Marrickville Council Submission to the Productivity Commissions Inquiry into the DDA

1. Introduction

Marrickville Council is pleased to present a submission to the Productivity Commissions inquiry into the Disability Discrimination Act (DDA) 1992. The submission is based on Council's observation of the DDA's implementation. Council's comments have also been formed through experiences in responding to the provisions of the Act and to the issues of people with a disability and their families living in the local area.

1.1 The Marrickville Area

The Marrickville local government area was created in 1948. It has a population of over **73,000** residents and is located in Sydney's inner west. The whole of the area lies between 4 and 10km kilometres from the centre of the city. Marrickville exhibits features typical of older inner city suburbs, and contains many items of heritage and of cultural importance, including sites of Aboriginal significance.

Marrickville's community is extremely diverse and the population density is one of the highest in Australia. Marrickville's post war history was characterised as a place of migrant settlement - often thought of as the birthplace of multiculturalism - where the benefits of a multicultural society are now well appreciated and actively celebrated.

Marrickville today appeals to a diversity of people as seen in the number of Aboriginal and Torres Strait Islander residents, the broad range of religious affiliations, the number of different languages spoken, the varied lifestyles of people of different age groups, of people with a disability and of Marrickville's gay and lesbian community, the wide socio-economic differences between the suburbs and the significantly high renting population.

1.2 The Marrickville Model and citizenship

Council's operations are currently guided by the Marrickville Model which is about integrating citizenship and corporate governance in a diverse, innovative and vibrant community. It defines Council's role and relationship with the Marrickville community. We see ourselves as part of the community not separate from it. We see residents as 'citizens not customers' and treat citizen access and involvement in the democratic process as a priority. A key principle of the Model is to create a strong participative framework for community decision-making through consultation and an emphasis on community building initiatives. Social Capital is one of Councils "community building' goals.

1.3 Marrickville's initiatives

Marrickville is about difference and celebrating diversity. Council has a strong commitment to social justice principals and has a record of responding to access and other issues affecting people with a disability. In particular the DDA Access Action Plan – is a plan which sets the policy context for the creation of an accessible and inclusive community. It was adopted by Council in 1999 and sets out strategies to remove identified barriers for people with disabilities and their families from participation in community life.

Council is also one of the few NSW Councils to employ a full time officer on disability issues. This has allowed a greater focus on this topic and enabled a number of initiatives that have been recognised as best practice. These include Council's;

- Accessible Pathways Program
- Pedestrian Access and Mobility Plan.
- Development Control Plan for Equity of Access and Mobility;
- inclusion in the Sydney Olympic Park Authority website as an example of best practice in achieving access for a local government area

These initiatives have been undertaken in an integrated approach across various sections of Council and have involved members of the community in their development.

2. Scope of the submission

This submission concentrates on the broader structural elements of the DDA. These comments are provided as a framework to consider at the public hearings. Other comments relating to the specific areas covered under the Act and questions raised in the Issues Paper will be covered in more detail at the hearings or in subsequent submissions.

Council notes a number of key elements to the DDA which have allowed a much more comprehensive picture to be considered on how discrimination affects the lives of people living with a disability and their families. These are acknowledged below.

2.1 Coverage

The provisions within the Act to include a broader range of conditions that have a disabling consequence is heavily supported. Also the extended coverage to include conditions that may have occurred in the past or presumed to occur in the future provides stronger protection from discrimination than would otherwise and is also supported.

The provisions within the Act to consider the 'associate' of a person with a disability have more accurately reflected the true scope of issues facing people with a disability. It has broadened the investigation of how practices may impact on people and those with them. This provision successfully recognises that relationships are an integral part of participation in society. Combined with the recognition that both direct and indirect discrimination has on those with a disability and those associated with them, much of the daily experience of discrimination is covered.

2.2 Types of discrimination

The distinction between direct and indirect discrimination has provided a solid base to assess the impacts of particular policies and practices. The reality for most people with a disability is that indirect discrimination is far more likely to be a barrier than direct discrimination as a result of a disability.

This is particularly so in regards to planning and development consent issues that local governments routinely deal with. However the same can be said for many operational practices, policies and regulations from the way that waste is to be prepared for collection, the way pedestrian infrastructure is designed and signed to employment practices including health checks. Council congratulates the Commonwealth on this distinction and its inclusion in the Act.

Coverage of the Act to include the 'intention' to discriminate is also supported. Although this becomes a difficult task to assess in a complaints based system, the principle is sound and should be looked at more closely to provide clear directions on when this would constitute a breech. Alternatively coverage could be improved in this area through the inclusion of what might be termed 'structural', 'systemic' or 'institutionalised' discrimination.

2.3 Definitions

While the broad inclusive interpretation of who is included in the Act is welcomed, the definitional aspects of disability used within the Act are problematic. This is because a medical model which sees disability and impairment as interchangeable has been used. Usage in this context can cause a misunderstanding about the source of the disability. The disability community generally regards the term 'disability' as being external to the person and referring to the social disadvantage and/or 'discrimination' that can occur as a result of a persons impairment and their experience of interaction with a non inclusive environment or social system that does not address difference. In that context the term disability discrimination is somewhat tautological and the source of some confusion. However it is acknowledge that this debate is ongoing and not limited to the Australian situation.

An issue emerging from this debate is that legal definitions of disability are not consistent but vary throughout the law. As more people use a variety of Acts and pieces of legislation to support their rights it is becoming increasingly more complex and important to abide by a clear set of terms that establish who is protected and from what. The challenge ahead will be to understand and consistently apply terminology that accurately reflects the nature of disability and the lived experience of people with disability in the legal arena.

2.4. Action Plans

The capacity to create Action Plans under the DDA as a genuine way to manage complex and costly changes to an organisation's practice, buildings and facilities, information systems, employment practices and service provisions has been a highly useful tool. Council acknowledges the benefits of this approach and that Action Plans can provide an effective means to engage the community, identify their needs and develop appropriate strategies to remove barriers. It has also enabled partnerships to be built and stronger relationships with the communities concerned. Actions Plans however should be seen as an ongoing process rather than a one off solution. Council suggests that Action Plans would have even greater impact if HREOC had a more proactive role in educating agencies on the advantages of Action Plans and on how to develop, implement and review them effectively. It is appreciated that while HREOC continues to be involved in complaint mediation as well as policy and educative functions this may be difficult to fully apply (see also section 4.3).

3. Structural limitations of the legislation

3.1 Complaints basis of the Act

An ongoing structural limitation of the DDA is that it is complaints based rather than rights based. Given the widespread systemic nature of disability discrimination many people have argued that reliance solely on a complaints based approach is an inappropriate tool for social change for this population. This is because change is largely reliant on individuals satisfactorily identifying a respondent, proving agrievement (within the context of the Act) and that a resolution would not constitute an unjustifiable hardship.

Any one of these tasks can require considerable effort for a well resourced advocate. Combined they can prove in themselves an arduous and insurmountable barrier. It is not uncommon for people to give up, decline from pursuing their complaint or simple not lodging one in the first place.

In contrast rights based legislation would set benchmarks of what would be acceptable practice, establish guidelines for implementation and penalties for breaching or non compliance. The responsibility to comply would be shared throughout the community (sometimes referred to as reasonable adjustments) and would become common practice. In this model potentially discriminatory practices are easier to identify earlier and rarely develop beyond conceptual stages as they must go through a more robust assessment regime along with other important issues. They become mainstreamed and a part of the service culture and practitioners are familiar with the regulations, what is expected of them and penalties if they are ignored. This is considered a far more practical way to address systemic discrimination and reflects the models chosen overseas where similar disability anti-discrimination law has been adopted.

In the current complaint based model of the DDA there is also doubt as to what constitutes a legitimate complaint and at what point the Act is breeched. A complainant must be able to show that they have been the subject of discrimination and experienced its impact before a complaint can be accepted. At times this can hold true even if the discrimination was preventing the person from the activity under question.

A case in point is Moxon vs Westbus. Mr Moxon claimed as a wheelchair user that he was unable to use his local bus service (Westbus) because the bus had steps that prevented him from boarding it. The court found that he had been discriminated against on that occasion however that did not mean that the discrimination and the impact to him could be extended to other occasions however likely or similar if the service remained inaccessible. Also the court found that determination of unjustifiable hardship had to be measured for that occasion alone and within the capacity of the respondent to not discriminate at the point that the incident occurred. This case highlights several issues;

- in order to show the full impact of the ongoing discrimination Mr Moxon would have to actually attempt to board the bus on every occasion that he wished to argue he had been discriminated on;
- the fact that it was obvious that the Westbus service was inaccessible to Mr Moxon on an ongoing basis could not be included in the assessment of the incident at hand;
- the fact that the service was inaccessible made it impractical (and possibly vexatious) to attempt use on a daily basis and subsequently make a series of complaints, and
- the intent or spirit of the Act can be lost in a technical reading of the Act and application of it.

Therefore in its current form the complaints basis of the DDA centres on single events of discrimination experienced by an individual and acts at best as an avenue of redress for a specific experience. It is not a practical way to remove ongoing systemic or structural discrimination.

The current complaints processes (having a complaint resolved) coupled with the ambiguities of determining unjustifiable hardship are onerous for anyone attempting a resolution. This has become more difficult with the transfer of judgment wholly to the Federal Court and the level of preparation and costs that follow. While the Federal Court processes can be a daunting experience for anyone it is unreasonable to expect that a person with cognitive or intellectual impairment is able to advocate on an equal basis in this environment. For people with a disability from NESB or ATSI backgrounds the situation is similarly complex and presents formidable barriers.

A further problem of the complaints basis of the legislation is the amount of case law required to establish precedent. The numerous individual cases that are successfully mediated cannot affect case law or set precedent even when they are closely related to a case being contested before the court. Subsequently the law does not benefit from the body of knowledge established through conciliation on disability discrimination which remains a relatively new and unfamiliar area for many advocates and legal practitioners including judges.

3.2 Unjustifiable Hardship

A major concern of Councils and the community has been the interpretation of unjustifiable hardship (UH) under the Act. A common comment by people with disability and their families is that the hardship they endure when living in an environment where their needs are often not met and their rights denied is not sufficiently factored into the equation. As such the hardships to those individuals while massive is either not recognised or interpreted as justified.

There is also a misconception that the status quo is cost neutral to society and this myth needs to be corrected. An easy illustration on this is the NSW Department of Ageing, Disability and Home Care (DADHC) alone spends over a billion dollars a year on disability specific services and supports. DADHC acknowledges that many of these have been created to fill the vacuum created from widespread and historic reluctance of all sectors to deliver inclusive and non discriminatory environments and services for people with disability in particular and society in general. It should be remembered therefore that costs are currently met by both individual and taxpayer to subsidise the exclusion and set up alternatives systems for those excluded.

From an economic viewpoint alone this distorts the reality of the market and is unsustainable. The key question is whose responsibility is it to adjust this imbalance and to what extent. As a response to this question UH has been useful to acknowledge the difficulties that individual respondents may face in providing for all and the extent to which they have a responsibility.

Applying this has been particularly difficult in NSW as Councils have had to develop strategies to assess this concept in development applications. Because this must be considered on a case by case basis and within an assessment system that is yet to formally recognise it at a state level, the application of this concept has been contentious and highly inconsistent throughout NSW.

This has not been very beneficial to Councils, developers or the community. Instead it has focussed the principles of equitable provision and social inclusion into an assessment of the economic cost of providing accessible facilities. The problem has been that in accepting the defence of unjustifiable hardship authorities have turned the obligation to ensure equitable treatment of citizens and social participation from a citizen’s right to an economic convenience.

Advocates believe that the existence of ‘unjustifiable hardship’ as a defence abrogates the responsibility to ensure citizens’ rights are protected and to participation and equitable terms. The DDA is the only anti discrimination legislation, within the suite of Federal protections in Australia, with coverage contingent on the costs to achieve its objectives. Neither the Racial Discrimination Act 1975, nor the Sex Discrimination Act 1984 includes such a condition based on costs. This tends to reinforce the view that some people's costs to be included in the community are justified if they result from gender or racial background but not if they are related to an impairment.

In contrast Acts like the UK's Disability Discrimination Act 1995 set out clear responsibilities for reasonable adjustments that everyone has an absolute responsibility to adopt. These reasonable adjustments articulate exactly what a *justifiable* hardship is. While similar to our DDA Standards the UK legislation is mandatory. There is also a subtle yet importance difference, with reasonable adjustment the focus is on the responsibility of all the society to remove barriers as opposed to a focus on what is considered unjustifiable to alter.

3.3 Exemptions

Several Commonwealth programs are exempted from the provisions of the DDA which has compromised its integrity. Notable examples are in the areas of Defence, Social Security and Immigration. In the case of the Social Security Act, 1991 this relates to their welfare and support programs. Often this is to ensure they can operate proactively but it also means that the eligibility criteria used to determine supports does not necessarily reflect the definitions used under the DDA. Also while discriminatory, some restrictions are not unlawful. A case in point is the requirement for a person who enters the country with an existing disability to wait ten years from the date of becoming a permanent resident to be eligible to apply for the Disability Support Pension. However those who acquire a disability following the permanent residency being granted have to wait only two years. Clearly this discriminates against those with an existing disability and assumes they will be a greater burden than someone who acquires a disability once a permanent resident.

While there may be merit in allowing exemptions to proactive parts of certain Acts such as for Social Security, others like the Immigration Act have no justification for exemption from the DDA. Because of this exemption in terms of policy and practice people with a disability are often ineligible to immigrate to Australia yet it is unlawful to discriminate on the grounds of disability in Australia. In some instances visas can be rejected on the basis of a person's disability.

The rationale is that people with a disability would put an undue burden or hardship on the Australian community because our society does not have the necessary services; supports and equality of opportunity to reasonable expect people with a disability to be self supporting. In contrast the Commonwealth Government enacted the DDA to remove these very same barriers and discrimination on the basis of disability. This was due to recognition that to continue to exclude a growing percentage of our population from the key social, economic, and citizenship opportunities that others enjoy was unsustainable.

Given the existing controls and criteria on immigration already considers a persons ability to contribute to the country it is illogical that people with a disability are a) excluded or b) required to prove this twice in an environment where there is legislation and strategies to ensure they are not disadvantaged.

People with a disability and their families are also excluded from disability supports (such as the DSP) for a period of time should they manage to be accepted. The pressure this places on individuals and families to cope often makes immigration or reunion with a family member that has a disability not viable. The damage to the family unit and extended family network can be irreversible.

It is hard to justify why the Commonwealth and its programs require exemptions from such an Act. Similarly with the existing provisions for UH, action plans and for inherent job requirements to be met there should be no need for any agency to seek a further level of safeguarding. Council's preference is away from broad blanket exemptions that ignore the circumstance of the case or the capacity of the individual. A DDA needs to be both comprehensive and holistic to deliver equality of opportunity.

3.4 Omissions

Accommodation other than as a service is one area that has not been covered by the Act very effectively. Housing (as distinct from short term and hotel style accommodation) is a fundamental need for all people yet those with a disability and their families continue to have very limited options. Housing, even public housing continues to be built with minimal appreciation of the present or future access needs of the population.

This has lead to continual problems for people in their attempts to find suitable housing and participate within the community. It is an area that needs greater attention on ways to ensure people with a disability and their families have adequate opportunities for housing and greater opportunities to participate in those activities that are centred around housing.

While people are protected from direct discrimination as in being refused rental options there is no obligation for the premises to be functional for that person. This 'indirect' discrimination is not covered in regards to housing in the same way it is in other areas of the Acts coverage. As such this renders the protections of the Act useless in respect to housing for many people. This is a major omission of the legislation and efforts need to be targeted towards a solution. Housing choice, functionality and stability affects many parts of our lives. Without the same options many will never be able to participate equitably in Australian society.

4. Process and resource limitations of the legislation

4.1 Practical implementation of Standards

If we return to 3.1 and the limitations of a complaint based model another practical difficulty emerges in relations to the Standards. While DDA Standards when passed become law there appears to be no formal compulsion to comply due to the triggering factor of complaints based legislation. In the case of the recently passed Transport Standards there appears no legal requirement for providers to meet the Standard unless they can be proved to have not met it by a successful complaint. It is noted that unjustifiable hardship provisions have been retained within the Standard.

In practical terms then the monitoring function of the Standards defaults to the individual to prove;

a) the instance of discrimination is contained within the provisions of the Standard
b) the provider has not met the Standard and
c) it would not constitute an unjustifiable hardship to do so

Each of these requirements involves significant legal knowledge and preparation. As has been stated the existing complexities and costs of pursuing a complaint in the Federal Court discourage most people. In addition the process is virtually inaccessible to people with cognitive difficulties and presents significant barriers to those with language or cultural issues to address.

The evidence suggests that Standards have been developed to achieve certainty of outcomes and from an acknowledgment that a complaint based system is not always the best way to removing systemic barriers. If this is so then they need to follow a rights based model and be compulsory. This would establish clear monitoring and performance measures and penalties for abuse.

In summary what has been adopted is a compromise of both complaints and rights systems without the advantage of either to the person experiencing the discrimination. A fair and responsible system would only require an individual to establish that they have been discriminated against (as with other anti discrimination law) or set clear benchmarks that avoid discrimination which all have to meet and demonstrate they have been met.

4.2. Resourcing - HREOC

The ability of the Act to achieve its objectives or achieve significant progress has been hampered by limited resourcing. The Human Rights and Equal Opportunity Commission (HREOC) who administers the Act is under-resourced to effectively coordinate all its implementation.

The complexities of disability discrimination are vast, combine with this the interactions with existing laws and practices and one starts to appreciate the enormity of the task before any one agency. In particular the Disability Rights Unit of HREOC consists of 3 staff. This is despite the amount of disability discrimination complaints being comparable to or exceeding complaints in other areas covered by the Commission such as race or sex.

Council has appreciated the advice received from HREOC on matters and would welcome it having a stronger role in policy development, producing guidelines or advisory notes and education. It is however aware of the difficulties and potential conflict that can arise for one agency placed to both develop policy advice and mediate complaints where the advice may need to be used in the mediation. It is unreasonable to expect one agency to address both roles.

4.3. Resourcing - Disability Standards

Similarly the Disability Standards Project is also under-resourced. As the body set up by the Commonwealth Attorney-General's Department to coordinate the disability sector input into the development of DDA Standards they have one full time staff. The Department provides funding to the Project for meetings of the Steering Committee and for a one-person secretariat to provide the disability sector with administrative coherence across all the DDA Standards processes.

It is also noted that the Standards Project is only funded to work on the development of standards and not on alternatives to standards. This restricts the impartiality of the Standards Project and compromises their ability to accurately reflect the breadth of community views, especially those who may want to consider or propose alternatives, there is no forum for this to be done.

The Project Steering Committee comprises 9 National Peak bodies. Not all disability groups are represented, notably people with a psychiatric disability do not have a national peak and therefore their input and representation of their views has been compromised. This is particularly of concern in the development of Education and Employment Standards both of which are areas where people with a psychiatric disability have experienced continual discrimination.

The Projects one full time staff member, the National Coordinator acts as secretariat support for the Project Steering Committee and day to day support to the range of standards working groups (6 currently) involving consumer representatives. It is of concern that the Attorney General believes all this can be competently handled by any one person.

Representation of the sectors view is conveyed through voluntary consumer representatives. The DDA Standards Project states within the roles and responsibilities of a consumer representative that;

> *"the expectation is that they will perform in a professional manner as they are representing the hopes and aspirations of people with disabilities across Australia. In doing so, they need to be able to dedicate considerable time and effort in their representation and strive to be an 'expert' who can be relied upon in their specific DDA Standard."*

The appropriateness of this expectation is questioned. It is considered unreasonable to expect such a level of professional expertise and commitment generally from volunteers but extraordinary without sufficient support.

Consumer Representatives (people with a disability) will often have significant additional support requirements to enable equal and meaningful participation. The Standards Project is obviously not resourced sufficiently to provide such support.

Critics of the Standards process have suggested that the quality of the standards is indicative of the level of investment the Government has made to resource the disability sector to participate. There are also obvious inequities present when the sector is weighted against industry representatives on working groups who can negotiate from a much stronger base of professional knowledge, research and legal advice.

5. Local Government Perspective

5.1 Resources

While the Australian Local Government Association (ALGA) employed a person in the early years (1990's) to provide resources to assist local government to develop action plans, little recognition of the extent of costs to local government to fully implement these plans has arrived from the other levels of Government, notable Commonwealth. Local Government is often swamped with implementing a variety of Commonwealth/State legislative responsibilities yet little funding follows to ensure adequate delivery of these policy outcomes.

Within the Department of Local Government Social Plan requirements that Councils must develop, people with a disability are a targeted group. However the guidelines to consider the needs of people with a disability in this framework differ from those in Action Plans and may be improved if more consistency was developed.

The Disability Policy Framework (DPF) adopted by the NSW Government in 1998 required all State Departments and agencies to develop "Disability Action Plans" in line with the DPF. These plans complimented the criteria of DDA Action Plans. The initiative was administered by the (then) Ageing and Disability Department who built up a knowledge base and momentum for the approach. It would be beneficial if this strategy was maintained.

It has only been through proactive Councils with a commitment to social justice principles that Action Plans and initiatives to improve the local situation has occurred.

5.2 Legislative conflict

It is also noted that other legislative responsibilities conflict with the objectives of the DDA and are not specific on how to manage both. In NSW application of the Environmental Planning and Assessment Act 1979 is a key example. Councils have had to design their own processes to adhere to both DDA requirements and NSW development assessment protocols. Interpretational clarity from the State Government has been limited and responsible for many councils ignoring the issue or seeking individual policy solutions to the liabilities they face as consent authorities. This has resulted in widely inconsistent access planning practice throughout the state. It remains a constant area of attention for many local governments and a consistent priority of the disability community.

While progress has been achieved to bring the Building Code into closer alignment with the DDA there are many other changes required in state law to have meaningful benefit to the full scope of the built environment yet these appear to have been largely ignored for the duration of the last decade. Similarly Heritage and OH&S regulations have had significant impact on people with a disability with little to no adjustment to ensure their requirements are consistent with the DDA.
Again local governments have often been left to make judgements without adequate or consistent guidance by other state authorities whose regulations they are implementing.

Models already exist such as those used by the Olympic Coordination Authority (now SOPA) to ensure equitable access planning, information and operations. These have not been incorporated in state planning law outside of the Olympic Park precinct. Councils such as Marrickville have used these approaches and adapted them to a local planning and assessment context with some success. Regrettably many agencies have not been proactive in addressing DDA issues locally in the belief that a Standard will soon be in place which will provide an overall comprehensive solution to the built environment.

5.3 Training

There are numerous operations of a Council that impact on people with disability. These include;

- social and urban planning;
- transport and local traffic management;
- parks and recreational facilities;
- community facilities;
- infrastructure management;
- waste management;
- environmental programs;
- arts and cultural events, and
- direct community services including child care, libraries, meals on wheels and community development projects

The diversity of professionals that collectively plan and manage a local government area and respond to the needs of the communities within it are vast. In contrast the level of exposure to disability issues and more specifically the DDA in the training of this array of professional disciplines is conversely miniscule. Councils do conduct a range of training to support their staff including disability awareness however an identified gap is the lack of practical training that is taught at the tertiary level on integrating inclusive practices and needs into the profession. Council recommends a greater role for HREOC to assist Professional Institutes and Training organisations to amend their curriculum to incorporate DDA issues.

5.4 Profile and Community Education

The Commonwealth Disability Strategy (CDS) which was designed to direct Commonwealth Government responses to the provisions of the DDA is all but unknown. The relative profile and resourcing of the CDS compared to how other strategies like reconciliation or cultural diversity had been supported while in operation sends a disturbing message to other levels of Government, business and community sector on its importance.

Not enough attention has been paid to educate the community and debunk myths and alter attitudes about people with disability. There remains significant stigma attached to disability and inappropriate stereotyping of people and disability issues. This continues in government policy, business practice and representation of people across the media. Change would occur far more rapidly if the community were more informed about the number of people with disability in the community, the scope of their issues and the impact that discrimination has on them.

The Paralympics resulted in a major improvement in the recognition of people with disability as a part of the Australian community. This event alone stands as the most notable attempt to educate the public and in raising peoples' awareness. If the Government made a greater effort to broaden such profiling it is more likely that the community as a whole would support the DDA's objectives and less likely to perpetuate barriers.

Council calls upon the Commonwealth Government to provide greater leadership in addressing discrimination, to raising the profile of initiatives such as the CDS and supporting it with appropriate resources. It also calls for practical ways to assist others in compliance.

5.5 Consultation on Standards

Local councils while significantly affected by the introduction of DDA Standards have had little involvement in their development. This in part may be due to the limitations of the consultation processes including resourcing of the DDA Standards Project.

Concern is expressed not only about participation but about the mechanics of how these standards will operate. In the case of the Public Transport Standard it is unclear how obligations as an infrastructure provider are to be followed in line with other transport providers to meet the standards over their timeframe. The majority of the attention has been on rolling stock and access issues related to boarding the conveyances. While this is important, to date no formal arrangement has been proposed to inform cooperation between the range of players that collectively control and maintain the assets that support transport stock. This includes footpath and road maintenance and improvements along with other pedestrian and traffic facility management.

A further consequence of the protracted development and unclear process has been that it has stalled other initiatives. Organisations involved in education, employment, access to premises or transport have been reluctant to develop or enact strategies to remove existing barriers in the shadow of proposed DDA Standards that may supersede their efforts. While this would be sensible if the timeframes were clear and short, the reality is that standards involve a long arduous development (7 years in the case of public transport). If the quality of the results are to be worthwhile in complex areas such as education and employment then this could be longer.

The dissemination of information about the Standards and consultation on them has been irregular and lacking in detail. Agencies await direction before taking their own action (believing a solution is just around the corner) and invariable the standard is further delayed and no progress is achieved. Unfortunately the process has not encouraged anyone to take a leadership role and appease the frustration within the disability community as no readily achievable improvement is experienced.

This highlights a lack of process and guidelines on the delivery of the standards that may negatively impact on their success. Council accepts that the first such standard will invariable contain gaps but it is hoped that those to follow will have a much clearer definition of what they (as DDA Standards) seek to achieve and a more comprehensive development including meaningful debate amongst stakeholders to set direction and establish operational agreement.

6. Conclusion

Council notes the improvements and focus that has occurred over the last decade since the DDA was introduced. It is impossible to determine how much of this was a direct consequence of the DDA, or attributed to focussed advocacy, a growing awareness of ageing and related loss of abilities, a heightened consideration of social justice principles or conversely the impact of world commerce leaving us behind. For example:

- the policy decision by the NSW State Transit Authority to purchase only wheelchair accessible buses may be attributable more to overseas manufacturers' decisions (in response to USA and UK legislation) and the Government's commitments to social justice than to the much delayed and highly contested DDA Standard on Accessible Transport; and.

- pro-active sensitivity to the communication needs of vision impaired people seeking access to the Internet is more attributable to international standards developed and recommended by the World Wide Web Consortium (W3C) [1.] Web Accessibility Initiative than the Australian DDA.

Where the DDA can be seen to have had some effect is with regard to 'after the event', corrective action and damages paid from discriminatory behaviour such as the SOCOG website and ticketing case.

However it is fair to say that the Act certainly has fostered debate and raised the expectation of those within the disability community. In so doing it has been the catalyst for recognition of people's rights and investigation into ways to redress the barriers people have and been faced with in the past. It is also felt that the Acts objectives are basically sound however the structure of the legislation has hampered their delivery as has limited resourcing.

The complaints based aspect combined with exemptions; unjustifiable hardship provisions and introduction of non mandatory standards have compromised its effectiveness and in many cases have obstructed its ability to effect any significant systemic change.

It is hoped though that the Inquiry will establish the necessity for protections such as the DDA and offer practical recommendations to improve its effectiveness. The DDA while focussing on disability has capacity to improve the lives of everyone. The Act, if allowed to operate effectively, could facilitate a truly inclusive society. One that understands discrimination and the social costs it creates and a society that takes active steps to avoid such costs for everyone.

In addition to this Submission Council would welcome the opportunity to expand on these points at the public hearing during June and July 2003. It would also wish to continue to participate in consultations on the Commission's draft report and comment at the public hearing following that report.

1. *The World Wide Web Consortium (W3C) was created in October 1994 to lead the World Wide Web to its full potential by developing common protocols. It is an international, vendor-neutral consortium, with over 450 Members and has a strong focus on the universality of the Web for all users.*