

Introduction

People With Disabilities ACT Inc, (PWD ACT Inc), is a not for profit consumer systemic advocacy organisation which represents the interests of people with disabilities in the ACT. Our commitment is to improve access to all amenities and to all forms of information and activities in the ACT community. PWD ACT also works to inform the community about disability issues.

PWD ACT'S Perspective – Outdoor Cafes and Human Rights

PWD ACT approaches the subject of this Review, the ACT Government's Policy in relation to outdoor cafes, from a human rights and disability rights perspective. This means that we start from the premise that People with Disabilities have a right to participate fully in the community and contribute to the economic, social and cultural life of the community. One element of this right is the right to easy and dignified access to community facilities such as outdoor cafes. Outdoor cafes are an important part of the social and cultural life of the community as both places for meeting, conversation and social interaction as well as places at which food and drink is purchased and consumed.

The Right of people with Disabilities to access community facilities such as outdoor cafes is contained in Article 9 of the Convention on the Rights of Persons With Disabilities which Australia has ratified. This Convention also gives people with disabilities the rights to independent personal mobility, Article 20 and to participation in cultural life and recreation and leisure, Article 30. In the ACT, the rights of people with disabilities are recognized in the Charter of Rights. Also the rights of people with disabilities to non-discriminatory access to premises and to goods, services and facilities is protected through ACT and Commonwealth discrimination laws.

This rights based approach requires that outdoor cafes in the ACT should be regulated in a manner which supports the legal rights of people with disabilities to access outdoor cafes as embodied in the international, Act and Commonwealth laws referred to above.

We also point out that people with disability are not only patrons or users of outdoor cafes. People with disabilities should also be seen in their roles as employees and proprietors of outdoor cafes and this policy should reflect this broad approach to access and community participation.

Attitude to Public Open Space

PWD ACT asserts that public open space is public space and is not private property. The permit by which a private person uses public open space for private business purposes is and should be seen as a privilege and not a right. We support the statement in the Policy that 'Outdoor Cafe areas should be treated as seating within the public domain and not as private property which is merely an extension of business premises.' Accordingly, we assert that there is a robust rational

basis for regulating the private use of public open space for outdoor cafes to achieve social outcomes including the accessibility of outdoor cafes and all the benefits they offer for all members of the community.

Limitations of Current Policy

The disability content of the current Policy's is limited to clearances and setbacks. It does not address the many other access issues including accessibility of the cafe environment to people who use wheelchairs and other mobility devices or other aspects of access for people who are vision impaired including colour contrast, signage and lighting and the use of tactile ground surface indicators. The Policy should be founded on the broad definition of access embodied in Article 9 of the United Nations Convention on the rights of persons with a disability.

The introduction to the policy needs to set the policy in its social context. It should a statement of the business case for the accessibility of the outdoor café environment in terms of encouraging the custom of the increasing numbers of older people and people with disabilities. The policy should also reference the legislative context including the International Convention on the Rights of Persons with Disabilities and ACT and Commonwealth disability and age discrimination laws.

The current Policy does not compare favourably with the Policies on this matter in other jurisdictions with respect to ease of reading and clarity of diagrams. We recommend that the ACT Policy should follow the lines of the Melbourne Policy for Outdoor Cafes with the specific changes we have proposed.

Requirements for a Minimum Adequate Clear Footpath

The minimum adequate clear width requirement of 3,000 mm for footpaths and The clearance zones for Public Amenities, utilities and other existing structures are vitally important for people with disabilities. These zones should be maintained and efforts to reduce them should be resisted. We note that the 3,000 mm clearance zone, may be varied if it can be demonstrated that special circumstances prohibit the establishment of an Outdoor Cafe in locations other than against the active shopfront and that the principles outlined above are not contravened. We seek clarification of the circumstances in which the Department exercises this discretion. We believe that the circumstances justifying the exercise of this discretion should be set out in the policy and that the discretion should be confined to circumstances which are truly exceptional.

The wording of the paragraph of the Policy on page 8 relating to appropriate spacing for outdoor cafe areas is highly confusing and needs to be clarified. This paragraph should clearly state a requirement for a pedestrian clearance way of 2 metres measured outward from the building or (shore) line with the building line to be kept clear of obstructions and objects such as cafe furniture, pedestrian seating and planters and trees to be placed towards the curb a minimum of 2 metres from the building line.

We recognise that there are two barriers to the implementation of are preferred Policy throughout the ACT. The first is that in some areas the limited size of the current footpath area may not allow for a two metre pedestrian clearance. Where this is so we would ask that the best result possible be achieved by adhering to the general principle of a pedestrian clearance way in the middle of the path with the building line kept free of obstructions and the obstacles such as cafe furniture and signs moved as far as practicable to the curb side.

The second barrier is the existence of current permits which give the holders existing rights to the use of footpath space for cafe furniture and signs. The Government would be liable to compensate permit holders if it restricts the placement of cafe furniture and signs to implement our preferred policy during the currency of existing permits. In these circumstances, we would advocate for the achievement of the best result possible by negotiations over the placement of cafe and furniture and street signs during the currency of the permit. We would suggest that when the permit comes up for renewal, the permit be renewed on terms which give effect to our preferred policy and in particular for a two metre clearance zone for pedestrians.

Assessment of Applications

The Policy does not state how the Regulator will assess the access implications of an application for an outdoor café permit. The Policy should include this information. We also submit that an applicant should include in the application a statement of its attempts to consult with people with disabilities on access issues. In addition, an applicant could also be required to provide a report from an accredited access auditor on the access implications of the applicant's proposals.

Defining The Permit Zone

We note the requirement that All Outdoor Cafe furniture must be kept strictly within the boundaries of the permit area. Outdoor Cafe furniture must not spill out into public thoroughfares and non-permit areas. Areas must be contained within a clearly defined boundary.

All too often our members encounter outdoor café furniture which has spilled out into public areas in positions which obstruct their access and create safety hazards. The marking of the boundaries of a permit area is of no benefit as generally people do not know the boundaries or cannot see or locate the markers. The Policy says the right words but experience suggests it is not implemented or properly enforced. We call on the Department to put additional effort and resources to enforcing compliance of the policy so that outdoor café furniture is not moved into positions which obstruct pedestrian walkways or clearance zones or create hazards for pedestrians.

Outdoor Café Furniture

The Policy, at section 2.1 on page twelve, contains detailed requirements as to the construction and appearance of outdoor café furniture but has no requirements to mandate the use of furniture which complies with universal design principles and is accessible for café users. This is a major omission in the current policy which the new policy should correct. The policy should inform applicants and proprietors that aspects of the design and configuration of furniture which are relevant to accessibility for people with disabilities e.g. colour contrast, height and dimensions affect the usability of the furniture by all customers. The policy should highlight that high tables, bar stools and fixed seating and tables are access barriers and their use is discouraged. The Policy should promote the use of furniture which is functional and universally accessible.

Temporary and Permanent Barriers, Screens and Other Structures

The current Policy provides for the use of barriers to limit the area within which outdoor café furniture and signs may be placed. We submit that the policy should specify the types of barriers to be used. In some places, e.g. in Civic, where there are cafes on both sides of the pedestrian walkway, there are no barriers between the two lines of tables. In other cases chains or ropes have been used as barriers. These chains or ropes are not detectable by people who use white canes and are a hazard. We would recommend that the barriers be solid barriers of canvas or other durable material which reach all the way down to ground level so as to be detectable by cane users.

The permit conditions should ensure that temporary and permanent barriers, screens and other structures are positioned and kept within the boundaries of the permit area and do not interfere with access to a clearance zone or pedestrian walkway or create a safety hazard. These permit conditions should be properly enforced. The above principles also apply to umbrellas, shade structures and other weather protection.

Signs

The Policy refers to the requirements of the Roads and Public Places (Removable Signs) Code of Practice 2005 www.legislation.act.gov.au/di/2005-207/default.asp We note the requirements of clause 7 of this Code of Practice regarding the placement of signs and clearance zones for signs. The requirements of cl 7 are expressed to be for the protection of people who are visually impaired. However, they are equally relevant to people who use wheelchairs and other mobility aids.

Notwithstanding the explicit requirements of clause 7 of this Code, all too often our members encounter moveable signs in positions which obstruct their access in a clearance zone or pedestrian walkway or which cause a safety hazard. The

Policy should include a requirement for proprietors of outdoor cafes to ensure that their moveable signs are at all times positioned within the permitted area and kept outside the designated clearance zones and pedestrian walkways and the requirements of the Code of Practice be complied with at all times these requirement must be strictly enforced.

Conditions of Use – Operation of an Outdoor Café

The conditions of use require the proprietor to comply with ACT laws relating to public health, work safety, smoking, noise pollution, waste management and service of liquor. We submit that the conditions of use should also refer to and require compliance with Commonwealth and ACT disability discrimination laws. This would ensure that proprietors comply with these laws in relation to the positioning and use of furniture and signs and would ensure that outdoor cafes comply with these laws in other respects e.g. requirements to give access to customers accompanied by dog guides and assistance animals.

Enforcement and Operation of Policy

We note that the Policy states that in a case of the placement of furniture or other items in a public place without a permit, an authorised road and public places officer may, under section 12G of the Roads and Public Places Act, remove furniture and other items from public places. These items may be sold by the Territory and any costs may be recovered from the proceeds. The Policy also states that if the conduct of the subject permit area causes undue inconvenience or disruption to pedestrians, vehicular traffic or to the occupiers of adjoining business premises, the ACT Government may cancel the permit.

We have mentioned above that despite the clear wording of this Policy and of related laws such as the Code of Practice for moveable signs, all too often, our members encounter café furniture and signs positioned in places which obstruct their access to a clearance zone or walkway or cause a safety hazard. Accordingly, we call on the regulator to put greater effort and resources into the enforcement and compliance of the Policy. We hope that that if the Regulator uses a combination of public education and stricter enforcement of permit conditions relating to street furniture, it will not be necessary to resort to the harsher methods of seizure and sale of furniture and items or cancellation of the permit. However, we consider that the Regulator would be justified in using these harsher measures in cases in which they are warranted, for example where a particular outdoor café engages in conduct which continually breaches this aspect of the Policy.

Conclusion

We would welcome the opportunity to meet with staff of the Office of Regulatory Services to discuss our submission and provide any additional information which may assist in the conduct of this review.

Robert Altamore
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