

Equality & Justice

for people with disabilities



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The DDLS Advocate

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Editors' Letter

It seems the more things change, the more they stay the same. How many years have people with disabilities been fighting for some of the basic rights that people without disabilities take for granted?

This issue examines the ongoing problems of transport issues for people with disabilities. In particular taxis, and buses that ferry children with disabilities to special schools.

While the new Victorian Charter of Human Rights and Responsibilities espouses the right to Freedom of Movement, people with disabilities can't even get a taxi. When we talk about equality, it does not mean that it is acceptable for people to be able to book a taxi as long as they are prepared to wait for three hours. Or as long as they book under certain conditions. This may be access, but it is not equal access. Ironically, the very people that may experience the most difficulty travelling independently, are the least likely to be able to use a taxi.

At the other end of the scale, children with disabilities accessing special schools are expected by the Department of Education to travel up to two hours each way (four in total) in buses. You would assume that this entails a trip covering hundreds of kilometres. Unfortunately, sometimes the trip could be 10 kilometres, but due to insufficient numbers of buses and circuitous routes, a trip spanning 2/3 suburbs can take longer than a trip to Ballarat.

These issues are examples of less favourable treatment of people with disabilities that remain despite discrimination legislation and the new Charter.

The DDLS looks forward to the time when proactive responses to this legislation result in improved conditions for people with disabilities without them having to personally make complaints under law.

Julie Phillips

The Future of Discrimination Law?

Victoria's adoption of a Charter of Human Rights and Responsibilities theoretically presents the State as committed to notions of political and social integrity. Yet, the Government's recent actions relating to discrimination claims from overseas students, may suggest otherwise. Transport Minister Lyn Kosky's side-stepping of existing laws and legal procedures in this matter, exposes not only the Government's dishonour, but also how protection of discrimination law can be jeopardised.

In February 2007, the Ethnic Communities' Council of Victoria (ECCV) sought representative legal action against the Department of Infrastructure for their refusal to allow overseas students concession fares on public transport. The basis of this claim was in the Equal Opportunity Act 1995, whereby the refusal of concession rates was argued to be racial discrimination in the provision of goods and services, under Section 42 1a). The claim was to be conciliated in the Victorian Equal Opportunity and Human Rights Commission. Whilst this conciliation failed initially, ECCV could still choose to appeal the decision before the Commission and VCAT.

However, Minister Kosky tried to prevent these avenues through the Transport Legislation Amendment Bill 2007. The Bill, proposed during conciliation proceedings, expressly provided that this denial of concession does not constitute racial discrimination under the Equal Opportunity Act. Since there is no discrimination, parties would be prevented from pursuing their claim under the procedures in the Equal Opportunity Act. Thus, ECCV would be unable to apply for a hearing at VCAT, or widen their group of complainants or claim thereafter. Clearly, Minister Kosky has endeavored to alter the processes to be followed under the Equal Opportunity Act as well as the meaning of relevant words in the Act, in order to engineer the desired result. The Scrutiny of Acts and Regulations Committee even questions whether the amending provision alters the definition of discrimination for the purposes of the Charter of Human Rights and Responsibilities.

Whilst this issue of concession fares does not pertain specifically to people with disabilities, its implications for discrimination law in general are disturbing. Instead of using existing law and procedures to resolve a discrimination claim, the Government has audaciously opted for circumvention. If the government can and will do this with discrimination matters broadly, then what guarantee is there that it will not do the same with disability matters? As Greens Member of Victorian Parliament Colleen Hartland observes, this is an unsettling example of a 'If you can't beat them, legislate against them' mentality. This scenario is particularly alarming for parties wishing to pursue claims against Governmental institutions or figures. Ultimately, perhaps rigorous public and media scrutiny is the most powerful way to prevent this subversion from becoming the norm.

Patricia Woo

Transport for People with Disabilities

The poor state of the state's transport services for people with disabilities has been exposed on two fronts recently. On December 9, *The Age* reported that despite having 229 multi-purpose taxis in the Melbourne area,¹ many people with disabilities have been forced to wait for up to five hours after a scheduled pick-up time for one of these taxis. More alarmingly, DDLS has serious concerns over the legality and compliance with basic human rights shown by the Education Department in its provision of bus services which enable students to attend the state's special schools for students with disabilities.

Taxis

The *Age* referred to two individuals both of whom claimed that Melbourne's taxi service for people with disabilities was substandard. The article described a taxi system rife with corruption and discriminatory practices. This mirrors DDLS own anecdotal experience. For many years clients have been raising concerns about both the availability of taxis and the subsidy system which enables people with disabilities to obtain a discount for travel for certain purposes. These are two aspects of the taxi service that must be improved in order to provide an adequate service to people with disabilities.

Licensing

Currently each multi-purpose taxi is licensed to carry passengers without a disability as well as passengers with a disability. This means that many multi-purpose taxis seek large groups of people at places such as the airport where there are often large fares, in preference to people with disabilities. One method of tackling this problem is to license some (or all) of these taxis to carry only passengers with a disability. Another possible solution is to introduce a monthly quota for each of these taxis so that each one is used to transport a person with a disability a certain number of times per month. DDLS believes that removing the incentive for taxi drivers to avoid picking up passengers with disabilities in favour of larger fares is the best way to solve this problem. Both of the possible solutions mentioned above would remove this incentive and DDLS urges the state's taxi providers to consider these options.

Subsidies

At present, people with a disability may obtain a discount for transport costs if the transport is for certain purposes such as work and education. While this system has no doubt helped many people with disabilities to participate equally in some areas, there are still many areas not covered by the subsidy. David Craig, executive officer for Action for Community Living, told *The Age*: "It diminishes the value of their participation in social activities.....visiting friends, participating in civic activities and attending medical appointments...those kind of things don't rate as sufficiently important for people to receive a subsidy for."² DDLS supports the expansion of this subsidy so that it applies to transport for a wide variety of everyday activities. It is particularly displeasing to note that the subsidy at present does not cover medical appointments.

¹ The age article

² The age Article

Recently a person with a disability attempted to book a multi purpose taxi on Christmas Day a few days prior. She was advised that no bookings would be taken until 6.00am on the morning of Christmas Day. Assuming that people without disabilities would have been able to book taxis in advance on Christmas Day, it seems to be the norm that there are two quite different systems in relation to services to people with disabilities, and those without .

Buses for Special Schools

Recently Premier John Brumby called for a report on the Department of Education's transport guidelines. The Department of Education provides free buses to students who attend the state's various special schools. At present the guidelines state that it is acceptable for these students to spend up to two hours each way on these buses. These two hours (up to four hours each day) are spent on a bus with no access to a toilet, and often without adequate supervision and requiring restraint.

To expect children with disabilities (and any child for that matter) to spend hours on a bus in conditions where they may not be able to communicate with the bus driver or chaperone; where they are meant to simply sit in one place without movement, seems to reflect a lack of respect for the rights enshrined in the Convention on the Rights of the Child. Lack of sleep and leisure time are other areas of concern when compared to children without disabilities who can easily attend the nearest government school.

If we as a society are trying to eradicate inhumane treatment of people with disabilities, and especially children, government must be seen to set the standard of such treatment. While children are having to endure such conditions as described, it will be difficult to have confidence in such instruments as the new Victorian Charter of Human Rights and Responsibilities.

Patrick Donovan

Role of the Victorian Equal Opportunity & Human Rights Commission

The current review of the *Equal Opportunity Act 1995* by the Department of Justice is an opportunity for anyone involved in the processes around making discrimination complaints and having them heard, to have their say on the law itself and the systems supporting it.

A constant disappointment to DDLS staff, and no doubt to many others in the sector, is the reliance on individuals to make complaints in an attempt to achieve the objectives of the Act, being:

- *promote recognition and acceptance of everyone's right to equality of opportunity;*
- *to eliminate, as far as possible, discrimination against people by prohibiting discrimination on the basis of various attributes;*
- *to eliminate, as far as possible, sexual harassment;*

- *to provide redress for people who have been discriminated against or sexually harassed.*

It has always been our view that the ideal response to human rights legislation is that government, business and community should step up to meet the expectations placed on them by law. This has largely not occurred.

Therefore, it is of great interest that the Department of Justice in its discussion paper, poses various questions around the Act itself, the Victorian Equal Opportunity & Human Rights Commission (“VEOHRC”) and Victorian Civil & Administrative Tribunal. Particularly of interest, is the role of the VEOHRC. Imagine a Commission whereby investigations into systemic behaviour could be initiated, public reports written, sanctions made, legal advocacy provided – functions that could take the pressure off individuals with disabilities and shouldering some of the responsibility of achieving a just society.

A number of comparisons can be made with the VEOHRC and other Commissions within Australia and internationally – there are many interesting examples of Commissions with greater powers than the VEOHRC currently has. Clearly, additional proactive functions can only positively contribute to the equal opportunity environment.

The challenge for such an expanded role is the absolute requirement for independence for the VEOHRC. Currently the VEOHRC is not seen as completely impartial by those in the field, or by others as so impartial that their footprint in eliminating discrimination is negligible. The VEOHRC has for some time now had a secondment program with the Department of Education (and possibly other government departments, however such arrangements are not advertised). The Commission’s staff assist Department of Education lawyers defend litigation against people with disabilities who have lodged discrimination claims against them. Such arrangements make it impossible to expect the VEOHRC could initiate and impartially investigate systemic discrimination by the Department of Education against children with disabilities.

It is disappointing to families of children with disabilities who are already suffering an enormous disadvantage in litigation in terms of resources, to find that the Department of Education is also supported by Commission staff. Therefore the leap from VEOHRC assisting Respondents, to possibly in the future assisting Complainants would need to be very large indeed.

If the review decides that the role of the Commission is not to expand, the issue of the Commission assisting government in discrimination litigation remains. Families of children with disabilities who have been involved in any level of the complaints process, but more significantly hearings, have found their experiences with the Department of Education to be bruising and unreasonably adversarial. It is understandable that they question why Commission staff are in the hearing room supporting this approach.

The playing field for people with disabilities trying to uphold their rights clearly remains extremely tilted in favour of Respondents – one more barrier to achieving equality.

Snapshot of the DDLS

Committee of Management

Martin Leckey(Chair)
Jan Ashford (Deputy Chair)
Robert Pask (Treasurer)
Tricia Malowney
Barbara Hocking
John McKenna

Staff

Manager

Julie Phillips

Principal Solicitor

Placido Belardo

Solicitor

Deborah Randa

Administrative Officer

Anna Leyden

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Marie Collard

Volunteers

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Patrick Donovan	Belinda Company
Tieng Chen	Chloe Lazaroy
Mohsin Mughal	Sara Afaghi
Simon Pitt	Daniella Ben-Danan
Jeffrey Wang	Kaitlyn Gullet
Adrian de Luca	Patricia Woo
Martin Chung	

Volunteer Profile

My name is Mohsin and I have been volunteering at DDLS since July 2007. I am currently in my first year of a Legal Studies degree at La Trobe University. My motivation in volunteering at DDLS has been triggered by my passion for human rights and equal opportunity and having a family member with a disability has added to the equation.

Volunteering at DDLS has expanded and enhanced my practical legal skills and has given me the opportunity to understand the practical aspects of Discrimination Law, something different from the theoretical approach undertaken at University and which is only attainable through invaluable experience.

Disability access and laws involving people with disabilities have elapsed through many a phase over the past 20 odd years. Taking this into consideration, it is comforting to know that we are contributing to this change. Although we cannot make this a perfect world, we sure can make it a better place for the forgotten or ignored segment of our society.

It has been a pleasure working with the staff at the DDLS and I look forward to volunteering here in the future.

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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