

Equality & Justice

for people with disabilities



Winter 2019

THE ADVOCATE



Villamanta Disability Rights Legal Service Inc.

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Editorial

High hopes continue for significant change and improvement to the lives of people with disabilities as a result of the Royal Commission into Violence Abuse and Neglect and Exploitation.

Both our organisations were pleased to be invited to meet Commissioners in Melbourne to discuss areas of importance for people with disabilities, as reflected in their representations to us.

We are particularly hopeful that due to the Commissions interest in educational neglect, that they may achieve what other statutory authorities and human rights bodies have failed to achieve to date, being an improvement in the quality of the lives of Victorian students with disabilities. Given the many reports between 2012-2019 on the Department of Education and Training and their treatment of students with disabilities, with no substantive practical change for that group, we are committed to encouraging students with disabilities, parents, advocates, legal centres and any persons who have been affected by mistreatment, abuse and neglect in Victorian schools to come forward and submit to the Royal Commission.

Legal advice through the Commission for those concerned about legal issues such as defamation, the previous signing of Deeds in the settling of complaints and like issues, should be available mid-September 2019.

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The Guardianship and Administration Act 2019

The *Guardianship and Administration Act 2019* (Vic) ('The Act') was recently passed by the Victorian Parliament. It aims to reform outdated laws regarding the rights of adults with disabilities by protecting the rights of those whose decision making capacity may be impaired. The Act allows individuals to be more involved in decisions that affect their livelihood and ensure that, as far as practicable, the person's will and preferences are followed.

What does the Act provide?

The Act presumes that a person has decision making capacity unless evidence provides otherwise. A person is now deemed capable if they can make decisions with support. It outlines the appointment of supportive guardians and administrators who help people in making their decisions and provides guidance as to how those appointed are to exercise their duty. New offences have been outlined under the Act regarding administrators and guardians who dishonestly use their position for financial gain or cause loss to the party they are representing. Those found guilty of this could face up to five years prison. Affected parties can also seek compensation for any losses caused by a guardian or administrator who breaches their duty.

VCAT has extended powers under the reforms. Under the Act they now have the power to set limits on guardianships and administrator appointments in order to fulfil individual needs depending on their circumstances.

Overview of Changes to the Disability Act 2006 (Vic)

The *Disability Act 2006* (Vic) has been amended by the *Disability Service Safeguards Act 2018* (Vic). A number of amendments commenced on 1 July 2019, to enable specialist disability accommodation to be governed by the *Residential Tenancies Act 1997* (Vic). The *Disability Act 2006* (Vic) has also been amended by the *Disability (National Disability Insurance Scheme Transition) Amendment Act 2019* (Vic), with the majority of the changes commencing on 1 July 2019. These amendments include:

- Extending safeguards in relation to the provision of advice, notification or information to persons with a disability, to protect NDIS participants;
- Allowing disclosure, use and transfer of certain information relating to the provision of disability services, to ensure a smooth transition to the provision of services under the NDIS;
- Applying certain obligations to former disability service providers and former regulated service providers, to ensure there are no gaps in regulation during the transition to the NDIS (August 2019 © RelianSys Pty. Ltd. Commercial in Confidence Page 2 of 11 RelianSys® Transforming Governance);
- Providing for revocation of registration as a disability service provider, due to transition to the NDIS or at the request of the disability service provider, and;
- Extending the access and inspection rights of a community visitor to include NDIS dwellings.

Details of the Changes

The *Disability Act 2006 (Vic)* has been amended by the *Disability Service Safeguards Act 2018 (Vic)*. The *Disability Act 2006 (Vic)* will no longer apply to certain residential services that are enrolled under the National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016. These SDA enrolled dwellings will instead be regulated under the *Residential Tenancies Act 1997 (Vic)*.

The main purposes of the *Disability Service Safeguards Act 2018 (Vic)* (the DSS Act), as described in section 1 of that Act, are:

- (a) To regulate registered and unregistered disability workers by—
 - (i) Providing for a registration scheme for disability workers and disability students receiving training to be disability workers; and
 - (ii) Establishing the Disability Worker Registration Board of Victoria; and
 - (iii) Establishing the Victorian Disability Worker Commission; and
 - (iv) Providing for the appointment of the Victorian Disability Worker Commissioner; and
 - (v) providing for a mechanism by which complaints and notifications in relation to disability workers and disability students may be investigated and dealt with; and
 - (vi) Providing for appropriate information sharing in relation to disability workers; and
- (b) To amend the Residential Tenancies Act 1997—
 - (i) To provide for the rights and duties of specialist disability accommodation (SDA) residents and SDA providers consistently with the National Disability Insurance Scheme; and
 - (ii) To provide access to SDA residents and SDA providers to general tenancy arrangements under Part 2 of that Act; and
 - (iii) To enable SDA residents to exercise choice and control in respect of their accommodation arrangements; and
- (c) To make consequential amendments to—
 - (i) *The Health Complaints Act 2016, the Ombudsman Act 1973 and the Public Administration Act 2004* in relation to the regulation of disability workers and disability students; and
 - (ii) *The Disability Act 2006* and other Acts to enable the *Residential Tenancies Act 1997* to provide for SDA residents and SDA providers (August 2019 © RelianSys Pty. Ltd. Commercial in Confidence Page 3 of 11 RelianSys® Transforming Governance)

Most of the amendments referred to in paragraphs (b) and (c) (ii) above commenced on 1 July 2019. The remainder of the provisions (notably those relating to registration of disability workers and disability students) will commence on 1 July 2020, unless proclaimed earlier.

Prevalence of disability discrimination today

In Australia, almost twenty percent of citizens live with a disability (AHRC, 2019.) This number is increasing every year due to the aging population. There are many services in Australia which assist those living with a disability to live productive and fulfilling lives, with regards to access to employment, education, recreation and medical services.

However, the incidence of disability discrimination is apparent in Australia. Disability discrimination occurs when a person with a disability is treated less favourably than a person without a disability in the same or similar circumstances (*Disability Discrimination: Know your Rights*, 2012). Such discrimination can be direct; such as not permitting someone who uses a wheelchair to access a premises, or a failure to provide reasonable adjustments; or indirect, such as expecting those in wheelchairs to access buildings via stairs. Advocating against unlawful discrimination with respect to people living with disabilities is the responsibility of community groups and organisations, to bring attention to matters of disability discrimination, in order to educate the community of its impact on the disabled and non-disabled population of Australia.

Indirect discrimination can have a devastating impact on those living with a disability, and their families. Heike Fabig has shared her story to media outlets about her twelve year old daughter who was discriminated whilst travelling on a JetStar flight from Sydney to Tasmania earlier this month. Twelve-year-old Billie Fabig, a competitor at a Boccia competition, a Paralympics ball sport, was forced out of her electric wheelchair at the check-out desk, and forced into a small aisle chair to board the aircraft. Sadly, Billie was not able to sit safely in the chair, so she was forced to endure an uncomfortable 2-hour wait with her mother, strapped to the chair so she wouldn't fall out. Jetstar policy states that wheelchairs must be approved by the airline to confirm that the battery used by the mobility aid is safe to travel by air. They claim there is a lift available for those who are unable to access the aircraft via stairs, and when an aerobridge isn't available. This practise is inconsistent, because on their return flight from Launceston to Sydney, Billie was able to use her electric wheelchair to board the aircraft smoothly without delay.

This case received a lot of support as Billie's mother shared a photo on social media upon request from Billie, so 'people can see what it's like, because they don't understand.' Ms Fabig wrote a letter to Jetstar following the devastating incident, to which Chief Executive Gareth Evans stated that 'forcing electric wheelchair users into manual chairs at check-in is a restrictive and discriminatory practice not based on any logical and proportionate reason.' This experience could have been avoided if Billie was treated like any other Jetstar customer, with respect to her disability and mobility aid requirements. A Jetstar spokesman told media outlets that 'we take the safety and comfort of passengers very seriously.' Billie's experience educates the community on the importance of special assistance being available for people accessing services such as aircrafts. It is essential for people with disabilities to be permitted appropriate access to everyday facilities and services, with the utmost respect for their disability to ensure comfort, safety and enjoyment.

Direct Discrimination is a serious matter which requires the upmost concern and attention. There have been cases of those living with a disability experiencing physical and verbal abuse, neglect and humiliation. Such treatment has devastating effects on individuals.

Mr Mick Higgins, from Canberra, has filed a complaint with the Australian Human Rights Commission following abuse by his taxi driver. Mr Higgins lives with quadriplegia and requires a wheelchair for transport. The taxi driver's mobility lift had broken, which caused the taxi to require repairs. The taxi driver allegedly blamed Mr Higgins for reporting the broken lift, whereby he became trapped in the taxi. The driver became verbally abusive towards Mr Higgins, acting in an 'aggressive and threatening' manner. Mr Higgins had ridden with the same taxi driver a month earlier, whereby he noticed the broken mechanism on the ramp and hoist, which prevents wheelchairs from rolling backwards whilst being lifted. The taxi driver was ordered to fix the issue after Mr Higgins' initial report, such report reflecting Mr Higgins' concern for other passenger's safety.

Mr Higgins decided to file a complaint with the Australian Human Rights Commission, where his lawyer Sam Tierney stated that he 'hoped the action would help ensure people with disabilities could safely use ACT taxis without having to fear for safety or mistreatment.' Such discrimination is universally unacceptable, as Mr Higgins endured discrimination due to him being in a wheelchair, where he could not use the taxi safely due to its broken parts. His lawyer has stated that '*Mick, as every other Australian in the community, has a right to not be discriminated against or harassed as a result of their physical characteristics.*'

Recent figures from the Australian Human Rights Commission.

Enquiries:

	2016-2017	2017-2018
Disability Discrimination	20%	21%
Sex Discrimination	11%	13%
Racial Discrimination	10%	10%
Australian Human Rights	6%	7%
General Employment Matter	15%	8%

Complaints:

	2016-2017	2017-2018
Disability Discrimination	39%	42%
Sex Discrimination	24%	27%
Racial Discrimination	21%	14%
Australian Human Rights	8%	8%
Age Discrimination	8%	8%

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

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

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