



# Disability Discrimination Legal Service

ABN 36 079 687 722

## Annual Report

## 2010/2011

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# Statement of Purpose

1. To promote the objectives of the Disability Discrimination Act (Cth) 1992 and the Equal Opportunity Act 1995 (hereafter referred to as 'the Acts') in relation to disability/impairment which are:
2.
  - The elimination of discrimination on the basis of disability;
  - That people with disabilities have a right to equal treatment before the law and;
  - To promote community understanding that people with disabilities have the same fundamental rights as the rest of the community.
  -
3. To provide leadership in State, Federal, and International for legal and policy reform in areas where there continues to be systemic failure that leads to discrimination on the grounds of disability or impairment.
4. To collaborate with community legal centres and disability advocacy agencies across Victoria to provide free and readily accessible legal advice, referral and casework services to people with disabilities and to people/organisations who assist or work for people with disabilities in relation to issues relevant to the Acts and domestic and international human rights instruments.
5. To initiate and participate in the development of education outreach and information distribution to promote further awareness of the Acts and human rights legislation to consumers and the community.
6. To initiate, and participate in reviewing legislation relevant to the needs of people with disabilities achieve law reform outcomes for people with disabilities, that as a natural consequence, reduce discrimination.

## Vision

There are no barriers to full inclusion of people with disabilities.

## Mission

To lead legislative and policy reforms that promote person with disabilities freedom and opportunities to achieve their life goals unhindered by prejudice, discrimination or injustice. To provide a high quality, professional, accountable and timely legal service to people with disabilities in the area of discrimination.

## Values

People with disabilities have the right to:

- ✚ the same opportunities as others;
- ✚ be treated with respect as clients and members of the community;
- ✚ full access to the judicial system in order to pursue their human rights at law.

## Service Profile

The Disability Discrimination Legal Service Inc. (DDLS) is a state-wide Community Legal Centre dedicated to the elimination of discrimination based on disability.

DDLS is funded by the Federal and the State Attorney's-General, and administered through the Victoria Legal Aid (VLA) Community Legal Centre (CLC) Funding Program. We thank them for their ongoing assistance and support. DDLS undertakes casework for people with disabilities under the *Disability Discrimination Act (Cth 1992)* ("DDA"), and the *Equal Opportunity Act (Vic 1997)* ("EOA"). This involves providing advice and on-going assistance to people with cases before the Australian Human Rights Commission (previously the Human Rights and Equal Opportunity Commission), the Federal Court and the Federal Magistrates Court, the Victorian Equal Opportunity & Human Rights Commission (previously the Equal Opportunity Commission) and the Anti Discrimination List of the Victorian Civil and Administrative Tribunal ("VCAT"). In addition the Service supports people who decide to conduct their own cases and likewise assists disability advocates to take up cases on behalf of their clients.

DDLS recognises the importance not only of direct casework assistance but also the need to increase awareness of rights and responsibilities under disability discrimination laws through strategic community legal education ("CLE") projects. Increasingly, these projects engage people with disabilities in the delivery of services or developing CLE resources and publications produced in hard copy or available on the internet.

We also work toward reform of the law and areas of public and private policy through activities such as research, projects, lobbying and submission writing. Through challenging and changing discriminatory laws and procedures, the Service can assist many more people with disabilities than would otherwise be possible.

DDLS is open five days per week, 9.00am to 5.00pm with two evening advice sessions per week. Legal advice is provided by telephone or face-to-face appointment where necessary. Community legal education is increasingly targeted and planned in advance and inquiries can be made directly to the Service. In addition, information about the Service, the relevant law and useful links can be accessed through the Service's Internet site located at [www.communitylaw.org.au/ddls](http://www.communitylaw.org.au/ddls). However, web sites can never be a substitute for informed advocacy; rather they provide another avenue for information access for people with disabilities who have the skills and resources to enable access to relevant technologies. Our main publication, *Using Disability Discrimination Law* can be downloaded from the DDLS website or hardcopies can be ordered from Victoria Legal Aid by phone order – 9269 0223 or 1800 677 402 (country callers).

The challenge for the Service has always been to provide targeted strategies to assist as many people as possible given very limited resources. The criteria for casework assistance therefore are primarily based on public interest principles. The other consideration is, of course, whether or not the client can find appropriate legal advice and representation elsewhere, and their capacity to meet any associated costs. Information and community legal education are provided free to people with a disability. Service providers, businesses and other organisations with the capacity to meet the associated costs of providing these services are duly charged for them. As an ATO

registered Donation and Gift Recipient, the Service can only charge a set amount determined as the 'cost price' for these services but can, of course, accept donations.

The community based management committee undertakes management of strategic decision-making, finances, policy direction and evaluating service delivery. The committee is made up of members of interested organisations and individuals. It meets bi monthly and otherwise as required and is elected from the membership annually. People with disabilities are strongly encouraged to be involved.

Membership of the organisation is free and open to all who share the philosophy of the Service. Interested people are encouraged to contact the Service to find out about how to become a member. Volunteers are an increasingly important part of the work of the DDLS and this will continue to be a focus for the continued provision of services. Various roles within the organisation provide an array of opportunities for people who wish to contribute their time and energy to the important work the Service does. Please contact the Service for details of how to become a DDLS Volunteer.

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## Committee of Management

The Committee of Management is responsible for the DDLS' strategic direction and the development of organisation policies, procedures and practices in collaboration with staff and management.

Chairperson:	Jan Ashford
Vice Chairperson:	Dr Martin Leckey
Secretary/public officer:	Julie Phillips
Treasurer:	Bill Ford
Public Officer:	John McKenna
Members:	Robert Pask Jane Simmonds Martin Grillo Lorraine Rodrigues
Observer:	Tim Greenall

## Staff Members

Manager  
Principal Solicitor  
Solicitor & Community Legal  
Education Coordinator  
Administrative Officer  
Law Reform Worker

**Julie Phillips**  
**Placido Belardo**  
  
**Deborah Randa**  
**Anna Leyden**  
**Adam Jones**

# Chairperson's Report

## **July 2010 – June 2011 Chairperson's Report:**

Disability Discrimination Legal Service (DDLS) has continued with limited resources to make positive contributions to casework, law reform and community education in the area of disability discrimination.

We are grateful for the contributions of Management Committee member John McKenna, who retired from the Committee after a number of years of support.

We welcome two new Management Committee Members, both of whom bring valuable experience as members of the disability sector. Lorraine Rodrigues is the mother of a son with a disability and a strong advocate for children's issues, particularly inclusive education. She has worked for the past decade in the Home and Community Care Program (Disability Services). Lorraine is currently pursuing a Masters in Education (Inclusive Education), which she hopes to use in her advocacy to improve the system in order to achieve equity and access in the current educational environment. Martin Grillo is a qualified social worker/counsellor and has worked as a Disability Officer at Centrelink for the last 25 years. Martin is also Vice Chair for the Disability Resource Centre, and has recently established a new group-Post Polio Victoria, of which he is Vice Chair.

DDLS began a strategic planning process towards the end of the 2010/2011 year, and our new Strategic Plan can be viewed on our website.

With the limited resources available to us, we have decided to take a more strategic approach to discrimination and concentrate more on strategic litigation. It is clear from the recent review of the *Charter of Human Rights and Responsibilities Act* and the Department of Education and Early Childhood's stated intention to have the *Disability Discrimination Act* read down in order that the Act cannot influence the provision of support to children with disabilities, that the DDLS, other Community Legal Centres, people with disabilities, and disability advocacy organisations have much to do.

I wish to express my strong appreciation for the support DDLS receives from our Management Committee members, dedicated staff and volunteers. In particular I would like to thank our manager, Julie Phillips, for her enthusiasm and determination in seeking a quality for people with disabilities. I submit the Financial Report for approval.

Jan Ashford  
Chairperson

# Manager's Report

The DDLS has had another extremely busy year with no reduction in the number of complaints of discrimination on the basis of disability.

As in almost every other year, the main areas of complaint from clients are goods and services, employment and education. It reflects very poorly on the Department of Education and Early Childhood Development that the number of complaints against it continues, and there has been no effort by that Department to address the issues that bring similar complaints from children with disabilities year after year, causing them and their parents much distress.

Therefore, the DDLS continues to be in the dichotomous situation of receiving government funding, of which a considerable amount is spent assisting children with disabilities making complaints against government. Unfortunately, the absence of an intelligent approach towards this situation simply disadvantages some of Victoria's most vulnerable.

On a more positive note, the DDLS applauds the new Minister for Community Services, Mary Wooldridge who on launching a new direction for the Department of Human Services on 9 June 2011 stated *'The physical care and support of people with disabilities with complex needs can be challenging at times, but the use of improper physical restraints is no longer acceptable in disability services. They can be dangerous and can cause physical pain, injury and death'*.

DDLS has, along with people with disabilities and disability advocacy agencies, been privy to the many independent reports over the last 10 years that have highlighted the use of physical abuse of people with disabilities in DHS care. Minister Wooldridge is to be applauded for making a stand integral to the respect for and health of people with disabilities.

## **Partnerships.**

The DDLS continues to work collaboratively with others in the field who share the same principles and values in relation to the inherent dignity that we believe all people with disabilities should be treated with.

DDLS is an active member of the Victorian Disability Advocacy Network (VDAN), the peak advocacy body for disability advocacy agencies in Victoria.

We continue to work closely with Youth Disability Advocacy Service, providing advice and support where required.

DDLS worked with Association for Children with a Disability, Parents Victoria, STAR and the Disability Advocacy Resource Unit to bring together information for a report on the treatment of children with disabilities in the Victorian public education system.

Another strong partner for many years has been Communication Rights Australia, who advocate for people with little or no speech, another extremely vulnerable group of Victorians.

The DDLS continues to be represented on the Human Rights Working Group of the Federation of Community Legal Centres. We have also been working constructively with the Epilepsy Foundation and Mental Health Legal Service.

I would like to thank DDLS staff for their unwavering dedication to obtaining equal rights for people with disabilities.

Julie Phillips  
Manager

## Casework Program Report

### **Anti-discrimination work**

Since its inception, the DDLS casework funding brief is to provide legal advice, advocacy and support to clients with claims or potential claims under the Victorian *Equal Opportunity Act* (the “EOA”) or the Federal *Disability Discrimination Act* (the “DDA”) which are the principal anti-disability discrimination laws available to Victorians, albeit specific industrial legislations, such as the *Workplace Relations Act* or the *Fairwork Act* contain similar prohibitions against disability discrimination in employment.

Whilst DDLS’s casework continued to focus on its expertise and traditional role, the last 12 months saw the diversification of the range of matters for which client representation was provided. This is largely on account of the direct and inseparable link between disability rights and human rights law. This link is well articulated by the Victorian *Charter of Human Rights and Responsibilities Act* of 2006 (“the Charter”). The Charter confers basic rights on the citizens of Victoria. The Preamble states that it is founded *inter alia* on the principle that “*human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community*”. Section 8 guarantees recognition and equality before the law.

The Charter unmistakably augmented the manner of DDLS legal advocacy and eventually reshaped the framing of discrimination claims in the quest for remedies for persons who have experienced discrimination, including those who due to the limitations of the EOA or the DDA are unable to challenge and obtain redress from acts that translate to disability discrimination, but do not fall under the statutory definition of unlawful discrimination. Such types of cases presented a new challenge to DDLS caseworkers and prompted an incursion in to previously inexperienced legal terrain. For example, DDLS has successfully assisted a client whose application to adopt a child was derailed by a negative assessment and conclusion about her disability or ability to look after a child as her own. This required initiating proceedings in the

General Law list rather than the Anti-Discrimination List of the Victorian Civil and Administrative Tribunal.

Another example, but one with an appalling illustration of a human rights breach and discrimination of a person with mental illness, is the case of Mr. Paul Slattery<sup>1</sup>.

Mr. Slattery was born 1 January 1947. He is a gardener by profession. He has many serious disabilities that affect his behaviour. He has been diagnosed with acquired brain damage and post traumatic stress disorder, which, combined with certain triggers, cause him to behave erratically from time to time. He also has bipolar affective disorder and an organic impulse control disorder secondary to a stroke. He takes medication to assist him on a day to day basis and has the stabilising influence of his wife, Barbara, to assist him. He has a hearing impairment which makes him speak louder than usual. This can give the impression that he is shouting when he is not.

Mr Slattery was charged under section 9(1) (d) of the *Summary Offences Act* 1966 with unlawful wilful trespass of the premises of the Manningham City Council. The basis of the charge was the Council's Notice of Declaration of Proscribed Prohibited Person ("the Declaration") which stated:

*"In order to uphold public safety and in reliance of its obligations to provide a safe working environment, until further written notice, Manningham City Council declares Mr. Paul Slattery of [address] to be a proscribed person who is prohibited from attending any building that is owned, occupied or managed by Manningham City Council, including the municipal offices and Council chamber at 699 Doncaster Road, Doncaster."*

The Declaration was issued by the Council unilaterally, without prior notice to Mr. Slattery, without a hearing and without a right of review or appeal. The Declaration is also perpetual. Moreover, the Council through the covering letter of the Declaration added a number of Draconian measures that were out of proportion with whatever difficulties he may have created for Manningham City Council, including: having his membership of the Council's Access and Equity Committee withdrawn, and advising that he is not to have direct contact with Council. That is he was not to telephone Council staff, nor was he to communicate with Council via mail, fax or email unless through a legal practitioner.

After the Declaration, Mr. Slattery attended at the Manningham City Council premises on 15 June 2009. He was quietly sitting in a corner, attending an advice session for senior citizens to retain or restore their drivers' licenses. This session had been advertised in the local press and was of interest to Mr. Slattery. It was being jointly run by the RACV and VicRoads. The Council sent an invitation by mail to all interested senior citizens living in the suburbs under the City Manningham.

The charge of trespass was based on the notion that the Declaration cancelled Mr Slattery's license to enter or remain in council premises regardless of his behaviour.

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<sup>1</sup> Mr. Slattery has agreed to the disclosure of his name and personal information in this report.

Aimed at challenging the validity of the declaration, DDLS provided him with legal representation<sup>2</sup> for his criminal defence as he was unable to change the declaration at VCAT due to a lack of an enabling legislation<sup>3</sup>. The decision of the High Court in *Purvis*<sup>4</sup> was likely to work against his claim of unlawful direct or indirect discrimination because the Tribunal may rule that the declaration was issued because of his behaviour and not his disability or that there was no comparator<sup>5</sup>.

Hence, DDLS assisted Mr. Slattery in arguing that the validity of the Declaration and the Explanatory Letter is a question of law arising from the application and interpretation of the provisions of the Charter, specifically that:

- a) that the Council did not have the power to issue the Declaration or to revoke Mr. Slattery's licence in the manner and extent specified by the Declaration.
- b) It is unlawful for the Council (a public authority) to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.
- c) a blanket prohibition is clearly not reasonably proportionate to the danger sought to be prevented. If it is to be regarded as an act of self-defence, then it fails the test of reasonableness and proportionality. By its terms, it is far too excessive and radical. Considering the failure to afford Mr. Slattery, due process, natural justice and procedural fairness, including denying him an avenue of appeal or review, the prohibition breaches Mr. Slattery's rights under common law as well as the rights guaranteed by the *Charter*.

Whilst the EOA and the DDA have been made stronger<sup>6</sup>, and have afforded significant remedies to aggrieved persons, Mr. Slattery's case highlights the discriminatory experience of people with disabilities for which recourse to the said legislations is not at hand. The lack of any other community legal centre to take on such a case, persuaded DDLS, within its resources, to assist in this case, which we viewed as having significant public interest.

## **Casework**

DDLS attended to 287 clients, and provided services in various areas of discrimination. Of these cases, three major areas were significantly represented, the highest being 85

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<sup>2</sup> DDLS is grateful to the pro bono work of Barrister Susan Aufgang and the involvement of barristers Simon Moglia and Alex Burt in this matter

<sup>3</sup> VCAT has jurisdiction to review acts of local government but on certain cases, reviewing the validity of the declaration is not one of them

<sup>4</sup> *Purvis v New South Wales (Dept of Education & Training)*

<sup>5</sup> This means that Council would have done the same to any person who manifests behavior that it considered disruptive or inappropriate.

<sup>6</sup> Amendments to the DDA came into effect on 5 August 2009; the new *EOA took effect on 1 August 2011*; and the Disability Access to Building Standards 2010 took effect on 1 May 2011.

in provision of goods and services, followed by 69 in employment, and 56 in education. A breakdown of our client data discloses as follows:

**Total advice activities** **228**

**Cases**

Cases open at the start of the period	62	
New cases opened	61	
Total cases open during the period		123
Minor cases closed	11	
Medium cases closed	16	
Major cases closed	61	
Cases involving court representation	15	
Cases involving primary dispute representation	37	
Closed test cases	09	
Closed with public interest indicator	22	
Total Cases closed during the period		88

**Case studies and outcomes**

The majority of our clients’ cases were resolved without the need of litigious proceedings before the tribunal or the court. The following are a few of these cases with the resulting outcomes achieved through the conciliation and mediation processes of the Victorian Equal Opportunity and Human Rights Commission, the (Federal) Australian Human Rights Commission (“AHRC”), the Victorian Civil and Administrative Tribunal and the Federal Magistrates Court<sup>7</sup>.

**1. DC and City Council**

Our client was a person with a disability and relies on a manual wheelchair as mobility equipment. She became to all intents and purposes trapped in her home as a result of a building development whose perimeter fence was allowed by the council to encroach on the (left side) footpath for the safety of the public during construction. She was unable to use the right side footpath because where the footpath finished at the nearest corner, there was a dip on the surface of the street that our client was unable to avoid and traverse with her wheelchair. The council was aware of the problem but did not have immediate plans to repair the road.

Hence, our client was compelled to use the street, and join the motor vehicle traffic along the road in order to travel to the shops, train station or doctor’s clinic.

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<sup>7</sup> The identities of the parties have been changed to comply with privacy legislation and terms of settlement.

The complaint was resolved with the council continuing to allow the fence to stay due to safety concerns but repairing the surface of the road to allow for sufficient gradient and use of a manual wheelchair.

## **2. Airline Cases**

- a. CW's case - the client's daughter has complex disabilities, including epilepsy, requiring a permanent full time carer. The daughter was denied air travel shortly after checking in on the basis that any passenger who has had an epileptic seizure within 3 days of the flight is unable to travel. The decision of the ground crew did not adequately consider the fact that the passenger was travelling with 2 full time carers.

Terms of resolution included payment of compensation and review of policy with input from the parents as well as the Epilepsy Foundation. Yet to be finalised.

- b. NB's case - Our client, who had a right arm amputation for 15 years, was disqualified from sitting in the bulk seating areas (more leg room but the passenger is tasked to operate emergency door if required) because the flight crew did not consider him "fully able" to operate and deploy the emergency door. The complaint was resolved with an apology and payment of compensation.

## **3. FV v Employer**

The client, a married family man, originally made a complaint to the AHRC alleging discrimination on the basis of religion in employment because he was refused a day's leave to attend his daughter's baptism. He made a further complaint of disability discrimination in employment when he was allocated security roster night shifts without his consultation, stating he was unable to perform this work due to past cancer. This was in spite of medical advice that night shift work caused the client further medical problems which it eventually did. The client made a work cover claim and was off work for 4 months due to stress and depression. On his return, although the respondent had opportunities to provide the client with a suitable roster, this was not done. A conciliation conference at AHRC failed to resolve the matter. After protracted post conciliation negotiations the matter was settled where the client received a payout /redundancy package inclusive of accrued entitlements and a guarantee of no disqualification for him applying for employment with the same department in the future.

## **4. DD v Pharmacy**

This case is a complaint of discrimination on the basis of an imputed disability (addiction). The client required anti-pain medications due to his recent surgical procedure. The pharmacist refused to sell them to him suspecting that he was a drug addict and was pharmacy shopping for drugs for illicit use. The complaint

was conciliated successfully with the respondent providing the complainant with an apology and compensation.

## **5. SL v Engineering Company and others**

The client was a female employed as an electromechanical engineer in a male dominated occupation by a large engineering company. Initially she was employed in Melbourne but when she was seconded to a regional office she experienced unfair treatment from the office manager and senior controls systems manager. She was treated less favorably because of her poor health. The client's complaints to her superior were ignored and she suffered a diagnosed psychological injury and went on to leave due to stress. The client also struggled with chronic insomnia because of the unreasonable demands in the workplace and the intimidating behavior from some of her colleagues. Even after a physical collapse the client was expected to put in long hours of work and travel. The client was denied training that was afforded to all graduates nor permitted flexi time like other engineers and her work colleague withheld details on job specifications. Compared to other employees the client underwent disciplinary action with unfair terms impossible to comply with. The client was pressurized to work outside her office hours. The client in a hostile environment lost her appetite and weight and interest in life. The client went on extended leave after disciplinary meetings and did not return. The client lodged a complaint of disability discrimination at VEOHRC that was subsequently resolved at conciliation with the client receiving payment for general damages and a statement of service and letters of regret .

## **6. KS v Clinic**

The client is a single woman who has profound blindness. She has a guide dog which she took to the clinic where she worked privately as a masseuse, subject to payment of rent and commission to the clinic. The owner of the clinic complained about the dog's smell and hair, which she believed presented serious hygiene issues and could compromise the clinic's reputation and business prospects. This case was successfully mediated with payment of compensation for damages.

## **7. Alex v A List Pty Ltd**

The complainant worked in a permanent position for a company for 2 years. He had various positions and worked his way up the company. The company promised they would put the complainant through management qualifications and provide him with a future career path, however after his back injury he was passed over for promotion or any internal positions that he applied for. He was told by his team leader and through an email from HR that because of his back injury, sick leave and work cover claim he was not being considered for positions. The complainant resigned as he felt any future at the company would be jeopardised by the company's attitude. The complainant lodged a disability discrimination complaint with the Australian Human Rights Commission. The matter was resolved at a conciliation conference with financial compensation for general damages and a statement of regret.

## **8. Student v School**

The complainant is a male child with autism spectrum disorder and other disabilities. Since April 2007 he had attended the local primary school but was not receiving the support and assistance he required. Although the school were aware of his disabilities and support needs it has not provided speech, occupational therapy, specialised staff or an Individual Learning Plan. The parents lodged a complaint of disability discrimination in education on behalf of their son. The Disability Standards appear relevant to this complaint. This complaint was not successfully conciliated and the parents put an application to have the matter heard at the Federal Court of Australia. Due to funding restrictions placed on the complainant's local school the parents decided to transfer their son at the end of 2009 to a specialist school. The transfer meant that the practical supports they were seeking from the local school were now irrelevant and the only remedy they could expect was a reimbursement of educational expenses. At mediation the family received a settlement sum which went in part to cover the out of pocket expenses incurred for educational specialists.

## **9. Sally v TAFE**

The complainant was a student who was taking a Visual Arts course. During the intake and selection process she disclosed to the teachers that she had a mental illness. Their comments during the interview made her feel demeaned, humiliated, embarrassed, uncomfortable and stressed, and they continued to humiliate her after she began her course. Some of the unwelcomed comments about her appearance she felt were of a sexual nature. She lost trust in her teachers and was unable to approach them. She was being humiliated in front of other class members. She began skipping classes because of her fear of going to school. Her education environment became so uncomfortable that it made it intolerable for her to continue her studies. She became so depressed by this treatment that she had to seek the regular services of a psychologist. She made a complaint of sexual discrimination, sexual harassment and impairment discrimination in the area of education, however the VEOHRC declined the first two. At conciliation the matter was resolved with financial compensation of \$4,200 to cover her out of pocket expense of fees, materials and future transport costs to the nearest TAFE to attend another course.

## **10. Employee v Employer**

The complainant was involved in two separate altercations while at work. The complainant met with an employee of the respondent to discuss the altercations and asked to be moved to another work area, the request was granted. An employee of the respondent said words to the effect that the altercations which occurred were the complainant's fault and that he had a history of 'bad attitude' and 'trouble making'. This upset the complainant and he did not return to work after the conversation with the respondent, and successfully applied and received Work cover for stress.

The complainant was ready to return to work and was required to meet with the same person who caused him the stress which resulted in him leaving work. The complainant requested that he return to the pre-injury work area and the request was immediately rejected, no reasons for the decision were provided. Later a

negative report about the complainant was released on an electronic reporting system that reports injuries, stressful encounters and near-misses with the aim of identifying hazards in the workplace.

The complainant brought a claim for discrimination on three separate grounds:

1. *Respondent chose the wrong person to be in charge of the complainant's return to work process.*
2. *The refusal to allow the complainant to return to pre-injury work area*
3. *Comments made in the electronic reporting system*

The case was mediated successfully with the Complainant receiving compensation for damages.

### **11. Employee v Electrical Company**

The complainant uses a cochlear implant to augment his hearing and is able to use a telephone and other electronic communication devices. The complainant began a 3 year apprenticeship with the respondent and there were no performance issues during the 3 month probation period. The respondent terminated the complainant's apprenticeship on the assumption that his hearing impairment would constitute a safety risk in the workplace because he could not verbally communicate with his colleagues. The respondent claimed that there would be no reasonable adjustments that would prevent safety risks or enable the complainant to communicate with his colleagues. The complainant alleged that the respondent directly discriminated on the basis of his hearing impairment. The complainant was treated less favourably as a result of the misconception that his hearing impairment affected his ability to perform any of the inherent duties. The matter went to conciliation and an agreement was reached with the respondent paying the complainant compensation for loss of income as well as pain and suffering

### **12. Lessee v Landlord and Real Estate Agent**

The complainant has cerebral palsy, hearing impairment, speech impediment and hemiplegia. He relied on physical devices such as rails to maintain his balance and ensure safe movement, particularly in the bathroom, exiting doorways and steps.

The complainant rented a property and soon after moving into the premises sought information from the real estate agent about installing grab rails. The complainant expressed to the agent that the landlord's written consent would be required in order to utilise a service available to people with disability (a non for profit organisation which assists in modifying accommodation). The respondent never responded to the complainant in regards to this request and the complainant assumed that this meant the landlord has consented. Ten days later the not-for-profit organisation arrived to install the grab rails at the cost of the complainant. The grab rails were installed in each of the showers, one behind the back door of the unit.

On 25 September 2009 the real estate contacted MECWA informing them that the installation was not authorised. The respondent demanded that the grab rails be removed and that the complainant pay for the removal and repair. The real estate agent also demanded that the tiles in the bathroom which were drilled into be replaced. The complainant then received a letter from the real estate agents demanding:

- the rails be repaired
- that the complainant can only continue to live in the premises if the repairs occur
- that if the complainant cannot continue to live in the premises without the rails that he should vacate the premises prior to the expiry of the lease without penalty.

The matter went to conciliation and was resolved with the respondents paying the complainant compensation for pain and suffering and undertaking to receive equal opportunity/anti discrimination training within 6 months of the agreement.

### **13. Visitor v Water Park**

The complainant was an amputee with limited function in his right arm. The complainant as a result of his disability required the use of an accessible toilet and shower. The respondent operates a water park and the complainant claimed that the respondent treated him less favourably than those without a disability by failing to provide readily accessible facilities, and to comply with both the facility accessibility report and the disability standards at the respondents leisure centre.

According to the compliance report the respondent failed to adhere to 11 separate standards for a disabled toilet. The family toilets and the disabled toilets were signed and treated as interchangeable facilities which resulted in great delays of use for the complainant due to the disabled toilet not being used exclusively by disabled people.

The issue went to Conciliation and was resolved. Below is a summary of the conciliation agreement:

- Council will in the future make the disabled toilets accessible exclusively to disabled people
- The signage on the doors will be amended to further clarify the toilets and who is to access which toilets.
- The shower head and grab rail will be changed to comply with Australian Standards

### **14. Race Participant v Race Organiser**

The complainant has an impairment which requires the use of a wheelchair. The complainant entered a Bike Ride organised by the respondent. Prior to entering and

completing the bike ride the complainant contacted the respondent to ensure that riders with disabilities were fully catered for. The client complained that his needs were only partly cared for as a disabled individual.

The complainant complained of various issues ranging from accessibility to change rooms, toilets at rest stops, positioning of the toilets, and extra assistance. Also he made a request that there be wheelchairs at each rest stop so participants could get off their bikes and move around freely. The complainant claimed that the lack of these things amounted to indirect discrimination requiring riders to access regular toilets during rest stops. This resulted in the complainant not being able to use the toilet at many rest stops along the bike ride, resulting in significant discomfort.

The matter is yet to be resolved although the matter went to conciliation with the only outcome that the respondent agreed to provide a toilet at each stop.

#### **15. Employee v Employer**

The complainant had a work related injury, and the employer attempted to medically retire her. The complainant obtained a certificate from a doctor that she was able to return to work, but the respondent's doctors said she was not. The parties attended conciliation but did not reach an agreement and the matter is unresolved.

#### **16. SK v VT Community House Committee of Management and the Chairperson**

SK was resident of VT and also member, volunteer and employee of VTCHCM over many years. SK has both physical and mental illness (PTSD rare genetic chronic severe depression) known to the respondents. SK alleged that she had undergone psychological trauma as result of the VTCHCM and Chairperson's behaviour, including humiliating comments about the complainant's illness by calling her 'Crazy Sue' and not allowing her to access the community house facilities which she was entitled to as a member. The matter was resolved at a telephone conference (with the complainant being many thousands of kilometres away on the side of the road using a mobile phone). The complainant received financial compensation for pain and suffering, written certificate of appreciation for volunteering and written letters of apologies were provided by both parties.

#### **17. DD v The Big Store**

DD has multiple sclerosis and requires the use of a wheelchair, and for short distances, crutches. She attended the Big Store and had to wait 5 minutes for a short steep gradient portable ramp that was unsafe to be put in place by a staff member who was unfamiliar with how to do this so she could enter the store. Upon leaving the store DD had to get the attention of a staff member to organize the ramp. She was told she had to wait until all customers had been served. She wanted to leave immediately but felt ignored and had to wait until another staff member located the ramp that was in a cupboard on the second floor of the store. The complainant lodged complaint at with the Victorian Equal Opportunity and Human Rights Commission. The matter was resolved with a written apology, investigation of the

installation of internal and external bell, and if feasible to install the bells, storing the temporary ramp close to front doors, providing staff training in the use of a temporary ramp and engaging an Access Consultant to provide a report on improving disabled access which they can follow at their discretion unless contravention of the disability discrimination legislation. The store additionally engaged a door greeter who can immediately respond to a person with an impairment entering/exiting the store, trained in positioning the wheelchair ramp as quickly as possible, trained to listen for the bell that indicates that a customer would like to enter/exit the store.

Placido Belardo  
Principal Solicitor

Deborah Randa  
Solicitor

## Community Legal Education Program Report

Community Legal Education (CLE) at the DDLS aims to raise community awareness about the law and legal processes related to disability discrimination, to increase the ability of community members to understand and critically assess the impact of anti discrimination laws; improve community members' ability to participate in the legal system, and create a climate that promotes participation in the law-making process and inspires efforts to pursue law reform through collective action.

Basically CLE covers everyday activities that range from listening to community members, talking with tertiary school groups, explaining what DDLS does to various organisations, doing interviews with local media, developing seminars and associated material and providing web information. CLEs provide information and opportunities to ask questions, share ideas and develop strategies that may address gaps in the legal system; they may assist someone to find a solution to a legal problem before it becomes difficult, complicated and possibly expensive; and they can influence law reform work and make broad systemic change

DDLS designs Community Legal Education workshops specifically to suit the needs of community organisations, community groups and the general public. The following CLE sessions were held in the last financial year.

Advocacy for Clients

TAFE

Equal Access for Students with Learning  
Disabilities  
Learning Disability Conference

Glen Waverley

Hate Crimes and Disability	Law Week Event
How the DDLS Can Assist People with Disabilities	Community Workshop
Equal Access for Students with Learning Disabilities Learning Disability Workshop	Disability Support Group
How the DDLS Can Assist People with Disabilities	Disability group
Disability Standards for Education	Community Group
Advocacy and How to Make a Complaint to AHRC	Disability Advocacy Group
Disability Discrimination Law and Education	TAFE
Disability Discrimination Law and Education	University
Disability Discrimination Law	University
Access to Premises	Young people with disabilities
Charter of Human Rights & Responsibilities Act	Advocacy organisation, Warnambool
Discrimination against Children With Disabilities	Community Group

DDLS invites those interested in community legal education sessions to contact us directly.

Deborah Randa  
CLE Co-ordinator  
2011

# Policy and Law Reform Program Report

The following submissions were made throughout the year.

1. **Education Standards (Disability Discrimination Act) Review**  
Department of Education, Employment and Workplace Relations
2. **Response to the Draft of Australia's Initial Report under the Convention on the Rights of Persons with Disabilities**  
Federal Attorney General's Department
3. **Vilification Legislation**  
Numerous presentations
4. **Submission on the Victorian Law Reform Commission's Guardianship Consultation Paper- ("the Consultation Paper")**  
Law Reform Commission
5. **Parents of Children with Disability**  
Project with Yooralla
6. **Submission on Inclusive Education**  
Victorian Ombudsman

For a copy of any submissions, please contact the office – some are available on our website.

## Volunteer and Student Program Report

DDLS would like to again express its appreciation to our volunteers. Derived mostly from law students and lawyers, our volunteers approach us independently, or are put forward by Universities for placement.

A requirement of DDLS is that volunteers spend at least six months with us – however it has been a testament to the commitment of some of our volunteers that is the fact that they have stayed significantly longer. Volunteers have assisted us in all manner of ways, including research and submission work. We acknowledge their efforts and appreciate their time.

Volunteers have helped us in the following areas:

- provision of general information and referral;
- case summaries;
- research;
- submissions;
- administrative support;
- law reform; and
- supporting solicitors in their casework.

Anna Leyden

Julie Phillips

**DISABILITY DISCRIMINATION LEGAL SERVICE INC.  
BALANCE SHEET  
AS AT 30TH JUNE 2011**

	2010/2011 \$	2009/2010 \$
<b>CURRENT ASSETS</b>		
Cash on Hand	103	437
Cash at bank		
Cash Management Account	8,368	294,337
Term Deposit 43452	165,000	
Term Deposit 43460	85,000	
Operating Account	(19,649)	5,253
Donations Account	1,154	1,154
Accrued Interest	3,603	
Prepayments	2,142	4,589
Sundry Debtors	1,009	60,672
VLA - One off Grant		
	<b>\$246,729</b>	<b>\$366,442</b>
Equipment & Furniture - at cost	46,150	29,839
Less accumulated depreciation	(29,816)	(23,648)
Leasehold Improvements	25,071	4,030
Less accumulated depreciation	(181)	(689)
	<b>\$41,225</b>	<b>\$9,532</b>
<b>TOTAL ASSETS</b>	<b>\$287,954</b>	<b>\$375,974</b>
<b>CURRENT LIABILITIES</b>		
VLA - Grant in Advance		54,616
Creditors and accruals	1,500	13,188
<b>Employee Entitlements</b>	10,659	5,849
Annual Leave	20,417	19,388
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$32,576</b>	<b>\$93,042</b>
<b>NON CURRENT LIABILITIES</b>		
<b>Employee Entitlements</b>		
Long Service Leave	24,512	15,623
<b>TOTAL NON CURRENT LIABILITIES</b>	<b>\$24,512</b>	<b>\$15,623</b>
<b>TOTAL LIABILITIES</b>	<b>\$57,088</b>	<b>\$108,665</b>
<b>NET ASSETS</b>	<b>\$230,866</b>	<b>\$267,309</b>
Asset Revaluation Reserve	14,143	14,143
Retained Surplus/(deficit) at Beginning of Year	253,166	179,762
Surplus/(deficit) for Year	(36,443)	73,405
<b>RETAINED SURPLUS/(DEFICIT) FOR THE YEAR</b>	<b>\$230,866</b>	<b>\$267,309</b>

**DISABILITY DISCRIMINATION LEGAL SERVICE INC.**  
**STATEMENT OF CASH FLOWS**  
**YEAR ENDED 30 JUNE 2011**

	<b>2010/2011</b>	<b>2009/2010</b>
	<b>\$</b>	<b>\$</b>
<b>Cash flows from Operating Activities</b>		
Receipts from Government Grants - recurrent	222,522	215,911
Receipts from Government Grants - non-recurrent	-	70,149
Receipts from Other Sources	2,433	1,163
Interest received	9,879	8,454
Payments to suppliers and employees	(258,687)	(214,801)
	<u>(23,853)</u>	<u>80,876</u>
<b>Cash flows from Investment Activities</b>		
Proceeds from sale of plant and equipment		
Payments for purchase of plant and equipment	(16,311)	(2,237)
Payments for leasehold improvements	(21,041)	
	<u>(37,352)</u>	<u>(2,237)</u>
<b>Cash flows from Financing Activities</b>		
Proceeds from Borrowings	-	-
Repayment of Borrowings	-	-
Net cash provided by/(used in) financing activities	-	-
Net Increase/(Decrease) in Cash Held	(61,205)	78,639
Cash at the Beginning of the Reporting Period	301,181	222,542
<b>Cash at the End of the Reporting Period</b>	<b><u>\$ 239,976</u></b>	<b><u>\$ 301,181</u></b>

**Notes to the Statement of Cash Flows**

**Reconciliation of Cash**

Cash on Hand	103	437
Cash at Bank	239,873	300,744
Other (specify):		
	<u>239,976</u>	<u>301,181</u>

**Reconciliation of Net Cash Used in Operating Activities to Operating Result**

Operating Result	(36,443)	73,405
Depreciation	5,660	7,240
Increase/(Decrease) in Provisions	9,918	6,426
(Increase)/Decrease in Current Receivables	56,060	(54,467)
Increase/(Decrease) in Creditors/Accruals	(6,879)	(2,812)
Increase(Decrease) in Other Liabilities		
(Increase)/Decrease in Prepayments	2,447	(4,589)
Increase/(Decrease) in Grant in Advance	(54,616)	54,616
Prior Year Adjustment	-	1,057

<b>Net Cash provided by/(used in) Operating Activities</b>	<b><u>(23,853)</u></b>	<b><u>80,876</u></b>
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**DISABILITY DISCRIMINATION LEGAL SERVICE INC.  
TOTAL SERVICE FUNDS  
INCOME STATEMENT  
FOR THE YEAR ENDED 30TH JUNE 2011**

	2010/2011	2009/2010
	\$	\$
<b>TOTAL INCOME</b>		
Commonwealth Grant (recurrent)	182,507	180,343
One Off Grant		70,000
State Grant (recurrent)	40,015	35,568
<b>Service Generated Income:</b>		
Community Legal Education	91	1,163
Interest	9,879	8,454
Miscellaneous	898	
<b>TOTAL CLSP INCOME</b>	<b><u>\$ 233,390</u></b>	<b><u>\$ 295,528</u></b>
<b>EXPENDITURE</b>		
Salaries	168,133	142,386
Superannuation	14,008	12,574
On Costs	7,086	6,427
Rent	25,008	21,670
Repairs and Maintenance	3,425	618
Other Premises Costs	728	181
Staff Training	1,109	1,914
Staff Recruitment		52
Communications	10,647	8,735
Office Overheads	8,198	3,414
Insurance	1,606	2,417
Finance, Audit & Accounting Fees	12,184	8,629
Library, Resources & Subscriptions	5,528	3,440
Travel	1,960	353
Programming and Planning	1,549	371
Client Disbursements		23
Minor Equipment	3,006	1,680
Depreciation	5,659	7,240
<b>Total Expenditure</b>	<b><u>\$ 269,834</u></b>	<b><u>\$ 222,124</u></b>
<b>SURPLUS/DEFICIT</b>	<b><u><u>\$(36,443)</u></u></b>	<b><u><u>\$ 73,405</u></u></b>



## INDEPENDENT AUDITOR'S REPORT

To the members of DISABILITY DISCRIMINATION LEGAL SERVICE INC

### Report on the Financial Report

We have audited the accompanying financial report, being a special purpose financial report, of Disability Discrimination Legal Service Inc comprising the balance sheet as at 30<sup>th</sup> June 2011, and the income statement, statement of changes in equity and cash flow statement for the year then ended, a summary of significant accounting policies and other explanatory notes.

### *Managements Responsibility for the Financial Report*

The management of Disability Discrimination Legal Service Inc is responsible for the preparation and fair presentation of the financial report and has determined that the accounting policies described in Note 1 to the financial statements, which form part of the financial report are appropriate to meet the needs of the members. The management's responsibility also includes designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on the financial report based on our audit. No opinion is expressed as to whether the accounting policies used, as described in Note 1, are appropriate to meet the needs of the members. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report on order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

The financial report has been prepared for distribution to members for the purpose of fulfilling the Management's financial reporting requirement. We disclaim any assumption of responsibility for any reliance on this report or on the financial report to which it relates to any person other than the members, or for any purpose other than that for which it was prepared.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis

for our audit opinion.

*Independence*

In conducting our audit, we have complied with the relevant independence requirements.

*Auditor's Opinion*

In our opinion the financial report of Disability Discrimination Legal Service Inc.

- (a) gives a true and fair view of Disability Discrimination Legal Service Inc's financial position as at 30th *June* 2011 and of its performance for the year ended on that date in accordance with the accounting policies described in Note 1; and
- (b) complying with Australian Accounting Standards to the extent described in Note 1.



Janet Collyer  
J L COLLYER & PARTNERS

10<sup>th</sup> October 2011



**DIRECTORS**  
**JANET L. COLLYER FCPA**

**LIONEL R. ARNOLD CA B.Bus**  
**RAELENE LAI CPA [B.Com](#)**

**LIABILITY LIMITED BY A SCHEME APPROVED**  
**UNDER PROFESSIONAL STANDARDS LEGISLATION**