

Equality & Justice

for people with disabilities



Summer 2020

THE ADVOCATE



Villamanta Disability Rights Legal Service Inc.

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As we welcome stakeholders, friends and community to 2020, we start the year with cautious anticipation of further revelations made to the Disability Royal Commission ultimately contributing to significant changes to the lives of people with disabilities.

We also hope that the recent NDIS review released January 2020 that formalised the many and varied concerns from people with disabilities who at best had average experiences, and at worst had experiences that caused trauma and pain, will be a catalyst for urgent NDIS reform.

The downside of being in organisations that have been in operation for more than two decades each, is to have to confront the fact that there is no less a need for our services than there were 20 years ago.

If government were responsive to the voices of people with disabilities and those that stand behind them, our jobs would be simple, and perhaps there would be no need for our existence.

Reports and submissions come and go, and unfortunately there do not seem to be many changes on the ground.

Let us hope that in 2020, there may be some positive changes to the lives of people with disabilities.

Julie Phillips
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Let's Talk About Disability

What does a perfectly diverse society look like?

Stephanie Seviloglou

Perhaps it is a place where LGBTQIA+ people are completely free to be themselves without fear of prejudice, or where people of colour are not discriminated against for their racial or ethnic identity. Maybe it also looks like those of different religions feel safe from persecution, and women and non-binary individuals aren't trapped in a gender hierarchy. So far, this paints an idyllic picture, of which progressive firms and corporations have incorporated within their diversity agenda. However, there is one facet missing from this intersectional model.

Where are the people with disabilities? The spoonies, the neurodivergent, those with congenital or acquired illness? Where is the visibility? Over 4 million Australians identify as having a form of disability, (1 in 5 people), yet those with disabilities are often left out of the diversity agenda and do not get a say. Treated with misappropriated pity, or heroised for simply living. Additionally, they are prone to tokenism, whereby one person is seemingly representative for the whole disabled community - despite the fact that there is a multitude of conditions and no two people with the same disability may share symptoms. Each case is unique with people presenting either overt or covert disability, or experiencing physical or mental disability.

While there is nothing wrong about focusing on the other facets of intersectionality per above (as our efforts will eventuate in a fully diverse and representative society). However, it is contended that people with disabilities remain in the shadows of the equal opportunity narrative - effectively disenfranchised.

Why does this occur? And how is this related to employment?

Modern studies theorise that the attributed disability stereotype is inherently anti-capitalist. An individual's employment worth is assessed by reference to their productiveness. If you can work extremely long hours and consistently produce high volume of results with minimal adjustments, you are a model candidate. Classically, those with disabilities were portrayed as "too much work to help" or "risky or poor investments". Less of these attitudes are openly expressed in contemporary times; however, disability discrimination still pervades society, and typically occurs indirectly.

Disability Discrimination Legal Service Volunteer Paralegal Emily Coghlan explains "direct disability discrimination occurs when an individual is treated less favourably than another person in the same or similar circumstances, due to living with a disability. What is less obvious (and more frequent) is indirect disability discrimination, occurring when there is a law, policy or rule applying to all people in the same fashion; putting those with disabilities at a disadvantage."

'Disability confidence' is a potential euphemistic branding tool needing to be cultivated in workplace cultures, to generate more accessible recruitment processes.

"An individual's employment worth is assessed by reference to their productiveness. If you can work extremely long hours and consistently produce high volume of results with minimal adjustments, you are a model candidate".

Disability and the legal industry

Being a law student is rife with stress and ubiquitous challenges. There are so many readings to accomplish, questions to answer and assignments to complete. It is physically, mentally and emotionally taxing - of which students with disabilities may become doubly sensitised to, verging on the point of the body "shutting down". The apex of pressure for students with disabilities though is when preparing for legal employment.

Numerous penultimate and final year students protest about psychometric testing and the writing of clerkship and graduate applications (it is certainly a gruelling endeavour). However, what about the students who need extra time or different technology to comprehend and answer questions? Those experiencing debilitating pain, requiring breaks or "chunking" of tasks? Due to negative social conditioning (through stigmatisation), people are trained to not talk about illness or disability. This affects people with disabilities' ability to be vocal about making adjustments and expressing their needs.

This may typify why graduates with a disability take 60% longer on average to acquire full-time employment than other graduates.

Unfortunately, statistics of Victorian lawyers with disabilities could not be provided as they have not been calculated, highlighting the necessity of visibility more than ever before.

Law is about resolving issues between people and their interplay with the world. Rosemarie Garland Thomas similarly asserts that we traditionally treat disability as a problem in bodies, rather than one located in the interaction between bodies and their situated environment.

So, if anything, people with disabilities are more exemplary employees than you may think. Workplaces that wish for empathy; resilience; adaptability; innovation and perpetual determination - in addition to the quintessential criteria? We have that in spades.

Embrace, trust and see us for more than our disability.

Stephanie Seviloglou.

Stephanie is a Competitions Officer at DLSS (Deakin Law Student Society) and a volunteer paralegal at Disability Discrimination Legal Service. In her little-to-no-spare time she enjoys obsessing over the Great British Bake-Off.

Kouzaiha v Launch Housing Limited (Human Rights) [2019] VCAT 1906

Parties

- Mouhamed Kouzaiha (the Applicant) has depression and anxiety. The Applicant has an assistance dog and his housing application was denied due to his dog.
- Launch Housing (the Respondent) is an independent community agency who provide support, housing, education and employment services in Melbourne

The issue

- Whether the Applicant's dog was an assistance dog as defined by s 4 of the EOA when the Respondent was considering the applications for a vacancy of a Spencer Street property.

Facts

- The Applicant applied for housing at a vacant Spencer Street property in Melbourne
- The Applicant's case manager deemed him to be suitable however the Respondent's tenancy team did not consider him for the vacancy because the Applicant "has a dog that he requires for his mental health well-being"
- The Respondent submitted that the dog did not fall under the definition of "assistance dog"
 - Assistance dogs need to be trained to perform particular tasks or functions that help alleviate the effects of a person's impairment: section 4 EOA
- The Applicant claimed his dog is an assistance dog because it has been specifically trained to offer him support and comfort
 - A report from the Lort Smith clinic stated that Mr Kouzaiha's dog had not been trained to aid a person with a disability and only a general, behavioural assessment had been conducted.

Findings

- In reference to Phillips v Andrews [2019], Judge Woodward determined that while the EOA is clear in what characteristics are required to have an animal be considered an assistant dog, it does not state who ought to provide or certify training for assistance dogs. However, there must be "reasonably clear and coherent evidence about the purpose and extent of the training". Without this, it is not possible to determine if a dog is an assistance dog, and therefore protected by the EOA.
 - The dog does serve a purpose to the Applicant in the sense that it provides a benefit, that may extend to the management of his mental illness.
 - While there is a benefit, the dog has not been appropriately trained to alleviate the effects of a particular disability that he has.

- The court accepted that, generally speaking, Mr Kouzaiha is comforted by his dog, however the provision by a dog of comfort and support to a person with a disability does not satisfy the definition of “assistance dog” in the *EOA*.
- The Applicant’s application of discrimination was dismissed.

Orders

- VCAT found that claim of discrimination was misconceived and bound to fail
- The application was dismissed under section 75(1) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic)

New tenancy laws

- The Residential Tenancies Act 1997 is under review, with new reforms starting by 1 July 2020. Within the 130 reforms listed, one of those directly relates to tenant’s rights to have a pet.
- According to new tenancy laws, a tenant will now have the right to keep pets provided they obtain the landlord’s written consent first.
 - Landlord’s consent can only be refused by way of VCAT order.
 - In the case of assistance dogs, consent cannot be refused at all.
- In relation to this case, the Applicant’s dog is not considered an assistance dog, but can be considered a pet.
 - If he were to obtain housing, he can seek approval of the landlords to have his pet, which cannot be refused unless by VCAT order.
 - Launch Housing would have to approve his pet request.
 - The Applicant would not be denied to have his pet in his new housing, and refusal by the Respondent (if not by way of VCAT order) could be deemed unjust and discriminatory.

Whistleblowing Information

The *Corporations Act 2001 (Cth) (the Act)* has recently expanded to include more in-depth provisions regarding whistleblowing as of 1 July 2019.

From 1 January 2020, a legal imposition is made on public companies, large proprietary companies as well as corporate trustees of APRA-regulated superannuation entities requiring them to have a whistleblower policy (s 1311(1) of *the Act*).

Moreover, not-for profit incorporated organizations are not excluded from this onus. Those that meet the definition of a trading or financial corporation are mandated to comply with Part 9.4AAA of *the Act*.

Not-for-profit organizations structured as public companies limited by guarantee (i.e. their annual consolidated revenue is at or exceeds \$1 million) are already mandated to comply with the whistleblower protection provisions.

The law

Per s 1317AA (1) an individual qualifies for protection if they are an eligible whistleblower that discloses information regarding a regulated entity to ASIC; APRA or a prescribed Commonwealth authority.

Officers, employees, suppliers, associates, trustees, etc. are considered to be eligible whistleblowers per s 1317AAA, regardless of whether they are paid or not. This means that a volunteer may meet the definition of a legal whistleblower by extension. Please note: a whistleblower need not identify themselves to qualify for protection under the Act.

The definition of a regulated entities includes foreign, trading or financial corporation formed within the limit of the Commonwealth. Despite their charitable or community benefit purpose, a not-for-profit may still be considered a trading or financial corporations if a significant proportion of their overall activities can be characterized as such (*Orion Pet Products Pty Ltd v Royal Society for the Prevention of Cruelty to Animals (Vic)* [2002] FCA 860; *R v Federal Court of Australia; ex parte WA National Football League* [1979] HCA 6).

Eligible recipients refer to officers, senior managers, auditors, actuaries or authorized persons of the body corporate or superannuation entity.

Thus, if all these elements are met, these entities must comply with the following obligations:

- maintaining confidentiality of the whistleblower's identity and information (unless consent is provided for it to be disclosed);
- preventing any harm or detriment occurring to a whistleblower (such as terminating employment, harassment or discrimination).

to do otherwise is to risk liability for compensation.

Penalties

If a regulated entity fails to comply with their requirement to have a whistleblower policy, a \$12,600 penalty may apply.

Pursuant to the new *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth), if confidentiality is breached or evidence proves that one attempted to or did cause/threaten detriment to a whistleblower, the following penalties may apply:

- individuals, up to 1.05 million (5,000 penalty units); and
- companies, \$10.5 million (50,000 penalty units), or 10% of annual turnover (up to \$525 million or 5 million penalty units).

To find out more on Australia's revised whistleblower protection regime, please read ASIC's Regulatory Guide 270.

Royal Commission Progress Report

The first progress report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) has been released. The progress report outlines the key activities conducted by the Royal Commission for the period of 5 Apr 2019 – 10 Dec 2019, unless otherwise stated.

Public Hearings

- So far, the Royal Commission has held 3 public hearings, with the first public sitting held in Brisbane, QLD on the 16 Sep 2019.
- The Education public hearing was held in Townsville, QLD on 4-7 Nov 2019. The purpose of this hearing was to examine existing legislation, policies and practices relating to inclusive education in Queensland state schools. Evidence was submitted from parents of children with a disability, advocates and community organisations.
- On the 8 Nov 2019, Commissioners visited Bwgcolman in Palm Island, QLD and met with a number of First Nations people and organisations. (“Bwgcolman” means 'Palm Island' in Manbarra, and is a collective name adopted for those many Palm Islanders peoples who, as distinct from the Manbarra, were subject to coercive displacement from a wide-ranging number of aboriginal communities on the mainland, a descriptive term that is used in recent claims for native title.)
- This was to hear what was needed to help provide direct support to First Nation children with disabilities.
- The Homes and Living hearing was held in Melbourne, VIC on 2-6 Dec 2019 and heard submissions in regards to experiences of people with disability living in group homes including their experiences of violence, abuse, neglect and exploitation. Evidence was submitted by people with disability who have lived in group homes, family members of people with disability, the Victorian Disability Services Commissioner, the Victorian Department of Health and Human Services, disability advocates and service providers.

Workshops

- 9 workshops were held across Australia to identify and discuss issues, ideas and information on topics affecting people with disabilities
 - **Advocacy Workshop** – focusing on experiences of people with intellectual disability who are denied legal capacity to make their own decisions, and the experiences of people with disability in interacting with police and the justice system.
 - **Legal Workshop** – focusing on legal issues for people with disability in areas of justice, accommodation, education and learning and economic participation; concerns about the National Disability Insurance Scheme (NDIS); and the importance of law reform regarding disability rights and services.
 - **Service Providers Workshop** – focusing on the impact of the NDIS on service delivery; and the barriers to accessing services for people with disability from culturally and linguistically diverse backgrounds.

- **First nations people consultation Workshop** – focusing on institutional racism within the health system, and the lack of services in remote settings for First Nations people with disability.
- **Justice Workshop** – focusing on legal capacity of people with disability; indefinite detention of people with disability; and barriers/ inaccessibility to the complaints process within the criminal justice system.
- **Education and Learning Workshop** – focusing on inclusive education, including barriers to implementing inclusive education and whether Australian teaching standards are consistent with the CRPD.

Submissions

- The Royal Commission opened for submissions on 29 Jul 2019. Submissions can be made via a submissions form found on the Royal Commission website, email, post or the established telephone hotline. As at the end of the year (10 Dec 2019), the Royal Commission has received 428 submissions from individuals and organisations. The submissions have come from people of very diverse background and detail of mainly recent events, with 74% of submissions describing cases of abuse, violence, neglect or exploitation that had happened since 2010. 1 in 3 submissions focused on housing and accommodation as the topic, and a similar number focused on education.

Community Forums

- The Royal Commission has held 6 community forums so far, which give people the opportunity to share personal experiences, ideas and issues on how to better care, protect and support people with a disability. The forums also act as a way for the public to be updated on the work that the Royal Commission is undertaking.

Future Plans for 2020

- The range of work that the Royal Commission will be undertaking in 2020 will include further hearings, community forums, community engagement and releasing of issues papers and interim reports. The commissioners will also begin the task of holding private sessions for people to submit information and experiences privately and confidentially. The Royal Commission will also be provided with further information from the NDIS Quality and Safeguards Commission and the National Disability Insurance Authority that it requires for their inquiry.

Royal Commission Advocacy Assistance

Several advocacy organisations and legal service providers have been provided with additional funding to support people to make submissions to the Disability Royal Commission. One of these is **Villamanta Disability Rights Legal Service Inc.** If you would like assistance to tell your story to the Royal Commission you can contact Villamanta on (03) 5227 3338 or 1800 014 111.

RIAC (Rights Information & Advocacy Centre Inc.) is also providing this Royal Commission advocacy. RIAC can be contacted on (03) 5222 5499 or email <DRC@riac.org.au>

For Legal Advice around the Disability Royal Commission, there is also a *National Disability Royal Commission Legal Advisory Service* being provided by the combined Legal Aid Commissions. It can be contacted 1800 771 800. There is also some funding available for legal representation at the Royal Commission. More information about the Disability Royal Commission Legal Service is available at the [Disability Royal Commission Legal Service website](#), or on the Australian Government's Attorney-General's website at [www.ag.gov.au > legal-assistance-for-the-disability-royal-commission](http://www.ag.gov.au/legal-assistance-for-the-disability-royal-commission)

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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