

# Equality & Justice

for people with disabilities



Spring 2019

## THE ADVOCATE



Villamanta Disability Rights Legal Service Inc.

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### Editorial

As the Royal Commission into Violence Abuse Neglect and Exploitation of people with disabilities gets on the road, people with disabilities and their supporters have had cause to be concerned about the time in hearings given to groups whose priorities are not the rights of persons with disabilities.

The first hearing on education in Townsville attracted controversy when evidence was given by the Queensland teachers union encouraging the continuation of segregated education settings for children with disabilities.

It is concerning that with so much evidence and research settling this issue unequivocally, that proponents of segregation are being given opportunities to promote these damaging practices.

People with disabilities are understandably feeling uncomfortable with a process which is affecting their confidence that this Royal Commission is solely for them and with the one goal of addressing the mistreatment and hardships they have had to endure over the years.

Let's hope the Royal Commission have heard these voices as a reminder of why they have been established.

Julie Phillips  
Manager  
Disability Discrimination  
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Principal Solicitor and  
Executive Officer  
Villamanta Disability Rights  
Legal Service Inc.

Consumer affairs website

## Specialist disability accommodation now part of Victorian renting laws

10 September 2019

On 1 July 2019, the law changed and specialist disability accommodation (SDA) became part of Victoria's rental laws. Consumer Affairs Victoria can give you information and advice about renting agreements in SDA.

### Residency agreements

Before **1 January 2020**, SDA residents and providers must do one of the following:

- establish or enter into an SDA residency agreement, or
- enter into a:
  - Residential tenancy agreement for a short-term lease (five years or less), or
  - Residential tenancy agreement for a long-term lease (more than five years).

To see the differences between agreements, visit the [Main differences between the types of agreements page on our website](#).

For a step-by-step process on starting a new agreement, visit the [Starting an agreement with your provider page on our website](#).

### Information statements

There are two information statements - one is for the SDA residency agreement; the other covers both the short-term and long-term residential tenancy agreement.

The information statements summarise the agreement and explain the rights and duties of providers and residents.

To download the agreements, information statements and other helpful resources, visit the [Resources for support people page on our website](#).

### Explaining certain information

Providers must explain the information statement to the resident and their support person (if they have one) in a way they can easily understand. Easy English resources, including a visual aid, will be available soon. These can help providers explain this information. **We will let you know when the Easy English resources are available.**

### Support people

The resident can ask their support person to help them understand the agreement, their rights and responsibilities. If the resident needs a support person but does not have one, the provider can appoint one on their behalf. This support person cannot work for the provider or be connected to their organisation.

Providers can also appoint an agent for themselves, to help them explain the agreement and information statement to the resident and their support person.

### Existing residential statements

Existing residential statements under the *Disability Act 2006* are valid until 31 December 2019 or until providers and residents enter into or establish a new agreement – whichever comes first. After this time, they will become void.

**Residents and providers must enter into or establish an agreement by 1 January 2020. After this date, the rules and protections for SDA under the *Disability Act 2006* will no longer apply.**

The National Disability Insurance Agency (NDIA) requires providers to have a written agreement with their SDA resident. If they do not have one by 1 January 2020, they will be breaching this requirement and may not be eligible to receive SDA payments for that resident.

### Need more information?

Call Consumer Affairs Victoria's SDA Helpline on **1300 40 43 19** (available 9am to 5pm, Monday to Friday, except public holidays) or [read the information for providers on our website](#).

To see a list of other organisations that can help, visit the [Organisations that can help providers page on our website](#).

You might also receive a copy of this information from the NDIA.

## Guardianship List Duty Lawyer service – VCAT Pilot

Villamanta Disability Rights Legal Service Inc. are combining with Deakin University's Deakin Law Clinic to provide a Duty Lawyer service at the Guardianship List of VCAT in Melbourne.

The Duty Lawyer service will operate on Wednesdays, starting Wednesday 7th August, until further notice. If you have a Guardianship List hearing coming up, you can contact the Deakin Law Clinic in advance to make an appointment to get some advice and possible legal representation. Contact can be made by phone: (03) 9244 3000 or email: [law-clinic@deakin.edu.au](mailto:law-clinic@deakin.edu.au)

You can also ask to see one of the Duty Lawyers on the day of your hearing if it is on a Wednesday, when you arrive at the William Cooper Justice Centre. Please arrive earlier than your hearing time to make sure you have time to talk with a Duty Lawyer.

A Duty Lawyer service is also being offered at some regional centres. For further information contact Villamanta or visit its website <[www.villamanta.org.au](http://www.villamanta.org.au)>



Villamanta Disability Rights  
Legal Service Inc.

## ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION OF PEOPLE WITH DISABILITIES – UPDATE

Two community forums will be held in Hobart, Tasmania on November 26<sup>th</sup>. These will provide the disability community with opportunities to share their experiences with the Commission in an informal setting, as well as to hear Commission updates.

A public hearing will be held in Melbourne at the Melbourne Convention and Exhibition Centre from December 2<sup>nd</sup> to December 6<sup>th</sup>. It will examine the housing and living experiences of people with a disability in Victoria. Issues to be explored include:

- the right of people with disability to choose where they live and who they live with
- how group homes have affected the accommodation options and experiences of people with disability in Victoria
- the causes of violence, abuse, neglect and exploitation against people with disability who live in group homes
- how effective laws, policies and government agencies are in protecting residents of group homes with disability from violence, abuse, neglect and exploitation
- social inclusion options for living independently and alternatives to group homes.

In October, the Royal Commission released an Education and Learning Issues paper. This was identified as a key area of inquiry. Broadly speaking, two major areas to be examined are access, and appropriateness and adaptability of education and learning. Multiple issues and barriers have been identified in the area of access to education.

These include physical and environmental barriers, gatekeeping at school entry level, partial enrolment, segregation, exclusion from school activities and expulsion. With regards to the appropriateness and accessibility of education, major issues include lack of reasonable adjustments, lack of individualised supports, inflexible curricula, workforce capability and behaviour management.

The Commission will examine the nature and content of violence, abuse, neglect and exploitation of people with disabilities in learning and education settings. This encompasses the use of constraints, restrictive practices, seclusion, bullying and harassment. The Commission has invited responses to its paper by December 20<sup>th</sup> (see website for further details on how to make a submission).

<https://disability.royalcommission.gov.au>

## Brennan v Horsham Camera Club

The matter of *Brennan v Horsham Camera Club Inc.* (Human Rights) [2019] VCAT 1460 directly refers to section 75 *VCAT Act 1998*, regarding section 4 of the *Equal Opportunity Act 2010*(Vic), the definition of a club.

The applicant, Mr Stephan Brennan, claimed that he was discriminated against by the respondent, Horsham Camera Club, in the provision of goods or services based on his race and religion. Mr Brennan claimed he applied to become a member of the Horsham Camera Club in February 2019, whereby his application was rejected, without an explanation for the rejection.

This denial of service was characterised by the applicant under Division 4, section 44 of the *Equal Opportunity Act 2010*, due to race and or religion. The applicant claimed that he arrived in Australia in 1966 and was raised Catholic but was no longer practicing. He claimed that he complied with all requirements to become a member of the respondent's club and attended a club meeting in February 2019.

During his VCAT hearing, the applicant gave evidence that the woman who rejected his application to the club was aggressive, threatening, and he feared for his safety. He told the Tribunal that he has been a member of many clubs and associations in the past. He told the Tribunal that he believed the rejection was humiliating.

The respondent gave evidence that rule 10(4) of the constitution provided that there was no obligation to advise of the reasons for an applicant's rejection by the club. The solicitor for the respondent, Mr Nick Graham, stated that it was not in the club's best interests to accept the applicant's application. He stated that the respondent did not reach its decision based on the applicant's race or religion, and was at a loss to understand the basis of that concern.

The Tribunal found the applicant's claims of unfavourable treatment on the grounds of race and religion to be not proven. It was found that there was no evidence to support the applicant's claim on the balance of probabilities, and that he was not rejected as a member of the club based on race or religion.

It was also ruled that the respondent is not a "club." Under Section 4(1) of the EO Act defines a club as: an association of more than 30 persons, associated together for social, literary, culinary, political, sporting, athletic or other lawful purposes that – (a) has a license to supply liquor, (b) operates its facilities wholly or partly from its own funds. The respondent's "club" had 21 members and there was no evidence of any liquor license.

The matter was decided on 20<sup>th</sup> September 2019 by Member D. Calabro

(NOTE- section 4 of the *Disability Discrimination Act 1992 (Commonwealth)* provides a different or broader definition of "club" and states that Club means an association (whether incorporated or unincorporated) of persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains its facilities, in whole or in part, from the funds of the association.)

## Give Now

Despite living in a wealthy developed country, Australians with disabilities experience extremely high rates of discrimination, abuse and neglect. This is why the Disability Discrimination Legal Service provides free legal services to those experiencing harm. We also work to improve conditions for all people with disabilities through community legal education and law and policy reform.

In the face of limited government funding, we need your support to expand our work, especially in the key areas of education and employment. Despite numerous parliamentary inquiries and government bodies uncovering widespread abuse and neglect, not enough has been done to improve matters. But we know that continual advocacy and litigation creates pressure for better protections. Every dollar you donate helps us to achieve this goal.

DDLS is an independent, non-profit community organisation. Many people with disabilities, volunteers and students contribute their efforts to our work

<https://www.givenow.com.au/DDLS>

### **Donations may also be made to Villamanta Disability Rights Legal Service Inc.**

Villamanta does excellent work for people who have a disability and a disability-related legal issue. These people are often our most vulnerable citizens.

Any amount, no matter how small, will help us to make a difference for those who most need it!

You can help Villamanta to help Victorians who have a disability by donating using either PayPal or Credit Card via our website at [www.villamanta.org.au](http://www.villamanta.org.au)

All donations greater than \$2 are tax deductible and a receipt will be sent to all donors.

## Our Organisations

### DDLS Management Committee

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### Villamanta Management Committee

Phillip H Clarke – Chairperson  
 Andrew Hill – Secretary  
 Michele Tucker – Treasurer  
 Amanda Millear – Deputy Chairperson  
 Neville Porter – Member  
 Hank Wyllie – Member  
 Dominique Saunders – Member  
 Darrell Harding – Member

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