

## THE CABINET OFFICE NEW SOUTH WALES

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

Dear Commissioner

I refer to the inquiry into the *Disability Discrimination Act 1992* (the Act). I understand that the Commission will be receiving submissions to the inquiry during this year. The intention of this letter is to forward to you an outline of some New South Wales Government initiatives to combat discrimination against people with a disability that are relevant to your inquiry. I would also like to take the opportunity to identify some key issues that will be relevant to the inquiry and which will be of particular interest to NSW.

The Act provides a wide definition of disability and limited application of a defence of "unjustifiable hardship" to avoid undue impost on service providers that would otherwise need to meet standards generated to meet the objectives of the Act. The definition includes many disabled people who fall outside of the ambit of other disability related laws. It has been argued that a broad definition avoids unhelpful contests about what the level of impairment must be before one is disabled for the purposes of the Act. However, an important question is whether the broad scope of the definition and the limitations on the ability to rely on "unjustifiable hardship" have unintended and undesirable consequences.

The definition is the first point in assessing the obligations of service providers, and this includes obligations under disability standards. The corollary of the need to develop standards with broader application is that such standards are likely to give rise to a wider range of operational and cost impacts. This will generally make it more difficult to finalise and implement these standards, as has proved to be the case for the standards for education service providers.

One alternative may be to consider whether a more focussed definition would be more likely to ensure progress on solutions that benefit those disabled people most in need of protection or assistance. Another option that has been put forward in the context of the education standards is the potential for extension of the application of the unjustifiable hardship criteria, which in the education context presently only applies at the point of enrolment.

The need for close review and clarification of the application of the unjustifiable hardship concept is also evident in the housing area. Specifically, it is not clear

whether unjustifiable hardship applies to social housing, as the exemption applies to public premises but not to the administration of Commonwealth programs. Social housing programs occur under the umbrella of the Commonwealth State Housing Agreement. Consequently, some advocate that 100% of public housing should be accessible. This is not achievable in public housing stock without significant efficiency and cost impacts. NSW Department of Housing has set a benchmark of 10% of all new social housing to be adaptable housing. The Department also responds to individual household need through retrofitting. This enables the Department to be strategic about the investment required to comply with the Act. Were the Department to be required to make all of its properties adaptable, the quantum of social housing available to all people within New South Wales would be reduced. The Commonwealth Government does not link funding of social housing under the Commonwealth State Housing Agreement to the costs of making reasonable adjustments.

There is also a process difficulty with settling standards to support a broad definition. The Act provides no guidance on the process required for the development of disability standards. If standards are to be useful tools to assist service providers to apply the Act to their day to day operations, it is important that the standard setting process is rigorous and inclusive. In particular, consultation with affected groups and a robust Regulatory Impact Statement should be required.

In summary, from the perspective of seeking a reasonable balance between maximising the benefits of the Act and the cost to the community of achieving the aims of the Act, the definitions, the process for developing standards and the scope of exceptions on the basis of unjustifiable hardship appear to warrant closer examination in the light of experience.

It is noted that no uniform method of data collection is available to assess the impact of the Act on people with a disability, service providers and the community. As part of the current review, the Productivity Commission could usefully examine the range of 'reasonable adjustments' that service providers are making and the impact of these on people with a disability and other consumers. In addition to facilitating evidenced based decision making, this will provide examples of good practice on the part of service providers.

Thank you again for the opportunity to provide input into the Commission's inquiry. Please contact Ms Vicki D'Adam, Policy Manager, Social Policy Branch (02 9228 4706, [dadamv@mail.cabinet.nsw.gov.au](mailto:dadamv@mail.cabinet.nsw.gov.au)) if you would like to discuss this matter further.

Yours sincerely,

Leigh Sanderson  
Acting Director General

## **SAMPLE OF NSW GOVERNMENT INITIATIVES TO COMBAT DISABILITY DISCRIMINATION**

### **Disability Action Plans**

The NSW Disability Policy Framework was developed to assist NSW Government agencies and Local Councils in complying with the Disability Discrimination Act. One hundred and eleven government agencies have developed Disability Action Plans under the Framework. Disability Action Plans focus on six priority areas -access (including communication), promoting positive attitudes, employment in the public sector, information about services, complaints procedures and training of staff.

The Department of Ageing, Disability and Home Care is currently reviewing the implementation of Disability Action Plans by NSW Government agencies. It has found that most agencies have made significant progress in implementing their Disability Action Plans. Some agencies have begun to revise their Plans to take into account the work already completed and further barriers identified by people with a disability.

### **Social Housing**

The NSW Department of Housing is very aware of the need for universal access to buildings because of its commitment to provide housing assistance and support for the more vulnerable in the community such as people with a disability. The Department provides offices, neighbourhood centres and other public premises which are accessible to people with a disability.

The NSW Department of Housing has set a benchmark of 10% of new social housing to be built as adaptable housing. (Adaptable housing can be readily adapted to allow a person with a disability to live there.) The Department also responds to individual household needs through retrofitting existing properties.

The Department has increased the number of dwellings available to people with physical disabilities in accordance with Australian Standard 4299 and/or fully accessible in accordance with specific requirements. During 2001/02, a total of 406 pensioner units were completed by the Department under State Environmental Planning Policy Number 5, which governs the provision of housing which is either accessible or adaptable to meet the needs of a tenant who is aged and/or has a disability.

## **Transport**

The NSW Government has endorsed the NSW Accessible Transport Action Plan. The Plan documents current initiatives being undertaken, and provides a framework to improve the integration of accessible transport services.

Current accessibility levels for NSW Government transport services include:

- All new buses being acquired by State Transit are accessible. There are now 500 wheelchair accessible buses operating as part of State Transit's bus fleet.
- 70 stations across the CityRail network are now wheelchair accessible, and CountryLink trains are now 100% accessible.
- All new transport infrastructure is required to be accessible.
- More than 365 accessible taxis have been introduced, and nearly 1.3 million taxi trips are supported each year under the Taxi Transport Subsidy Scheme.

Implementation of the Accessible Transport Action Plan will see at least 24 more 'Easy Access' railway stations, 400 accessible buses, and 400 accessible taxis. All new State public transport facilities are required to be fully accessible.

## **Education**

In October 2002, the NSW Department of Education and Training released a comprehensive 10-point plan to improve services for NSW students with intellectual, physical, emotional and behaviour disabilities. The plan improves support for children with a disability, and their teachers and counsellors. Initiatives identified in the plan include:

- more training for teachers of children with disabilities who are integrated into regular school classes;
- additional funding for children with a disability who are integrated into regular classes; and
- reduced administrative paperwork so teachers and school counsellors have more face-to-face contact with special-needs students.

Where necessary, new classes will be established for children with emotional disorders and autism.

## **Sport and Recreation**

The NSW Department of Sport and Recreation supports athletes with a disability through a range of funding initiatives. These include support for the NSW Paralympic Committee and the NSW SCD (the unit for athletes with a disability located at the Sydney Academy of Sport and Recreation), as well as scholarships for athletes and teams.

The NSW Active Communities Grant Scheme, for not-for-profit organisations, is designed to improve opportunities in sport and recreation for under represented groups, including people with a disability.

The Department's Sports Development Program aims to promote best practice initiatives in sport management. State sporting organisations receive funding over a three year period and agree to prescribed outcomes that can include a focus on increasing opportunities for people with a disability.