

# Equality & Justice

for people with disabilities



Advocate Summer 2013-2014

## The DDLS Advocate

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### Editorial

Last week, submissions were due to the State Government regarding the social inclusion of people with a disability. A few weeks prior, the Australia Human Rights Commission released its report “Equality before the Law - towards disability justice strategies”. The week before last, submissions were due to the Commonwealth Government in response to its inquiry into the prevalence of different types of speech, language and communication disorders and speech pathology services in Australia.

It was a busy time for organisations and individuals who have an interest in the different community and government hurdles that prevent people with disabilities living in society on an equal basis as others.

Experiencing some “submission fatigue”, organisations were minded to reflect on the many reports over the years to different governments, re-stating the same information in a slightly different package, repeatedly. We might ask ourselves, how many submissions does it take to effect change?

It may be the right time to ask instead, what do we need to do in between submissions to ensure that the information we provide serves a useful purpose?

Julie Phillips  
Manager

## Mental health discrimination - still a problem in the workplace

Everyone has the right to work free of discrimination and harassment, but according to new research by the Mental Health Council of Australia (MHCA), at least 1 in 5 Australians have been discriminated against at work as a result of their mental illness.

The research was conducted as part of the 2013 World Mental Health Day (WMHD) campaign.

According to their website, [www.mhca.org.au](http://www.mhca.org.au), the MHCA advises that WMHD is a day for “global mental health education, awareness and advocacy” and that in 2013 in Australia it had three objectives being

- “1. Encourage help seeking behaviour
2. Reduce the stigma associated with mental illness
3. Foster connectivity throughout communities”

The 2013 campaign aimed to achieve the above goals “by encouraging people to take personal ownership of their own mental health and wellbeing”.

In the article “Mental health still taboo in the workplace” dated 24 September 2013, Mr Frank Quinlan, CEO of MHCA states

*“When 22% of people surveyed tell us that they have witnessed discrimination in the workplace, relating to mental illness, it shows that we have a serious problem with stigma in this country.”*

The study also found that more than two-thirds of respondents felt uncomfortable “disclosing a mental illness to their employer”, with more than a third saying that they “never would”.

In the article, Mr Quinlan further states:

*“It is concerning that 35% of respondents completely ruled out the possibility of talking about mental health, even if it was appropriate to do so. That’s a big problem, especially if it means people not seeking help they need, when they need it.”*

It appears that the disclosing of a mental health illness in the workplace by an employee can at times lead to discrimination.

In the article “Mind over matter”, by Catherine Quinn, Alison Gibbs, a senior policy officer for the charity Mind is quoted as saying

*“We recently conducted a poll where a great number of people reported being discriminated against (because of) mental illness – people being demoted, refused promotions or having job offers withdrawn after having disclosed a mental health problem.”*

On their website, <http://www.mentalhealthvic.org.au>, the Mental Health Foundation of Australia (Victoria) advises.

“Society still harbours stereotypes about people with mental illnesses, and those misconceptions and fears make their way into workplaces. Although the stigma around mental illness can take the form of well-meaning misunderstandings, it can result in discrimination and harassment.”

In Victoria, discrimination in the workplace in relation to a person’s disability is dealt with by way of the Equal Opportunity Act 2010, which is State based legislation.

However, there may be circumstances when discrimination in the workplace in relation to a person’s disability is best dealt with by way of the Disability Discrimination Act 1992, which is Commonwealth based legislation.

If you believe that you have been wrongly discriminated against in the workplace as a result of having a disability and you would like some advice, please contact the Disability Discrimination Legal Service.

## **Grant v State of Victoria (Office of Public Prosecutions)**

**(2014) FCCA 17 (23 January 2014)**

Mr Grant, a solicitor, suffering from anxiety, depression and interrelated alcohol problems, brought a claim of adverse action under the *Fair Work Act* (2009) against his former Employer, the State of Victoria, following his dismissal.

According to the Reasons for Judgement, in summary Mr Grant says

“he was dismissed because of a temporary absence because of illness or injury or that he was the subject of adverse action because of his physical or mental disability, in this case depression.”

The State of Victoria denied Mr Grant’s given reasons for dismissal, instead arguing that “he was dismissed for misconduct”. Judge Burchardt of the Federal Circuit Court of Australia rejected this denial and found in favour of Mr Grant.

### **Background**

Mr Grant had been employed as a solicitor with the State of Victoria since October 2007 until he was dismissed on 15 August 2012.

Whilst working for the State of Victoria, he was subject to yearly performance reviews. The performance reviews for 2009 and 2010 assessed Mr Grant as ‘performing beyond expectations.’

In September 2010 he suffered a severe fracture to his leg and then suffered from Compartment Syndrome, as a result “significant surgical intervention” was required.

In December 2010, Mr Grant was diagnosed with Deep Vein Thrombosis, which required further hospitalisation, being medicated with Warfarin and required blood tests three times per week.

On returning to work from sick leave, Mr Grants work performance deteriorated. There were issues with arriving late to work, work attendance, conduct and handling of work matters, for example absenting himself from work to attend a friend’s wife caesarean section.

Throughout this time Mr Grant was suffering from depression, anxiety and difficulty with alcohol - these were inter-related conditions.

## **Dismissal**

By January 2012, the State of Victoria was considering formal disciplinary proceedings against Mr Grant. However, it should be noted that formal disciplinary proceedings were considered as early as July 2011.

In February 2012, he advised the State of Victoria that he “was depressed and he referred to the inter-related difficulties of insomnia and anxiety.

On 20 February 2012, Mr Grant absented himself from work to assist a friend who was very unwell in hospital. The absence was conditional on Mr Grant finishing a matter in Court, which he failed to do.

Mr Grant’s matter was brought to the attention of a particular manager by the name of Mr Hyland. Mr Hyland took a strong approach, whereby Mr Grant was stood down and a medical report was requested.

Dr Frean, Mr Grant’s treating doctor, produced a medical report in regard to Mr Grant’s medical condition. Mr Hyland took the view that Dr Frean’s report “told him nothing”, eventually Mr Grant’s employment was terminated.

Despite Mr Hyland’s view of Dr Frean’s report, the presiding Judge took the view that: “Dr Frean’s report is clear. It would tell any reasonable observer exactly why Mr Grant was behaving as he did.”

## **Conclusion**

Taking all evidence into account, especially that of Mr Hyland, His Honour found in Mr Grant’s favour. In His Honours conclusion some matters noted were that Mr Grant:

“was a good employee who misconducted himself when he was unwell.”

And

‘He was not sacked because he was temporarily not at work because of ill health. He was sacked because he had misconducted himself as a result of issues arising from his ill health.’

## New South Wales Anti-discrimination Law update

In September 2013, Independent Member for Sydney, Mr Alex Greenwich, held a second reading of the Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013 which he introduced as a private member's bill.

According to the Overview of the Bill

“The Anti-Discrimination Act 1977 currently exempts private educational authorities from provisions of the Act that make it unlawful for an educational authority to discriminate against a student or prospective student on the grounds of sex, marital or domestic status, disability, homosexuality or age or on transgender grounds. Private educational authorities include all non-government institutions at which education or training is provided, such as private schools, business and coaching colleges and private universities. The object of this Bill is to remove these exemptions for private educational authorities.”

It appears that this Bill was aimed at giving protection to gay and lesbian students.

However, the Bill was “discharged from LA Business Paper and withdrawn on 20/11/2013.”

According to NSWCCCL Civil Source Newsletter October-November 2013:

“The bill had the support of the ALP, Greens and independents in the lower house. NSWCCCL was supportive.

It has, however, been withdrawn by Alex because the Coalition would not support it.”

When visiting Mr Greenwich's website in relation to this matter, one is directed to a news article which appeared in The Sydney Morning Herald on November 21, 2013 and titled “Greenwich's gay student bill on hold”

In the article Mr Greenwich acknowledges supporters of his withdrawn Bill and advises

“I will reintroduce my bill in parliament next year if the new Board of Studies process fails to protect vulnerable students from discrimination and I remain committed to anti-discrimination law reform and removing religious exemptions.”

## **Management Committee**

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## **Volunteer Profile**

Hi, my name is Jenny Collins. I have worked in the law for a very long time – firstly as a Legal Secretary, and now as a Lawyer. As a later Lawyer/mature aged student, I studied a Bachelor of Arts/Law at LaTrobe University where I loved the rigours of study, coupled with the friendship of my fellow students – some of whom I still socialise with on a regular basis.

I have been married for over 40 yrs, have two adult sons, and 2 beautiful Russian Blue cats – who wrap me around their little paws – I worship the ground they walk on. My interests include animals (especially cats), gardening – Old Roses, reading, film and theatre, and the company of good friends.

In addition to volunteering at DDLS (for just over one year now), I volunteer at Fitzroy Legal Service, the Animal Law Clinic at Fitzroy, RSPCA – (love Million Paws Walk), also do a bit of legal typing 2 days a week, and finally, Town Planning Law updates for a Legal publisher on an ongoing basis.

Having always had a passion for disadvantaged people, animals and social justice issues – I hope to be able to make a positive difference in my own small way.

## **Disclaimer**

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*Disability Discrimination Legal Service Inc. – The Advocate*

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