

# Equality & Justice

for people with disabilities



Autumn Edition 2018

## THE ADVOCATE



**Villamanta Disability Rights Legal Service Inc.**

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### Editorial

The recent release of the report from Monash University’s Castan Centre for Human Rights Law - “Improving Educational Outcomes for Children with Disability in Victoria” was another in a long, sad series of reports from Victorian statutory authorities and parliamentary committees on the plight of students with disabilities.

This particular report looked at the systemic and ongoing barriers for students with disabilities in Victoria, through a human rights lens. No matter the angle, the findings continue to reflect a government system that prioritises the needs of students with disabilities last, and discriminates against them from the time they are enrolled (if they are not refused enrolment) through to when they leave school - many of them if you go back to the most recent Ombudsman’s Report, suspended and expelled.

The suffering of students of disabilities and their families seems destined to continue unaddressed until (hopefully) we receive some strong leadership that demands a change in attitude towards this group.

Each year that students with disabilities can’t access their education contributes to another generation, destined for the Disability Support Pension or the dole. It is hard to imagine the rationale behind any lack of action by the Department of Education and Training.

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### LMNT and the NDIS at the AAT: Summary

One of the many sources of controversy in the legal framework under the National Disability Insurance Scheme (NDIS) has been what constitutes a “reasonable and necessary support”. There is ongoing uncertainty as to how this term should be interpreted.

Section 34 of the *NDIS Act 2013* (Cth) relevantly provides that before a support is funded under the NDIS, it must be “reasonable and necessary” having regard to an array of matters, including whether the support will assist the plan participant to achieve their goals and objectives as stated in their Statement of Goals and Aspirations.

This standard was recently applied in a decision of the Administrative Appeals Tribunal (AAT).

LMNT is a participant in the NDIS. She is blind, lives with a degree of cognitive impairment and a seizure disorder. LMNT’s Statement of Goals and Aspirations included a desire to improve her communication ability and emotional regulation; give her increased independence; and ensure her current carer is able to keep providing support. LMNT’s foster mother believed LMNT was entitled to more under the NDIS than she was granted by the National Disability Insurance Association (NDIA). She requested review of the NDIA’s decisions in the AAT.

The AAT rejected most of the NDIA’s decisions regarding LMNT’s support plan:

**First**, the AAT allowed LMNT 104 hours of support coordination, allocated over six months as a “reasonable and necessary support”. The NDIA had reduced the 208 hour allocation in her original plan without explaining how they determined this was necessary. The AAT pointed out that in LMNT’s case, a “high level of support coordination is required, including a high level of coordination with her school.”

**Second**, the AAT determined that funding for two support workers twice a week; and one support worker once a week to take LNMT swimming, was a “reasonable and necessary support”. Swimming is the only social and community contact LNMT is able to access where she lives, but she needs two people present when swimming to remove her from the pool if she has a seizure. This is significant, as the NDIA typically regards seizures as “medical” and thus not eligible for support funding.

**Third**, the AAT determined it was “reasonable and necessary” that funding be granted for seven days of out-of-home respite care in every six weeks. The AAT stated it was the NDIA’s responsibility to fund this in order to ensure LNMT’s foster mother could continue caring for her.

**Finally**, the AAT determined LNMT’s cognitive assessments should be funded through her NDIS plan, despite these being available through the public health system.

The decision will invigorate many in the disability community who are battling with planning decisions made by the NDIA. It remains to be seen as to whether the NDIA will appeal.

## United Nations Assessment of Australia's Human Rights 2018

In February 2018, the United Nations published a 'Report of the Special Rapporteur' ('Report') on the situation currently facing human rights defenders in Australia. The report examined the progress the Australian Government has made since making a pledge to advocate for the protection of journalists, human rights defenders and civil society. Overall, the report commends Australia's vibrant and diverse society, that on the most part, effectively ensures Australians live with dignity, equality and security. However, the Report contained heavy criticism of the Government's attitude towards strengthening civil society, even going as far to indicate that the current legislative environment was 'hostile' to organisations and defenders of equality and protection.

### Criticism

Of particular note, the Report criticized the verbal attacks on the Australian Human Rights Commission ('AHRC'), an integral institution that seeks to resolve human rights complaints across a diverse range of civil rights areas. The AHRC also plays an influential role in the disability community, providing avenues to voice instances of discrimination and conflict resolution services. The verbal attacks on the AHRC in the media by senior government officials questioned the integrity, impartiality and judgment of the organisation, of which spurred the President of the AHRC to state that the government has been 'ideologically opposed to human rights' since her 5 year tenure began. This view was further entrenched when the AHRC was targeted for funding reductions, which naturally reduces the AHRC's ability to defend the human rights of those most vulnerable in Australian society. In response, the Report recommended to the Australian Government that it scrutinise and condemn criticisms of human rights defenders such as the AHRC and raise awareness of their legitimate role in protecting and promoting human rights.

### Key Recommendations

The Report also made recommendations to the Australian Government that are relevant to disability advocates. Of significance is the recommendation that legal assistance funding of community service organisations are not reduced, obstructed or unduly controlled. This would mean that active disability defenders such as the DDLS and Villamanta Disability Rights Legal Service are able to maintain service standards and deliver quality legal assistance to those with disabilities.

The Report also recommended that human rights advocates and defenders are guaranteed to have influence in government decision making, which may open the door for community legal centres to play an even more active role in lobbying legislative reform in areas of civil rights. Although the report does not detail how this guarantee may be implemented, it is an encouraging prospect to know that community legal centers might have their voices heard. Of particular relevance would be a guaranteed input into the content of a Federal Human Rights Act that would constitutionally guarantee human rights with a clause of precedence over all other legislation. Such an Act was a recommendation by the Report.

### Impact of the Report

This Report highlights the Australian Government's approach to civil rights from the view of independent international bystander and assessed whether Australia's direction is consistent with international standards. The author is not satisfied with the Government's current approach and stresses that it needs to focus its mind on recognising the important role of human rights defenders and redouble its efforts in strengthening civil society.

## Victoria Police: A time for cultural change

The recent exposure of police brutality cases in relation to those who are marginalised or disadvantaged is having a significant effect on people with disabilities, who often refrain from reporting complaints in the first place.

The case which seemed to spark a series of investigations into police brutality was that of a man named John who was filmed by Victoria police being beaten and assaulted outside his home in late 2017. John was reluctant to complain, like many who are disadvantaged – due to race, disability, sex or otherwise. According to the Victorian Equal Opportunity and Human Rights Commission in their report *Beyond Doubt*, not only do people who have a disability fear police have negative attitudes towards them, but a significant number of their reports were not being taken up by Police.

Victoria Police are required by policy and law to adjust their practices to meet the diverse needs of victims, and thus understanding the community in which they work in is vital. The challenge then appears for Victoria Police to be that of taking these ethical and professional standards out of theory and translating them into practice. Developing a respectful and comfortable environment at the lower level instils legitimacy and authority back into the force. Assistant Commissioner Luke Cornelius noted that a “culture change” is needed. Arguably then consultation with community groups, particularly those that feel marginalised by the force is needed. However until Victoria Police show its members that inappropriate treatment of marginalised groups will not be tolerated, consultation will be of limited use.

The case of John, like others highlighted recently, is an example of excessive force, beyond any reasonable limits and without excuse. It is an example of a lack of understanding, appreciation or sympathy for what it means to be a person with a disability.

It is clear that current “policing of the police” has failed. We hope that Victoria Police use what has happened as an opportunity to make significant and quick changes that will benefit those reporting violations, and marginalised groups of society in general.

## Casework – Strategic Planning

DDLS wants to know what your thoughts are about priorities for our casework.

Is it education? Employment? Goods and services? We would be interested in your feedback to assist us in deciding where we should put our efforts.

Please email your views to [info@ddls.com.au](mailto:info@ddls.com.au).

If you don't have access to email, feel free to call us on 9654-8644 and ask for Julie.

## Stronger Schools Campaign

The Disability Discrimination Legal Service is proud to support the VCROSS lead campaign for stronger schools.

Supportive schools have healthier and more resilient students who go on to become happier and more fulfilled adults. They are more likely to succeed in their goals if they are supported during their education and likely to have stronger connections to family, the workforce and within their local community.

Strong schools are inclusive and supportive of every student and every family. Without the right support, students are at risk of increasing disengagement that can lead to a lifetime of social, economic and health problems.

Please join us in our campaign.

Website: [www.strongerschools.org.au](http://www.strongerschools.org.au)

Facebook: [www.facebook.com/strongerschoolsvic](https://www.facebook.com/strongerschoolsvic)

Petition: [www.strongerschools.org.au/petition](http://www.strongerschools.org.au/petition)

## Marketing and Fundraising Committee Member Being Sought

The Disability Discrimination Legal Service (DDLS) is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform. The long term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with a disability, and to generally promote equality for those with a disability.

DDLS relies on government funding to assist people with disabilities who need assistance regarding discrimination, throughout the state of Victoria.

Our funding permits us 2.7 EFT staff.

We are looking for a volunteer to join our Management Committee who has experience in marketing/fundraising in order to assist us solidify our position and continue to provide the service we do, regardless of variations in government funding.

If this would interest you, please contact Julie Phillips, Manager on 9654-8644 or by email at [manager@ddls.org.au](mailto:manager@ddls.org.au).

## 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

Liddy Nevile (Chair)  
Marius Smith (Vice Chair)  
Nick Corker (Treasurer)  
Elizabeth Muhlebach  
Wayne Kiven  
Geoff Waite  
Winnie Gu  
Julie Phillips (Secretary)

### Staff

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### Villamanta Management Committee

Phillip H Clarke – Chairperson  
Andrew Hill – Secretary  
Kathryn McBride – Treasurer  
Amanda Millear – Deputy Chairperson  
Neville Porter – Member  
Hank Wyllie – Member  
Michele Tucker – Member

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#### **Administration Worker**

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