

The Advocate

Winter 2016



**Villamanta Disability
Rights Legal Service Inc.**

In this edition

Editorial	1
Police Officers, PTSD and Insurance Surveillance	2
Census 2016 and People with Disabilities	3
Fishlock v State of Victoria 2016	4

Editorial

The needs and interests of Australians with disabilities seem destined to continue to be ignored if recent events are anything to go by.

The 2016 Census, like those before it, had no interest in whether Australians have disabilities or not.

Print and television media continue to reveal horrific stories of the abuse of students with disabilities, recently showcasing a school in New South Wales that had been keeping students in outdoor cages, and which had already been brought to the attention of the Minister.

Given the flurry of state and federal senate inquiries in the last 12 months into abuse and their findings, one wonders what needs to happen to people with disabilities before these very serious issues are addressed.

Recent revelations of abuse and restrictive practices in youth detention brought immediate response from government and a formal and wide reaching inquiry committed to within 48 hours.

A year later, the status quo remains for people with disabilities in institutional settings, including schools, who are subjected to mistreatment and abuse.

It is unsurprising that people with disabilities are wondering about their status as Australians in society.

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Police Officers, PTSD and Insurance Surveillance

A recent report featured on ABC's *Four Corners* (aired Monday 1 August 2016) revealed the surveillance practices of insurers dealing with the claims of former police officers who suffer from work-related Post Traumatic Stress Disorder ('PTSD'). A former officer featured in the program, Brendon Bullock, had been diagnosed as suffering from a "total and permanent" disability because of his acute PTSD.

Although this diagnosis was reached by a psychiatrist appointed by the insurer MetLife,¹ the former officer was subsequently subject to excessive surveillance by the insurer. Mr Bullock was followed frequently and his actions (and those of family members) were photographed and recorded on video for many months. Psychiatrist Sandy McFarlane explained on *Four Corners* that not only are police officers at very high risk of developing a mental illness due to the nature of police work, but surveillance often exacerbated the PTSD suffered.

In the case of Mr Bullock, the surveillance had a considerable impact upon his condition. The hyper-vigilance that was a symptom of Mr Bullock's condition caused him to have a heightened perception of threats within his environment, and Mr Bullock perceived these threats to be very real and direct. Mr Bullock explained that being followed and photographed echoed certain traumatic experiences he had as a police officer, and this directly affected his psychological condition and the extent of his suffering.

From the perspective of discrimination law, it could be asserted that the insurer has discriminated against Mr Bullock on the basis of his disability. The subjection of Mr Bullock to excessive surveillance was a requirement or condition that has been imposed upon him by the insurer. The illness suffered by Mr Bullock affected his ability to reasonably be subject to that requirement. This caused disadvantage to Mr Bullock, namely the exacerbation of his health condition.

Entreaties by Mr Bullock's lawyers to reduce or cease the surveillance were not heeded and surveillance continued. By not making reasonable adjustments in accordance with these requests, the insurer had imposed further disadvantage upon Mr Bullock in breach of anti-discrimination legislation. Mr Bullock's condition became so serious after the surveillance started, that he attempted to end his own life.

The Australian Lawyers Alliance have advocated for a Code of Practice that prohibits any surveillance on insurance claimants that could be considered invasive, excessive or unnecessary. The Australian Lawyers Alliance explained that courts have acknowledged that surveillance is not an effective means with which to determine the existence or extent of a claimant's psychological illness, such as PTSD. This calls into question the purpose of the use of these strategies, particularly with regards to the impact it has upon claimants.²

Since the involvement of the ABC in Mr Bullock's matter, MetLife announced it "now no longer use surveillance in the assessment of claims related to mental illness".

¹ <http://www.theage.com.au/victoria/former-police-say-insurers-made-their-post-traumatic-stressdisorder-worse-20160801-gqipcd.html>

² <https://www.lawyersalliance.com.au/news/police-ptsd-claims-show-insurers-cannot-be-trusted-lawyers>

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Census 2016 and People with Disabilities

Census 2016 is about as famous as a census gets. The resounding crash of the census website on the big night surprised no-one but the ABS, heralded the #censusfail twitter storm, and made Malcolm Turnbull very cross indeed.

On a positive note, greater efforts were made to make Census 2016 the most accessible yet for people with disabilities. Initiatives such as online videos available in Auslan, and access to audio versions were commended by Australia's new Disability Discrimination Commissioner Alastair McEwin.

While access to the Census in 2016 improved for people with disabilities (website disasters notwithstanding) many Australians with disability will not be counted by Census 2016. Literally.

Four questions, relevant to disability, are asked. In a nutshell they are: Does the person require assistance for self-care activities? For body movement activities? For communication? Why does the need exist?

These questions appear to be about disability. But, as disability advocate Samantha Connor, writes "the problem is that the census does not actually ask Australians if they have a disability"³. The needs of Australians with disabilities, who, like Connor, do not receive formal care and support, are effectively unaccounted for. The message we hear is this: Tell us all about how your disability affects the community, but we really have no interest in how the community impacts upon your experience with disability. Sorry.

This concern was articulated by former president of People with Disability Australia, Craig Wallace in relation to Census 2011,⁴ and was raised again in the lead up to Census 2016 by National People with Disabilities and Carer Council (NPWDACC) and representatives from the National Disability Organisations.⁵

The census guides Australia's future resource allocation and has real effect upon communities and the individuals who live in them. With half of people with disabilities in Australia living in poverty, the better allocation of resources is central to removing barriers for those who experience disability.

If the aim of the Census is to accurately collect data on key characteristics of people in Australia, the failure to recognise personal experience of disability in the next Census could perhaps be overcome with one little question: "Does the person have a disability?". Maybe we can avoid #censusfaildisabledaustralians next time.

³ <http://thestringer.com.au/census-fail-makes-disabled-australians-grin-a-bit-12107#.V61oYPI96mw>

⁴ <http://www.abc.net.au/rampup/articles/2011/08/05/3286486.htm>

⁵ https://www.dss.gov.au/sites/default/files/files/disability-and-carers/Attachment_C_2016_Census_topics.pdf
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Fishlock v State of Victoria (Department of Human Services- Office of Housing) [2016] VCAT 1214

Victorian Civil and Administrative Tribunal, Human Rights Division.

Mrs. Fishlock's application was for the re-instatement of her earlier case of disability discrimination by the State of Victoria (Department of Human Services – Office of Housing) ("the State").

The original case involved a claim of unlawful discrimination in that the house provided by the State for her use was unsuitable as it was not properly accessible or useful for a person of her disabilities; she required the use of a wheelchair. Mrs. Fishlock had claimed that due to her disabilities the house was unsuitable and required modifications. This case was struck out in orders made by consent of the parties.

The orders⁶ made were:

- An agreed upon occupational therapist would be engaged (with time limitations);
- The occupational therapist would provide a report to the State identifying Mrs. Fishlock's needs arising from her disability for the purpose of disability modifications in accordance with the Modified Housing Standards;
- This report would necessitate co-operation from Mrs. Fishlock and information from her treating medical practitioners;
- The State would assess and approve any recommendations in the report in accordance with the Modified Housing Standards and would action **any** approved modifications within 21 days of approval; and
- Mrs. Fishlock could apply for reinstatement of the proceedings if the works were not actioned within the time stipulated in the order.

(Paraphrased)

These orders were signed on Mrs. Fishlock's behalf by her husband who, it was thought, held Power of Attorney.

On their face these orders appeared to say that the Occupational Therapist would assess Mrs. Fishlock's needs, make recommendations for modification and the State Board action these modifications with 21 days of the recommendations being made.

However what actually occurred was that the Occupational Therapy report made no recommendations for modification of the property. The report said there were 'design and therefore construction issues, which cannot be resolved without substantial modifications and rebuilding, to the existing layout'. It recommended that Mrs. Fishlock be relocated to a suitable dwelling.

This resulted in nothing more than Ms. Fishlock being placed on the waiting list for public housing.

⁶ The Tribunal is empowered to make the relevant orders under the *Victorian Civil and Administrative Tribunal Act 1998*, section 93.

Public Housing

Public housing is long-term rental housing managed by the Department of Human Services – Office of Housing. It is for people on low incomes, especially those who have recently experienced homelessness or have other special needs, offering a secure tenure with rent no more than 25 per cent of the tenant's income.

The Office of Housing is responsible for providing appropriate, affordable and secure housing assistance for low-income earners living in Victoria, according to eligibility and needs.

General wait turn

Those applicants satisfying the general eligibility requirements set out above are placed on the general wait turn list. Two valid offers of housing may be made however if both are refused an applicant's name will be removed from the waiting list.

Early housing categories

If you have an urgent or special need for housing you may be eligible for the Early Housing list. These needs include homelessness with support, unsafe housing (family violence), insecure housing, significant personal support, inappropriate housing, modified housing and urgent medical needs and living in unsuitable housing or need major modifications to your home due to physical disability.

An applicant who is accepted onto the early housing list will receive one offer. If this offer is refused they will be moved onto the general wait turn list where they will receive only one additional offer before removal from the list altogether.

Waiting time

General statewide figures for applicants on the Public Housing waiting list now exceed 32,000. The total figure is down when compared with the June 2012 figures however this is not merely a statistic; it has "real human impacts".⁷ However the figures for the Early Housing list have remained around 10,000 over the last four years.

In 2013-14 the average waiting time for Victorians receiving an Early Housing allocation was 8.7 months; in 2015-16 this was estimated to rise to a wait of 10.5 months.⁸ The waiting time for those Victorians on the Wait Turn list may be around twelve years from application to an offer of housing as they are bypassed by those in even more urgent need.⁹

The length of these waiting lists has impacted Victorians in several ways:

- High levels of housing related stress;
- Thousands of low-income Victorians do not even apply for public housing; and
- Increased difficulty for those wanting to transfer between properties.

⁷ Margaret Guthrie of the Victorian Public Tenants Association.

⁸ Victorian Public Tenants Association Budget Submission 1026-17.

⁹ This information gratefully sourced from a publication by the Flemington and Kensington Community Legal Centre. *Disability Discrimination Legal Service Inc/ Villamanta Disability Rights Legal Service Inc – The Advocate*

Public housing developments in Victoria are running at least two years late.¹⁰ Some sites have remained vacant for a “number of years”.¹¹ This land could be used and incentives explored with private developers who may be able to contribute to social housing.¹² Redevelopment plans for older railway stations, such as the Hampton, Ormond and Jewell stations, could include affordable public housing units, thus meeting the legislative objective that “every person in Victoria has adequate and appropriate housing at a price within his or her means”.¹³

DDLS supports the tenet that “public housing should be disability-friendly in terms of its location, design, and responsiveness to the different needs of people with disabilities”.¹⁴

Meanwhile Mrs. Fishlock, and many others in similar situations, waits in housing unsuitable to their needs.

DDLS Strategic Plan

Thank you to those of you who contributed to our 2016-2019 Strategic Plan. A summary version is available on the DDLS website.

¹⁰ <http://www.theage.com.au/victoria/public-housing-redevelopments-delayed-while-waiting-list-soars-20160508-gop28t.html>.

¹¹ Housing Minister Martin Foley.

¹² See n 6.

¹³ *Housing Act 1983* (Vic), section 6.

¹⁴ *The Public Housing Needs of People with Disabilities: Submission to the Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* by the Office of the Public Advocate, January 2010.

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