Equality & Justice
for people with disabilities

Disability Discrimination Legal Service Inc

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The DDLS Advocate

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ACCESS – if you need this newsletter hard copy, large font size, Word or plain English, please let us know.

Editorial

In this Advocate we ask for your active participation in human rights matters which affect many members of Victorian society.

Firstly, we encourage you to have a say in the future of the *Charter of Human Rights and Responsibilities Act*. We attach an information sheet, also in plain English, which explains to you why we need your input.

Secondly, we strongly encourage you to contact any student with a disability and/or their parents in a government school in order that they can contribute to the Victorian Equal Opportunity and Human Rights Commission's research project on students with disabilities in Victorian schools.

As a community, we must remember that our input is vital to change, and it won't happen, and should not happen, without us.

As this year comes to a close, we also remind you that if you wish to contribute to our service delivery, or give us an indication of what sort of articles she would like to see in the Advocate, we would be very pleased to hear from you.

Julie Phillips
Manager

The Importance of Victoria's Human Rights Charter

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter') is an important piece of legislation protecting our human rights, coming into full operation on 1 January 2008. In accordance with Section 44 of the Charter, the Attorney General is required to undertake a review of the first four years of the Charter's operation and a report was to be tabled in Parliament by 1 October 2011. On 19 April 2011, the Attorney General requested the Scrutiny of Acts and Regulations Committee ('SARC') to undertake the review. Following this, the SARC announced the commencement of the review on 2 May 2011. Submissions were received and oral hearings took place between 18-22 July 2011 and the SARC tabled its report on 14 September 2011. The Government now has six months to respond to the recommendations set out in the SARC report.

The majority of members of the SARC recommended that the sections of the Charter requiring Parliamentary scrutiny of new Bills for compatibility with human rights be retained (with some amendments). While this is welcomed, of most concern is that the SARC has also recommended that the obligations on public authorities to consider and act compatibly with human rights when making decisions be repealed (removed) and that the statutory obligation on courts to interpret human rights consistently with the Charter be repealed (removed). The recommendations of the SARC fail to reflect the overwhelming response to a strengthening of the Charter, with approximately 75% of the substantive submissions and 95% of the total number of submissions supporting the retainment or strengthening of the Charter. It is abundantly clear that Victorians want human rights protections.

The importance of strengthening the Charter cannot be underestimated. In its current form, the Charter promotes human rights and equality before the law. If the rights contained in the Charter were to significantly diminish, individuals would not be able to seek recourse to the Courts to remedy human rights violations. Moreover, if the Government does not have to consider and act compatibly with human rights, the Government is less likely to take their obligations seriously and there will be no accountability of the Government to Victorians.

In order to ensure the strengthening of the Charter, we encourage you to do the following:

- Write to the Premier and Attorney General about the importance of the Charter to your client base, stakeholders and community; and/or
- Write to your local member about the importance of the Charter and how it has assisted individuals and groups achieve fairer outcomes that contributed to their well-being.

It is vital that we inform and educate the rest of the community on the importance of the Charter, so please encourage clients, stakeholders and the community to advocate for the strengthening of the Charter by forwarding the FACTs sheet.

Have Your Say - Students with Disabilities

Disability Discrimination Legal Service ('DDLS') welcomes the initiative taken by the Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') in conducting research into the experiences of students with disabilities in Victorian schools.

The DDLS has noticed an increase in the number of disability discrimination complaints relating to the education sector and it appears to have become a systemic issue. The VEOHRC has echoed these sentiments following an increase in complaints to the Commission relating to disability discrimination in education and the concern of disability advocacy groups.

The VEOHRC is looking to gather information about the issues and challenges facing students with disabilities in the Victorian school system and to identify potential solutions to improve access to education for students with disabilities. If you would like to participate in this project and have your input, there are several ways to do this:

- If you are a student with a disability, a parent of a student with a disability or a principal, teacher or you work in a Victorian school, you can complete a confidential online survey at http://www.humanrightscommission.vic.gov.au/disabilityinschools.
- If you work in a community organisation or otherwise provide support to families, children and young people with disabilities, you can send an email to research@veohrc.vic.gov.au. This will be treated as a written submission to the research.
- Call 1300 292 153 or (03) 9032 3583 on Saturday 3 December 2011 from 10 am to 4 pm.
- Go in person to one of the VEOHRC 'have a say' days in regional Victoria held in February 2012.

Landmark Immigration Case – Simran Kaur

In a landmark case, Minister for Immigration and Citizenship, Mr Chris Bowen intervened in the case of Ms Simran Kaur, a legally blind social worker from India, granting her permanent residency in Australia. In 2009, Ms Kaur's original application for citizenship was denied on the basis that she did not meet the health criteria due to her legal blindness. This unprecedented intervention by Mr Bowen should be heralded as a positive step in promoting disability rights and equality before the law. The DDLS has taken the opportunity to congratulate Mr Bowen on this landmark decision and to show our appreciation for his support of people with disabilities.

We hope that this will mark the beginning of a long awaited reform to immigration law, prohibiting disability as a basis upon which the Government may deny applicants permanent residency. We invite you to also congratulate Mr Bowen for this decision.

Casework - Challenge to Social Security Act

The DDLS has recently lodged a complaint on behalf of a client ('Ms X') which is of particular interest. Ms X was born in Iraq and while still living in Iraq, she suffered an injury which resulted in her losing the ability to control urination and bowel movements. She is also paraplegic and requires a wheelchair for mobility purposes. In 2011, Ms X arrived in Australia under a 'Last Remaining Relative' visa. Due to Ms X's medical conditions, she incurs significant recurring costs in purchasing medication and other necessary items to manage her illness and disability.

Under various provisions of the *Social Security Act 1991* ('the Act'), newly arrived migrants must serve 'waiting periods' in order to be eligible for the allowances provided for in the Act. In particular, Section 94 of the Act requires that a person have resided in Australia for a period of 10 years in order to be eligible for the Disability Support Pension ('DSP'). Moreover, Section 1061Q requires that a person have resided in Australia for a period of 104 weeks in order to be eligible for a Health Care Card.

The above provisions have a detrimental effect on newly arrived migrants like Ms X, who have disabilities. In order for a person to access certain disability services provided by the Government, the person must receive the DSP. Similarly, a Health Care Card would assist Ms X to receive discounted health services and discounts on many of the medications and items she requires to manage her illness and disability.

The outcome of this case will be a landmark decision in allowing newly arrived migrants with disabilities to gain access to Australia's healthcare system. We will provide updates on the progress of the case.

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Volunteer Profile

Hi my name is Phey Shan, I am an international student from Malaysia, and I just completed my law degree at Melbourne University. My younger brother is autistic and this is the reason why I chose to work with DDLS because I think that the cause that DDLS is working on is one that I can relate to at a personal level. I only started volunteering with the DDLS about 3 months ago but I am already madly in love with this place and the people that I am working with!

Disclaimer

DDLS makes every effort to ensure the accuracy of the contents of this newsletter. However, DDLS accepts no liability whatsoever arising from anything published in the newsletter, including liability arising from errors, misprints or inaccuracies. Any opinions expressed therein should not be taken as legal advice. Case studies are presented observing client privacy. Any similarity with any other person's experience or circumstances is purely accidental.

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