

Footpath Disability Access Requirement – LEGAL ADVICE

We have been provided with the draft Footpath Trading Policy (**Policy**) dated March 2003 prepared by the City of Yarra. You have asked us to advise whether to comply with the *Disability Discrimination Act 1992 (Cth)* (**DDA**):

- there is a minimum width for a pedestrian passage that Council must provide; and
- in a retail shopping strip, the guidance line for visually impaired persons must be the building line as opposed to another line such as the footpath line.

We advise:

- The DDA makes it unlawful for a person to discriminate against another person on the ground of the other person's disability in the provision of a means of access to premises. The definition of "premises" is sufficiently broad to extend to include footpaths under Council's control within the municipality.
- The defence of unjustifiable hardship does not apply to the specific questions you have asked as it does not apply to the *use* to which a footpath is put.
- For a footpath to be accessible to persons with a disability and not unlawfully discriminate in breach of the DDA, industry standards (even though they may not be binding) are relevant considerations.
- Australian Standard 1428 Parts 1 and 2 contain relevant provisions, but the most specific industry standard is Part 13 of the AustRoads *Guide to Traffic Engineering Practice: Pedestrians*. This sets a general minimum standard footpath width of 1.2m as adequate for most road and street situations **except in commercial and shopping environments**, where the pedestrian demands and accident risk may require wider paths. The Guide states that to enable wheelchairs to pass, an absolute minimum width of 1.5m is required.
- The Human Rights and Equal Opportunity Commission is the body responsible for administering the DDA. It has issued an Advisory Note on Access to Premises which adopts the content of Australian Standards 1428 Parts 1 and 2. It states that where it is not possible for a continuous accessible path of travel to be 1.8m wide, then the frequency of passing spaces should be considered in the context of a *location and purpose* of the path.
- We consider the location and purpose of the path to be considerations that any court assessing a claim under the DDA would treat as fundamental.
- The location of the paths are in public streets maintained by Council at the expense of ratepayers residing in the municipality for public use and benefit. The purpose of the paths are to enable access to shopping and other public facilities/venues, as well as private housing. If proper access paths are not provided it would impede the ability of disabled persons to perform basic

functions of shopping, attending public facilities, going home or visiting friends. These are basic human rights to which the DDA is directed.

- In our view encroachments on the accessible path of travel by commercial trading activities are unlikely to be tolerated by a court determining a case under the DDA. For Council to tolerate such encroachments would, in our view, expose it to a high risk of a matter being successfully litigated. We advise that footpath widths should be 1.8m wherever possible, and not less than 1.5m with passing spaces at intervals of not more than 6m, as recommended by Australian Standards.
- Part of the continuous accessible path of travel is having a guidance line on which a visually impaired person can rely to guide them along the path of travel.
- Although the issue was not finally determined, in *DAIS v Stonnington Council* (16 January 1998) the Victorian Civil and Administrative Tribunal (**Tribunal**) indicated its strong view that where the failure to provide a guidance line may force a visually impaired person to lose their straight line, become disoriented or lose direction, and risk injury, then this is unlikely to be unreasonable and in breach of anti-discrimination legislation. It stated that tactile indicators were not an entirely satisfactory alternative as they may be of little use to the elderly.
- In our view the building line is the only appropriate guidance line on Council footpaths. To use the footpath line is unsatisfactory in that it has encroachments by signs, parking meters, fire hydrants and the like. This is likely to cause the disorientation and potential for serious injury identified in the *Stonnington* case.