



Hobsons Bay
CITY COUNCIL

Hobsons Bay City Council Submission to Equality, Capacity and Disability in Commonwealth Law – Issues Paper

JANUARY 2014

Introduction

Hobsons Bay City Council (the Council) is pleased to see that the Australian Law Reform Commission is reviewing Commonwealth laws and legal frameworks that either directly or indirectly impact on the recognition of people with disability before the law. This is a great step in ensuring that the rights of persons with disabilities are adhered to.

People with disability in Hobsons Bay

Hobsons Bay City Council is situated approximately seven to 20 kilometres south west of the Central Business District (CBD), covering an area of 66 square kilometres. The municipality has a population of 87 360 people which is forecast to increase by 17 per cent (14 864) by 2031.

People with a disability make up approximately 17 per cent of the Hobsons Bay population. Disability is a key priority for the Council, as noted in the Councils directional plans, the Community Health and Wellbeing Plan 2013-2017 and the Council Plan 2013-2017.

The Council's commitment is further confirmed with the development and implementation of the Disability Access and Inclusion Strategy 2013 – 2017, which works towards achieving a fully accessible and inclusive municipality where all residents, regardless of their ability, can reach their full potential and lead fulfilling lives.

The Disability Access and Inclusion Strategy 2013 – 2017 (DAIS) is underpinned by various International, Commonwealth, State and Local legislation and policies, including the United Nations Convention on the Rights of Persons with Disabilities, and the Commonwealth Disability Discrimination Act 1992. This enables the Council to ensure appropriate methods and strategies are included in the plan, strengthening its ability to address discrimination experienced by people with disability.

The DAIS has also been developed in consultation with our community, with ongoing consultation throughout its implementation and evaluation. A key advisory group for this strategy, and the work the Council undertakes within disability, is the Council's Disability Advisory Committee.

Key elements of concern

Highlighted below are key elements of concern to the Council:

- Framing principles: The framing principles (dignity, equality, autonomy, inclusion and participation, and accountability) are supported, however equality should also recognise that in some instances people with disabilities need to be treated with equity in order to create equality. For example, needing additional assistance with some elements of the law in order to fully participate.
- Gay, Lesbian, Bisexual, Transgender, Intersex and Queer (GLBTIQ) people with a disability: Discrimination and abuse against GLBTIQ people can have acute impacts on mental health and wellbeing (including internalised homophobia and transphobia). People with disabilities have the same range of sexual orientations, gender identity and intersex variations as in the general population, so any discrimination in law against gay, lesbian, bisexual, transgender and intersex people affects people with disabilities. This discrimination compounds the discrimination already experienced by people with disabilities, and includes laws relating to marriage and parenthood. It is therefore imperative to recognise these additional challenges and inequities

faced by GLBTIQ people with disabilities. In addition legal frameworks need to include education and training that explores these issues and identifies policy directions within services that validate individual self-expression and explicitly includes sexual orientation and gender identity.

- National Disability Strategy: Once the Australian Law Reform Commission completes its report, and it is endorsed by the Australian Parliament, the recommendations should be included in the National Disability Strategy to ensure they are implemented.
- National Disability and Insurance Scheme (NDIS): While the NDIS is still yet to be largely implemented, gaps can already been seen. This is largely within the age range, with people over 65 years being ineligible. This is of great concern as it is often people within the older age group that need the most support and financial assistance in order to maintain their health and wellbeing.
- Financial services: People with disability may be refused access to a bank account, or if they have a bank account, the financial institution may refuse to allow them to operate it independently. Banks also frequently refuse to recognise informal support people, such as family members from whom a person may wish to receive assistance to operate a bank account. This needs to be addressed in order to allow people with disabilities to be able to manage their finances. This could include defining and recognising the different types of persons to assist people with disability to exercise their capacity, or to exercise capacity on their behalf.
- Board participation: Under Commonwealth corporations and associations law, a person with disability, such as a person with psychosocial or intellectual disability can be automatically disqualified from holding the office of a director or committee member. This should be reviewed to ensure inappropriate dismissals do not occur when people are still able to perform their jobs to the required capacity.
- Access to justice: People with disability may be unable to obtain equal benefit and protection of the law because they do not receive supports to enable them to take action to protect their interests, and no one else may do so on their behalf. For example, some people with disability cannot obtain a personal violence order unless supported to do so. This is further compounded for people that are newly arrived or of a Cultural and Linguistically Diverse (CALD) background, navigating an often complex system. This needs to be reviewed to ensure all people can access the justice system. This could include establishing principles to determine the level and type of support a person may require to exercise his or her capacity before the law.

In addition, the capacity of people with cognitive impairments to participate as witnesses in court proceedings is not supported. This could lead to serious crimes going unprosecuted. Witnesses should be supported in order to be able to give evidence.

- Communication: Adapting communication and using a variety of communication methods to implement and discuss the law is essential for all community members, particularly those with a disability and CALD people with a disability. This should be a key priority for the Government via using such tools as screen readers, BrowseAloud, font size, Auslan interpreters, easy English, and interpreters. Caution needs to be taken however to ensure key information is not lost through simplification.

- Universal design: Currently new buildings have to comply with the Building Code of Australia, however unfortunately this does not go far enough in creating spaces and buildings that are accessible for all ages and abilities. Universal design principles need to be included within the legislation when developing new buildings and public infrastructure.
- Women and girls with a disability: Gender equity is a key priority for the Council. Women and girls with a disability are often faced with inequities therefore it is essential that the law and legal frameworks identify this and put strategies in place to address them, such as greater support for women with disabilities at risk of violence, abuse, and or neglect.
- Human rights: While the issues paper identifies the need to review and or link with specific state and territory laws, it should also identify the need for the development of a National Human Rights Charter which can set the direction for the nation on all human rights, including people with disabilities.
- Disability and aged care: Currently young people with disabilities are placed in nursing homes when no appropriate accommodation is available. This is of great concern. Legislation needs to be in place to ensure there is appropriate housing for young people with disabilities and that they are placed in accommodation that is age appropriate.

The Council also understands people with disability are denied the right to recognition before the law in a wide range of civil law contexts – for example, in the law of contracts, the law of succession, in relationship (family) law, and in laws related to civic duties and employment law. These should also be reviewed to ensure recognition is achieved.

Conclusion

The Council looks forward to reading the final report by the commission and seeing change implemented to support and enable full participation and recognition of people with disabilities in the law and legal frameworks.