

Submission to the Productivity Commission Access to Justice



Inquiries to:

**Julie Phillips
Manager
Disability Discrimination Legal
Service**

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Disability Discrimination Legal Service Inc
c/o Ross House Association, Inc.
247 Flinders Lane
Melbourne, 3000 VIC
Ph: 03 9654 8644
Fax: 03 9639 7422
TTY: 03 9639 7422
Country: 1300 882 872
Website: www.communitylaw.org.au/ddls
Email: info@ddls.org.au
ABN 36 079 687 722

A. Disability Discrimination Legal Service

1. What We Do

The Disability Discrimination Legal Service Inc (**DDLS**) is a statewide independent community legal centre that specialises in disability discrimination legal matters. We provide free legal services in several areas including information, referral, advice, casework assistance, community legal education, and policy and law reform.

The DDLS works actively towards the eradication of disability discrimination and facilitates and promotes justice for people with disabilities through community legal education sessions to professional and community groups to raise disability awareness and provide information on the *Disability Discrimination Act 1992 (Cth)* (**DDA**) and the *Equal Opportunity Act 2010 (Vic)* (**EOA**).

We also undertake community development research projects to investigate and challenge current social, economic and legislative issues affecting persons with disabilities in the community.

We seek to inform the Commission of a few discrete issues which time permits us to submit on. They are by no means exhaustive, and focus on our area of specialisation.

2. Expertise

In order to best assist the client group we work with, staff at DDLS are required to develop and maintain a broad knowledge of disabilities, their common causes and symptoms, and the sorts of supports people with disabilities may require in order to provide them access.

Responsiveness to our clients requires a willingness to be educated on the needs of the individual, but at the same time a base knowledge of disability and disability issues in order that clients have confidence in our understanding of their matter, our

skill to advocate on their behalf in dispute resolution processes, and our ability to competently advise them on preparation for trial.

A consequence of being a law firm specialising in discrimination law is that our solicitors have expertise in this area which is born out of working with the state and federal discrimination legislation full-time.

3. Partnerships

Our partnerships with people with disabilities, disability advocacy agencies and disability support groups assist us in ensuring our knowledge is up to date, and creates pathways to our services through community legal education and general collaboration.

4. Ability to Assist/Resources

Base funding for the DDLS allows for 2.6 staff, including administration and manager. We are a statewide organisation. Our constraints in assisting people with disabilities to run cases are obvious.

There are certain areas of disability discrimination, such as employment and education, where allegations of discrimination can run over a number of years. Such cases can be set down for between one and four weeks. It is not possible for us to commit to such assistance due to our size.

This is a significant barrier for people with disabilities who wish to access disability discrimination legislation. Where alternative dispute resolution processes [conciliation] are unsuccessful, a number of our clients, when faced with locating an alternative law firm that does not employ staff experienced in disability [as distinct from staff experienced in discrimination legislation] choose not to proceed.

B. Why Is Access to Justice Important for People with Disabilities

5. Research/Reports

There are numerous reports both domestically and internationally about the significant disadvantage experienced by people with disabilities. In relation to Victoria/Australia, the DDLs particularly notes the following:

The 2011 report by Price Waterhouse Cooper¹ reflecting that people with disabilities in Australia have some of the worst living conditions in the developed world.

The Victorian Equal Opportunity and Human Rights Commission Report on students with disabilities in Victorian schools², highlighting inequity and disadvantage in areas including quality of educational services, attendance, use of restraint and seclusion, and transport.

The finding by the Victorian Auditor General's Office Report³ that despite millions of dollars being spent on students with disabilities, the Department Of Education and Early Childhood Development does not have the information it needs to determine whether those funds are being spent effectively or efficiently.

The United Nations Committee on the Rights of Persons with Disabilities concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2–13 September 2013), highlighting the many areas whereby the Committee concludes that Australia is not meeting its obligations under the Convention on the Rights of Persons with Disabilities.

It is clear that people with disabilities in Victoria have more need than most to access the full protection of legislation generally, and more particularly any laws designed specifically to assist them.

C. Self Representation

¹ "Disability expectations, Investing in a better life, a stronger Australia." 2011

² "Held Back" Victorian Equal Opportunity and Human Rights Commission 2012

³ "Programs for Students with Special Learning Needs" Victorian Auditor Gen. Office 2012

Clearly, people with disabilities such as mental illness, intellectual disability, Autism Spectrum Disorder and other cognitive disabilities may have more barriers than most in representing themselves. This issue links strongly with the affordability of legal services, and has a direct correlation to the availability of legal assistance in this area.

D. Cost of Accessing Justice

There are numerous costs barriers for people with disabilities at different points of access to the justice system.

6. Engagement of Lawyer

As a Community Legal Centre, the DDLS provides free services, including casework. The limitations of DDLS assistance have been set out above. Victoria Legal Aid has a means test which excludes many people. Private law firms provide pro bono services sparingly, particularly when as mentioned, discrimination cases may run for a considerable period of time.

Private law firms often do not have expertise in disability discrimination. Private law fees are prohibitive.

7. Engagement of Counsel

In instances where a Committee Legal Centre is able to assist a client with free services, the services of Counsel are not covered. Counsel who are willing to work pro bono are difficult to locate, and when found may consist of junior barristers wishing to gain experience in a particular area. This may not be the best outcome for our clients.

8. Transcript

Transcript is unaffordable. Not being able to obtain transcript, particularly during a lengthy trial, puts a client at a significant disadvantage when the respondent, [often government or corporation] has such access.

9. Videoconferencing Fees

This is unaffordable for many of our clients, and precludes them from adducing evidence from witnesses who are from interstate or overseas.

10. Medical Reports and Evidence

In disability discrimination cases, medical reports are often vital, as is the ability to call medical experts to give evidence. One medical report may range from \$300-\$2000 in cost. Medical experts will often charge by the hour. Our clients can often not afford reports or medical experts.

11. Costs Jurisdictions/No-Costs Jurisdictions

The fear of costs orders at the Federal Court is sufficient to deter people with disabilities from using the Disability Discrimination Act. Ironically, it is cost jurisdictions that can attract private law firms who believe a discrimination case may have sufficient merit, to act. On the other hand, while VCAT therefore becomes more attractive to people with disabilities in relation to using discrimination law [through the *Equal Opportunity Act*] due to the fact that it is primarily a no cost jurisdiction, it does not attract private law firms, who know they will receive no payment for their work. This again leads back to reliance on community legal centres such as DDLS.

Summary

The above is by no means an exhaustive list of the difficulties our clients face in accessing Justice. Putting the inadequacies of discrimination legislation aside, the practical realities for our clients are that even if they get over the hurdles of obtaining legal assistance, so many other aspects of running a legal case require money in order that there is a level playing field.

As most respondents do not experience the same difficulties, it is not hard to understand why many cases fail, and many clients withdraw. These are issues that are fundamental to equality for people with disabilities.

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