Ms Helen Owens
Presiding Commissioner
Disability Discrimination Act Inquiry
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne 8003

Dear Ms Owens

INQUIRY INTO THE DISABILITY DISCRIMINATION ACT 1992

The South Australian Government welcomes the opportunity to comment on the Productivity Commission's draft report from its Inquiry into the *Disability Discrimination Act 1992* (DDA).

The South Australian Government experience of the DDA

The South Australian Government is very well positioned to provide comments to this inquiry given that it has been affected by the DDA in many ways over the past 10 years.

The South Australian Government considers that the DDA has played an important role in raising community awareness about disability discrimination. The South Australian Government's commitment to eliminating disability discrimination has been evident in recent years through its actions aimed at both addressing disability discrimination and achieving compliance with the DDA.

The aim of this letter is to provide comments on various recommendations made by the Productivity Commission in its draft report and to provide some general information on topics raised in the draft report.

Eliminating Discrimination

Draft finding 5.4

The DDA appears to have been relatively effective in improving the accessibility of public transport in urban areas. However, it has been less effective in relation to taxis and in regional areas.

The South Australian Government is aware of the issues concerning the accessibility of public transport in regional areas and taxis for people with disabilities. However, many regional services are not under the control of the State Government.

Public Transport in regional areas

The Commonwealth's Remoteness and Accessibility index demonstrates that many South Australians in regional areas experience limited access to services and have limited transport options.

During community consultation in regional areas, the Office of Public Transport (OPT) [formerly known as the Passenger Transport Board (PTB)] has found that regional communities have lower expectations about the availability of accessible regional services. People generally do not expect the level of accessible transport found in the metropolitan area, and are willing to accept systems that, for example, allow for an accessible vehicle to be booked a day or two in advance. A service of this type allows an operator with an accessible vehicle to travel between nearby towns to provide an accessible service. Community Passenger Networks can assist in coordinating services.

Patronage levels for passenger transport services are critical to service viability. This is significant in rural and remote areas, where the numbers of potential passengers with disabilities is small.

The OPT can influence the accessibility of some services. The OPT assists some passenger transport services in rural and remote areas where a need has been identified and funding is available. Tenderers are required to meet criteria that include providing an accessible service. This approach has been quite successful in establishing some accessible services in regional South Australia.

However, the cost of establishing an accessible service, where long distances are travelled and patronage levels are low, is a barrier to many small operators. Regional operators do not replace vehicles as often as metropolitan operators because patronage levels and financial turnover is often significantly lower. The requirement for vehicle accessibility increases the funding required from Government.

The market will provide passenger transport services in regional areas where it is economically viable to do so. The DDA requirements result in an additional cost that adversely affects the viability of operators with already tight margins. The Government can alleviate this to some extent by subsidising services.

Taxi Services

The main issues concerning the taxi industry that impact on accessibility for people with disabilities and DDA requirements are detailed below.

Licensing

Wheelchair accessible taxi vehicles are known in metropolitan Adelaide as Access Cabs. Access Cabs are subject to special licence conditions that require them to give a priority service to people with disabilities. These licence conditions are necessary to ensure that Access Cabs do not undertake general taxi work to the detriment of services for people with disabilities.

The South Australian Government has not issued new general taxi licences for approximately four years. Government policy is that none will be issued until at least 2006. In the last four years, entry to the taxi industry in South Australia has only been possible through the purchase or lease of existing licences or through the purchase of new wheelchair accessible taxi licences (Access Cabs).

General taxi licences currently trade at around $150,000. Access Cab licences are substantially lower. The purchase cost of an Access Cab is significantly more than a general taxi. However, when the cost of the licence is considered, the overall cost of putting an Access Cab on the road is still likely to be less than a general taxi licence.

Regulation of taxi licences therefore allows the Government to directly influence the number of Access Cabs and can encourage entrants to purchase and viably operate an Access Cab.

Structure of the industry

Taxi services are provided commercially by independent small business operators, with every level within the taxi industry being a separate business entity. This poses significant issues for compliance to DDA standards for taxi services.

For example, taxi companies cannot guarantee an equivalent response time for Access Cab bookings compared to general taxi bookings. This is because drivers, as individual business entities, can choose how to prioritise the jobs they accept from the booking service.

State Government regulation and specified licence conditions ensure that taxi services are available for people who require an Access Cab. However, compliance with standards ultimately falls to the business decisions of operators and drivers of taxis, as small business operators.

A deregulated market would significantly reduce Government influence on provision of services to people with disabilities.

Owners/operators of taxis are responsible for the purchase and maintenance of vehicles. The cost of purchase, modification and resale of wheelchair accessible vehicles may be beyond the capacity of single and small operators to provide in low population/patronage areas. Owners make business decisions as to the profitability of providing an accessible service.

The Government has endeavoured to improve the attractiveness of Access Cabs as an investment. This has been done in several ways, perhaps most significant was the introduction on a trial basis of an "on time" bonus scheme for Access Cab drivers picking up customers within a specified period of time. This provides a financial incentive for drivers to meet the DDA standards.

The bonus scheme has been in place since December 2002 and waiting times have improved during that period. However, there remains a need to attract more drivers to further improve the service.

A broader question regards the appropriate level of subsidy that the State Government should provide in order to assist small businesses (in this case taxi operators and drivers) to comply with the DDA, particularly where this is an ongoing cost. Given that the DDA is Commonwealth legislation it is also reasonable to consider whether the State Government should meet all of this cost.

Equality before the law

Draft Recommendation 6.3

The DDA should be amended to make it clear that acts (actions) done in compliance with non-prescribed laws are not exempt from challenge under the Act, regardless of the degree of discretion of the decision maker.

The South Australian Government supports this recommendation. However, it makes the exemption provision and the process of adding State Acts to the exemption list much more important than at present. Amendments to the DDA for state governments should be simple to administer.

The South Australian Government also supports providing a transitional period during which the states could address requests to the Commonwealth for the prescription of other laws and possibly establish appropriate consultative mechanisms to ensure exemptions are justified.

The mechanism for deciding whether it is reasonable to add a law to the prescribed list should balance the rights of people with disabilities and the benefit to the community as a whole. Perhaps all that is required is a report from the relevant Government justifying an Act being on the prescribed list by making clear the net public benefit. For example the consultative process used by HREOC where any applications that are made to seek an exemption result in:

- the public being notified of the application
- those that are likely to be affected and interested parties having the opportunity to comment on the merits and outcome of any exemption.

Defining discrimination

The South Australian Government considers that the overall effect of the DDA's broad definition has resulted in an increased level of awareness amongst service providers and the community in relation to disability and the needs of people with a disability, and that this has in turn reduced discrimination.

For the South Australian Department of Transport and Urban Planning (DTUP), the DDA definition of disability has heightened awareness that disability can extend beyond that which is immediately apparent and has encouraged new ways of thinking about this issue.

Many aspects of the transport agencies' work within DTUP are based on conservative averages, driver reaction times, more conspicuous road signs, minimum lane width requirements, walking speeds on pedestrian crossings, etc. Thus road users' *physical* abilities have been taken into consideration for many years.

More recent work has focused on assisting people with visual and/or hearing and other disabilities to safely negotiate the arterial road system as unaccompanied pedestrians. Examples include audio and tactile devices mounted on traffic signal poles, kerb ramps for people in wheelchairs or pushing prams and strollers, and the installation of tactile tiles at critical decision points (intersections, train platforms, etc) for the visually impaired. While DTUP is aware that the DDA covers more than just physical impairments and disease, little has previously been done within DTUP in relation to the needs of people with intellectual, psychiatric, sensory and neurological impairment. Some work has now commenced in these areas (such as the most effective colours to use on signs for people with an intellectual disability) but it is still at an early stage.

While the broad DDA definition of disability has raised awareness in the building industry, the breadth of the definition poses an ongoing problem for those in the building and property industries (including property owners, builders, designers and building surveyors) who undertake assessment of building applications. Architects and building designers are required to design in accordance with the minimum standards prescribed in the Building Code of Australia (BCA); building surveyors must assess in accordance with those codes and standards; and builders must construct in accordance with the codes and standards.

An owner of a building invests a significant amount of time, money and resources in undertaking the design and construction of a building. At completion, the owner should feel comfortable with the knowledge that their consultants (designer, assessor, builder) have delivered a building fit for purpose which complies fully with all the legislative requirements, such that the owner will not be subject to legal action in the future.

The overriding nature of the DDA, however, means that all of the consultants involved in the process of delivering the building, and the owner, can still be subject to legal action under the DDA if the building access provisions are not equitable. A new building may comply with all the codes and standards but the owner and

consultants still have to live with a relatively high level of uncertainty as to whether or not action will be taken against them in the future. This is a risk that, at the moment, cannot be effectively managed.

This uncertainty is because the BCA did not meet the 'equity principles' of access that are contained within the DDA. For instance, it has been legal under the BCA to construct a building that has multiple entry points and have only one of the entrances accessible. It has also been legal under the BCA to construct a multi-level building with male and female toilets on every floor but only have one accessible toilet. However, such provisions are not equitable and there are grounds for a DDA complaint.

The South Australian Government has been directly involved in work to address anomalies between the BCA and the DDA over the past five years. During this period of time where there has been conflict between the BCA and DDA, HREOC-issued 'Advisory Notes' have provided guidance to the industry on how to comply with the DDA. The advisory notes have been most useful as a guide to assist consultants when they have undertaken access audits of State Government buildings.

In addition, draft Premises Standards have recently been released by the Commonwealth for comment. When they come into effect, these standards will provide greater certainty within the BCA about how to comply with the requirements of the DDA.

Draft Recommendation 9.1

The definition in the DDA (s 4) should be amended to ensure that it includes:

- *medically recognised symptoms where a cause has not been medically identified or diagnosed*
- *genetic abnormalities and conditions*
- *behaviour that is a symptom or manifestation of a disability.*

The South Australian Government notes that under the definition section, disability includes:
'(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.'

Some mental illnesses and some forms of intoxication can cause a person to behave in a violent or threatening manner or engage in other behaviour which poses a risk to others. For example, a person suffering a paranoid illness may choose to carry weapons, or a person suffering delusions or hearing voices may fell compelled to take steps that injure others. Addictions, which can be regarded as mental illnesses, can cause people to engage in behaviours such as stealing, embezzlement or armed robbery. They can also result in application of the family budget to addictive substance, and other harms. Thus, a range of dangerous or criminal behaviours can be analysed as symptoms of disabilities such as mental illness, addiction or intoxication.

The South Australian Government believes that it should be able to legally deal with people exhibiting such behaviour, for example, by calling the police to remove them, or by refusing them service.

Draft Recommendation 9.2

The definition of direct discrimination in the DDA (s 5) should be amended to:

- *clarify what constitutes circumstances that are 'not materially different' for comparison purposes*
- *make failure to provide 'different accommodation or services' required by a person with a disability 'less favourable treatment'.*

The effect that this recommendation has on State and local governments and owners of existing building stock needs to be considered. Often it will be very costly to provide such accommodation or services. This has been recognised in current proposals to develop DDA Standards for Premises and Education Services. Government authorities have limited budgets and have to allocate them among competing priorities. Governments should be able to make choices on the allocation of funds without being liable under the DDA. They have a right to allocate funds, for example to child care centres in preference to services for gambling addictions or improving road safety in preference to brain injury rehabilitation in a particular year. This is in keeping with the development of case law on the scope of liability of Government for harm arising from non-exercise of a statutory power, for example, in the Wallis Lake Oysters case. It is also in keeping with tort law reforms promoted by the Commonwealth that would restrict the liability of governments for such harm. It is unreasonable for the Commonwealth to seek to extend the liability of authorities in this way under the DDA at the same time as promoting the Ipp recommendations on this subject in the tort law reform process.

South Australia does not support liability for simple failure to provide a service where the authority is not otherwise obliged by law to do so.

If this recommendation is to be retained, the second dot point should be modified to read:

- make failure to provide accessible accommodation or services required by a DDA Standard for a person with a disability 'less than favourable treatment'.

Draft Recommendation 9.3

The definition of indirect discrimination in the DDA (s 6) should be amended to:

- *remove the proportionality test*
- *include criteria for determining whether a requirement or condition 'is not reasonable having regard to the circumstances of the case'*
- *place the burden of proving that a requirement or condition is reasonable 'having regard to the circumstance of the case' on the respondent instead of the complainant*
- *cover incidence of proposed indirect discrimination.*

The South Australian Government believes that this recommendation is undesirable. The concept of reasonableness permeates the law and is nowhere defined, because this is impossible. The criterion is meant to be flexible. Making lists of ancillary criteria would only result in something important being omitted. Each case must continue to be looked at on its own merits.

Defences and exemptions

Draft Recommendation 10.2

The criteria for determining unjustifiable hardship in the DDA (s 11) should be amended to clarify that community-wide benefits and costs should be taken into account.

Community-wide benefits should not be the only or dominant criterion for determining unjustifiable hardship. The DDA intends that if the respondent would have had to spend a lot of money or go to a lot of trouble to achieve the required result, unjustifiable hardship can be proved even if there is no wider effect in the community. That should continue to be the case.

The following general information is provided on the workings of the unjustifiable hardship defence in South Australia.

The South Australian Government believes that the concept of unjustifiable hardship has served to make the DDA a more reasonable and workable document and has therefore enhanced the effectiveness of the DDA.

For education service providers, the defence of unjustifiable hardship under the DDA may be available where an educational authority refuses to accept an application of a student for admission to an educational institution. A limitation of the defence of unjustifiable hardship is that it is only available at the time of enrolment and cannot be employed should a student's needs change over time.

At the local school level, the defence of unjustifiable hardship has helped to focus discussion on the various possible options for making accommodations. It has promoted flexibility in thinking about alternatives and led to useful dialogue between families, staff and system level personnel. DECS is generally able to make whatever accommodations are required for students with disabilities and the concept of unjustifiable hardship is rarely invoked.

The concept of unjustifiable hardship is beneficial for smaller Registered Training Organisations (RTOs). However, this does mean that there is a potential for an increased demand on the resources of larger RTOs, eg TAFE Institutes, to accommodate the need of vocational education and training (VET) participants with a disability who cannot be accommodated by smaller RTOs.

The concept of unjustifiable hardship has also provided flexibility and options for designers and building owners due to its performance based nature.

Its effectiveness should be considered from two different viewpoints in relation to building issues – the construction of new buildings and the upgrading of existing buildings. When considering the design and construction of a new building it is not acceptable for owners and developers to argue that they will undergo unjustifiable hardship if they are required to incorporate provisions for people with disabilities. The design and construction of a new building offers the opportunity for incorporation of

state of the art equipment and facilities, as well as simple measures such as eliminating steps and providing handrails. In this instance owners and developers should not be able to claim unjustifiable hardship.

The South Australian Government considers that there are a small number of cases where this argument may hold sway. For example, the incorporation of a lift into relatively small developments is often a huge financial impost when compared to the overall cost of the building.

In other cases mainstream community services may be provided by organisations which have little or no control over the premises they use. This is the case with many recreation and sport clubs which often hire venues for their activities. Few clubs have the resources to make the necessary physical improvements to such venues, thereby continuing to deny people with a disability opportunities to be physically active in sports of their choice.

Of greater concern is the upgrading of existing buildings. A large amount of work in established commercial areas is related to the refurbishment of older buildings that were constructed when there was little or no regard for people with disabilities. The cost of making structural alterations is substantial and has to be balanced against other priorities (eg fire safety) to retain the economic feasibility of the building as a sound financial investment. It is the view of the South Australian Government that in cases such as these, the concept of unjustifiable hardship enhances the effectiveness of the DDA as it offers building owners a flexible option to resolve the problem.

Complaints

The South Australian Government provides the following information about the experience with the DDA complaints process across agencies and general comments about the process.

DTUP's experience with dealing with complaints under the DDA include:

- various government departments, including the former Passenger Transport Board and the then Minister for Transport, being named as respondents to complaints of disability discrimination under the DDA in September 1994
- the lodgement of an interim injunction in 1994 by the President of the Human Rights and Equal Opportunity Commission (HREOC) which prevented the then State Government going ahead with an order of 50 buses which were deemed to be inaccessible to people in wheelchairs
- the former Passenger Transport Board reaching a conciliated agreement with disability advocates in October 1994 through a full HREOC Hearing. As part of that Agreement, the Government implemented the following:
    - the first trial of accessible buses in Australia
    - a review of accessible taxi services
    - a process to develop a Disability Action Plan for public transport.
- the former Passenger Transport Board being granted a three year exemption to the DDA on the basis of a detailed Disability Action Plan in 1996.

Relatively few complaints are made to HREOC that arise from alleged disability discrimination in relation to the services provided by DECS. This is largely because,

once a disability issue arises, considerable effort is expended in working with parents/care givers and students to solve problems and to make whatever accommodations are required. Furthermore, families generally prefer to explore options and try to solve the problem at the local level without embarking on a legal process.

The percentage of people with a disability undertaking VET is still low. However, the Department of Further Education, Employment, Science and Technology is committed to implementing the Australian National Training Authority (ANTA) five year national strategy to improve opportunities for people with a disability in VET.

In addition, TAFE Institutes have been able to use the current complaints process to conciliate with positive outcomes. TAFE Institutes have also taken the opportunity provided within the DDA to develop and submit Disability Action Plans (DAPs) to HREOC. The DAPs have the added advantage of incorporating the requirements of a major national VET/ employment disability strategy.

The DAPs allow a very proactive approach to providing an equitable service for people with a disability. The DAPs cover physical access, provision of support services, capacity building for staff, etc. The use of DAPs as a tool for addressing discriminatory practices and possible complaints at the local level is highly valued. This is preferable to a complaints-driven process.

South Australia sees that when required, the operation of HREOC under the DDA provides a generally effective independent mechanism for conciliation.

Regulation

Draft Finding 12.3

Disability Standards offer the potential to meet the needs of a wider range of people with disabilities in a shorter timeframe than individual complaints. It is appropriate that compliance with disability standards should provide protection from complaints.

The South Australian Government supports this finding. A number of South Australian Government Departments have directly participated in a national committee established to develop Disability Standards under the DDA. At various times throughout the development of standards, states (including South Australia) have expressed concerns about the cost implications of adopting the various standards.

It is the view of the South Australian Government that Disability Standards for Education are potentially a worthwhile extension of the DDA as they can provide more specific expectations of education staff and help to promote improved planning and monitoring of strategies to prevent discrimination and harassment. The education of students with disabilities is likely to be enhanced by having a set of visible standards in common use at national, state and local levels. Furthermore, the process of implementing education standards will help to increase awareness and knowledge of the DDA to assist in the removal of barriers often faced by people with disabilities.

Education standards are still in the process of development. A cost/benefit analysis of implementing the current draft of the standards is being carried out by the Commonwealth. This cost/benefit analysis will not include the costs of implementing the DDA, but will include the costs of implementing the subordinate legislation to the Education Standards.

For the building industry, mandatory standards are necessary to ensure at least a minimum level of access and provision of facilities for people with disabilities. In addition, such standards provide a level of consistency and certainty that the industry requires in order to function efficiently and effectively. Designers, assessors and builders can depend on a series of prescribed standards (for example, the Commonwealth's draft Premises Standards) that are consistent, applicable to everyone, readily accessible and readily identifiable. This aids the industry in providing appropriate levels of facilities, minimises the risk of litigation, and aids assessors in speeding up the assessment approval process.

Mandatory standards can, however, cause problems with the retrofitting of existing buildings. As the standards are developed to aid in the design and construction of new buildings, trying to incorporate such measures into the retrofitting of an existing building (particularly a heritage building) can be costly, time consuming and structurally impossible.

Mandatory standards need to take into account that some new buildings and structures may be built (particularly in the case of remote sites and national parks) in locations that are unable to be easily accessed. It is not possible to provide people with disabilities access to all parks and remote sites. The South Australian Government has given priority to upgrading facilities and sites in high use and high profile parks to barrier-free status so that these places can be enjoyed by the widest cross-section of the population.

In such situations, the rigid nature of mandatory standards can pose a problem. They lack flexibility and will limit innovation that often emerges when a clear performance requirement can be expressed.

The current process for the development of disability standards is based on an industry wide consultative approach. If members of the consultative committees are not prepared to adopt an open, flexible approach and work towards a measure of compromise, then development will always be difficult and protracted.

The *Disability Standard for Accessible Public Transport,* formulated under the DDA, prescribes standards for transport and infrastructure providers to meet in order to comply with the DDA.

There is a potential difference between the Disability Standards for Accessible Public Transport under the DDA and those to be referenced by the proposed Premises Standard under the DDA, and consequently the Building Code of Australia (BCA).

The application of Australian Standards in the Premises Standard and the BCA applies only to new buildings or substantial upgrading of existing buildings. The

version of the Australian Standard to be used will be the most recent that has been developed for referencing by the Premises Standard and the BCA.

The *Disability Standards for Accessible Public Transport* requires **all** (ie new and existing) conveyances, premises and infrastructure to comply with the Disability Standard over a specified time of 20 years, except for trains and trams which must comply for 30 years. The Disability Standards specify which particular version of the Australian Standards shall apply and later and earlier versions are not recognised (refer Guidelines 1.10 (4)).

This means that in applying both the Disability Standards for Accessible Public Transport and the Premises Standard under the DDA there will be potentially two sets of standards with different requirements. It is understood that there are ongoing discussions to resolve this conflict.

Although certain standards do not apply to operators of aircraft of less than 30 seats, existing operators have until 31 December 2007 to comply. Under this circumstance, advice from HREOC is that in the event of a complaint against an operator of an aircraft with less than 30 seats, notwithstanding the *Disability Standard for Accessible Public Transport*, the operator would need to satisfy the Disability Discrimination Commissioner that the provision of access would involve unjustifiable hardship to the operator.

This advice suggests that every operator of aircraft of less than 30 seats should seek specific exemption from the provisions of sections 23 and 24 of the DDA. This does not seem sensible and it is generally understood that the reason certain Standards were not applied to these aircraft was in order to remove the need for individual operators of such aircraft to seek exemptions.

Clearly the situation for operators of aircraft with 30 seats or more is different. This distinction is made in the Disability Standards because it is reasonable to provide assisted access to many aircraft in this category. Applications for exemption under the DDA for this category of aircraft would need to be very carefully considered according to the particular characteristics of each aircraft.

Companies operating aircraft of less than 30 seats seem to have made the assumption that the *Disability Standard for Accessible Public Transport* effectively exempts them from their obligations under the DDA. We are not aware of any companies in South Australia, other than the North Territory based Air North that recently took over the operation of Airlines of South Australia, that have developed formal policies in relation to the carriage of people with disabilities or that are in the process of drawing up Action Plans to demonstrate the steps they will be taking to comply with the DDA.

This suggests that there is a need for:

- HREOC to formally recognise industry difficulties associated with provision of air transport for people with disabilities requiring wheelchair access in aircraft having less than 30 seats

- HREOC to clarify the requirements of the DDA and the *Disability Standard for Accessible Public Transport* for the carriage of passengers using wheelchairs in aircraft having less than 30 seats
- HREOC to promote the need for all service providers operating with aircraft of less than 30 seats to develop, in conjunction with people with disabilities, practical solutions for addressing difficulties associated with the carriage of people with disabilities in such aircraft
- HREOC to actively promote the need for representatives of Federal, State and industry bodies to facilitate the development of nationally acceptable guidelines governing the carriage of people with disabilities in aircraft of less than 30 seats.

Draft Recommendation 12.6

The DDA (s 59) should be amended to clarify that voluntary action plans can be developed and registered by employers.

The South Australian Government is aware of the importance of this recommendation and provides the following general information about voluntary action plans.

It is the view of the South Australian Government that the DDA does not provide sufficient incentives to encourage organisations to submit voluntary action plans. Currently the only incentive is to reduce the threat of legal action, and while anecdotal evidence suggests that HREOC does consider action plans and whether they have been implemented, there is no system in place whereby a building owner can develop an action plan and have it approved so as to reduce the potential for litigation.

Voluntary action plans have the potential to create some confusion for the building owner who must then balance the issues in such action plans with their priorities such as Occupational Health Safety & Welfare, fire safety and structure.

Financial incentives could be explored in the form of targeted grants to heritage and community oriented builders to develop and implement action plans. Such buildings provide benefits to the wider community and it would be in the interests of all to have an increased level of compliance in these buildings. However, such work is often beyond the resources of people (community groups, such as recreation and sport organisations) who operate them.

If effectively monitored, Disability Action Plans have value regardless of whether the legislation encourages their submission for public information. Disability Action Plans help organisations to articulate priorities for the use of resources and, together with Promoting Independence[1], have created a strategic planning framework which has contributed to a systematic change process to raise community awareness and ensure that services are accessible to people with disabilities. On this basis, the South Australian Government strongly supports the provision in the DDA that relates to Voluntary Action Plans.

[1] A policy framework for the development of Disability Action Plans as a key strategy for all South Australian Government Portfolios and their agencies, introduced in November 2000.

Draft Recommendation 12.7

The laws currently prescribed under section 47 of the DDA should be delisted unless the States request their retention.

The Commonwealth Attorney-General agreed to prescribe the following South Australian provisions and legislation pursuant to s 47 (2) of the DDA:

- Sections 20 and 20A *Firearms Act* 1977
- Sections 88 and 148 *Motor Vehicles Act* 1959
- Sections 75 (3) and 75A *Education Act* 1972
- Regulation 11 *Industrial and Employee Relations (General) Regulations* 1994
- Section 30A and Schedule 3 *Workers Rehabilitation and Compensation Act* 1986.

The South Australian Government does not support this recommendation and if necessary would formally request the retention of the prescribed law in all of the above cases. Any amendments to the DDA to change the current process of having Acts exempted should:

- be simple to administer
- balance the rights of disabled people against the benefit to the community as a whole.

With reference to Regulation 11 of the *Industrial Relations (General) Regulations 1994* and section 30A and Schedule 3 of the *Workers' Rehabilitation and Compensation Act 1986,* delisting of any prescribed legislation without first consulting extensively with relevant South Australian Government agencies (such as Workplace Services, WorkCover Corporation, Disability Services Office, peak employer and union bodies and the Commissioner for Equal Opportunity) should not occur. Section 30A and Schedule 3 of the *Workers' Rehabilitation and Compensation Act 1986* are essential to the sound management of workers compensation in the South Australian public sector, which effectively self insures.

Through the process of preparing this response the SA Government has identified that there are administrative reasons for reference to Regulation 11 of the *Industrial Relations (General) Regulations 1994* to be changed to *Chapter 3, Section 7, Industrial and Employee Relations Act 1994.* This will be followed up with the relevant Commonwealth Department so the amendment can be made.

The following provides further details about the relevant sections of the Firearms Act and Motor Vehicles Act.

Firearms Act 1977

The current provisions of section 20 and 20A of the *Firearms Act 1977* work well and are essential for the cancellation and suspension of firearms licences where a person has a disability or deficiency that makes it unsafe for them or for others that they should possess firearms.

The notification requirements are well accepted by the medical and firearms fraternity. Ongoing discussions are held with mental health and medical agencies to assist in understanding the provisions of the sections and the manner in which they are

applied. Every effort is being made by the South Australia Police to deal with relevant cases in a non-confrontational manner.

The current provisions are essential for the control and use of firearms by people who, for whatever reason, could be classed as not fit and proper for the carriage, ownership, use or possession of firearms. As such, South Australia will continue to require that these provision be prescribed under the DDA. Any restriction on the use of these sections could have serious implications for the general public and the individuals involved.

Motor Vehicles Act (MVA) 1959

Section 88 of the MVA was repealed in 1999 with its function being taken over by section 80. It appears that the necessary consequential amendment to the DDA Regulations to reflect this change has not occurred. This will be followed up with the relevant Commonwealth Department so the amendment can be made.

Section 80 enables the Registrar of Motor Vehicles to decline to issue a new licence or suspend an existing driver's licence. Section 148 imposes a duty on legally qualified medical practitioners, opticians or physiotherapists to report to the Registrar any person who is suffering from a medical condition that if that person drove a motor vehicle they would be likely to endanger the public. In this way, the MVA protects all road users from the danger of drivers who become medically unfit to drive during the currency of their licence. These sections should continue to be exempted on the grounds of a net benefit to the public in terms of road safety.

It is not the disability per se that determines whether the person is fit to drive but the nature and severity of the disability. Driving a motor vehicle is a complex task involving perception, adequate response time and reasonable physical capability. A range of medical conditions, as well as their treatment, may impair any of these factors. Such impairment may adversely affect driving ability and result in an accident.

The person's rights are also protected as once a person can demonstrate that they are fit and able to drive safely the licence suspension is lifted. Conclusions regarding fitness to drive are made in accordance with the nationally accepted guidelines. The Registrar has little discretion other than to require further testing should there be any doubt. If a person is aggrieved by the Registrar's decision then existing administrative and judicial review mechanisms are prescribed within the MVA.

Currently the Registrar receives approximately 50 notifications per week from medical professionals that a person is suffering from a physical or mental illness, disability or deficiency, and as a result is likely to endanger the public if they continue to drive.

A key element of this provision is the protection afforded to the professional making the report. It is vital that section 148 remain prescribed pursuant to section 47 of the DDA. Should this provision be delisted, complaints could be made against professionals under the DDA, and it could be anticipated that medical professionals may be discouraged from submitting such reports. This would result in an increased

risk to the community as the Registrar would not receive timely notification regarding persons who are unfit to drive.

I would be happy to provide the Inquiry with additional information detailing the South Australian experience. The first point of contact for discussion of any issue contained in this submission should be Mr Martin Brine, Director, Federal/State Relations, Cabinet Office (08) 8226 2704.

Yours sincerely

Kevin Foley
Deputy Premier
Minister for Federal/State Relations