

June 1995

DO INTERNATIONAL STUDENTS WITH DISABILITIES GET "A FAIR GO"
AT AUSTRALIA'S UNIVERSITIES?

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ISSN: 1321-7828
ISBN: 1 86342 481 4

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ABSTRACT

Do international students with disabilities get "a fair go" at Australian universities? And what "is a fair go"?

Australian universities provide a range of tertiary education opportunities for international fee-paying students. These include courses conducted at the Australian campuses and courses which are conducted off-shore.

Within the body of international students are students who have disabilities which impact on their studies. The university may/may not know about the student's disability prior to enrolment and/or arrival in Australia.

This paper will examine current practices within universities, explore the legal issues associated with disclosure of disability prior to entry/enrolment and the responsibilities of universities to the student, vis-a-vis the Disability Discrimination Act. This paper will also examine the financial implications for both the universities and student when expensive support services are required.

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INTRODUCTION

Anecdotal feedback regarding international students with disabilities, is that there is an increase in the numbers of these students and that the universities are generally unaware of their situation until they are enrolled.¹

Once the service implications of their disability are revealed, it is often the case that the university is caught in a "catch up" position. If provision has not been made for the student, it is not clear who needs to know about the student's requirements, who should be responsible for sorting out the student's needs (Disability Adviser or the International Office), and then finally, who should fund the provisions. Does the student's cost-recovery education fee cover these services?

This paper considers the issue of whether or not international students with disabilities are given "a fair go" at Australian universities, insofar as they are provided with the services, facilities and supports necessary for them to complete their studies. While the national experience is the focus of the paper, the authors will also refer to their experiences at their host university, the Curtin University of Technology.

The paper further considers the legal aspects of service provision that is, the interaction of the Migration Act 1958 (Cth) and the Disability Discrimination Act (1992) (Cth) insofar as those Acts affect university practices and procedures in relation to international students with disabilities.

¹. See Tertiary Education Disability Council (Australia) (TEDC) Discussion Paper on Funding for Support Services to International Fee-Paying Students with Disabilities. National Survey Regarding Full-Fee Paying Students with Disabilities (August 1994), (unpublished). Hereafter TEDC, (1994)

The important question of who should fund these supports is also discussed.

These issues will be considered as per the following:

- **DEFINITION OF SERVICES**
- **CURRENT PRACTICES**
- **LEGAL ISSUES**
- **ISSUES OF DISCLOSURE**
- **FINANCIAL IMPLICATIONS OF SUPPORT SERVICES**
- **RECOMMENDATIONS**
- **CONCLUSION**

DEFINITION OF SERVICES

For the purpose of this paper, services are defined as those which are high cost and tagged to individual students, as opposed to those which are generic and do not attract visible costs eg. services in library, service from the Disability Adviser and any service regarding physical access on the campus. (Generic services are embedded in mainstream services and are funded by recurring university budgets). The high cost, one-off, individually tagged services are essential for the successful participation in, and completion of, a student's studies. They could reasonably be considered as direct costs of education.

They are services which are tagged to students who require high support, usually for the duration of their studies. These services are:

- * interpreter services
- * notetaker services
- * scribing services
- * braille services
- * audiotaping services

NB Attendant care is not included in this discussion, as the authors have concluded that this could reasonably be considered a personal service.

Included in this discussion however, are the costs associated with the purchase of equipment (computer), personal aids (hearing aids) or mobility aids (wheelchair) which may become necessary during the course of the student's studies.

1. CURRENT PRACTICES

1.1. Written policies

Tertiary Education Disability Council (TEDC) survey results (August, 1994)² indicated at that time, that no tertiary institution had a written policy regarding the provision of service to international students with disabilities and who should pay for them. One university had an unratified written codicil to its policy regarding international students, detailing a user pays requirement.

The anecdotal feedback from the same institutions is that to date, the students' general needs have been accommodated within the normal operating budgets, however, no institution was clear about how high cost individual services would be funded. Some presumed they would be funded by the cost-recovery education fees and were negotiating policies with their International Offices, while others assumed they would continue to cover these costs within normal operating budgets. These comments were informal responses to the question "If there is not a written policy regarding support service costs for full-fee paying students with disabilities, please provide information re your institution's practices or views in relation to the matter".

At the time of writing this paper (May 1995), a request for an update on written policies was repeated, with only one university indicating that they had such a policy. This particular policy arose out of a situation whereby the university had enrolled an international student without prior knowledge of the student's disability, and had used considerable resources, both human and financial, to support the student during her course. This expenditure was totally unexpected. This university's policy is to tag an individual fund (fixed amount) to all

2. See TEDC, (1994) op cit.

identified students with disabilities. This is available to both local and international students. This university also has a question on the enrolment form, inviting students to disclose their disability/medical condition.

1.2 The cost-recovery education fee

There appears to be a lack of clarity about what the cost-recovery education fee covers and what constitutes an "education" expense versus a "personal" expense. In the case of students with disabilities, is the use of an interpreter a personal service to a student, or is it providing education in a format which is accessible to the student, and indeed any other hearing-impaired/Deaf student in the audience? It may be argued that this is the equivalent of providing lecture notes (brailled, audiotaped or large print). Notetakers and scribes may also be considered in this light. Attendant care is clearly another matter. To date at Curtin University for example, students (both residential and day) have been required to bring their own carer onto the campus.

The whole issue of the provision of potentially expensive human resource services (interpreters, notetaker, scribes etc) for local students is a vexatious one anyway, with approaches by institutions varying from full responsibility being assumed to little responsibility being accepted.

1.3 DEETs position regarding payment for services

An informal response from DEET to the question of who should pay for such services to international students with disabilities is that the individual institutions set their own cost recovery fees and that the onus is on the institutions to consider how these services can be funded. One inference which may be drawn, is that these costs be factored into the fees. The Federal Disability Discrimination Act (1993) is clear that discrimination occurs if extra fees are imposed on an individual because of a disability.

1.4 Universities Code of Practice regarding students

While the institutions have no clear guidelines regarding international students with disabilities, the Australian Vice-Chancellors' Committee (AVCC) code of practice states,

The university will provide opportunities for students to participate in the functioning of the university at various levels and to provide feedback on the teaching-learning environment. ³

And that,

The university will endeavour to address the reasonable needs of all its students regardless of gender, ethnicity, age, disability or background. ⁴

The AVCC further describes the responsibility of Australian universities to international students as per the following:

Australian institutions should recognise their ongoing responsibilities for the education and welfare of international students. Institutions should ensure that the academic programmes, support services and learning environment offered to international students will encourage them to have a positive attitude about Australian education and Australia when they return home at the conclusion of their studies. ⁵

1.5 Disclosure of disability

At Curtin University, there is, at present, no question on the enrolment form, or invitation in the university's literature for prospective international students to disclose that they have a disability, and this may be representative of the national experience. Clearly, some forms of compulsory disclosure contravene anti-discrimination legislation and this is not required of local students. The university may/may not become aware of a medical condition or disability only when the student applies for a student visa and medical information is revealed in the the application form

³. Australian Vice-Chancellors' Committee (AVCC). Universities and Their Students Expectations and Responsibilities. Generic Guidelines, (1994a), item A.10, p3

⁴. AVCC (1994a) op cit, item A. 12, p3

⁵. Australian Vice-Chancellors' Committee (AVCC). Code of Ethical Practice in the Provision of Education to International Students by Australian Higher Education Institutions, (1994b), item A.12, p3

There have been a number of instances however, whereby an international student with a significant disability has been offered a place and the university has been unaware of their situation prior to enrolment. The consequences of this have been many and varied, with the student invariably the most affected. Again at Curtin University, there is a student with a significant hearing loss (undetected in his own country), a student who has suffered with polio, making mobility difficult around the large, hilly campus and in her fieldwork placements, and a student who became a paraplegic whilst in the middle of his course. Every one of these students have presented with issues and support needs that the university did not anticipate or allow for when accepting their enrolment.

It could be argued that this is exactly the situation for local students, however, a local student is usually aware of the health system and community supports, and has organised his/her own network of help. An international student not only doesn't know what supports are available or how to access them, but may not even be eligible for them. This has considerable implications for the level of support provided by a university and the Disability Adviser in particular. In the case of Curtin University, it is very often the case that the international students with disabilities receive more individual support from the Disability Adviser, than does their local counterpart.

2. LEGAL ISSUES

The Disability Discrimination Act (DDA) was proclaimed in October 1992 and is effective from March 1st 1993. In general terms, the Disability Discrimination Act (1992) makes unlawful, discrimination on the basis of physical, intellectual, psychiatric, sensory, neurological and learning disability. The DDA also makes it unlawful to discriminate against people who may have some physical disfigurement, or because of the presence in their bodies of an organism capable of causing disease. The DDA, unlike some counterpart State legislation (New South Wales, Victoria, South Australia and Western Australia) defines disability so as to include not simply the present existence of physical, intellectual, psychiatric, sensory, neurological or learning disabilities, but also the previous existence of those disabilities, the future existence of those disabilities or the imputation that such disabilities may exist in a person. The DDA therefore overcomes some of the limitations which have been identified in New South Wales and South Australia in particular, where the definition of disabilities in those States made

certain claims for discriminatory behaviour difficult or impossible.

Universities are bound by the DDA under Section 22.

Section 22 of the DDA prevents a university from discriminating against a student or potential student. It will be unlawful for a university to discriminate against a person on the grounds of that person's disability by:

- a. Refusing or failing to accept a person's application for admission as a student.
- b. Imposing terms and conditions upon that student not otherwise imposed upon students without disabilities.
- c. Denying the student access to any benefit provided by the university.
- d. By expelling the student because of the disability, or
- e. By subjecting the student to some other detriment.

It will not be unlawful for the university to refuse or fail to accept a person's application for admission as a student at a university where the person, if admitted as a student by the university, would require services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the university.

Similar provisions are contained in State legislation.

2.1 The Migration Act 1958 and the Assessment of Student Visas

A prospective international student who wishes to study in Australia must make application for a student visa to the Minister for Immigration, Local Government and Ethnic Affairs (MILGEA) under the Migration Act 1958. In most cases the student will apply through the Australian Embassy in their own country. Specific requirements relate to the grant of student visas. The essential requirement is that the student is eligible to study at the institution of their choice so it must be shown that they would satisfy the academic entry criteria. In addition, and perhaps more relevant to this paper, is the requirement that a student who

applies for a student visa must satisfy MILGEA that they are able to pass a medical examination. An applicant for a student visa may be requested to attend for a medical examination. In effect this means that the student will be examined by a Commonwealth Medical Officer appointed from medical practitioners practicing in the country from which the student applies for a visa.

The applicant for a student visa must complete the particulars of the medical examination form which, in general terms, requires the applicant to disclose whether or not they are suffering from any contagious diseases or other disabilities which affect their health.

Of particular concern to the medical practitioner examining the applicant is the ability of the student to be able to complete their studies so that any disability which bears upon that capacity is an important consideration.

If the student has a disability then the medical practitioner is required to consider whether or not this disability is likely to be a financial burden upon the Australian community.

Applicants for student visas are required to show that they have some form of medical insurance (usually Medibank Private coverage) to cover the cost of any medical treatment. If such coverage is not available (usually because the student has a pre-existing disability which is not covered by the insurance for a certain period) then the student must satisfy the medical officer that they have sufficient resources to meet the costs of any medical treatment. This may be achieved by showing additional medical cover or sufficient financial resources to cover these costs.

It may be that the total cost of any future medical treatment could not be anticipated or covered by the student, in which case MILGEA will have to consider whether it is in the public interest to allow the student to enter Australia for study.

It is worth noting that different considerations apply to students obtaining a student visa, which in essence is a temporary visa, to those who apply for permanent residence in Australia. The fact that a student will be in Australia for a limited period only generally means that considerations in relation to long term medical costs will not be so significant. By contrast, a person who applies for

permanent residency has a more difficult task in satisfying MILGEA that the costs of any medical treatment will not be an additional burden to the Australian community.

It is clearly a relevant consideration for a MILGEA officer to take into account whether or not the student has a contagious disease.⁶ Purely economic considerations may however not be sufficient and there is Federal Court authority for the view that some applicants should be entitled to entry into Australia notwithstanding severe disability.⁷ There do not appear to be any reported Federal Court cases dealing with the refusal of a student visa based on medical grounds. Given the limited duration of the visa the long term economic considerations are less likely to be significant. More significant are the considerations of whether a disability will prevent a student from completing their studies or whether on more general grounds the disability may somehow be a health threat to the Australian community.

It would appear that in some circumstances an applicant may be refused a student visa where they suffer from a mental illness which, whilst not having prevented them from satisfying the academic admission requirements, may prevent the student from completing their studies.

2.2 The Requirement of Public Interest Under the Migration Act 1958

As indicated above, one of the considerations for a MILGEA officer is to consider whether the admission of the student will be in the public interest. That criteria requires the officer to take into account a number of matters, one of which includes the medical health of the applicant. The assessment of the applicant's medical health is primarily the function of the appointed Commonwealth Medical Officer. The stringency of the medical examination and the frankness of disclosure by the applicant will therefore be critical to the assessment of the student visa.

Provisions under the Migration Act 1958 require that there be frank disclosure of

⁶. See *Raven v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 25ALD 689, a case dealing with an application for permanent residence by an applicant with HIV positive diagnosis. Also note *Othman and Another v Minister for Immigration, Local Government and Ethnic Affairs* (1991) 24ALD 707, a case dealing with an applicant with a history of drug dependency.

⁷. See *Chaudhary v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 33ALD 437.

any circumstances relevant to the application and failure to disclose or the submission of false material may lead to the subsequent cancellation of the visa.

If the student fails to disclose, for example, a pre-existing disability which was not identified by the Commonwealth Medical Officer but subsequently became apparent, then there may be grounds upon which the student visa could be cancelled.

The notion of public interest requires the MILGEA officer to take into account a number of considerations, primary amongst those are economic. It is clear that persons with disabilities frequently require additional services, the provision of which can be expensive. One of the considerations in the public interest is whether or not the student will require care or treatment, and use of resources which are in short supply. It would appear that in the case of care and services for persons with a psychiatric illness/disability, that those services are in short supply. Therefore a student who has a psychiatric illness (which nevertheless does not preclude them from studies) may be prevented from obtaining a student visa, on the grounds that their condition is such as to place a high demand on services which are short in supply and possibly costly.

If the Commonwealth Medical Officer considers that the services required by the applicant are of such a type as to place a high demand on resources in short supply, or if there would otherwise be a burden on the Australian community, then the Commonwealth Medical Officer may report to MILGEA that the applicant has not satisfied the medical test. If that is the case then the applicant fails to satisfy the public interest criteria and may be precluded from obtaining a student visa.

2.3 The Relationship Between the Migration Act 1958 and the Disability Discrimination Act 1992

The requirement that MILGEA take into account health considerations and that they assess whether or not an applicant has a disability, is central to the granting of a student visa. The ability of an officer to grant a visa based upon a person's disability would appear to be discriminatory. Section 29 of the DDA makes it unlawful for a person who performs any function or exercise of power under Commonwealth law or for the purposes of a Commonwealth programme or the administration of a Commonwealth law to discriminate against another person

on the grounds of the other person's disability. MILGEA is clearly a Commonwealth Government department administering Commonwealth programmes and law. Section 52 of the DDA however specifically excludes the provisions in the Migration Act 1958 from the operations of the DDA. It therefore follows that the practices and the procedures of the MILGEA officers are not touched by the DDA so that their deliberations in relation to the public interest criteria, and in particular the medical assessment of an applicant, are unfettered by the DDA.

The effect of Section 52 of the DDA means that MILGEA is free to impose conditions upon persons who have a disability of the kind referred to above, namely that they supply evidence of health insurance cover or that they are otherwise able to restrict the costs of any care and treatment to a minimum. Such conditions would, in general terms, be unlawful were it not for the exemption granted under Section 52 of the DDA.

2.4 The Obligations of the University Under the DDA

The areas covered by the DDA in relation to universities have been outlined above. The student visa requirements may provide a screening process for universities which preclude some students with disabilities being eligible for a student visa. Nevertheless it is clear that international students with disabilities do apply for student visas and are granted those visas. There are a number of circumstances in which a university will have to provide services for an international student with a disability. In the first instance, the student may have a pre-existing or disclosed disability at the time of their application for student visa. If the student visa is granted, then as soon as the student enters the Australian jurisdiction, the provisions of the DDA are available to that student. In other words, simply because the student is "international" does not mean that the Australian law does not apply to that student.

Second, a student may be granted a student visa, who at the time of their application may not be aware of a disability and may subsequently develop a disability. This may come about as a consequence of either the development of a pre-existing asymptomatic condition, or where a student suffers an accident in Australia.

Again, in these circumstances, the university is prevented from discriminating against the student on the grounds of disability.

Whilst the MILGEA officer may be aware of an applicant's disability, a university may not at the time that the student visa is granted to the student, be aware that that student has a disability. Some universities have put in place procedures whereby applicants for admission to university are required to complete details of whether or not they have a disability. The request for those particulars is not discriminatory where the purposes of obtaining those particulars is to provide care or services to the student. If those particulars were used in any other way it may be argued that discrimination could occur. If the university does not have in place a procedure whereby applicants are requested information about the disability at the time of seeking entry to university, then it may be difficult for the university to establish which students have a disability. This is further compounded by the fact that a student who enters university without a disability may subsequently develop a disability.

The major difficulty for universities is not with direct discrimination against persons with disabilities as such direct discrimination is usually easily identifiable. The difficulty arises where the discrimination is indirect in its nature. Such discrimination occurs where conditions are placed upon entry for or continuation of university studies which cannot be complied with by a person with a disability and which are not relevant to the study. This may be exposed in a number of areas, for example, during examination time where a student with a visual or writing disability may be required to complete an examination in a particular manner where the style of completion of the examination is irrelevant to the academic knowledge or skill that is to be obtained. It may also surface in the provision of facilities for students, for example, the access to buildings and provision of equipment.

In establishing which students have a disability it appears essential that the university attempt to obtain this information upon application by the student for admission to the university in the first instance, and by regular ongoing request for particulars on re-enrolment.

2.5 The Relationship Between Unjustifiable Hardship Under the Disability Discrimination Act (1992) and the Public Interest Under the Migration Act 1958

The DDA allows for certain discriminatory conduct where it can be shown that the university would have to provide services or facilities which would impose unjustifiable hardship on the university. Unjustifiable hardship is dealt with under Section 11 of the DDA and the following matters will be taken into account:

- a. The nature of the benefit or detriment likely to accrue or be suffered by any persons concerned, and
- b. the effect of the disability of the person concerned, and
- c. financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship, and
- d. in the case of the provision of services, or the making of available facilities - an action plan given to the Commission under Section 64.

Part 3 of the DDA deals with action plans. Section 60 provides that a service provider may prepare and implement an action plan. A university is, for the purposes of the Act, a service provider.

The action plan must include provision relating to, in general terms, the programmes and policies to be put in place by the institution in order to comply with the provisions of the Act.

Under Section 64 a copy of the plan may be given to the Commission.

In considering whether or not the conduct of a university can be exempt from discriminatory behaviour on the grounds of unjustifiable hardship, the reported cases suggest that the main consideration will be financial considerations. Where the behaviour of the university could be modified so as to prevent discrimination and the modification does not require any additional staff or equipment, then it would be difficult to establish unjustifiable hardship.⁸ However even large institutions such as government instrumentalities have been able to show that

⁸. See *McKenna v Re-Creation Pty Ltd and Others* (1984) EOC92-100

unjustifiable hardship will occur through significant financial expenditure.⁹ If however the financial burden is so significant as to put the institution at peril then it may be regarded as unjustifiable hardship.¹⁰

It would appear however that it would be difficult for a university with significant financial resources and the ability to be able to plan and administer the provision of services and facilities to mount a convincing case for unjustifiable hardship.

Commenting on the question of unjustifiable hardship, the Disability Discrimination Commissioner, Elizabeth Hastings recently said:

I shall be strongly encouraging employers, academics and other relevant persons to ask appropriate questions of applicants with disabilities and to exercise thought and imagination about their duty statements, work practices and course requirements. I shall similarly encourage all persons with disabilities to answer these questions with confidence and vigour, even sometimes when they haven't been asked. There is nothing wrong with saying to a prospective lab demonstrator 'I expect you are wondering how I am going to attach the grobniks to the doowackies with an impaired thingummy: well I have been giving that a lot of thought and I have worked out that if I carry a snogflupple I can easily thread it through the ickwhiffler, and Bob's your uncle'

Under the DDA, if provision of a snogflupple does not constitute unjustifiable hardship, then the employer, educator or service provider must make one available to enable the person with a disability to perform the "inherent requirements" of the job. ¹¹

It would appear therefore that it would be difficult for a university to maintain that the provision of any relevant snogflupples will be beyond it's means.

The requirement that MILGEA consider the public interest has some relationship to the question of unjustifiable hardship. Whilst the university must make a case

⁹. See *Ellis v Metropolitan Transit Authority* (1988) EOC92-232.

¹⁰. See *Blair and Others v Venture Stores Retailers Pty Ltd* (1984) EOC92-103.

¹¹. The Disability Discrimination Act 1992, it's impact on tertiary institutions. Tertiary Education Briefing, Edith Cowan University and University of W.A. 3rd August 1993.

establishing unjustifiable hardship in order to prevent an allegation of discriminatory behaviour, MILGEA is likewise required to establish that in order to refuse a student visa, it must show that the grant of a visa would be contrary to the public interest. This could be established where the cost of medical treatment and care would be a burden on the Australian community. Where the student can show that such costs would not be a burden then the onus would rest upon MILGEA to establish to the contrary. In that sense similar considerations apply to the granting of student visas. MILGEA however is exempt from the provisions of the DDA and can place what might be regarded as discriminatory conditions upon an applicant for student visa.

3. ISSUES OF DISCLOSURE

At what point in the application and enrolment procedure does the university find out if a prospective student has a disability, and does the timing of the disclosure make any difference to the university's actions or responsibilities?

For many universities, there is no question on the enrolment application inviting students to disclose a disability. Nor is there information in the general university literature which indicates to a prospective international student that the university provides services and facilities for students with disabilities. For many prospective students then, the only time they are approached to disclose any medical history, medical condition or a disability is when they apply for a student visa. As the application process is a confidential one, the Immigration Department findings would not be made available to the university, so the successful applicant could enrol and the university would still not be aware of any disability.

For universities which do have questions on the enrolment form relating to disability, acknowledgement need be given to the possible reluctance of a prospective international student to disclose a disability (as with a local student) for fear that this might jeopardise his/her application and enrolment. As with local prospective students, all Australian universities are constrained by the DDA against refusal of an offer of entry on the grounds of disability. Questions on enrolment forms therefore need to be accompanied by an affirming statement to the effect that this information is required only to assist in providing appropriate services and support. University literature also needs to have words to this effect,

with the invitation to contact the university Disability Adviser, even before application, to discuss his/her level of disability and what support will be available. This exchange of information should be promoted as an important part of the student's decision-making process regarding final choice of course and university.

The experience of the Counsellor (Disability) is that the willingness of a prospective international student to disclose a disability, prior to application, is influenced by:

- * the severity of the disability
- * the likely dependence on the institution for support
- * the concern that disclosure will affect application and entry
- * the presence, or lack of, affirming statements by the university
- * unwillingness to stand out
- * reluctance to disclose because of implications for professional work on graduation
- * confidentiality of the information

For universities which do have questions on the enrolment form and encourage disclosure of disability, the issue still remains, who pays for the high cost individually-tagged services? As previously mentioned, the national experience is that all students (local and international) have access to all generic support services and all the benefits of improved physical access features of a campus. What is not resolved, is how does the university fund the provision of the high cost, individually-tagged support services (interpreters, notetakers, tutors etc), when the DDA makes it clear that discrimination has occurred if extra charges are incurred by individuals with disabilities, which are not incurred by those who do not have a disability.

Does the timing of the disclosure (either prior to, or after enrolment) make a difference to the university's actions or responsibilities?

The DDA makes it clear that the timing of the disclosure of the disability does not affect the university's responsibilities in respect to that student, however, it does significantly influence the university's actions.

Curtin University experience is that students who have informed the university of their situation and requested information about supports, have given the university the opportunity to be clear about what services can be provided, what community supports might be helpful and on limited occasions, have been able to conduct personal tours of the campus to check the access features. This has given the prospective student useful information about whether or not they will be able to complete their studies at this campus, and has given the university a chance to inform the appropriate people - library staff, lecturers, school personnel etc - of the student's pending arrival and make provision for special needs.

The university has also had the opposite experience of international students who have said nothing about their disability and have only come to the attention of the university when they are failing in their studies. Reactive, "catch up" action is then taken with student usually caught in a lull before services and supports can be put into place.

4. FINANCIAL IMPLICATIONS OF SUPPORT SERVICES

Clearly, the provision of services can be managed in an orderly or a reactive way, depending on the notice the university receives about a student's disability. Quite independent of the actual provision of the service however, is the underwriting of them - who pays?

As has been outlined already in this paper, once the student is granted a student visa and is enrolled at a university, he/she is covered under the provisions of the DDA, as the Disability Discrimination Commissioner, Elizabeth Hastings, makes clear in her written letter of response (September, 1994) to a university query:

Under the DDA, it would constitute unlawful discrimination to exclude a person from being a student because he or she would require special services or facilities because of his or her disability, or to refuse to provide the person with these services or facilities, except where provision of the services or facilities would impose unjustifiable hardship. Unjustifiable hardship would need to be demonstrated by the educational institution in the event of a complaint.

Further, the Commissioner responds to the question of whether or not universities are able to request that international students with a disability pay additional fees to offset the cost of disability services:

Clearly, the requirement to pay an additional fee for this reason constitutes less favourable treatment because of the person's disability, and therefore prima facie amounts to unlawful discrimination, unless some exception under the DDA applies.

It is possible that, where provision of facilities would otherwise involve unjustifiable hardship and thus not be required, provision of the service on condition of the payment of an additional fee may be permissible.

In conclusion she says,

*A safer course, and one more consistent with the objects of the DDA and with the principle of equality to which
. universities are committed, would be to build the costs of disability services into the general costs and funding structures, either for international students or for students more generally as appropriate.*

This approach would be consistent with the recognition, which the DDA in fact requires, that people with a disability are inherently part of the Australian community, and indeed any community with which Australian institutions have dealings. Consequently, in my view it is not proper for Australian educational institutions to define their market or audience as excluding people with a disability, or including them only on the condition that they provide or are accompanied by special funding.

So what does this mean for the universities?

Clearly, the universities have a duty of care to treat all students with disabilities equitably and to request that an international student with a disability fund the cost of their individual support service would most probably be in contravention of the DDA.

What are the costs?

4.1 Actual costs for any student requiring high support services

For the purpose of this paper, costs are those which are "incurred by or on behalf of a person with a disability which would not otherwise have been incurred but for the disability".¹²

In order to gauge costs involved, reference is made to the Swinburne experience¹³ whereby a **Support Cost Formula** was designed using an instrument for identifying actual support costs incurred by an individual student with a disability. The instrument was a pay claimant form, used by intergration workers (interpreters, notetakers etc), with the student being identified when a claim for remuneration was submitted. This instrument tagged direct support costs to individual students, while generic services were part of the university's recurring budget.

The study showed that there were two variables which affected the costs:

- type and level of disability
- amount and type of contact hours of course

12. Graham S. and Stapleton C. The Extra Costs of Participation in Work, Education or Training For People with Disabilities: An Exploratory Study. SPRC Reports and Proceedings, (1990), no. 86, Social Policy Research Centre, The University of New South Wales.

13. Jones M. G. Financial Benchmarking of Students with Disabilities, (1994), Department of Employment, Education and Training, Australian Government Printers, Canberra.

The formula plots the two variables against each other and is expressed thus,

**Cost of the individual student = cost of the interpreter + cost of notetaker +
cost of reader + cost of scribe**

The cost of the interpreter (notetaker, reader, scribe) were calculated as per the following:

Cost of interpreter = a1 x a2 x a3

a1 = Fn (disability) 1 or 0 interpreters

a2 = Fn (course type) no. of interpreter hours

a3 = Fn (institution) cost per hour

Cost of notetaker = b1 x b2 x c3

as above.

Etc

Using this formula, per annum costs for high cost individual services per student ranged from \$3,000 to \$23,000.

The study further concluded that the universities should fund the generic services from recurrent budget, while the cost of specialised high cost support should be covered by a grant tagged to the student, recommending that if the student leaves, so does the funding!

Andrews and Smith¹⁴ reached the same conclusion, but differed in their estimates of costs of services. They used a hypothetical model to project costs and estimated a tagged funding of \$1653 per student with a disability, per annum. They detailed costs of support for hypothetical students as per the following:

general additional support costs (in addition to generic services):

\$600 (personal care supports) to \$10,000 (hearing impairment)

high support costs:

\$1,000 (personal care supports) to \$17,000 (vision-impairment)

¹⁴. Andrews R.J. and Smith S. Additional Costs of Education and Training for People with Disabilities, (1993), Department of Employment, Education and Training, Australian Government Printers, Canberra

Their research concluded that there is a wide range of supports required and these vary from student to student, making their individual needs a unique combination which cannot be standardised.

While these two studies have attempted to quantify actual costs, the discrepancy in the figures indicate how difficult it is to achieve this, and universities would need to recognise that these will always be ball-park figures and calculate their budgets accordingly.

Where then, might money for these services for international students with disabilities come from?

4.2 Sources of financial support

4.2.1. DEET Co-operative Grants and Access and Equity Grants

These grants are made available on a year-by-year basis, with no guarantee of amount or continuation. They are usually ear-marked for one-off, seeding projects and are available for all the categories of equity, making it not feasible to fund services of any kind.

4.2.2 Vice-Chancellor's Discretionary Fund

At Curtin University, this fund is available only at the time of call for applications, and is available for one-off projects. These projects fall into the categories of teaching, research and collaborative activities, with the occasional miscellaneous activity (one-off travel grants etc). The projects need to demonstrate a value to the university as a whole.

This fund could not be regarded as a likely source of funding for these services.

4.2.3. University Recurrent Budget

As detailed elsewhere in this paper, the universities already fund generic services for all students with disabilities (special examination arrangements, study facilities, library services, access facilities etc) and it

could be reasonably argued that additional monies be made available and earmarked to fund tagged, high cost support services. As per the recommendations (Jones, 1994, and Andrews and Smith, 1992), the universities would have to be specially funded for these costs, and the funds should be tagged to individual students.

DEET could be reasonably approached to fund this:

- In its discussion paper, "A Fair Chance for All"¹⁵, the Commonwealth Government clearly spells out its commitment to equity principles in higher education and further details its responsibilities and the responsibilities of the institutions in this matter. The document identifies the categories of disadvantage within the Australian community and spells out the government objectives for each category. While the international students, it could be argued, are not Australian citizens, for the duration of their course, they are treated as Australian university students, with access to all facilities and services offered by the institution.
- So far as the DDA is concerned, no distinctions at all are drawn regarding citizenship, and it is incumbent on the universities to treat all students with disabilities in a non-discriminatory manner.

4.2.4 International Fees

The intention of the international student fees is to cover the cost of a one-off occasion of service (tertiary education) for an individual student. It could be argued that the high cost, individually tagged support services are also one-off occasions of service for an individual student - that is there is no general benefit for any other person, and that the services are essential for accessing lecture material, writing assignments, and sitting examinations etc.

At Curtin University, the international student fee is divided to fund eight categories of overheads and service delivery. These include the categories of STUDENT SERVICES and SURPLUS. The effect of the DDA is that it is probably discriminatory to charge an *individual* a separate fee to cover the

15. A Fair Chance for All: Higher Education That's Within Everyone's Reach. National and Institutional Planning for Equity in Higher Education. A Discussion Paper, (1990), Department of Employment, Education and Training, National Board of Employment, Education and Training.

costs associated with his/her disability, however it is probably not discriminatory to amortize the costs across the total student fees. This could be achieved by setting aside a discrete amount from the student fees, from which costs for services for *any* international student with a disability could be underwritten.

Whether these funds are drawn from the category of Student Services, or Surplus would be a matter for the university administration to decide, however, a case could well be made for this to occur.

5. RECOMMENDATIONS

- 5.1 That the individual institutions have appropriate policies and procedures to respond to the needs of international students who:
 - a) are known to have a disability prior to an offer of a place,
 - b) do not disclose a disability prior to an offer of a place,
 - c) acquire a disability during the course of their studies.
- 5.2 That universities examine their promotional literature regarding the provision of service to students with disabilities and provide opportunities for the prospective international student to disclose that they have a disability. That the literature also encourages the prospective student to contact the Disability Adviser in advance of their application for entry, in order to determine whether the universities have services and facilities which can support them.
- 5.3 That the disclosure material contains affirming statements regarding the need for this information and that it will not affect their application for admission to the university.
- 5.4 That the universities examine their admission procedures and understand that prospective international students with disabilities have the same rights to service, under the DDA, as a local student and that to refuse entry to the university on the grounds of a disability is only possible when the

Migration Act, under the Public Interest clause deems that it is not in the Australian public interest for this person to be granted a student visa, or that the university can demonstrate that to support this student would cause unjustifiable hardship to the university.

- 5.5 That institution staff, both on- and off-shore, have opportunities for staff education regarding people with disabilities, and are familiar with the universities policies and procedures regarding students with disabilities.
- 5.6 That the universities initiate a more formal communication with the Immigration Department, whereby, the universities have the opportunity to contribute information about the level of support international students with disabilities can expect at the university and that the universities might be informed about the progress of the application for student visa of individual students, so that a submission might be made by the university on behalf of the student, should that be necessary.
- 5.7 That the universities request DEET to specify those matters that are components of the cost recovery student fees and in particular those components which relate to the cost of education support services incurred as a consequence of disability. In other words some attempt be made to identify those costs which are generic or tagged high-cost.
- 5.8 That the universities examine and consider the two options regarding funding the costs of service provision to international students with disabilities:
 - 5.8.1 That no distinction be made between local and international students, and that DEET be approached to provide additional individually tagged funds to universities to cover the costs of high cost support services for all students with disabilities
 - 5.8.2 That there be monies set aside from the international student fees budget, which is used to fund high-cost, individually-tagged support services for international students with disabilities.

CONCLUSION

In conclusion, do international students with disabilities get "a fair go" at Australian universities? In the opinion of these authors, they do. While there are few written policies detailing the universities' commitment to this aspect of service, the national experience is that universities have extended themselves in both human and financial resources to support these students, when they know about them. Generally, the universities are aware of their responsibilities and obligations under the DDA and are careful not to be in contravention of this legislation.

Clearly however, the precarious position of non-secured funding for these services cannot continue, and the next step is for universities to request clarification from the Department of Education, Employment and Training regarding its intentions for international students with disabilities. That is, that either no distinction is made from any other student with a disability and that DEET underwrites the cost of high support services for all students, or that this funding is seen as a component of the cost-recovery fees.