

Equality & Justice

for people with disabilities



Christmas 2016



Villamanta Disability Rights Legal Service Inc.

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Editorial

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ACCESS – if you need this in an alternative format, please let us know

Equal Opportunity Act v Disability Discrimination Act - which should you use?

VCAT Special Provisions - the relationship between VCAA decisions and discrimination legislation

What is Special Provision in VCE?

The aim of Special Provision is to ensure that a student's ability to complete VCE is not impeded by personal circumstances beyond their control such as illness, impairment or disability. Eligible students may receive provisions throughout VCE such as alternative assessments, additional working time, frequent rest breaks during examinations, or the use of technology aids. Other forms of Special Provision are also available, as adjustments are made in order to accommodate the needs and circumstances of the particular student.

Who decides whether I get Special Provision?

Although schools can independently grant Special Provision to their students on some occasions, they must not approval Special Provision for any VCE examinations unless the Victorian Curriculum Assessment Authority (VCAA) approves. VCAA is an independent statutory body that oversees government and non-government schools in Victoria. They develop, conduct and monitor VCE assessments and examinations to ensure standards are consistent across the state. Students wishing to apply for Special Provision will need to provide their school and VCAA with supporting documentation (such as medical certificates or evidence of hardship). However, VCAA's website expressly states that 'VCAA does not automatically adopt a medical or psychological provider's advice'. This may mean that on some occasions VCAA may reject an application even where the applicant has the relevant supporting documentation.

What if I need Special Provision, but my application was rejected?

Where an application for Special Provision is rejected by VCAA, students and parents often accept the decision as final. However, while VCAA does have the power to review, accept and reject applications for Special Consideration, VCAA's determinations must be consistent with Commonwealth and State legislation. This includes the *Disability Discrimination Act 1992* (DDA) and the *Equal Opportunity Act 2010* (EOA). Under both Acts, it is unlawful to discriminate against a person with a disability by failing to make reasonable adjustments. This means, where VCAA rejects an application without justification, the decision can be challenged.

If you or someone you know feels that an application for Special Provision in VCE has been unfairly rejected, we encourage you to get in contact with us at Disability Discrimination Legal Service. Under both State and Commonwealth legislation,

VCAA is under a duty to make reasonable adjustments for people with disabilities.
For further information, you can reach us on (03) 9654 8644.

Rising Complaints of Disability Discrimination to the Human Rights Commission

Current Submissions

Individuals and organisations have been invited to make submissions to two Senate inquiries that will affect people with disabilities, and the organisations providing services to them.

The Community Affairs References Committee is seeking submissions concerning the delivery of outcomes under the National Disability Strategy 2010-2020 to build **inclusive and accessible communities**.

Terms of reference are broad and include: planning and design considerations for commercial and public spaces and for transport services; design and regulation of communication and information systems; the impact that restricted access has upon people with disabilities; and how to address barriers to innovation in these areas. The full terms of reference can be found at on the website of the Parliament of Australia at

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AccessibleCommunities.

Opinions and proposals can be submitted in writing by 17 March 2017. Submissions can be made online at

http://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission or by email to community.affairs.sen@aph.gov.au .

The Joint Standing Committee inquiry into the **implementation, performance and governance of the National Disability Insurance Scheme (NDIS)** will address the implementation, performance and governance of the National Disability Insurance Scheme (NDIS). As part of this inquiry, the committee has invited submissions regarding the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition. Submissions are due 27 February 2017.

Terms of reference relate to: eligibility criteria for those with a mental health condition who seek provision of services under NDIS; services available to those not eligible; transition processes; the role of outreach services; the role of primary health networks; and the scope and level of funding under the Information, Linkages and Capacity building framework.

Please refer to the website of the Parliament of Australia for full details of terms of reference:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/MentalHealth.

Submissions can be made online at

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/MentalHealth/Submissions.

For more information on how to make a submission please refer to the website of the Australian Parliament:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/How_to_make_a_submission.

Victorian Parliament response to the Inquiry into Abuse in Disability Services

The Family and Community Development Committee released a report into their Inquiry into Abuse in Disability Services on the 26th May 2016. The final report included 83 recommendations with the aim of ensuring that abuse is both reported and acted upon within disability services.

On the 23rd November the Victorian Parliament responded to the report, yet did not endorse all the proposed recommendations. The changes have been perceived by some as great progress towards reducing the cases of abuse in disability services. Amendments include a zero tolerance stance towards abuse - an approach to be reflected in the Disability Act 2006 and a requirement of all disability service providers. The government also vowed to ensure all disability services were included within the Disability Worker Exclusion Scheme and that the Certificate IV in disability has an emphasis on the recognition, reporting and prevention of abuse.

Further, \$1.5 million was proclaimed to be provided to advance the ability for self-advocacy, to improve the capacity to respond to the great demands in service delivery and to abolish the obstacles people with disabilities face in relation to social and economic participation. Among other things, the government declared to increase the oversight role of the Disability Services Commissioner to include the commencement of legislative work to authorise investigation powers, to conduct an annual review of deaths in disability services, and that all incidents be reported to the Commissioner by the Community Visitors Program. Improvements to access to justice were also promised such as the establishment of a procedure to clarify the processes in relation to the investigation of abuse complaints to the Commissioner from the Victorian Police. Further, a review was declared to be undertaken in order to enhance data collection and the ability of the police to identify and respond to crime influenced by prejudice.

However, others believe the amendments are not enough to tackle such a crucial issue. The failure of the Victorian Government to take steps to establish a Royal Commission into abuse in disability services may reflect its unwillingness to give the problem all the attention it requires.

Harsher punishments to be handed down to disability services which fail to report cases of abuse or fail to take appropriate action against employees who do were open to the Government.

The continued reliance on the Office of the Disability Services Commissioner is a concern for many advocates. Changes to the *Evidence Act* to optimise the ability for people with complex communication needs to give evidence were also not taken up.

Our organisations

DDLs Management Committee

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 Jan Ashford (Vice Chair)
 Elizabeth Knight
 Nick Corker (Treasurer)
 Elizabeth Muhlebach
 Wayne Kiven
 Liddy Nevile
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 Neville Porter - Member
 Hank Wyllie – Member
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