by a commercial leisure centre, for not providing access to its upstairs hall.

This Council would like the legislation to mention Local Government's role in assisting determination of "unjustifiable hardship". In addition Councils and other bodies would appreciate better guidance and clarity on just what constitutes "Unjustifiable hardship". In determining these cases, councils are opening themselves up to liability if a complaint is then made about a particular premises to/within which we did not require full access to be provided.

- 2.2 Problems the DDA seeks to address:** The objects of the DDA Act 1992 are similar to those captured in Council's policies, albeit on a smaller scale. We will go on working to redress injustice and discrimination caused by wilful or unintentional bias towards people without disability.

The problems are not considered to have changed since the introduction of the DDA, but better information on rights, has raised the issue to one of greater importance.

- 2.3 Effectiveness in achieving objectives:** The role of HREOC here is crucial in its reporting on complaints, which assists policy makers in knowing where areas of discrimination lie. There is no official method to establish numbers and types of disability in any community. Box 3 provides some useful pointers to governments in measuring whether they are meeting targets in reduction of discrimination. There need to be fewer arguments around positive discrimination towards people with disability. The provision of employment, physical access, appropriate recreation all lead to long term savings in welfare and health budgets at all levels of government.

A measure of **physical access in the built environment** is that it provides a seamless transition from car or public transport into buildings, which is involved in good design at the time of the initial building. Some ramps are ugly, because they are attached like scars at a later date. Council Development Control Plans all need to be "in tune" with the DDA Act, ensuring good design from the outset.

Signage is also important, but often is not in place to guide the person with disability on the most accessible routes.

State governments have in place plans to make all bus, ferry, train and light rail transport fully accessible, and these are plans which can be measured. Governments can fail to budget properly for capital works to improve access and this is a form of discrimination. HREOC is not able to monitor plans, but rather responds to complaints. It would be useful if they were provided with resources to encourage best practice in both government and privately built environments.

Many councils including this one, run annual Access Awards, whereby the issues around access can gain media attention. A recent awards project was conducted of 150 doctor's surgeries in the Municipality. Only three were found to have good access, with a further three having reasonable access. This measurement provides good data on reasons to provide further education of the public on the provision of adequate/good access to buildings and services.

Ensuring equity before the law: The NSW Local Government Act 1994, makes provision for charges to be levied when changes take place to buildings, affecting the streetscape. This Council's Access committee has argued for reduction in fees, where ability to gain access to a person's own residence is compromised by disability. This is a case of positive discrimination, broadening the principles of the DDA Act to assist in particular cases.

In addition, we support the positive representation of people with intellectual and psychiatric disabilities in court proceedings. At Council level, this could involve taking a case to the Guardianship Board, or to the Court of the Protective Commissioner, where a person with disability wishes to remain independent in the community, but needs considerable assistance to do so.

Promoting recognition and acceptance: Council's social policies play a local role in doing what the DDA Act achieves on a national level. The Access committee believes that by making substantial changes to the built environment, that participation by people with disability is taking place in community groups, including advocacy, self-help and recreational groups. Continued recognition of sports people with disability has happened, since the spur of the Paralympics. The media, mainstream schools, Councils and others need to give positive acknowledgment where people with disability are making remarkable achievements.

2.4 Competition and economic effects: The installation of access to the built environment has produced economic (costs) effects. Each annual budget must list items that require rebuilding, or other changes. Council would welcome any ideas on ways of quantifying the benefits of direct and indirect costs of providing access. However, as the local regulator of new constructions, it must be seen as keeping its own house in order, so that the wider community will actively pursue access, given leadership from the local Council.

2.5 The DDA and other legislation: The uniformity provided by the DDA Act provides a certain stability throughout Australia in the way anti-discrimination legislation is applied. The Commonwealth government is planning to broaden its legislation to include age discrimination. This may be commendable, but may not recognise that the other Commissions of HREOC, eg Aboriginal, Disability, Race, Sex and Human Rights have a way to go before the wider community catches up with the concepts of justice and fairness encapsulated in DDA legislation for these target groups.

The costs of the Commonwealth introducing omnibus legislation that covers discrimination on the grounds of sex, race, disability and age could be that specific areas of knowledge of discrimination could be lost, especially if HREOC is restructured to consist of a President and three Human Rights Commissioners. The benefits of bringing age discrimination into HREOC are yet to be measured. Most states have age discrimination legislation, but bias continues against older workers, which is not in the national interest.

2.6 Regulations, standards and other instruments: Council has no particular expertise or knowledge in the area of regulations.

Disability Standards are very much in our arena, and continual appraisal of the Building Code of Australia is required in order to ensure that the best principles of building for access are being applied in our Municipality. Provision of around 10% of "Adaptable, Accessible and Affordable" (AAA) housing would provide a benchmark against which to measure our performance. Over time, it would reduce discrimination of people with disability, who generally have less ability to purchase their own homes, or indeed to find suitable rental accommodation.

A recommendation from this committee, that the DDA Act be amended to ensure that Local Government is encouraging development of a percentage of AAA housing, would provide for local initiatives to take place throughout Australia.

HREOC guidelines and advice: The non binding nature of these documents are seen as offering positive encouragement, but sometimes the “big stick” of disability standards is necessary, whilst community attitudes towards disability are changing.

Voluntary action plans: Apart from public sector organisations, few businesses do submit these plans to HREOC. It is possibly only when defending a case of “unjustifiable hardship”, that they are written. It is not thought that HREOC has resources to cast a wider net, although as an exercise, it is useful for all businesses to engage in the exercise of producing an Action Plan. The suggestion for industry to engage in self-regulation appears to be a useful concept.

2.7 Complaints: It is generally known that people with disabilities are reluctant to make complaints to HREOC, because of fear of legal costs, and lack of knowledge of the processes involved. The original DDA's powers, where the Disability Commissioner could initiate complaints and make determinations about remedial action still has merit. If HREOC is not considered to be the appropriate body to undertake both complaint and remedy, then another body or bodies, such as disability peak bodies should be empowered to lodge complaints.

2.8 HREOC's education, public policy and inquiry roles: HREOC still has a leadership role in these areas to advise all levels of government and the community where discrimination is taking place. Some opinion fears that HREOC's role is being progressively weakened, particularly by the present legislation to abolish the positions of particular Commissioners and instead to appoint a President and three Human Rights Commissioners. There has only been one permanent Disability Commissioner, Elizabeth Hastings, and when her term expired in 1997, the Human Rights Commissioner Dr S. Ozdowski has acted in the position, along with his other areas.

This will progressively downgrade, by generalising, Australia's commitments to the promotion of human rights and elimination of discrimination. The *Report of Ten Years Achievement of the Disability Discrimination Act* shows how thousands of individuals and organisations have used the DDA to create change, either by making complaints of discrimination or by using the law as a basis for negotiating broad social change or educating organisations on their responsibilities. Despite this, HREOC could be better known as a community educator. The HREOC website receives 3 million “hits” every month- an indication of the value of its information to the Australian community.

If the DDA is to meet future challenges and play a constructive role, it will need specific resources to deal with the expansion of medical technology, genetic screening, and a rising aging population. By keeping separate portfolios or areas of expertise through the Commissioners, their knowledge and educative abilities will expand, and there will be greater community understanding of HREOC's role.

3.0 Discrimination in specific areas of activity: For the present submission, Council's Access Committee will confine its response to Item 3.4 and 3.6

3.4 Access to public premises: It is undeniable that the DDA has improved access to public premises. The proposed revision of the BCA to meet DDA requirements is welcomed, as there are presently many inconsistencies. A lack of clarity on what is required of building owners and organisations to meet the requirements of the DDA for the provision of equitable access to premises is a cost to the community. This could result in inadequate access being provided, which may lead to litigation and its associated costs.

The cost of retrofitting premises is much more expensive than if access is included in the original building design. Furthermore, reliance on the AS for access standards is problematic, given the restrictions placed on the reproduction of the material in our (and any ones') Development Control Plan and the costs associated with purchasing the data from them. What is needed is a standard that is easily disseminated and accessed, and the community needs to be notified when it is updated- and to be involved in this process. This would provide a far better outcome than is available at present, where *Standards Australia* is taking an extremely long time to produce the new "Standard for Access".

There has been excellent work in Eric Martin's paper, *Improving Access to Heritage Buildings*- see attached flow chart. He states "there must be a shift in conservation policy which taken into account the social and legal duty to provide access and facilities for people with disabilities, if real improvement in access to heritage buildings is to occur". Leichhardt council provides a case in point, that heritage buildings can also be accessible.

"Unjustifiable Hardship" – see earlier- page 1

The impact of disability standards for public premises will make for a simpler interpretation by assessors and the public as to ways of compliance with access standards. At present, councils produce Development Control Plans which have to be amended frequently, when changes occur with the Building Code of Australia.

3.6 Accommodation, land, clubs and sport: Leichhardt Council has an "Active Australia" policy, which includes making sporting and recreational facilities available to people with disabilities. It encourages the mainstreaming of people with disabilities into all recreational opportunities. Rent of space at its Community Centres is made minimal to groups of people with disability in order to encourage development of social networks.

Despite this, the DDA Act is not well understood by sporting clubs. The NSW Disability Sports Council is one body which exists to break down barriers, but further work is required in educating the public.

Conclusion: Leichhardt Council's Access Committee is pleased to have the opportunity to contribute to the discussions around the DDA and proposed changes. The DDA Act provided the "big stick" in 1996/7 to this Council to get its house in order, which caused budgetary difficulties at the time. However, without it, we could be back in the 1880's, when our public buildings were constructed. The DDA is in keeping with Council's other policies around social justice and positive discrimination and we have been able to take a leading role in provision of access, which is now being taken up by the wider community. The HREOC Website is an important disseminator of information on disability rights. Councils and other levels of government could be required to provide local or specific information on their websites, on disability rights and disability access to enable deeper understanding of the importance of DDA legislation.

