

**Productivity Commission**

**Inquiry into the**

**Disability Discrimination Act 1992 (DDA)**

Submission prepared by People with Disabilities (WA) Inc on behalf of the Disability Coalition

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**The Disability Coalition consists of the following organisations:**

- People with Disabilities (WA) Inc. (PWD(WA)Inc.)
- Council of Disability Services Commission Funded Agencies (COFA) Inc.
- ACROD (WA) Ltd
- Ethnic Disability Advocacy Centre (EDAC)
- Developmental Disability Council (DDC)
- Carers WA
- Western Australian Association for Mental Health (WAAMH)
- Committed About Securing Accommodation (CASA)

Ministerial Advisory Council for Disability Services

## **Introduction**

The DDA has been an important piece of legislation in promoting the equality and the rights of people with a disability to have access to the same opportunities as other members of society. It has become an avenue for people to use when they find that they are being discriminated against, or where a situation is likely to occur which will be discriminatory. In areas of life where there are specific challenges to promoting access and inclusion the DDA is important in supporting arguments which insist access is essential. While not ideal, when people will not listen to logical argument they must adhere to the law.

The need to comply with legislation has exposed greater numbers of people to the moral arguments about inclusion, raising awareness not only of the needs of people with a disability, but also their abilities and the contribution which they make to society. In doing so it has ensured that people are increasingly aware of the importance of ensuring society is inclusive of all members, thus the increased visibility of people with a disability has become an indirect form of education. The increasing prominence of elite sportspeople has had an important impact in this area raising awareness of ability, which then links into peoples attitudes about social inclusion, and therefore attitudes towards discrimination and accessibility.

## **Definition of Disability**

As an organisation working across the disability spectrum we see the broad definition of disability as essential. This is particularly important where a person may have an invisible disability, which while not appearing to affect them physically may affect their ability to participate in a range of areas. If the DDA did not have a broad and encompassing definition of disability it is likely that discrimination would occur against those groups not specifically included. While this might be able to be addressed using a complaint this would be time consuming and costly.

Including relatives of the person with a disability is also important, as there may be times when people require time off work to assist a relative and they should not be penalised because of this. As a society we are moving towards greater recognition of family oriented work policies and it is important that this should be extended to include caring duties.

As with many areas of the DDA the use of a broad definition of disability should be supported by community education. This could cover raising awareness of invisible disabilities, and the impact of disability on families and carers. In addition to ensuring people are aware of their obligations to all groups under the DDA, education could look at flexible approaches to inclusion, a more proactive approach to preventing discrimination.

## **Exemptions and Unjustifiable Hardship**

The concept of unjustifiable hardship within the DDA enables companies to apply for an exemption where they feel that ensuring their business is accessible will have a negative impact on the business. Undoubtedly there is a place for such a concept however it needs to be carefully monitored to ensure that it is not abused.

In looking at their obligations under the DDA there have been instances when companies and organisations have used exemptions and unjustifiable hardship as a first course of action to avoid having to make adjustments to their building or business operations. It is therefore essential that such applications are monitored closely, to ensure that there is a valid reason for granting an exemption. Additionally businesses seeking such exemptions must have an action plan to improve access to their services within a fixed period of time. This would enable the business operator to plan for improvements on a gradual basis, therefore removing the hardship as costs could be spread over time.

Education has an important role to play in ensuring people understand their obligations, and do not try to use the unjustifiable hardship clause to avoid fulfilling their obligations under the DDA. This education process needs to include all people involved in the planning process. It is essential that people are able to speak with authority about the obligations businesses have to providing access, and education of these groups would ensure their understanding of the issues and assist in gaining their commitment to ensure all legislative requirements are met. As many of these people work outside of the disability sector their exposure to people with disabilities and knowledge of the challenges posed by inaccessible or minimally accessible spaces could expect to be limited. Some consideration must be given through the course of this review to developing an education process which will assist in increasing the awareness of legislation and therefore the effectiveness of the DDA.

## **Effect on Competition**

With regard to competition principles, which are referred to in cases of unjustifiable hardship, education would enable businesses and organisations to see the benefits of ensuring full and equitable access. Enabling people with a disability to access a restaurant, for example, would ensure that not only that one person, but their friends and family would also use the business.

As is frequently noted, while there is a minimal cost incurred by ensuring a premises is accessible in the initial planning processes, to improve access at a later stage is usually very costly. However if all organisations are required to make the same improvements there will be no real effect on competition, as all businesses will be operating under the same rules. In fact there may be occasions where an inaccessible business identifies that it is losing custom because a neighbouring business is accessible and therefore chooses to make improvements to boost competition.

The social impact for people with a disability should also be considered when looking at competition principles, for example by excluding people from some services, activities and opportunities, their freedom of choice is being limited. They may also not be able to take advantage of the cheapest service available because their disability makes it inaccessible. This is an area which must be considered when looking at competition, exemptions and unjustifiable hardship. While a company may feel they are experiencing hardship, it is likely they are in a far better position to accommodate increased short term expenditure than an individual with a disability is to cope with long term increased costs resulting from the inability to access the cheapest service available.

A current example can be seen when looking at petrol prices which can vary widely between service stations. While generally people will choose to fill up at the cheapest station, a person with a physical disability may be limited to those stations which provide a driveway service, and this may not be the cheapest available. Again the benefits and importance of education are apparent. The service stations involved may not be aware of how they are discriminating by their business practices, and certainly would be unaware of the business they were losing as a result of these practices. With some level of awareness raising it may be possible to solve this problem to the benefit of both parties.

In practise unjustifiable hardship and reasonable adjustment are difficult terms to quantify. What is unjustifiable to one person may be considered entirely reasonable to another. Therefore some clarification is required to ensure guidelines are applied consistently. However to quantify these concepts in financial terms would also create difficulties, since rising costs would make a dollar value meaningless over time. To focus on a reasonable adjustment, may be a more positive way of promoting access since it comes from a basis of trying to include rather than trying to exclude people. A reasonable adjustment could be quantified, in accessible terms rather than with a dollar figure which would make it more long term and also identify the considerations which need to be made by organisations.

## **Complaints Process**

The process of the DDA directs that cases of discrimination should be addressed through a complaints process initiated by the person experiencing the discrimination. This in effect puts the onus on people with a disability, their family or associates to pursue acts of discrimination, but in many instances they may be the people for whom this is most difficult. It also entails that where there is an instance of perceived discrimination that it is necessary to find a person with a disability to bring a complaint.

The problems with this system are that it can be time consuming and costly both financially and emotionally for a person with a disability to bring a case. They are often open to personal scrutiny, have to divulge personal details to people who may not require this information and can be intimidated by the process. They also have to

identify themselves as the complainant which could lead to harassment, or create difficulties in relationships in the future.

In many cases an organisation defending an action will often use extensive resources into defending their position rather than using resources to fix a problem. Often the cost of rectifying a problem would be far less than the cost of defending their position, especially when compensation is taken into consideration.

Being complaints based the legislation places people with a disability in the position of being the aggressive party. This does not create a positive image of people with a disability, and is therefore not helpful in assisting the development on an inclusive and accessible society, where people with a disability are valued as individuals for their contribution to society. In many ways it perpetuates the idea that people need 'special' treatment and are making themselves different by demanding something 'extra'. While this is not the case it can be the perception which people will gain.

## **Summary**

The DDA aims to eliminate discrimination, based on a person's disability, and the law covers various areas of life. Since its inception in 1992 much progress has been made in working towards a society where people with a disability are treated equally, and do not have to fight for rights which are automatically available to other people. As in many other countries the introduction of a law relating to disability discrimination/rights has been a major factor promoting rights.

High profile cases such as the actions taken against the Sydney Organising Committee of the Olympic Games (SOCOG) and Telstra have successfully raised the profile of the DDA and indicated the breadth of issues it covers. Such cases have set precedents for action, which is an important function of the legislation. This indicates to businesses that discrimination against people with a disability is not something which will be tolerated.

Whilst the DDA has been effective, there are of course changes which can be made which will make it easier to use the law to address areas of discrimination, and consideration could be given to expanding the areas of life covered by the DDA. Strengthening of the DDA to ensure increasing access and inclusion should be seen as a priority for this review.