

Equality & Justice

for people with disabilities



Advocate Christmas 2014

The Advocate



Villamanta Disability Rights Legal Service Inc.

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ACCESS – if you need this newsletter hard copy, large font size, Word or plain English, please let us know.

Editorial

This is the first edition of The Advocate since 2002, written and distributed by both Disability Discrimination Legal Service (“DDLS”), and Villamanta Disability Rights Legal Service (“Villamanta”).

Approximately one year ago, both organisations decided to formalise our close working relationship with a Memorandum of Understanding. This combined newsletter is one aspect of our partnership.

The recent expose of violence and abuse against people with disabilities revealed by Four Corners was an issue of concern to both organisations, while at the same time viewed as an opportunity to highlight a problem that has been with us for decades.

Numerous reports over the years – formal and anecdotal – have documented the dangers of an untrained and underpaid workforce largely comprised of many casual workers. The vulnerability of people with disabilities, some of whom are unable to communicate, coupled with such a workforce, creates a situation which is ripe for exploitation and abuse to occur.

Both DDLS and Villamanta support the disability community calling for a national inquiry into violence against and abuse of people with disabilities. To be safe and free from abuse is one of the most basic human rights that we have.

For those of you who did not see Four Corners, the link is <http://iview.abc.net.au/programs/fourcorners/NC1404H044S00#playing>

It is important that the community now comes together to lobby for change.

Julie Phillips
Manager

Deidre Griffiths
Principal Solicitor and
Executive Officer

DDLS – Villamanta Where Do I Go?

DDLS provide legal services to people with disabilities. Villamanta provide legal services to people with disabilities. What's the difference?

DDLS is funded to provide services in relation to discrimination only. That means that they only deal with two laws - the *Equal Opportunity Act* and the *Disability Discrimination Act*. Sometimes poor treatment of a person with a disability is discrimination, and sometimes it is not. If you believe you are being treated poorly because of your disability, or being expected to do things that you just can't do, it is worth contacting us to find out whether this treatment constitutes discrimination.

Villamanta's priority constituency are people who have an intellectual disability and most of its legal casework is done for them. Villamanta provides free legal services in several areas including information, referral, advice, casework assistance, community legal education, and policy & law reform.

Sometimes it's hard to work out which organisation can help you. Villamanta and DDLS staff will refer you to the correct organisation so just give either a call. Contact numbers are on the last page.

Christmas/New Year Closing Dates:

DDLS – Close: 5pm 24th December 2014
Re-open: 9am 5th January 2015

Villamanta – Close: Midday 24th December 2014
Re-open: 9am 2nd January 2015.

Productivity Commission: Access to Justice Arrangements

The recent release of the Productivity Commission's report into access to justice has found that while Australians generally find it difficult to institute proceedings, gain and maintain legal representation and navigate the intractable nature of the Australian legal system, disadvantaged Australians are even 'more susceptible to, and less equipped to deal with, legal disputes'¹.

The Findings:

The Commission found that legal assistance providers and information and advice services which attract government funding suffer from low visibility in the community and therefore struggle to provide services to those who need it most.

The Commission went on to recommend that the four government funded legal assistance providers (of which CLCs and therefore DDLs and Villamanta are a part), streamline their eligibility criteria for government funded legal assistance and are 'linked to an agreed measure of disadvantage'. The Commission also recommended that the eligibility guidelines be updated over time in order to reflect societal values and avoid unnecessary restriction of services. In essence, the Commission found that a more holistic and systematic view of the government funded legal services industry would greatly benefit both resource allocation and service delivery.

The Report noted that Victorian Legal Aid (VLA) does not agree with the approach proposed by the Commission as it relates to the streamlining of eligibility criteria. VLA believes that complimentary diversity between VLA and CLCs 'benefits the community and increases access to justice', and reduces demand on VLA's services. VLA went on to note that where legal aid commissions are restricted and inflexible in many areas, CLCs do not labour under the same restraints and can often 'catch' those who fall through the safety net provided by VLA. As such, VLA cautions that any streamlining undertaken between CLCs and legal aid must be done in a manner sensitive to their disparate roles.² This position was echoed by the Federation of Community Legal Centres (Victoria) submission to the Commission's draft report released in May of this year.

The Federation's submission further cautioned against a uniform set of criteria for both CLCs and VLA alike. It was the Federation's opinion that such an approach would result in the collapse of CLCs' capacity to:

- Maintain focus on 'community specific needs', such as disability discrimination.
- Maintain flexibility when dealing with emerging legal issues and needs
- Assist those who do not meet the eligibility criteria for VLA services, yet are unable to procure the services of a private practitioner and would suffer or continue to suffer harm, marginalisation or injustice if unrepresented.

What does the report say about CLC funding into the future?

¹ Access to justice arrangements, No 72, 5 Sep 2014, pg 16

² Victoria Legal Aid - Submission to the Productivity Commission Draft Report on Access to Justice Arrangements

- The Productivity Commission recognised that CLCs are funded on an ad-hoc basis or on an approach based on the history of services provided by the CLC (the Community Legal Services Program funding model).
- The Commission recommended that federal funding of CLCs reflect to a greater extent the real world costs of providing legal services and relative need, taking into account the area/s of law in which the CLC practices and the clientele the CLC serves.
- The Commission concluded by suggesting that both State and Federal governments provide funding that is adequate to meet the priorities of the CLCs, and that any funding should allow flexibility and long-term planning.
- In concrete terms, the report concluded that approximately \$200 million was required to adequately support existing services and 'to broaden the scope of legal assistance services'.

Whether or not these recommendations are instituted by the Federal and State governments is another matter, given the difficult fiscal climate and burgeoning public debt.

Moreover, as noted by VLA in their response to the Commission's draft report in May of this year, the report and any proposal for meeting the costs of providing continued quality services for a larger proportion of the disadvantaged has been absent a 'credible, authoritative modelling on the cost of unmet legal needs'. VLA also noted that the CLC sector in Victoria is the best funded out of all the state CLC programs.

The Commission recognised the difficulty that CLCs face in both providing quality legal services and administering an autonomous practice, especially when CLCs are often run by only a handful of full time staff. In order to improve resource allocation, reducing administrative costs and increasing resource availability for the provision of front-line legal services, the Commission supports amalgamation of CLCs. The Commission took note of the moves to amalgamate by several CLCs in Melbourne's West, but did not detail the results of those amalgamations.

In relation to what CLCs themselves can do to increase quality outcomes for their clients, the Commission recommended a greater emphasis be placed on alternative dispute resolution (ADR) methods over formal proceedings in order to:

- Bring down costs of providing services
- Resolve disputes before they cause more economic and psychological damage to disputants
- Deal with disputes more efficiently and faster than traditional litigation can achieve.

The Commission also recognised that many seeking legal services are unaware of the low-cost (an even no-cost) dispute resolution services that ombudsmen can provide. In comparison to dispute resolution undertaken in the Tribunal or in the Courts (which necessarily include costs, expert fees and costs of attendance, amongst others), the services of the ombudsmen can be retained entirely for free. CLC practitioners should take into account the various services provided by Ombudsmen when advising their clients.

While the Federation's own submission largely supports the recommendations of the Commission as they relate to ADR, the submission was careful to point out that those clients from a disadvantaged background, particularly those who have a mental illness or other disability may be ill-suited to the ADR process.

What did the Productivity Commission's Report leave out?

Absent from the Commission's report was a discussion of the cost for applicants bringing a matter before the Federal Court under the *Disability Discrimination Act*. In relation to the work conducted by the DDLS, the prohibitive costs of bringing a claim under the federal anti-discrimination legislation often means that clients and the CLCs representing them are unwilling to institute proceedings and must refer the client on.³

Calls for Yooralla Abuse Inquiry

Yooralla, a Victorian disability services provider, has come under intense scrutiny after calls were made by both the State Government and the Federal Opposition to open an inquiry into the mishandling by the provider of allegations of systemic abuse of disabled residents. While the incidents which have occurred at the Yooralla facilities are shocking in and of themselves, unfortunately they are a reflection of the greater abuse being perpetrated on people with a disability nationally, by those employed by similar service providers.

Why has such abuse been allowed to continue for so long?

Tricia Malowney, former President of the Victorian Disability Services Board, argues that such abuse is 'considered relatively unimportant because of negative attitudes towards Australians with disabilities'. Further, due to the widespread nature of the abuse, under reporting, and the presence of 'systemic barriers in the legal system', the response to the allegations of abuse has, until very recently, been slow and diminutive.

Abuse can be particularly prevalent in private facilities which are allowed to self-administer, therefore avoiding any accountability imposed on state run facilities by the government. In particular, staff member Vinod Kumar, who had a record of abuse going back years, was allowed continued contact with clients despite the fact that he had been counselled in 2011 after documented instances of inappropriate conduct perpetrated against a number of Yooralla residents. Worse still, while Yooralla refused to engage Kumar on a full time basis due to the allegations of abuse made against him, they nonetheless permitted Kumar to be rostered on a part-time basis and at times when he would be the only staff member on duty.

Regardless of whether or not a Royal Commission is established to investigate past and ongoing wrongs, the focus must now necessarily turn to the future and the necessary reforms to a sector wracked by scandal and controversy.

What steps does government need to take in order to ensure abuse halts in the future?

One main issue many commentators point to in the Yooralla saga is the weak regulatory scheme in place to deal with allegations of abuse. Moreover, more strict staff screening and training are obvious routes to rectifying the cycle of abuse present in the disability services sector. With the rollout of the National Disability Insurance Scheme (NDIS), Australia should see a boom in the number of homes for people with disabilities. It is therefore urgent that reforms are made to the sector to stop future instances of abuse occurring.

³ Productivity Commission Issues Paper: Access to Justice Arrangements, People with Disability Australia, Nov 2013, pg 4

Website Accessibility and Disability Discrimination

- Sourced from “Oh the irony! Retailers blind to discrimination and lost business”.

A blind woman (Gisele Mesnage) has experienced ongoing difficulty in accessing the Coles website upon which she relies to complete her weekly grocery shopping. Mesnage, who has been legally blind since birth, struggles to select delivery dates on the Coles website, and filling an order often ‘takes her days to complete’. Mesnage relies upon a piece of technology called a ‘screen reader’, a program that scans bodies of text on web pages and relays that information to the user via audio description.

In this case, the Coles website failed to provide text that could be read by the software, instead incorporating the information necessary to complete the order in graphics and images which the program could not read. Despite continued and long-term efforts by Mesnage to have Coles amend the website to allow for greater accessibility by vision impaired people, the supermarket giant failed to do so.

Mesnage, represented by The Public Interest Advocacy Centre, has instituted legal proceedings against Coles on the grounds of disability discrimination.

Website accessibility for the disability community has been an established part of Australian common law since the 2000 case of *Maguire v SOCOG*. Nonetheless, *Mesnage* is an important case as it is the first disability discrimination matter regarding website accessibility brought in Australia since *Maguire*. The matter illustrates the ongoing difficulty vision impaired people and the wider disability community in general have in accessing online services.

Vale Stella Young

What more can be said that hasn’t already been said about Stella Young? Stella died suddenly last week and the disability community and those that stand with them are still trying to fathom the loss of a person who was a ferocious advocate for people with disabilities. Stella was unique in many ways, and is irreplaceable. For those wanting to join in the celebration of her life, there will be a service at Melbourne Town Hall, 11 AM Friday, 19 December.



United Nations International Day of People With a Disability

3rd December

Last Wednesday 3rd December was the United Nations International Day of People with a Disability – an event made even more significant when one considers that one in five Australians live with some form of disability. The day was celebrated across the country with various events including the Ballarat Community Disco (VIC), celebrations at Hughes Primary School (ACT) and the ‘lighting up’ of iconic locations such as Federation Square, Sydney’s Pitt Street Mall and Adelaide Oval.

2014 is the first time this ‘lighting up’ initiative has taken place, wherein buildings and artwork are lit up in blue and orange. These particular colours were chosen for International Day of People with a Disability as blue signifies equality, dignity, rights and wellbeing, while orange is said to represent harmony, diversity and integration.

Additionally, it is hoped that the lighting up of iconic buildings around Australia will provoke curiosity, increase awareness of International Day of People with a Disability, and provide an opportunity for communities to show their support for those living with a disability.

Other activities conducted on International Day of People with a Disability include the Independent Disability Services Disability Awareness BBQ (VIC), the Festival of all Abilities (NSW) and the International Day of People with Disabilities Morning Tea (SA). Athletics Australia also took part in International Day of People with a Disability, providing young people with the opportunity to get involved in a variety of para sports. Great to see so many organisations getting on board!



Equality, Capacity and Disability Commonwealth Laws

Financial Report (ALRC)

The Australian Law Reform Commission (ALRC) undertook a review of Commonwealth laws in reference to equality, capacity and disability. As a result, the ALRC has made a number of recommendations relating to Commonwealth legislation and the potential improvement of them. In making these recommendations, the ALRC placed emphasis upon legal capacity, support and equal access to justice, while using five 'Framing Principles' as a guide. These principles are as follows: dignity, equality, autonomy, inclusion and participation, and accountability. A further hallmark of the ALRC's review was its focus on consultation. Such consultation took place with not only people with a disability, but also stakeholders including the Disability Discrimination Legal Service (DDLS). The DDLS was able to provide input in a number of instances. The DDLS has assisted in the nature of these reforms via a number of recommendations, contributing largely to the ALRC's recommendations in relation to the inclusion of people with a disability on jury panels and restrictive practices.

Jury Inclusion

The DDLS emphasised the need for true representation of people with a disability on juries. As the ALRC noted, though people with a disability are not barred from jury duty, no person with a sensory disability has sat on a jury at any point in the history of the Victorian Justice System. In explaining this, the ALRC noted the DDLS as the source of this information.

Hence, the DDLS suggested reforms so as to avoid this apparent exclusion which is currently taking place, at least where a person's disability can be *reasonably accommodated*. Accordingly, the ALRC has recommended that the *Federal Court of Australia Act 1976* (Cth) provide that a person will be 'qualified' to sit on a jury where they meet criteria, namely that the person "can be supported to" (Recommendation 7-12):

- (a) Understand the information relevant to the decisions that they will have to make in the course of the proceedings and jury deliberations;
- (b) Retain that information to the extent necessary to make these decisions;
- (c) Use or weigh that information as part of the jury's decision-making process; or
- (d) Communicate the person's decisions to the other members of the jury and to the court.

The inclusion of "can be supported to" is a significant development, as it makes it more difficult to exclude persons with a disability from sitting on a jury simply based on their disability. Instead, this essentially allows for reasonable adjustments to be made, so as to accommodate the person with a disability, as recommended by the DDLS.

Also noted by the DDLS, this improvement will likely be of great importance to those with sensory disabilities, as "today's technology" may surely account for this, allowing a wider array of reasonable adjustments which would enable many persons with disability to be a jury member, rather than being "arbitrar[ily] exclu[ded]".

Recommendation 7-13 also extends the potential adjustments which may be afforded to a potential juror, suggesting that the *Federal Court of Australia Act* be amended to allow the trial judge to order a communication assistant where required by a person with a disability.

Restrictive Practices

Regarding restrictive practices, it seems the critical issue was the national status of the framework. Though the ALRC did not make the framework binding upon organisations which receive federal funding, Recommendation 8-2 indeed calls not only for “a national approach to the regulation of restrictive practice”, but also over a range of contexts. Hence, the scope of this regulation is extended.

Reaching Rural Victoria

Both DDLS and Villamanta will be liaising with Deakin University’s Centre for Rural and Regional Law and Justice early next year to see how the Centre can partner with us to ensure our services can reach the areas of Victoria which are traditionally under serviced due to location. The Centre for Rural and Regional Law and Justice is a unique centre of the Faculty of Business and Law which draws on cross disciplinary knowledge and expertise to assist others in engaging meaningfully with regional communities.

We look forward to working with the Centre on a collaboration to improve our rural reach.

Improving our Website

DDLS has received a grant to improve its website. A total overhaul is on the cards! We would like to hear from you as to what you would like to see; particularly if there have been accessibility issues in the past.

Please let us know your thoughts and send an email to info@ddls.org.au if you have ideas for improvement.

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