

Northern Territory Disability Advisory Board. (NTDAB)

Submission response into the Disability Discrimination Act 1992.

The NTDAB is an advisory board to the Northern Territory Minister for Health and Community Services, on the needs of people with disabilities throughout the region. The board representation is a collective of service providers, people with disabilities, and parents of people with disabilities.

We provide the following thoughts on the detail contained within the Inquiry document.

2.1 **Definitional Issues**

- Whilst the broad definition of disability is a necessity to allow integration for whole of community, the effect of this on people with high support needs and those living in rural and remote areas is compounding. The increased expenditure on these people further decreases access to the community in the area of social integration. The DDA needs to consider the social aspects of access in the lives of community members.
- In relation to areas of activities covered we feel workers compensation and superannuation should not be exempt. To alleviate any restrictions on the part of insurers the commonwealth government could offer tax breaks or incentives to offset any additional costs to insurers. The law favours the service provider. The individual does not have the resources to fight any action due to the enormity of the costs involved in taking on "the big end of town".

Temporary Exemptions

- **We believe that temporary exemptions should be granted under extreme circumstances only.** Applicants requesting a temporary exemption will always put up a strong argument for the maximum period, which if granted can have an enormous effect on the most disadvantaged members of our society. In considering the term of the temporary exemption HREOC should minimise this period, as it either directly or indirectly discriminates against people with disabilities.

Reasonable adjustment and unjustifiable hardship

- It is essential that reasonable adjustment be clearly defined within the DDA. Currently there does not appear to be any requirement within the Act for reasonable adjustment. In not doing so the DDA provides a loophole for all providers and developers of goods and services. The DDA needs to enforce the duty of care providers have in relation to the Act.
- In relation to the costs of “reasonable adjustment”, the initial cost is always born by the consumer of the service. The cost is the inability to use or access the service. There are far too many exemptions sought, particularly in building construction, to not provide facilities that can be used by people with disabilities.
- In terms of reasonable adjustment, there are instances where a person with a disability could make an unreasonable request to participate in an activity eg. A blind person, wanting to enter a car racing event. However, there are many examples where people with disabilities cannot participate due to everyday sporting and recreation facilities being unavailable due to physical barriers.
- Commonwealth laws and programs have little excuse for denying the involvement of up to nearly 20% of its citizens. This number is growing and will continue to grow with an aging population that is also living longer.

Harassment

- There have been improvements, in some areas but in other areas problems persist. Governments can offer many incentives for employers to work on improving the incidences of harassment in the work place, and nothing works better than financial incentives. Employers could be invited to develop and implement harassment policies and procedures and receive premiums where harassment claims are not made.

Request for information

- There has been a reduction in the information requested on a person's disability and other personal details (eg. Age, education, material status), where it is unwarranted. The exceptions are workers compensation and superannuation. These need to be addressed urgently as previously mentioned.

2.2 Problems that the DDA seeks to address

- We support the objectives addressed by the DDA legislation regarding the social, environmental and economic problems for people with disabilities.
- Since the DDA was introduced problems have diminished in some areas and the solutions have changed as well. The delineation of responsibilities between state/territory governments and the commonwealth government has exacerbated some issues. For example, under the provision of aids for people with a disability program, the client group categories have changed significantly as well as the aids and equipment provided. In some states/territories, the provision of oxygen has risen by 1000% consuming a very large proportion of the budget, because it is a recurrent and essential item. It takes precedence over items such as wheelchairs, to the point that there are waiting lists of over two years for these items.

2.3 **Effectiveness in achieving objectives**

- It is extremely difficult to measure the effects of the DDA and any relevant data or other evidence, as there are many factors that impact on outcomes on results of DDA activity. As mentioned in this paper, qualitative and quantifiable measures can be used and these can be obtained by a number of means. The number of requests for exemptions sought could also be used along with their success or otherwise. A firm stance on the unacceptability of new services and facilities seeking “unjustifiable hardship” on financial grounds needs to be taken as these seem to be spreading like a virus.

Eliminating discrimination

- The effectiveness of the DDA in eliminating discrimination could be measured via research into the qualitative and quantitative enhancement to legislation, and by a reduction in exemptions and reduction in reasonable hardship.
- Results portrayed in Participation rates, equity programming success, lifestyle participation, and activity levels, provides evidence of progress achieved in eliminating discrimination in different areas and different types of disabilities.

Ensuring equality before the law

- Provision of Tax breaks for improving goods, services, and access. Spreading the cost to all the Australian community is one way to limit the impost on individual companies.

2.5 **The DDA and other legislation's**

- The overlap between the commonwealth and State and Territory anti-discrimination legislation creates problems. An assumption would be that each keeps the other on their toes to provide best practice legislation. In reality, this creates unnecessary confusion for people with disabilities. It provides an avenue for the passing on of responsibility by levels of government. It is hard to imagine why we need separate commonwealth and territory/state legislation when we are dealing with the same target group.

Disability Standards

- There are advantages and disadvantages of mandatory disability standards. Disability standards were introduced with the best of intentions but quickly became overly bureaucratic, costly to implement, monitor and evaluate and in many instances were culturally inappropriate to remote (aboriginal) communities.
- The processes for developing disability standards need to be simplified, streamlined, and easy to implement and monitor and have a minimum of paper work.

Voluntary Action Plans

- There are insufficient incentives under the DDA for businesses to submit voluntary action plans (Eg. Shopping Centres, Transport, and Tourism). For any agency that does receive government funding, action plans should be mandatory. All government agencies (at all levels) should have mandatory action plans.
- Relatively few businesses submitted voluntary action plans because there are no benefits or return on investments. This is why most unjustifiable hardship submissions come from the private sector. The legislation has too many exemption clauses or it is too easy to get exclusions.

Industry Self-Regulation

- Industry self-regulation should not play a greater role in managing disability discrimination. It will fail miserably. There are few examples of self-regulation working and few benefits are passed on to consumers.
- We do not support any action which promotes any amendments to the DDA to facilitate industry self-regulation

Complaints

The willingness of people with disabilities to make a complaint(s) to HREOC is hindered by the possibility of retribution (ie. cost,

intimidation and emotional distress) and the difficulty of obtaining support (eg. legal advice).

Confidentiality

- There is insufficient publicity of the outcomes of complaints. If the complaint and outcomes are publicised, it could provide a deterrent to transgressors of the DDA. Without the publicity of outcomes, the deterrent evoked by the DDA is absent. Complaints should be de-personalised so that the complainant remains unidentified. The adoption of this systemic change could encourage others to come forward and initiate action, and provide a raising of awareness to the whole of the community.

Access to Public Transport

- There has been improvement in the provision of public transport. This improvement is mainly in government subsidised services. There has been little improvement of accessible transport in the areas of tourism, private hire and courtesy vehicles. For this to improve there would need to be financial incentives in the initial stage of development for the private sector.

Access to Public Premises

- Whilst the accessibility to public places has improved there still remains some difficulties. The current provision of access to premises is focused on the provision of the minimum standards. In some areas this does not allow for independently functional access for people with disabilities.
- The expectation of the introduction of disability standards for public premises is that it will provide a strong link between the Building Code of Australia (BCA), the DDA, and Development Consent Authority (DCA). This should also limit the provision of a certificate of occupancy to developers that have not complied with the premises standards.

Northern Territory Disability Advisory Board May 2003