

Equality & Justice

for people with disabilities



Advocate Winter 2014

The DDLS Advocate

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Editorial

Staff at DDLS were gratified and relieved with the announcement that the intended alterations to s 18C of the Racial Discrimination Act will not be proceeding.

We are very familiar with the vilification of people with disabilities consistently reported to us, and the distress and humiliation such treatment causes the individual. There is no protection for people with disabilities similar to that offered under the Racial Discrimination Act, and in our opinion, people with disabilities are all the poorer for it.

The community looks to government for role modelling on these issues. Acts of protection for marginalised and disadvantaged groups within our communities send a message to society at large about how we should be treating each other.

There are already many barriers to disadvantaged Victorians having the same equity and enjoyment of life as those more fortunate. It was a great disappointment to think that another barrier was being put in place.

We would like to see a way forward in the future for establishing protections for people with disabilities from hate crimes, vilification and intimidation. As a society we need to stand together and make it very clear that some attitudes and actions against others are simply unacceptable and will not be tolerated.

While we may not be able to change how people think, if we can stop them from doing harm, then that may be sufficient for now.

Julie Phillips
Manager

Business Services Payment Scheme Bill 2014

You may recall the reporting of ***Nojin v Commonwealth of Australia [2012 FCAFC 192]***, where the High Court ruled that two workers with intellectual disabilities were discriminated under the use of the BSWAT.

The Business Services Wage Assessment Tool (BSWAT) is a workplace assessment tool used to set the rate of pay for people with intellectual disabilities who work in Australian Disability Enterprises (ADE).

Although the ruling of the Federal Court set a precedent throughout Australia, the government has continued to allow the BSWAT to be applied to thousands of workers.

The proposed *Business Services Payment Scheme Bill 2014* has been the subject of a senate inquiry which recently called for submissions regarding the Bill. It is probably fair to say that the thrust of the Bill is to counter the High Court decision and allow for low payments to continue to be made unfairly to people with disabilities.

While recent positive changes to Victorian mental health and guardianship legislation have been seen to be ensuring that people with disabilities have the maximum amount of independence, in contrast, this Bill allows the departmental Secretary to appoint nominees to act on behalf of individuals without their consent.

Apart from a significant conflict of interest, such a move seems incompatible with the aforementioned changes to legislation which aims to uphold the choices and human rights of people with disabilities as much as possible. The Bill negatively affects the rights of individuals with intellectual disabilities, particularly those set out in the Universal Declaration of Human Rights, Article 23(2), *equal pay for equal work* without discrimination.

A number of organisations have put comprehensive submissions forward to the inquiry. Whilst BSWAT is not an area of expertise for DDLS, the basic premise of imposing representatives on people with disabilities and preventing free and informed choice is something that worries us greatly, and sets a negative precedent in the scaling back of recent moves to empower and support people with disabilities as much as possible in decision making.

HIV Discrimination

Victoria could be well on its way to amending the state's only HIV-specific legislation.

The proposal follows comments by Health Minister David Davis, who speaking at the 20th International AIDS Conference last month announced the Liberal government's intention to amend section 19A of the Crimes Act.

Under section 19A a person can face up to 25 years imprisonment if they are found guilty of 'intentionally causing another person to be infected with a serious disease'. The legislation specifically includes HIV as a serious disease.

The amendment is likely to be welcomed by groups who play an active role in fighting discrimination suffered by individuals who carry HIV. These include groups such as the AIDS Council who in the past have labelled the current provisions as counterproductive to both public health and HIV-prevention. Living Positive Victoria has labelled the proposal to amend section 19A as an important step in reducing the stigma attached to HIV-sufferers.

In response to the announcement some advocates have suggested that further measures are necessary to protect individuals with HIV from being exposed to prospective discrimination. Rather than seeking an amendment to section 19A such advocates have called for a complete revocation of the law which makes the transmission of the virus a criminal offence.

Mr Davis has stated that the law once amended would be reviewed to so as to ensure that it cannot discriminate against individuals who have HIV.

People with Disabilities – Their Involvement in the Criminal Justice System

Research supports a high correlation between having a disability and an over-representation in the criminal justice system.

Many may start to question whether criminality is an inherent symptom of any disability. Of course this is not the case. However studies have pointed to the lack of an adequate education, or illiteracy, as being one of the major links between disability and criminality.

The significant numbers of people with disabilities in the criminal justice system has been clearly set out over the years. Research shows that those with disabilities, particularly 'mental disorders', are over-represented within the criminal justice system (*Mayes, 2003*). The rate of mental disorders is at least three times higher for those who enter the criminal justice system prior to adulthood (*Hagell, 2002.*). The research shows undeniable links between criminality and mental health problems, cognitive disabilities, autism spectrum disorder, language disorder and ADHD.

In Victoria, an explanation for the links between disability/illiteracy and crime can be found in the standard of education for children with disabilities. What is the evidence?

The Department of Education and Early Childhood Development ('DEECD') has been the most common respondent to discrimination complaints received by the Disability Discrimination Legal Service in the last five years.

Recent collection of data from Disability Advocacy Victoria, [the peak body for independent advocacy organisations] reflect that education issues are the most common complaints made to disability advocacy organisations.

In 2012, the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC") and the Victorian Auditor General's Office both released reports on the quality of education for children with disabilities Victoria. Suffice to say, there are significant and wide ranging problems.

Complaints received by parents and students relate to a lack of resources, expertise, guidance and training needed by teaching staff in order to adequately educate students with disabilities. Currently, there are no clear requirements by DEECD for teachers to use any particular programs to assist students with disabilities, either related to academic instruction or disability intervention. In relation to psychological/behavioural interventions, as a result, as found by VEOHRC, the use of restraint and seclusion in response to challenging behaviours is not uncommon. The situation becomes more concerning due to a lack of independent oversight or monitoring of these practices in Victorian schools.

Studies show that the use of seclusion and restraint on people with disabilities has resulted in death, serious physical injury, psychological trauma, post traumatic stress disorder and various other mental health issues (*Nishimura & Florick, 2011*) (*Fink, 1990; Leone & Messi, 1997*).

So what can be done to address this problem?

Numerous shortcomings have already been identified in relation to the education of students with disabilities. Both the Victorian Equal Opportunity and Human Rights Commission (2012) and the Office of the Public Advocate in 2013 have recommended that the Department of Education hand over its regulation of restrictive practices to the Office of the Senior Practitioner. VEOHRC made many and varied recommendations to generally improve the standard of education for children with disabilities.

You can lobby DEECD and urge them to adopt these recommendations.

Young people with disabilities have a right to be educated. Education leads to employment, improved socio economic conditions, and allows people to be contributing members of society. All of these advantages will also work to reduce the over-representation of people with disabilities in our criminal justice system.

[This is a summarised version of a presentation to the Strengthening Advocacy Conference held in Melbourne 5 August 2014]

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Volunteer Profile

Ly-Ann

I am 21 years of age. I love to travel and have great interest towards achieving social justice.

I am currently in my final year of study in the Legal and Disputes Studies course at RMIT. This course is best described as a mixture of social sciences and law where I will be qualified to work in alternative dispute resolution processes. Before graduating at the end of this year, I am required to undergo a 50 day placement at an organisation of my choice. In this case, I have chosen DDLS.

Working with DDLS has been a great experience for me. I have always wanted to work in social justice through the law and after travelling to Mauritius to volunteer at a centre for disabled children, I found DDLS most suitable for my placement. It has really given me an insight of the legal professional work field. Being given hands on tasks by experienced lawyers has given me the chance to learn and gain the skills I need for the future.

Whenever I come into DDLS and I am helping individuals gain access to their legal rights, the satisfaction I get I cannot describe. Although I may feel that it was only a small deed from me, it is great help for the community.

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