

Submission to the National Competition Policy Review of the Disability Discrimination Act 1992 - from ParaQuad Victoria*

Introduction

We, as an organisation are not qualified to comment on all questions posed in the issues paper associated with this review. We will, therefore, restrict our comments to areas where our Information Officer has expertise and experience.

In response to your introductory section, we would comment that in attempting to promote the equality and human rights of people with disabilities, we, as a community, are addressing a long, entrenched history of injustice, disadvantage, marginalisation and, at times, outright cruelty and abuse. This situation is not going to change quickly or easily. Long held attitudes die hard. At some level there is an almost unconsciously held mind-set that assumes exclusion for people with disabilities is acceptable, even 'normal', that they shouldn't expect the same rights, experiences and choices that everyone else takes for granted and that we shouldn't have to make changes for a 'minority'. In fact, much the same arguments and attitudes that were applied to women in the not-too-distant past.

We see it as essential that legislation supporting equity for people with disabilities is strengthened and in no way watered down. In other countries, such as the USA (seen as the paragon of free enterprise), Canada and the UK, disability discrimination legislation has included deadlines in various areas, such as physical access and employment. Our act has never included such deadlines. The USA also offered tax incentives to encourage businesses to make alterations. Thus they have 'bitten the bullet' and created a point in time at which the old dispensation is replaced by the new. As with the introduction of the GST, there is a period during which people dislike the change that is happening plus inconvenience of adjustment. But after the adjustment has taken place perhaps with a few minor alterations, the new situation becomes the norm. It is factored into planning and costs. In these countries the principle of bringing about a change in society's attitudes and actions in regard to disability were considered paramount and the inconvenience of change was considered less important than the underlying ethical values and beneficial practical changes and ultimate economic benefits.

From anecdotal evidence from Australians with disabilities visiting these countries, the feeling of acceptance and respect, the awareness, the ease of functioning in the day to day world of buildings and transport is much superior to what they experience here. This would seem to indicate that the stronger legislation with enforcement deadlines has at least begun to have the desired effect.

Equality for people with a disability should not be seen as an optional extra. Businesses would not consider not having a front door, yet an accessible entrance for people with disabilities is considered a special extra. The definition and understanding of what is a basic essential needs to be changed, so that universal standards of design, in the case of physical access, which accommodate the needs of the whole population, including the frail aged and parents with pushers, become the norm.

Better access and design, better work and education opportunities, access to a wide range of goods and services, all serve to increase the independence of people with disabilities, so that they are less reliant on subsidies and services. They also place people with disabilities in a position where they can be more productive members of

the community and more active consumers. If you can't enter a building or use it, you can't work there and you can't purchase goods and services there.

It should be possible for justice and equity for citizens to exist in the same society as competitive businesses. We have heard a great deal about market forces. A business must be fragile if it cannot tolerate better and more just conditions for its disadvantaged fellow Australians. We would laugh if a business complained that the expense of installing a front door at full adult height, was threatening its competitiveness, yet there is an implication that this argument is acceptable when it comes to provisions for people with disabilities. Again, this argument entertains the proposition that we will tolerate the continued disadvantage and deprivation of opportunity to people with disabilities.

The Disability Discrimination Act and associated regulations and standards have been some of the few instruments by which people with disabilities have begun to upgrade their condition. It could be strengthened but should not be weakened. Being complaints driven, it is slow moving. This could be changed, but the whole process of change also needs to be allowed time and the claims of the powerful business lobby are reactions to change, very similar to reactions to the introduction.

2.1 Definitions

The definitions currently covered under the DDA seem to accurately include the range of people who suffer discrimination in relation to what is commonly seen in our society as a disability. Those who are associated with people with disabilities can definitely also suffer discriminatory treatment, for example, in renting accommodation as a spouse or family member or in trying to obtain goods and services, accompanying a friend, relation or client with a disability. The degree of the disability does not seem to be relevant. While deaf people may not suffer the same endemic discrimination in the built environment or on public transport as do people with physical disability, deaf people are nevertheless neglected and discriminated against in many of society's other arrangements, such as sound alarms and non captioned movies.

In regard to differing definitions for different purposes, a person may require the protection offered by the DDA and yet not need to use Disability Services. If the definitions were merged, this may disqualify many who need it from the protection and support of the DDA. For example, a low-level paraplegic would not qualify for certain government funded attendant care services, but they are still certainly discriminated against in many ways on a daily basis and therefore need the support of anti-discrimination legislation.

Exemptions: Discrimination in the Insurance industry certainly makes it difficult for people with disabilities to obtain certain types of insurance. Why should they be deprived of this benefit? If they have a reliable work record why should they be discriminated against in superannuation?

Unjustifiable hardship: This provision has advantages in that it allows for an 'out' where a business does not have the resources to make certain changes to the way they operate. However, one would not like to see it become so broad and permissive that it became a widespread excuse to do nothing.

The costs of reasonable adjustments will vary and often if factored in from the beginning, in the case of physical provisions, the cost will be low. Changes to employment practices, for example, need not involve great cost. Where physical

changes have been made to existing buildings they can be expensive. Large wealthy businesses can probably support these costs. In the United States, tax incentives were offered to encourage organisations to make alterations. If the Government is serious about full integration, it could consider this worthy and practical use of its well publicised surplus. The resulting increased productivity and consumer activity by people with disabilities in a world designed to meet their needs would repay this outlay.

Centrelink currently offers some funding for workplace alterations and equipment for employees with disability. This scheme could be extended to assist businesses who employ people with disability. This reduces the number of people dependent on benefits and thus costs to the Government. The alterations and equipment would then be available to future employees.

Commonwealth laws and programs It is essential that the basics of Commonwealth laws and programs are available to all equally. These are the basic needs of citizenship. If Commonwealth laws and programs do not set an example by non-discriminatory behaviour, then other bodies may think that it is acceptable for them to do likewise. The Commonwealth must set an example to the rest of the community.

Requests for information: The same principles should be applied here as for people without a disability. You are straying back into discriminatory territory if you are allowed to request information other than that volunteered by the person or relevant work-related information from job referees. You are treating the person as less than an adult with the rights of an adult citizen. People are perfectly able to offer information that will help to determine 'inherent requirements' and 'reasonable adjustments', or their self chosen advocate can do this in the case of a person with a degree of intellectual disability. If a person without a disability in a job interview seeks a job, we don't ask them for a detailed medical record to determine their fitness for the job and we don't phone their doctor to ask for it.

2.2 Problems DDA seeks to address

Broadly, the DDA adequately accurately describes the range of problems that need to be addressed. They have begun to change in some areas but slowly. In some cases, there seems to be a process of one step forward and two steps back as people and organisations in the community resist change and try to return to the discriminatory status quo. Some sectors have taken change on board, taking seriously the Disability Action plans recommended under the DDA. Sometimes these are carried through and sometimes they are a token. Change will only persist if the laws are supported and seen to be supported by Government, publicised and strengthened and accompanied by an educational program, not if they are weakened and attacked.

2.3 Effectiveness

Ways of measuring effectiveness could include research into the provision of physical access in new and renovated buildings, which offer a public service; numbers of people with disabilities in employment; general survey of community attitudes to people with disability; general survey of business attitudes to customers and workers with disability, questioning whether perceptions have changed; among other things.

Perhaps research could also be taken into the number of complaints lodged and their outcomes. Whether these outcomes have found a wider recognition and application.

2.4 Competition and economic effects

Potential economic and competition effects of the DDA could be looked at by referring to overseas countries where disability discrimination legislation has been applied much more vigorously with deadlines. The USA is an interesting case in point. Canada also, which has a similar population to Australia, would provide parallels worth looking at. The UK is currently applying deadlines, but the North American examples are of longer standing.

As mentioned earlier, if people with disabilities can function fully in the community, they are more likely to be productive citizens and greater consumers of goods and services with the obvious benefits to business. If they are marginalised by inaccessible transport, buildings, education and employment then they will not patronise business and services to the same extent.

The DDA currently has provisions such as 'unjustifiable hardship' and 'reasonable adjustment', which allow businesses to make change slowly or not to make it all. So it is hard to know why business should feel its competitiveness threatened by such an accommodating law.

If physical alterations are made in planning stages or during major alterations, then expense is not high and may well be reimbursed by the increased patronage of people with disabilities and ageing baby boomers, spending their superannuation, increasingly frail and prone to disability of various kinds (mobility, deafness, vision impairment). Statistics show that the rate of disability increases greatly once people reach their sixties. The same principles apply to accessible transport vehicles, which can be acquired new as old vehicles wear out or during any new general upgrade of service without great additional expense.

Even considering the status of disability human rights in the same arena as business endeavours has a flavour of the name the Nazi regime employed for people with disability: 'useless feeders'. The dignity and humanity of people with disabilities should not be mechanistically pulled apart and calculated in accord with business interests.

2.5 Regulations, standards and other instruments

The advantages of standards are that they provide a firm guideline for necessary change, which is stronger than general anti-discrimination statements. If they rely on the complaints mechanism to enforce compliance, then this makes the process of change painstakingly slow and places the responsibility on the shoulders of people with disability to make change happen. Although one hopes that precedents are created, this is not always the case and change moves slowly when it operates one case at a time. People with disability can become exhausted when coping daily with an often hostile environment plus the necessity to go through the process of lodging a complaint each time they wish to get on a bus, attend a cinema, go to school, buy a cup of coffee or do the weekly shopping

Therefore independent enforcement and monitoring arrangements would take this burden somewhat from the shoulders of people with a disability and would assist in upgrading the situation more quickly so that it could become the norm and therefore not seen as unusual or a hardship.

It seems to make sense that some areas are more available to the creation of standards than others. However, employment is an area that could be considered for standards. This measure together with deadlines has been taken in the UK recently under disability discrimination legislation

If disability standards have greater force than guidelines then there are many areas where they would be preferable. Otherwise change is again painfully slow and people will have a tendency to want to stick with the old discriminatory way of doing things through sheer inertia and reluctance to change.

Voluntary action plans

Voluntary action plans may have a place in cases of 'unjustifiable hardship' in order to lay out a plan for changing things slowly in a realistic and affordable way, however, they should not be an excuse to do nothing. There should be a monitoring and/or reporting process so that the business sticks to the plan. There could be tax incentives to encourage it to do so. It is possible that an action plan could lead to acceptance of an 'unjustifiable hardship' plea. It could provide an impression that something is being done where not much is actually intended to be done. However, I have no practical knowledge of how often this might have happened.

As a worker in a disability organisation, I can only speculate on why businesses have not chosen to submit action plans. They would be more informative on those reasons. I have already suggested possible reasons above: reluctance to change, not seeing the business advantages of improving the situation of people with disabilities and the ageing population, not feeling any social responsibility, not having any personal experience of disability, having economic problems (but the 'unjustifiable hardship' clause should save them here), entrenched assumptions and prejudices about the place of people with disability in society.

There should definitely be satisfactory plans for compliance linked with exemptions in order to achieve change and to have equity for people with disabilities taken seriously. Otherwise it is seen as timid, passive, mendicant legislation. Qualities too often attributed to people with disabilities, which leads to the dismissal of their needs. Plans should be monitored and reported on by HREOC or the State EEO bodies.

2.6 Complaints

From my experience as a worker in a disability organisation and a person with a disability, I have found that only a minority of people is willing to lodge complaints. I would think the reasons for this would include

- People with disabilities reflect the attitudes of the general community in being reluctant to take what is seen as political or legal action
- People imagine that such action is going to be complicated and expensive and to always involve going to court
- They are afraid that it will involve expensive legal action
- They are hesitant to challenge or question what they see as powerful interests
- They lack education and confidence with bureaucratic processes
- They are exhausted by functioning in an often hostile physical and social environment

At present the Victorian Equal Opportunity Commission seems to offer a quicker service in hearing complaints than HREOC. I presume that this is due to lack of

adequate resources at HREOC. It is important to have uniform federal legislation. But if the philosophy of an existing government causes it to weaken the federal law, it is vital to have the State law as a back up and vice-versa. The improved status of people with disability is fragile and could easily go backwards at the whim of government.

Representative actions could be helpful in expediting systemic change. Individual action is slow and demanding on individuals. Representative action would resolve some of these problems, as long as it truly represented people with disabilities and involved a genuine consultation process.

Disability organisations could take this role. Bodies may certainly take more notice of an organisation and of HREOC itself.

2.8 Education

Complaints in themselves have an educative effect but results could be more widely publicised. The Internet site is educative. I feel educational efforts from the HREOC may have died down in recent years due to lack of resources. They could encourage materials and training to be produced by other government departments and NGOs, with advice and assistance.

Public enquiries would be helpful in assessing discrimination in certain areas, in measuring improvements or deterioration in future. They provide concrete evidence on which to base action and accord credibility to the issues treated.

2.9 Looking to the future

As previously mentioned other countries with disability discrimination legislation which seem to have produced a better general situation in many areas for their disability community are the USA, Canada and the UK. This seems to have involved, especially in the case of access and employment, introducing incentives in the form of time deadlines, in some cases associated with tax incentives. In that sense our DDA lacks teeth to make things move along quickly and relies upon already disadvantaged people with disabilities to do much of the work in the form of complaints. It is not really their responsibility to make things just. It is that of the whole community. If the full inclusion of people with disabilities and their human rights are to be taken seriously, then we could well take on the methods of these countries, which we are so fond of imitating in other fields.

Representative actions may also be helpful in expediting matters

Incorporating requirements of the DDA into the Building Regulations has been a positive step and perhaps could be extended to other types of laws and regulations in areas where discrimination exists. Transport standards have been helpful but methods of enforcement for transport in other countries where greater advances have taken place (USA, Canada, UK) could be examined

Unless the DDA and HREOC are strengthened in this way change will be long in coming and may falter and go backwards. This would place Australia far behind the countries it likes to regard as mentors and would waste the enormous human potential of Australians with disabilities, including our ageing population.