
Inquiry into Disability Discrimination Act 1992

Response prepared by:

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Section One:

1.1 About Disability Discrimination Legal Service

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

A Committee of Management consisting of people with disabilities and organisational representatives oversees the Service. The Service receives \$157,000 (recurrent annually) from the Federal Attorney-General's Department and administered through the Victoria Legal Aid (VLA) Community Legal Centre (CLC) Funding Program. The service employs three part time workers to fill four positions, these include, Coordinator/Community Legal Education, Caseworker and Systems Administrator.

1.2 Casework

DDLS undertakes casework for people with disabilities under the *Disability Discrimination Act (Cth 1992)* (DDA), and increasingly the *Equal Opportunity Act (Vic 1997)* (EOA). This involves providing advice and on-going assistance to people with cases before the Human Rights and Equal Opportunity Commission (HREOC), the Federal Court, Federal Magistrates Court, Equal Opportunity Commission Victoria (EOCV) and the Discrimination List of the Victorian Civil and Administrative Tribunal (VCAT). In addition the Service supports and encourages people to conduct their own cases and likewise assists disability advocates to take up cases on behalf of their clients.

In providing casework services, DDLS works within the casework policy framework. The policy outlines the criteria by which DDLS makes an assessment in regards to the matters in which DDLS can provide assistance. Due to resource constraints DDLS casework policy is necessarily restrictive. Clearly, the capacity of DDLS to assist in a greater number of cases would be enhanced by funding levels, which accurately reflected the level of need in the State of Victoria, and the level of funding required by DDLS to offer a comprehensive statewide service.

Despite current funding levels, during the 2001/2002 financial year DDLS casework program assisted two hundred and twenty nine clients. Of these an assessment was made to take on fifty-nine cases. Clients were provided with a range of services including; representation at conciliation conferences, conciliated by either the Equal Opportunity Commission or Human Rights and Equal Opportunity Commission; mediation referred by the Victorian Civil and

Administrative Tribunal and appearances at hearings, either at VCAT or the Federal Court.

1.3 Community Legal Education

Community Legal Education plays an important role in promoting the awareness of the Disability Discrimination Act and the Equal Opportunity Act as it relates to disability. In providing awareness CLE promotes empowerment of people with disabilities and their families by informing them of the laws which seek to prevent discrimination on the grounds of disability and the remedies available to them should their rights be infringed. CLE also plays an important preventative role as it seeks to inform service providers, employers, sporting organisations and educational institutions of their responsibilities to disabled members of the community.

In 2001/2002 financial year DDLS provided CLE activities to a diverse range of people in a wide range of environments and formats. Thirty-five CLE activities reaching over 1800 people were conducted over this period, comprising twenty-one workshops, six public forums, three lectures and two conference presentations. Importantly, almost one half of CLE was provided in rural regions of the state. Rural outreach included Warrnambool, Beechworth, Geelong, Ballarat, Mildura and Sale.

1.4 Projects

DDLS has embarked on several projects during 2001/2002 financial year, which have focused on resource development and research. The ability of DDLS to embark on work in addition to its ongoing CLE and casework activities was possible due to the success of DDLS in applying for funding from various philanthropic trusts.

1.4.1 Legal Information Resources

i) Legal Precedents Kit: This resource is a key strategy to empower people with disabilities and their advocates with information of cases relevant to each area of disability discrimination law. It enables complainants and/or their advocates to cite the legal issues and arguments relevant to their complaint when negotiating with respondents or in preventing disability discrimination.

ii) Understanding Disability Discrimination Law: The UDDL is plain language publication, which seeks to demystify both the *Disability Discrimination Act (Cth 1992)* and the *Equal Opportunity Act (Vic. 1995)* as it applies to disability. The information is written in a way, which is accessible to people with disabilities, their families and advocates. It sets out to compare the two acts and provides practical examples of how the legislation can be applied.

1.4.2 Research

i) Sexual Offences: In 2002 DDLS received funding from the Lance Reichstein Foundation to conduct research into the reporting experiences of women with cognitive impairment who are victim/ survivors of sexual assault. The research was specifically funded so that it would further inform the Victorian Law Reform Commission reference into the Sexual Offences Act.

ii) Parenting and the law: In 2001 DDLS in partnership with Yooralla received funding from Victoria Law Foundation to conduct research into the experiences of parents with disability in relation to child protection matters. DDLS and Yooralla were concerned about the apparent high number of parents with disabilities that were presenting before the Children's Court in relation to child protection matters.

Section Two:

Specific Responses

Section 4 of the Disability Discrimination Act (the “Act”) provides the following objects:

- a) to eliminate as far as possible discrimination against persons on the ground of disability***
- b) to ensure as far as practicable that persons with disabilities have the same rights to equality before the law as the rest of the community; and***
- c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.***

Consistent with the said objects, review and possible changes to the following features of the Act are recommended:

2.1 Definitional Issues

The definition of disability as described in the Act ¹is admittedly quite broad. It includes many conditions that might not be commonly considered to be disabilities. The broad legal definition of disability was intended to increase the effectiveness of the law against unlawful discrimination on the basis of anything to do with the working or non-working of a person's body or mind. However the Act is concerned more about discriminatory treatment rather than the medical technical accuracy of a disability. For the same reason, and in the light of recent decisions by the courts, a new definition may have to be examined to give the act further and wider coverage.

2.1.1 Definition of disability

- i) In a decision dated 15 November 2000², the Federal Court said, “opium dependency is a disability for purposes of the Act. Consequently, concerns were raised whether addiction (to any

¹ Disability Discrimination Act (1992) Preliminary Part 1 Section 4

² Marsden v HREOC & Coffs Harbour & District Ex-Servicemen & Women's Memorial Club Ltd. (2000) FCA 1619 15 November 2000

substance) may constitute a disability, and under what circumstances a cause of action under the DDA may arise³. This is an area that may be clarified if the definition states precisely how dependence to any substance, whether legal or otherwise, may attract protection under the Act. Arguably, substance abuse or any type of substance dependence may cause an impairment that falls under Section 4 of the Act.

- ii) Psychological disabilities may constitute a “disability” within the meaning of the Act. A psychological disability may result in certain behaviour that may become the basis of discriminatory treatment. The Federal Court⁴ and the Federal Magistrates Court both held that behaviour per se is not a disability. Even if the behavior is a manifestation of the disability, it may not be considered a disability under the Act. It is not enough to show that the behavior is caused by the disability. It must be shown that the behaviour is the direct result of the disability. This appears to be an added burden to the complainant. Emmet JJ⁵ of the Federal Court commented that

“It would have been possible for parliament to define disability by reference to symptoms that have a particular cause. For example, it would have been possible to define disability as disturbed behavior that results from a disorder, illness or disease.”

In another case, the Federal Magistrates Court⁶ in reserving comments on the issue of whether the manifestation of the complainant’s disability constitutes the applicant’s disability, referred to the “*disability/manifestation dichotomy*”. There appears to be a need then for parliament to revisit the otherwise generous definition.

2.1.2 Definition of an assistance animal

The Act⁷ provides that if the discriminator treats the aggrieved person less favourably because the aggrieved person possesses, or is accompanied by an animal trained to assist the aggrieved person. Currently there is a requirement that the animal be “trained to alleviate the effect of the disability”. A hearing dog for those with hearing impairment or a guide dog for those who are vision impaired is an example of an assistance animal that has undergone special

³ The NSW parliament has passed legislation to prevent drug-addicted employees from claiming unlawful discrimination due to their disability. Concerns were also raised if addiction to nicotine may constitute a disability.

⁴ Alex Purvis v State of NSW (Dept. of Education) [2002] FCAFC 106

⁵ State of NSW v HREOC and Alex Purvis, FCA 29 August 2001, paragraph 38

⁶ Minns v State of NSW [2002] FMCA 60, Raphael FM at paragraph 267

⁷ Section 9

training relative to the owner's disability. The training requirement for the animal seems to exclude an owner who relies on a therapeutic pet where the pet may not necessarily have to be trained in order to alleviate the effect of disability. The "training requirement" may also be unreasonable in cases where a training regime for the assistance animal is hard or impossible to identify.

For instance a tenant suffers from depression who is not allowed to keep a pet by the landlord may not be able to make a complaint regardless of medical evidence about the therapeutic benefits for such an animal or about the "coping" benefits of keeping a pet.

2.2 Application of the Act

Section 12 of the *Act* provides that the *Act* applies throughout Australia and that the *Act* has effect in relation to acts done within a Territory. There appears to be an uncertainty about whether a person who is discriminated in the provision of goods under *Section 24*⁸ is able to take action against a foreign manufacturer or producer of a product manufactured or produced outside the territorial jurisdiction of Australia. For instance, a movie in DVD format produced abroad that has no subtitles or captions is not accessible to a person with a hearing impairment. The sale of the DVD without such a facility may constitute indirect discrimination under *Section 6*⁹. In cases where the producer has a domestic agent, the complaint may be filed against the agent under *Section 9(12)*¹⁰ of the *Act*. In cases where the foreign producer does not have a domestic agent but a local distributor under a distribution contract supplies the product (the DVD movie) to the Australian public, a complaint may be made against the distributor under *section 122* of the *Act*.

Section 122 of the *Act*¹¹ provides that a person who is aiding or abetting a discriminatory conduct is as liable as the person who has committed the discriminatory conduct. A successful complaint under this provision is unlikely however to succeed because the distributor is usually able to rely on the defence of unjustifiable hardship¹². The distributor under its contract with the producer may not have the contractual prerogative to add additional feature such as captions¹³. Adding captions may necessitate deletion of other features that may be of value to other consumers. If the producer provides a master copy of the movie in DVD format without captions, the distributor obligated to make the

⁸ Section 24

⁹ Section 6-

¹⁰ Section 12,ss 9

¹¹ Section 122

¹² Section 24,

¹³ The Australian Caption Centre received an annual grant from the Department Of Family and Community Services to caption "general release" entertainment videos. This grant allows the captioning of many titles free of charge for Australian distributors however; not every film can be captioned under this grant because funds are limited. The costs to provide captions to a movie either in VHS or DVD is about t \$26.00 per minute.

product accessible to deaf persons may be faced with the possible prohibitive costs of captioning and reproducing captioned copies.

Hence, there is a need to put in place standards or measures to ensure that goods manufactured abroad, particularly movies in DVD formats are accessible for a person with a hearing disability. Currently the Act is not effective in resolving this type of discrimination. There is a need for a specific legislation requiring DVD's distributed in Australia to have captions.

2.3 Lawful discrimination under the Migration Act

The Act provides that discriminatory conduct in migration matters is exempt¹⁴. The *Migration Act 1958* deals principally with the application for Australian citizenship, residence and any other type of visa. Among other requirements, visa applicants must pass a medical test as a condition for the grant of a visa. Unsuccessful applicants are not able to make a complaint of discrimination if their visa application is denied on medical grounds. It is apparent that the exemption is directed towards the visa applicant in relation to a visa application. The current wording of the exemption is very broad and tends to cover areas beyond the policy considerations for the exemption. The exemption ought to be reviewed with a view to allowing a complaint:

- i) by a person other than the visa applicant, i.e. the sponsor who is either an Australian citizen or resident¹⁵
- ii) where the conduct of an employee or agent of the Department of Immigration and Multicultural Affairs ("DIMIA") is in connection with a provision of service that is merely ancillary to enforcing migration regulations and far removed in the assessment of the applicant's eligibility to class of visa. For example, a complaint of discrimination arising from DIMIA's operation of the detention centers for asylum seekers. It may be said that these detention centers are not safe environment and are most unsuitable to a person who has or may have developed a form of mental or psychological disorder as a consequence of detention. Detaining or compelling a person with a

¹⁴ Section 52

¹⁵ There was a case where an Australian man married an European woman. His wife then lodged an application for a spouse visa. The DIMIA denied the application because they thought that the relationship between the sponsor and the visa applicant is not genuine. This assessment was made on the basis that the man has a disability and that the woman married him simply to obtain Australian residency. The man made a complaint of disability discrimination but the court held that the exemption under Section 52 also applies to him.

disability to live in such a detention facility is imposing an unreasonable condition on that person and may constitute indirect discrimination. In such a case if a complaint is brought, the complaint is not about the denial of a visa application on medical grounds. Most likely the aggrieved person would seek remedy to stop the discriminatory conduct. Such action is not currently possible because of the express and blanket exemption provided under *Section 52* of the *Act*.

2.4 Cost consequences for unsuccessful litigants

Prior to the amendment introduced by the *Human Rights Legislation Amendment Act of 1999*¹⁶ in April 2000 the complaint handling process and the hearing of complaints at the Human Rights and Equal Opportunity Commission ("HREOC") was essentially cost free. The prospect of unsuccessful application and a corresponding cost order discouraged many people with disabilities from pursuing their claims at the Federal Court. In courts, costs follow the event. Whilst the courts exercise discretion in awarding costs orders, there have been Federal Court decisions¹⁷ where the judges have been quite liberal in favour of unsuccessful applicants. A specific provision allaying the fear of cost consequences will provide great incentives for people with a disability to fully utilize the law and realise the objects of the *Act*.

In one case the Federal Magistrate rejected previous dispositions on costs and said:

"In my view in the absence of any amendment to legislation which would seek to interfere with the ordinary discretion exercised by a court in the award of costs it

¹⁶ The amendment removed the hearing jurisdiction from the Human Rights and Equal Opportunity Commission and transferred it to the Federal Court and/or the Federal Magistrates Court of Australia.

¹⁷ Decision in the Federal Magistrates Court in the matter of *Ryan v Presbytery of White Bay Sunshine Coast* [2001] FMCA 12 at paragraph 20 where the court stated, "Whilst I have a power to award costs the nature and intent of anti discrimination could be thwarted if citizens were unreasonably inhibited from prosecuting bona fide, even ultimately unsuccessful claims".

Decision of the Federal Magistrates Court in *Tadawan v State of South Australia* [2001] FMCA 25 where the court said that these matters were normally considered to be 'no costs' matters as evidenced by the practice of state tribunals and the fact that there was no power in HREOC to award costs. The court has recognized that where proceedings are brought a successful party should not have the benefit of his or her victory lost in costs. The court is also anxious not to discourage litigants from bringing claims, which may well have merit because of the fear of the adverse costs order in the event that the applicant is unsuccessful. On the other hand the court can use its powers in relation to costs to discourage unmeritorious claims

should be stated that in the normal course of events costs follow the event. I can see no legislative or legal basis which would support the proposition that there is any need in human rights matters to alter the law applicable to this court by adopting the practice of the state tribunal or indeed to have regard to the fact that the Commission does not have power to award costs. Unfortunately I therefore find that I am unable to agree with the conclusion in relation to costs set out by the Learned Federal Magistrates in the Tadawan Decision and the Ryan Decision. It is not appropriate for courts to exercise discretion in relation to costs on the basis that it may or may not discourage applicants from making claims. That is a matter for Parliament to decide and if necessary legislation can be amended which, subject to any Constitutional challenge, may direct the court in relation to the issue of an award of costs in human rights applications. In the absence of that legislation as indicated I do not believe there is any need to depart from the normal principles which apply.”¹⁸

It would be desirable and would further the object of the Act if there were provisions giving a person with a disability a clear indication that costs orders will not be awarded against unsuccessful complainants in certain cases¹⁹. These cases may be those:

- i) where there are no material question of facts and the court was called upon to decide on a question of law; or
- ii) where the complaint is a representative complaint and the applicant is seeking remedies other than financial compensation, or
- iii) where the respondent to a complaint does not dispute the discriminatory conduct and relies on the defence of unjustifiable hardship, or
- iv) where the respondent refuses to participate in the conduct of investigation by HREOC or its attempt to resolve the complaint by conciliation.

2.5 Investigative functions of the HREOC

There is a need to review the effectiveness of the investigative powers of the HREOC, particularly in requiring a respondent to a complaint to produce and submit document to or information to HREOC that may be used as evidence in

¹⁸ *McInnis in Ball and Morgan Ball v Morgan & anor* [2001] FMCA 127 (21 December 2001)

¹⁹ This is not meant to take away the discretion of the court in not awarding costs orders against unsuccessful complainants due to different reasons.

court if the complainant decides to apply for a hearing. The HREOC is not meant to act merely as a conduit of correspondence between the complainant and respondent to a complaint. A comprehensive and rigorous investigation at such stage would greatly assist complainants in weighing their options or accepting a compromise. Due to the cost consequence of a court or tribunal hearing, people with disabilities are discouraged from proceeding with a hearing application. A thorough investigation may disclose vital information that enables a person with a disability to make an informed decision about whether to discontinue or to pursue the claim.

2.5.1 Prosecution of offences

The following are the offences under the Act:

- a) Victimisation ²⁰
- b) Inciting a person to commit discriminatory conduct ²¹
- c) Discriminatory advertising ²²
- d) Failure to provide actuarial data or statistical data ²³
- e) Failure to attend a conference ²⁴
- f) Failure to give information or produce documents ²⁵
- g) Giving false or misleading information ²⁶

There has been no prosecution under the Act since it took effect ten years ago. This could be due to a variety of reasons other than the absence of a complaint under the relevant section. In any case, the federal police indicated that it wouldn't be on their priority list. The reasons for the inactivity of these provisions need to be canvassed and identified. The provisions on offences may need to set out clearly what needs to be done, the role of the complainant, the HREOC, and police agencies if an offence is reported to have been committed.

Section Three

3.1 Concluding Comments

Thank you for the providing the opportunity for DDLS to respond to this very important review. DDLS are more than happy to provide the Commission with further information, which the Commission deems beneficial to this inquiry.

²⁰ Section 42

²¹ Section 43

²² Section 44

²³ Section 107

²⁴ Section 108

²⁵ Section 109

²⁶ Section 112

Further, DDLS would welcome the opportunity to discuss this submission at the public hearings scheduled for Melbourne.

Section Four

Attachments

4.1 Casework Policy and Criteria

Initial Criteria

The following criteria are to be used as a guide in determining whether the DDLS will take on a case. Each point should be taken into consideration if it is relevant, however, the weight attributed to each may vary from case to case.

- 1) The merits of the case must be considered. The fact that a case has strong prospects of success will be looked upon favourably by the DDLS.
- 2) The DDLS will avoid taking on cases where there is a strong likelihood of a negative precedent being set if the case is lost. The DDLS may, however, in its discretion, take on the case if it considers that creating public awareness of the issues in the case outweighs the risk or consequences of setting a negative precedent.
- 3) The DDLS must consider whether it has the resources available to take on a case. Current and future caseload expectations of the DDLS will be taken into account.
- 4) If a case involves more than ground of discrimination, the DDLS will only consider taking it on if the person's disability is a substantial reason for the discrimination or the issues arising in relation to the discrimination on the grounds of disability.
- 5) The DDLS will not take on a case if the client can resolve it themselves if given some guidance, or the DDLS can resolve the issue at the time of consultation by drafting a letter or making a phone call. The client will simply be provided with such assistance and no case file will be opened.
- 6) The DDLS will not take on the case if suitable assistance can be provided by another person. In assessing the suitability of other assistance, account will be taken of the fact that the DDLS gives priority to public interest test cases and targets certain areas of discrimination and therefore may be able to provide specialist assistance in particular areas (see pages 2-3). If any alternative assistance would involve a cost to the client, the client's ability to meet that cost may be considered.
- 7) The DDLS may take on cases where the discrimination involves breaches of legislation other than Disability Discrimination legislation. In deciding whether to take on such a case the DDLS must, however, consider whether

another organisation is better suited, and is able, to assist the client. The DDLS's main function will be to run Disability Discrimination cases.

- 8) The DDLS will liaise with the Human Rights and Equal Opportunity Commission (HREOC), the Anti-Discrimination Board and disability organisations to ascertain areas where legal assistance and investigation is most needed in relation to discrimination complaints. The DDLS will take this information into account when formulating target areas and assessing which cases it will take on.
- 9) The DDLS will only take on cases that promote the inclusion of people with a disability and are in accordance with the DDLS's Service and Access Policy.

Prioritising Cases

Given the limited resources of the service, it is not able to accept all cases that meet the above criteria. The following provides a guide to the priority the DDLS gives cases that meet the above criteria. The DDLS is not bound to take on cases in order of priority below; this is intended as a general guide only.

Public Interest Test Cases:

The first level of priority for cases the DDLS will take will be given to cases that are test cases in the public interest. A case will be a test case if it is likely to change law or practice in an area or clarify an area or question of law if successful. The change or clarification may only relate to an aspect of a law or provide for a change that is a step towards achieving a broader change. A case will be in the public interest if a decision in the case would affect a significant percentage of the DDLS's constituency or a distinct part of that constituency. For example, a case against a large service provider could have an effect on a significant proportion of the DDLS's constituency.

Public Interest Cases:

The second level of priority will be given to Public interest cases.

Test Cases:

The third level of priority will be given to individual cases of a test case nature.

Individual cases:

The fourth level of priority will be given to cases which will result in an immediate effect for the individual bringing the action. For example, a case against a local club that has not made all of its facilities available to a member with a disability.

Issues Impacting on Casework

Client options:

The DDLS must always advise a client of all available options (of which it is aware) in relation to the client's complaint. If the DDLS recommends a particular option, it must base its recommendation on its assessment of the needs of the client, whether that client is an individual or a group.

As long as the option selected by the client does not conflict with any of the DDLS's policies, and the DDLS has sufficient resources, it must pursue the client's complaint through the option selected by the client.

Outline of process:

Before commencing any procedure the DDLS must provide the client with an explanation of the processes that are to be followed in order to pursue the complaint in the manner chosen by the client. These explanations are to be provided at each new stage, or with each new development in the process.

A client must advise the DDLS if they wish to continue with the process. The DDLS must take no further action on a complaint if the client advises that they no longer wish to pursue it.

The DDLS may, however, if it thinks it is appropriate and the client agrees, inform the Attorney-General and/or the Commissioner of the general nature of the discrimination and ask him/her to investigate the matter.

Interim Orders:

Although the DDLS recognises that many matters may have aspects of urgency the DDLS will only seek interim orders under any relevant legislation if failure to do so will result in the client facing immediate threat to their safety or well being. Examples of such situations may be where a client will lose their job or housing before the matter can be resolved.

Briefing Counsel:

The DDLS will attempt to brief counsel on all matters that are likely to be set for more than two days of hearing.

Act on instruction only:

The DDLS must take all reasonable steps to ensure that it is at all times acting on the instructions of the client.

Representative complaints:

The DDLS will only lodge a complaint as a representative complaint, as defined in Section 89 of the DDA, if it is satisfied of the following:

- The complaint is about an issue that affects a distinct group in the same manner

- The complaint is more likely than not to have a positive outcome.

The DDLS Caseload:

Due to the differing resource requirements of cases, it is recognised that the DDLS cannot estimate the number of cases it will be able to handle at one time. The DDLS will maintain

**Disability
Discrimination
Legal Service
Victoria**

**Annual Report
2001/2002**

Disability Discrimination Legal Service Inc. (Victoria)
(formerly the Disability Discrimination Law Advocacy Service Inc.)

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10.00am to 5.00pm Tuesday to Friday

Membership and Volunteers

The Disability Discrimination Legal Service welcomes new members and volunteers. To find out more about becoming a member or volunteer of the service contact us (contact details listed above).

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ABBREVIATIONS USED IN THIS REPORT

ALRC	Australian Law Reform Commission
CLC	Community Legal Centre
CLE	Community Legal Education
DCLS	Darwin Community Legal Service
DDA	Disability Discrimination Act (Cth) 1992
DDLS	Disability Discrimination Legal Service
DHS	Department of Human Services
DPL Project	Disability Parenting and the Law Project
EOA	Equal Opportunity Act (Victoria) 1995
EOCV	Equal Opportunity Commission Victoria
HREOC	Human Rights and Equal Opportunity Commission
NHMRC	National Health and Medical Research Council
OPA	Office of the Public Advocate
VLA	Victoria Legal Aid
VLRC	Victorian Law Reform Commission

LONG TERM GOAL

To eliminate discrimination as defined by the Commonwealth Disability Discrimination Act 1992 and the Victorian Equal Opportunity Act 1995 against people with disabilities and their associates and assist the empowerment of people with disabilities to address discrimination throughout Victoria.

STRATEGIES DEVELOPED TO ACHIEVE LONG TERM GOAL

- provide a free and accessible legal service for people with disabilities
- provide legal advice, support and casework assistance to those who have a complaint under the *Disability Discrimination Act (Cth 1992)* (DDA) and the *Equal Opportunity Act (Vic 1995)* (EOA)
- ensure the inclusion of people with disabilities in all law reform activities in order to affect systemic change
- provide community education on disability discrimination and the DDA and the EOA to:
 - people with a disability
 - legal workers
 - service providers
 - and others affected by the DDA and the EOA
- produce resources which raise awareness about disability discrimination, the DDA and the EOA
- provide an administrative infrastructure which both meets the requirements of the Service and optimises scarce resources
- ensure that the Service is accessible and responsive to the needs, concerns and issues identified by people with a disability, their advocates and disability groups
- gain further resources to increase and enhance the Service's provision of legal services to people with disabilities under the EOA

COMMITTEE OF MANAGEMENT



The Committee of Management is responsible for the direction, policy development, procedures and practices of the service together with staff management. The Committee meets monthly and as needed between monthly meetings. Members of the Management Committee for 2001/02 were as follows:

Chairperson: Geoff Tresise, Bear In Mind (resigned July 2002)

Deputy

Chairperson: Amanda Hiscoe, individual (Public Officer)

Secretary: Jeanette Lee, individual

Treasurer: Isobel Collins, Victorian Mental Illness Awareness Council

Members: Caroline Morgan, individual

Stella Young, Victorian Women with Disabilities Network (resigned August 2002)

Richard Berger, Disability Resources Centre

Sophie Delaney, individual

Matt Wright, individual

Grant Roberts, Victorian Council of the Deaf

Under the DDLS Constitution, a majority of members of the Management Committee are people with disabilities, ensuring that the DDLS is an organisation for people with disabilities that is managed by people with disabilities.

The Service attempts to ensure that the Management Committee is as representative of the communities that it aims to serve as possible and is made up of representatives from a range of consumer-managed disability community organisations as well as individuals.

SERVICE PROFILE

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

The Service is funded by the Federal Attorney-General's Department and administered through the Victoria Legal Aid (VLA) Community Legal Centre (CLC) Funding Program, and 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 increasingly the *Equal Opportunity Act (Vic 1997)* (EOA). This involves providing advice and on-going assistance to people with cases before the Human Rights and Equal Opportunity Commission (HREOC), the Federal Court and the Federal Magistrates Court, and of course the Equal Opportunity Commission Victoria (EOCV) and the Discrimination List of the Victorian Civil and Administrative Tribunal (VCAT). In addition the Service supports and encourages people to conduct their own cases and likewise assists disability advocates to take up cases on behalf of their clients.

The Service recognises the importance not only of direct casework assistance but facilitates awareness of rights and responsibilities under these Acts through strategic community legal education (CLE) projects. The Service also works toward reform of the law and areas of public and private policy through activities such as research, projects, lobbying and submission writing.

The Service is open Tuesday to Friday from 10am to 5pm and provides legal advice by telephone or face to face appointment where necessary. Requests for community legal education 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.ddls.org.au**. 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. The Service's main publication, *Using Disability Discrimination Law* (the successor to the widely recognised *A User Guide to the Disability Discrimination Act* and now in its second edition) is available through the website or post by contacting our office by email – info@ddls.org.au, or by phone – 1800 651 275 for country callers or 9602 4877 for local callers, or by TTY – 9602 4135.

The challenge for the Service has always been to provide targeted strategies to assist as many people as possible given very limited resources. The annual budget is in the order of \$157,000.00. The Service employs three staff: a Coordinator and Community Legal Educator, a Casework Solicitor, and a Systems Administrator, all of whom are part-time. The criteria for casework assistance, therefore, is 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 the day to day decision-making, finances, policy direction and service delivery. The committee is made up of members of interested organisations and individuals. It meets monthly and otherwise as required and is elected from the membership annually. Constitutionally the majority of the committee members must be people with disabilities. It is a Service for people with disabilities, managed by people with disabilities.

Membership of the organisation is free and open to all that 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.

CHAIRPERSONS REPORT

The 2001/2002 financial year has been a successful one for the Disability Discrimination Legal Service (DDLS) thanks to the hard work and determination of the staff, volunteers and Management Committee. Despite a shrinking core funding pool in real terms, the DDLS has continued to provide quality services to people with disabilities throughout Victoria in casework, community legal education (CLE) and policy and law reform services. In particular, the year saw an increase in funding for projects and capital equipment, which has built on the substantial increases in service provision recorded over the 2000/2001 financial year. This has increased the Service's capacity to undertake a broad range of activities addressing disability discrimination in Victoria.

The statistics of DDLS service levels for the year indicate that the number of people who contacted the Service and received a service of some kind has increased when compared to the previous year. The DDLS provided information to over 2,500 individual requests, legal advice to 229 people, casework assistance and/or representation to 59 people, casework client contacts totalling approximately 600, CLE to over 1,800 people and over 250 organisations, resulting in over 4,500 activities of service across all DDLS program areas. This represents an increase of approximately 25% in the number of individual service activities provided. Clearly this is an achievement given that the DDLS core funding continues to shrink in real terms.

Our dedicated and hard working staff team – the same team reported in last years Annual Report – continue to contribute their energy and expertise to the DDLS. Placido Belardo, the Casework Solicitor, is now a veteran in community terms with over 18 months service as a permanent staff member with 16 months prior service as a locum staff member. Kate Allan continues her hard work as the Systems Administrator, as does Marie Collard, the DDLS Bookkeeper. Jonathon Goodfellow, now with the Service for nearly four years, continues to work in the demanding roles of Coordinator and Community Legal Educator. The Disability Parenting and the Law and Sexual Offences and Disability projects were staffed by Wendy Bennett. And finally, but importantly, a cohort of some 25 volunteers contributed their time and efforts to the day to day activities of the Service.

Despite staff stability and increased resources in specific areas the DDLS is still vulnerable to the need to reduce staff hours and services to people with disabilities unless increases in recurrent funding are forthcoming. The Service has been highly successful in attracting one-off and project based funds over the last three years but unfortunately this does little to enhance our long-term prospects of survival and success. Once again, the Management Committee calls on state and federal governments to look closely at the valuable work the DDLS undertakes with people with disabilities and assist our work further by increasing our shrinking recurrent resource base. As in previous years, we urge the incoming committee

to not just rely on the enthusiasm and hard work of the community, but to continue to urge governments for greater resources to provide access to justice for people with disabilities experiencing disability discrimination.

Many different people contribute their time and skill to the activities of the Service. Far too many to thank, in fact, to list them all here. But it is important to highlight the achievements and contributions of the voluntary members of the Management Committee. Their time and tireless efforts are essential to the ongoing viability and success of the organization.

The Service is heartened by the assistance we receive through the close relationships we develop and maintain in working toward a society free from disability discrimination – people with disabilities, disability advocates and advocacy organisations, community legal centres, and statutory offices and government departments. Special thanks goes to Professor Phillip Swain and the University of Melbourne School of Social Work for their ongoing work with the Disability, Parenting and the Law Project, The Victoria Law Foundation for their financial support for the DPL Project, the Reichstein Foundation for their financial support for the Sexual Offences and Disability Project, the VLRC for their practical support and assistance, the EOCV, the HREOC and the Disability Services Branch of the Department of Human Services (DHS). A special thanks too, to the Office of the Public Advocate (OPA) for their practical support and assistance, particularly regarding the DDLS' Strategic Planning Process. But the most heartfelt and sincere thanks goes to the many clients of the DDLS who, despite the challenges, find the courage and determination to fight the injustice they experience.

The collaborative efforts of both Management and staff have overcome challenges to complete another successful year of activity for the DDLS. Whilst the Management Committee facilitate essential decision making and set the organisation's direction, the staff apply themselves with commitment and passion to the daily pressure of service provision and on behalf of the whole Committee our sincere thanks go to them.

A thanks finally – and in advance - to the members of the incoming Committee for your yet unrealised role in the success of the coming year. Whilst much has been achieved this year there is still an enormous amount of work to yet be done. Many people with disabilities still experience serious breaches of their human rights in Australia with few effective avenues to seek redress. In the face of this, we must continue to work to expose disability discrimination with even more vigour and enthusiasm if we are to succeed in reaching our ultimate goal: a society free from discrimination on the basis of disability.

On behalf of the DDLS Management Committee
(Please Note: Due to the resignation of the DDLS Chairperson in July 2002, the Committee produced this report)

TREASURERS REPORT

The twelve months from 1st July 2001 - 30th June 2002 have seen continuing financial pressures despite securing substantial capital equipment funds and further project funds to support the community legal education and policy and law reform work of the Service.

Despite ongoing lobbying and approaches to the state and federal governments to support our work through increasing our recurrent funding base, the DDLS needs continue to be overlooked. This has resulted in the DDLS being one of only two Commonwealth only funded centers to see no assistance from the state government in the form of recurrent funding. The state government remains on notice to provide recurrent assistance to support the increasing efforts of the Service – particularly in the context of the extremely limited assistance it provides specialist disability CLC's in Victoria – and particularly given that it provides no direct assistance to complainants of unlawful disability discrimination in this state. In July 2001, the Parliamentary Law Reform Committee released the outcomes of its inquiry into the provision of legal services to rural, regional and remote areas of Victoria. The Committee recommended that the DDLS be funded to adequately undertake community legal education across the state but as yet we have seen little more than an in-principal agreement that this be provided and references to the 10 year *State Plan* for disability services released by the DHS. Of course, highlighting the responsibilities of the state government in no way serves to minimise the very real responsibility of the federal government to increase our recurrent funding to adequate levels for a state-wide specialist community legal service.

Despite the funding situation – or rather because of it – the staff have continued to work enthusiastically to become more efficient, to cut costs where possible and to locate and secure additional funding sources. Our Coordinator, Jonathon Goodfellow was able to secure project funding for the Sexual Offences and Disability Project (\$22,000 from the Lance Reichstein Foundation, \$6,300 from the Mercy Foundation, \$1,350 from the Lord Mayors Trust and \$15,000 from the Victorian Women's Trust), the Disability Discrimination Legal Precedent Kit (\$27,500 from the Disability Services Branch of the DHS) and nearly \$40,000 for capital equipment from the state Attorney-General.

These successes however, have not altered the fact that our recurrent funding from the Commonwealth Attorney General, administered through Victoria Legal Aid, is inadequate to meet the increasing costs of operation alongside increasing demand for services. The year to come will no doubt see yet more belt tightening and watchful eyes on our financial commitments and expenditure. One of the initiatives to be explored in the coming year to help to save funds is the sponsored purchase of permanent DDLS offices, freeing rental expenditure for other important needs.

I would like to thank Jonathon, Placido and a special thanks to Kate and Marie for their diligence and tenacity in smoothing the transition to the new financial administration structure.

Finally, I wish the incoming Committee all the very best in working closely with the staff to carefully monitor the finances of the Service whilst continuing to seek permanent solutions to our ongoing financial viability.

Isobel Collins
DDLs Treasurer

STAFF MEMBERS

Co-ordinator/Community Legal Educator

Jonathon Goodfellow

The Co-ordinator is responsible for the overall day to day management of the Services' activities, to assist and support the staff in their program areas and to report to and liaise with the Management Committee.

The Community Legal Educator identifies education needs and develops and provides training and education programs to people with disabilities, advocates, the legal profession and the wider community. It is also a crucial link in the direction and prioritisation of policy/law reform activities.

Administrator

Maeve O'Driscoll

(until August 2001)

Systems Administrator

Kate Allan

(restructured position)

(from September 2001)

Bookkeeper/Accountant

Marie Collard

(new position created July 2001)

The Administrator is the essential central function of the Service to all other areas of activity. It also provides the financial accountability that the Service requires to continue to receive funding and support from the state and federal governments. A change was made to the position upon the departure of Maeve O'Driscoll, removing the financial accounting functions and outsourcing these functions with the Bookkeeper/Accountant.

Casework Solicitor

Placido Belardo

(locum Solicitor until November 2000, appointed permanently December 2000)

The Solicitor provides telephone advice, direct advocacy, and casework (including the running of test cases) regarding complaints under the *Disability Discrimination Act (Cth) 1992* and the *Equal Opportunity Act (Vic) 1995* to people with disabilities, their associates and advocates.

The Solicitor also provides expert casework support to Community Legal Centres and disability advocacy agencies.

Disability, Parenting and the Law Project

Project Coordinator

Dr Phillip Swain

Project Worker

Wendy Bennett

(March '01 – December '01)

Research Assistant

Nadine Cameron

Sexual Offences and Disability Project

Project Worker

Wendy Bennett

(from December 2001 – September 2002)

COORDINATOR'S REPORT

The 2001/2002 year was, once again, highly productive, building on the office relocation and increases to services in the previous year by acquiring much needed capital equipment and by attracting project funds to extend our policy and law reform and community legal education activities. As a result, whilst the challenge to do more with less remains, the Service's capacity to embrace new opportunities is very much increased.

The figures reflecting service levels for the year reveal that overall, DDLS provided services to over 4,500 individual requests and provided some form of assistance to some 120 organisations across Victoria, representing a 25% increase in the provision of services. This is an astounding feat, boosted by the delivery of new promotional resources for the Service and despite planned reductions to service targets prior to the start of the financial year.

The year represents yet another characterized by the hard efforts of a wide range of people working to eliminate disability discrimination in Victoria through their contributions to the Service. The role of Coordinator continues to present its unique set of challenges not the least remains the need to balance the various resourced (or more accurately under-resourced) and unresourced aspects of the Service. Some of the program related highlights of the year include significant staff and structural changes to the administration program, an increase in our funded capacity to undertake policy and law reform and community legal education work, the acquisition of nearly \$40,000 worth of capital equipment and the development of the DDLS draft three-year strategic plan. Core services increased in community legal education and information, whilst casework services were maintained despite the tighter application of eligibility criteria – both despite reduced targets set due to resource restraints as agreed by VLA before the year commenced. On the policy front, the DDLS finalized its work on disability and mandatory sentencing, and the disability parenting and the law project, responded to the initial consultation for the Australian Law Reform Commission (ALRC) inquiry into the protection of human genetic information, and commenced work on the sexual offences and disability project alongside the Victoria Law Reform Commission (VLRC) reference into Sexual Offences Law and Procedure. DDLS also participated in forums and discussions for the VLRC reference examining a Legal Framework for Compulsory Care and Treatment of People with Intellectual Disabilities. For details of the full range of DDLS activities throughout the year see the various program sections that follow in this report.

One of the highlights of year was the launch of our new premises and promotional resources by the then Minister for Community Services, the Hon Christine Campbell MP. The day was a great success with over 50 people attending and enjoying lunch and the friendly atmosphere. Many people where

impressed by the new DDLS offices, commenting on the vast improvement on our last premises.

Undoubtedly, the major program issue that challenged the Service during the year was the need to furnish our new premises with appropriate capital equipment following the relocation of DDLS offices. The furniture and fittings acquired prior to and following our relocation could not adequately meet the need to house increasingly regular project workers and importantly volunteers. In fact some of the furniture had verged on becoming an occupational health and safety risk! Of particular concern was the need to upgrade and expand the DDLS computer system, long a technological relic. Through the successful acquisition of capital funds, the DDLS was able to purchase 5 new computer workstations and network, 3 new desks, Committee meeting tables and chairs, a fax/photocopier, a printer, a phone system, an upgraded outreach vehicle handover, other office furniture and partitioning. Our thanks go to the state Attorney-General and the VLA CLC Funding Program for their assistance in acquiring these capital items which provide the capacity for accommodating volunteers, project workers and potential secondees from private law firms.

A particular highlight of the year has been the increase in project funds the DDLS has received to supplement activities in policy and law reform work and community legal education resource development. The Service was successful in gaining funds for the Sexual Offences and Disability Project with the support of the Lance Reichstein Foundation and the Mercy Foundation with support from the Victorian Women's Trust for the Project's second stage. The Service was also successful, in collaboration with Villamanta Legal Service, in gaining funds for a project to develop a Disability Discrimination Legal Precedent Kit to assist people with disabilities researching and advocating their complaint as well as legal and non-legal advocates and others assisting people with disabilities with their complaint. Funding support for the kit was provided through a competitive process under the Advocacy Innovation Grants Program of the Disability Services Branch of the DHS. Both of these projects will continue into the next financial year.

The Service had a unique opportunity to present its work in a key note presentation to the National CLC Conference in Perth in September 2001. The presentation focused on the collaborative work the Service undertook with the Darwin Community Legal Service (under the banner of the National Disability Discrimination Network of the National Association of CLC's) in researching and reporting on the impact of mandatory sentencing upon people with disabilities in the Northern Territory - and the lessons therein for reforming the criminal justice system more generally. Copies of the presentation are available through the DDLS office (contact details on inside front cover). Thanks go to the DCLS for their support conducting the research which lead to the DDLS presenting evidence regarding its work to the Senate Legal and Constitutional References Committee's Inquiry of the Human Rights (Mandatory Sentencing and Property Offences) Act

2000 introduced into Parliament by Green's Senator Bob Brown.

A major project, the Disability Parenting and the Law Project, was completed late in the year. Whilst the Project's final report *Pride and Prejudice: A snapshot of parents with disabilities experiences of the child protection system in Victoria* was released in September 2002 at the National Conference of CLC's, it seems wise to mention that it can be sourced through the DDLS office. It contains important findings about and recommendations for changes to the child protection system in Victoria. Thanks to our partners in this work: the University of Melbourne School of Social Work and Yooralla's Parents with Disabilities Community Project with financial support from the Victoria Law Foundation.

Whilst it has been a busy and successful year, and whilst there is a great deal of interest in and respect for the DDLS' activities, the success of the service overall is still very much dependent on our success in attracting greater recurrent resources to expand core services to even attempt to meet demand. Despite years of consolidation and improvement this remains the key to the ongoing viability of the Service. As is reported here with clockwork regularity, this is due, in the main, to the cumulative increases in the costs associated with running the Service without any due recognition and support from funders. The DDLS continues to call on both the state and federal governments to increase funding levels to assist the Service to meet the levels of demand presented by the community.

The future looks bright for the Disability Discrimination Legal Service as we move into the 2002/2003 financial year. The draft 2003 – 2005 Strategic Plan is ready for the consideration of the incoming Management Committee following a well planned and facilitated process culminating in the 2002 Strategic Planning Day in June. Our thanks go to the Office of the Public Advocate for their support in facilitating the day. The draft plan outlines the specific areas of focus over the next three years of activities including defining the governance and management roles that exist in the organization, planning implementation and evaluation of service delivery, the development of a fundraising and promotion strategy, and mechanisms for constituency consultation.

Finally, it is important to thank all the people who worked for and with the DDLS throughout the year to combat disability discrimination. Whilst there are too many to mention here by name, a special thanks to the Management Committee members, the volunteers and staff of the service, our comrades in the disability advocacy and community legal sectors and our partners in government, the public service and statutory offices. But our very special thanks are reserved for the many people with disabilities who contact our service seeking support and advice about unfair treatment they have experienced. Your trust and ongoing confidence in contacting us is the key to our success in eliminating disability discrimination in Victoria, and for this we thank you.

Jonathon Goodfellow
Coordinator

ADMINISTRATION REPORT

The 2001-2002 financial year saw many changes in not only the position of administrator, but in the day to day office environment at DDLS. The administrator's financial duties have been divided into accounts, payroll and end of month reporting with all other reporting requirements outsourced to Marie Collard, our bookkeeper. The position is now one of a systems administrator, with responsibilities ranging from volunteer recruitment and supervision to office systems development and management. The position attempts to alleviate the administrative burden on a small number of staff who are required to focus their efforts on providing services rather than managing the day to day affairs and requirements of the office.

In a community legal centre environment such a purpose may be idealistic. While the office has streamlined such procedures as volunteer recruitment, staff and volunteer communication, mail procedures and financial reporting, the time spent assisting clients and volunteers cannot be so easily reduced and streamlined. Consequently, whilst the greater emphasis on casework and community legal education in the position allows better team work, communication and coordination, a greater role is limited by resource constraints. The eventual implementation of the 3 year Model Service Agreement and the Service Standards and Performance Indicators is going to place further pressure on the Service's limited resources.

Such constraints always exist in the context of a tight budget. While we managed to end the year with a surplus, such funds were largely due to the pro-active efforts of the Coordinator to source funds and capital equipment. The coming year however is looking tighter than ever. Previous years have seen the removal of items from our budget, leaving us with the bare essentials, which have then been pared as far back as possible. The 2.7% increase in funding from the Commonwealth Attorney-General for the coming financial year, while welcome, is unlikely to cover the increase in wages, CPI and increasing demand for our services. Consequently, the staff once again face potential cuts in their hours and our clients cuts in services should further financial assistance not be provided to the DDLS.

Obviously not all is doom and gloom. While the day to day pressures of service delivery are very real, the many successes, positive developments and sincere contributions are the stuff CLC's are made of.

The capital equipment grant by the State Attorney-General resulting in the provision of new computers, a telephone system and a photocopier/fax /printer/scanner was gratefully received and will benefit not only the day to day operations of the service but the capacity to employ project workers and maintain the Minter Ellison secondee who is due to start in January 2003.

The formalisation of the volunteer program has resulted in the recruiting of a large number of workers who have greatly benefited the staff and clients of DDLS. Volunteers are required to attend induction training prior to commencement conducted by Jonathon and myself, and are required to spend at least a few days orienting themselves to the DDLS, completing administrative tasks and answering the phones. Following such a period the volunteers provide casework assistance to Placido, undertake large DDLS projects or complete smaller projects as required by the staff. For example, Fiona Makedona researched and co-wrote a submission on the impact of mandatory sentencing in Western Australia on people with disabilities to the Senate Legal and Constitutional References Committee, and commenced a project evaluating the outcomes of representative complaints. Amanda Johnston, a placement volunteer, spent a large amount of time compiling the Referral Directory.

A very big thanks must go to all the volunteers and management Committee members who donated their time and skills. Thanks should also go to Marie Collard and the DDLS staff for their assistance in the adjustments required for the development of the position, and to the numerous people who supported the DDLS' work in 2001-2002.

Kate Allan
Systems Administrator

CASEWORK REPORT

DDLS provides legal advice, advocacy at complaint conciliation conferences and in some cases representation at hearings at the Federal Court or at the Anti-Discrimination List of the Victorian Civil and Administrative Tribunal.¹ DDLS employs a part time solicitor for 32 hours per week. The advice service is provided by appointment from 1 to 5 in the afternoon every Tuesday, Thursday and Friday. The service has an 1800 number for residents of rural areas and a TTY number for clients with a hearing impairment. The caseworker also assists in providing community legal education and in running the day-to-day operations of the office.

Complaints of discrimination may take 3 months or more before they are concluded. In some cases the process takes more than a year. There are those resolved very quickly, but they are very few.

In the 2001/2002 year the DDLS casework program assisted 229 clients provided 170 telephone advice appointments and 20 face to face appointments. The program worked on 59 cases during the year 22 of which were closed during the period. The number of client contacts was approximately 600, being the number of times over the period the casework solicitor had contact with clients – of course this is sometimes multiple contacts for the same client to meet individual needs or as required as the matter progresses. There were 14 clients who were assisted with representation at conciliation conferences, 10 being conciliated by the Equal Opportunity Commission and 4 by the Human Rights and Equal Opportunity Commission. There were 4 clients who were assisted at mediation all referred by the Victorian Civil and Administrative Tribunal. There were 9 matters where DDLS provided appearances at hearing, 6 held at the VCAT and 3 at the Federal Court. 17 cases were successfully resolved with 37 matters still open at the end of the period leaving 5 cases where the client withdrew the matter or it was not satisfactorily resolved. Of those 17 cases, 10 matters were resolved at mediation or conciliation conference: 6 being employment matters; 3 provision of services matters; and 1 access to education matter. The remaining 7 cases were resolved by other means: 1 being an employment matter, 5 provision of services matters; and 1 access to education matter. The Casework Solicitor also participated in the CLE program by presenting 5 sessions and assisting to research others.

Case Studies

¹ DDLS provides assistance at either VCAT or at the Federal Court or Federal Magistrates Court where the client cannot afford private representation, and the case has a strong public interest and likelihood of success. DDLS will not take on any case where the litigated outcome is likely to set a bad precedent.

1. Joint work with another community legal centre

This year DDLS and the Brimbank Community Legal Centre collaborated in providing assistance to a prisoner who made a complaint of discrimination against a private prison and the Office of the Correctional Services Commissioner. The client was exposed to Environmental Tobacco Smoke (“ETS”) and charged with an offence under the Victorian prison drug strategy without regard to the client’s inability to tolerate smoke and inability to pass urine because of a medical condition.

The complaint was resolved by mediation at VCAT. A summary of the outcome for the client is as follows²:

- Transfer to minimum-security prison in a non-smoking cottage
- Fellow inmates would always be non-smokers
- Complete examination by cardio-respiratory and eye specialists
- Implementation of any recommendations by the specialists
- Smoke free transfer to minimum-security prison
- All reasonable attempts to eliminate exposure to ETS in all other future transfers and accommodations
- Corrective and explanatory statements on the client’s prison file, with a copy provided to the Parole Board
- Agreed procedure for the taking of urine samples
- Statement of regret to complainant and his partner (they were affected by loss of contact visit)
- Review of DOJ anti-discrimination policy in consultation with Federation of Community Legal Centre
- Payment of costs

2. Working with a disability organization

DDLS works closely with a number of disability and advocacy organizations, including the Victorian Council of the Deaf (“VCOD”). The following illustrates the outcome of the active sharing of resources by the DDLS and VCOD:

Provision of an Auslan interpreter in non-award tertiary education

The University provides assistance to students of award courses only. The complaint was resolved through advocacy with the school agreeing to provide assistance, to review their policy and find ways to resource the costs of Auslan interpreters for non-award students.

Provision of adjustments in employment

² Our client has right to reinstitute the complaint in case of breach of deed of agreement. There is no confidentiality clause.

The complainants were both profoundly deaf. They complained that they felt isolated and ignored because their employer did not provide adequate accommodation in the workplace for their lack of hearing. The complaint was successfully conciliated with the employer agreeing to provide compensation, a teletypewriter, a television with a teletext facility, a vibrating pager for all deaf employees, interpreters for important meetings, undertake staff training and distribute disability awareness literature.

3. Conciliation of discrimination and sexual harassment case

DDLS provides assistance to clients who have non-disability related complaints provided that discrimination because of disability is part of the complaint. The client has a mental illness and complained that the owner-manager of the business made numerous inappropriate remarks about their disability and unwanted gratuitous remarks about their physical appearance.

The respondent denied any liability but agreed to provide a written reference, make available a nominated referee, statement of regret, to undertake training and adopt a written policy on equal opportunity and preventing sexual harassment and discrimination in the workplace. The client declined DDLS' offer of representation at VCAT to pursue compensation. The client advised that they were not prepared to become involved in litigious proceedings and opted to settle.

4. Employment-related complaints

These are two of the several cases involving discrimination in employment

Provision of adjustments in training programs

The client suffers from epilepsy and did not have steady employment during the last two years. Their medication regime slows learning ability, particularly the ability to recall. As a result our client requires a longer time to learn new tasks but once learned they are good at what they do. Our client applied to be a reservation clerk. The employer has a strict training timetable where trainees have to complete a number of modules in 6 weeks. The employer refused to extend the training period or to provide the employee with one on one tuition. Our client was dismissed because they failed a series of tests and could not catch up with the rest of the trainees. Our client accepted substantial compensation for loss of income, and pain and suffering by way of resolution.

Unfair dismissal and mental illness

The client suffers from schizophrenia and worked as a caterer at a prison hospital for women with psychiatric illness. The hospital management alleged that certain incidents involving our client, other staff and patients indicated that the client was not fit to continue to work in such a critical workplace and requested transfer elsewhere. The client was happy where they worked and maintained that their mental illness did not in any way affect their work. The complaint was successfully conciliated with the employer providing our client with a written reference and substantial compensation for damages. The employer also offered our client

work but they declined because of they had already been employed in two other jobs.

5. Complaints resolved without a formal conciliation process

Adjustments to a telecommunications service

The client has multiple disabilities and is also non-verbal. They use the telephone with the aid of a computer program. This program is reliant on a special call facility provided by the respondent for a fee. Hence the client pays not only for the cost of a call but also for the cost of the special facility. A complaint was made on the basis that it is unreasonable to impose the special facility fee to the client because their disability prevents them from using the phone in any other way. The company agreed to waive the fee to access the said telephone facility, and to refund all previous fees paid. The company also agreed to consider requests by other similarly affected clients.

Physical access to a cinema

A person who relies on a wheelchair for mobility challenged the lack of suitable access facility on a cinema's plans for renovations and construction. Our client considered the complaint resolved after the owners and franchisers modified and submitted plans rectifying the deficiency identified.

Physical access to a fast food retailer

A person with physical disability complained that a local franchisee (of an international chain of retailers) serves them outside the shop because the premises is physically inaccessible. Following receipt of the complaint, the owner applied for building permits and installed a ramp immediately.

Thank you to all the people: clients; advocates; volunteers; Committee members; DDLS staff members; legal practitioners; and barristers; who contributed their time and skills to the casework program throughout the year. The year ahead will undoubtedly be busy but we will continue to be assisted by many people, including a secondee solicitor from Minters Ellison in January 2003.

Sadly, the discrimination many people with disabilities experience in their everyday lives continues despite the efforts of many people to eliminate discrimination on the basis of disability. In order to move forward confident that our efforts are indeed making an impact, it is important to reflect on what we have achieved. Gladly, when we do reflect it becomes clear: there are many people making a difference in the ongoing work to create a society that accepts difference and accommodates diversity.

Placido Belardo
Casework Solicitor

COMMUNITY LEGAL EDUCATION

During the 2001/2002 financial year community legal education (CLE) services were once again provided to a diverse range of people in a wide range of environments and formats. The Service undertook 35 CLE activities reaching over 1800 people comprising 21 workshops, 6 public forums, 3 lectures, 2 conference presentations and 1 exposition for 3 days. Importantly, almost one half of CLE was provided in rural regions of the state whilst over 1,000 people were reached through conferences and expos. Rural outreach included Warrnambool, Beechworth, Geelong, Ballarat, Mildura and Sale.

The challenge for the Service in providing CLE remains ensuring that it is as accessible as possible to the diverse population the organisation serves. And this accessibility extends to not only the format of CLE but also to the complexity of the law and legal process. A range of initiatives aimed to address this accessibility throughout the year. Firstly, the Service maintained its targets in relation to people from non-English speaking backgrounds and the indigenous community, reaching workers with people with disabilities in the Vietnamese community, carers of people with disabilities from the Greek community and workers from aboriginal cooperatives. The DDLS also reached a broad cross section of diagnostic categories of disability, students who will go on to work with people with disabilities, advocates for people with disabilities, service providers, government departments and local councils. We continued to provide education on issues around barriers to tertiary education for students with a mental illness at Ballarat University and the University of Melbourne.

The Service also embarked on new initiatives to produce resources that provide information about disability discrimination law. We were successful, in collaboration with Villamanta Legal Service, in obtaining an Advocacy Innovation Grant from the Disability Services Branch of the DHS to develop a plain-English guide to disability discrimination legal precedent. The kit will provide details of cases relevant to each area of disability discrimination law enabling complainants and/or their advocates to cite the legal issues and arguments relevant to their complaint when negotiating with respondents or in preventing disability discrimination. This resource is a key strategy to empower people with disabilities with relevant knowledge, and in tipping the scales back in favour of the complainant rather than the often resource rich respondents or potential respondents.

Toward the end of the year, the VLA, DDLS and Villamanta Legal Service embarked on a revision of the highly successful *Using Disability Discrimination Law* (UDDL). The first print run of the resource, numbering 10,000, had been fully distributed by May 2002, just 18 months after their production. The revised resource will be available in early 2003 and reflects what we now know about the new Federal jurisdictions' operation.

The DDLS continued to work toward creating translations of its own resources and publications, particularly the UDDL Translation Strategy. The Strategy outlines key features and target groups for translations including targeting workers with individuals and groups who may not be literate in their first language or in English, and producing various formats where necessary such as an Auslan Video. After some deliberation and discussion, the DDLS reluctantly agreed to VLA's CLE section's decision not to produce the full revision in community languages but rather to develop brochures. These will summarise the resource and provide information about the legal services that can assist with disability related legal matters in up to seven community languages. This does not mean that further full versions in community languages will not be developed, but rather that further work is done first to identify the priority community languages and target groups for full translations. The brochures will be produced over the 2002/2003 year and our thanks go to VLA's CLE Section for their ongoing financial and practical support of DDLS' translation strategy. In a related area of the Strategy the DDLS attempts to secure DHS resources for the inner-west Vietnamese Community Disability Discrimination Education and Awareness Project from the DHS have proven unsuccessful to date. The DDLS continues to work to secure funds for the project as reflected in the 2002/2003 Work Plan.

The DDLS also continued to work to make the UDDL available for national production in state and territory specific editions. The text and design will be released to NSW Disability Discrimination Legal Centre (funded by the NSW Law and Justice Foundation) and WA Legal Aid in the coming months for the production of state-based resources, with the other states and territories working to secure resources in order to develop and print their versions.

Of course, in providing accessible resources the DDLS must also focus on its publications, resources and promotional materials to ensure they are accessible to people with comprehension difficulties and/or low literacy. To this end, a volunteer project, currently being undertaken by Denise Goldfinch, aims to identify what issues should be considered when developing resources to meet this particular area of need.

The year ahead promises to be as busy as previous years but will see a significant change in focus for the delivery of CLE. From January to June 2003, traditional CLE provided in response to requests will cease while the staff work to establish a new project, the Disability Discrimination Speakers Bureau. The Bureau will act as the central coordination point for peer-based education services, providing training, support and evaluation for people with disabilities seeking to provide CLE. This initiative will see the focus of services change in order that those people most directly affected by disability discrimination, being people with disabilities themselves, will provide most of the CLE. The DDLS believes strongly that education about disability discrimination is likely to be more effective when presented by a person with a disability. The Bureau is also an affirmative action

program in that where the DDLS receives funds for services provided, a significant proportion of those funds are paid to the peer educator with a smaller proportion paid to cover the costs of administering the Bureau. While services will suffer some short-term disruption, the medium to longer-term benefits to participants, peer educators and the Service overall will be significant. If you are a person with a disability who would like to participate in the Speakers Bureau then please contact the DDLS offices (contact details on the inside front cover).

While the year has been a challenging one for the CLE program, the DDLS continues to respond to these challenges in innovative and flexible ways that ensure accessible services are provided in a manner that maximises the low level of recurrent resources available to the program. Our thanks go to the many individuals and organisations that have contributed to DDLS' CLE program this year through requests for sessions, participation, co-presentations, venue hire, promotion, networking, catering, accommodation and more! It is true to say that without your hospitality and generosity the DDLS CLE program would be much smaller than it is today! A special thanks also goes to the DDLS Caseworker Placido Belardo and those volunteers who researched CLE sessions and developed background case studies that always make the presenter look like the best-read person on the issue!

Jonathon Goodfellow
Community Legal Education Worker

POLICY AND LAW REFORM ACTIVITIES

As described in last years annual report, policy law reform issues:

“are those which are systemic in nature and are unlikely to be the subject of a complaint, and/or where the possibilities for remedy by way of complaint are negligible or impossible, but where discrimination is nonetheless apparent and is likely to be best remedied by medium to long term strategies. In general these strategies take the form of community campaigns and networks, lobbying governments, statutory authorities and stakeholders, initiating and participating in inquiries and reviews and through research and investigation.”

Of course the range of policy issues that DDLS could potentially work on is many and varied. The DDLS' Policy and Law Reform program is the only area that is not supported by any recurrent budgetary allocation and therefore the Service has had to work hard to gain funds for projects that supplement it's policy and law reform work. The Service has also worked hard to maintain and further develop its networks and direct organisational collaboration to address policy and law reform issues. As a result, DDLS has seen the most active year in policy and law reform to date.

Sexual Offences and Disability Project

In December 2001 the DDLS was successful in gaining funds from the Lance Reichstein Foundation to undertake the Sexual Offences and Disability Project alongside the Victoria Law Reform Commission's (VLRC) reference into Sexual Offences Law and Procedure. The project seeks to identify some of the experiences of women with 'impaired mental capacity' – as defined by the *Crimes Act* – and to identify the barriers experienced in reporting and seeking justice for sexual offences. The Service also received financial support from the Mercy Foundation and the Melbourne Lord Mayors Trust. While the project's first stage is not yet complete, the Service has already received funds from the Victorian Women's Trust for the second stage: to produce a community legal education kit for victim/survivor's with disabilities – a gap in resources identified early in the project's first stage. Further funds are being sought to support a training strategy for workers with women with disabilities at risk of, or victims of, sexual offences, in order that they can assist in educating this group of women. The report of the findings and recommendations of the project's first stage will be completed and released early in 2003.

Disability Parenting and the Law Project

This project was completed during the year although the launch of the final report, *Pride and Prejudice: A snapshot of parents with disabilities experiences of the child protection system in Victoria*, occurred in September 2002 and will be a subject for the next DDLS Annual Report. The project found, amongst other things, that

parents with disabilities, particularly those with an intellectual disability or a mental illness, are over-represented in child protection proceedings when compared to the levels of these disabilities in the general population. The report details some 16 recommendations for further research of these issues, and for more resources and advocacy for parents with disabilities as well as changes to the policies and practices of a range of stakeholders who work with parents with disabilities. The report is available through the DDLS office (contact details on the inside front cover). The DDLS thanks the many contributors to the project and our project partners, the University of Melbourne School of Social Work, Yooralla's Parents with Disabilities Community Project and the Victoria Law Foundation. The DDLS continues to work to further the findings and recommendations of the *Pride and Prejudice* report and is seeking funds to run a series of stakeholder forums to gain commitments to key recommendations such as the need for parent advocacy services.

The Impact of Mandatory Sentencing Upon People with a Disability

This important work was completed in late 2001 after the election of the first Labour Government in the Northern Territory and the subsequent repeal of mandatory sentencing, followed by the muted completion of the Senate Legal and Constitutional References Committee Inquiry into the Human Rights (Mandatory Sentencing and Property Offences) Act, introduced into Parliament by Green's Senator Bob Brown. Unfortunately the Committee's final report left a "wait and see what WA does" approach to addressing the remaining mandatory sentencing legislation in that state. Despite the disappointing outcome, the DDLS successfully highlighted the issues as they affected people with disabilities in the Northern Territory as well as their import to the criminal justice system more broadly. The DDLS made an initial submission to the inquiry, was invited to present evidence before the Committee at its Sydney hearings and was subsequently invited to present a submission specifically relevant to Western Australian law and procedure. The DDLS also presented a keynote speech to the 2001 National CLC Conference in Perth outlining the findings of the research and the lessons for reforming the criminal justice system more broadly.

Other policy and law reform activities the DDLS addressed throughout the year include:

- Participating in the HREOC DDA Summit in December 2001 and subsequent actions meetings representing the National Network of Disability Discrimination Legal Services
- Participating in the Victorian Law Reform Commission's reference regarding proposals for a Legal Framework for the Compulsory Care and Treatment of People With Disabilities at risk of harm to themselves and/or others, through the Disability Working Group of the Federation of CLC's

- Making a submission to the ALRC/NHMRC Inquiry into the protection of Human Genetic Information regarding discrimination and potential genetic predisposition to certain types of disability
- Continuing to call for a VLRC inquiry into the treatment of people with disabilities throughout all stages of the criminal justice system
- Providing DDLS' views to the DHS investigation into the provision of an independent witness in child protection matters where a parent with an intellectual disability or cognitive impairment is subject to intervention
- Participation on the Legal Working Party of the Safe Transport Action Group working to ensure transport infrastructure and services are safe and accessible for all Victorians
- Various ongoing initiatives with the Disability Working Group of the Federation of CLC's

INFORMATION SHARING AND NETWORKING

DDLS continued to participate actively in information and resource sharing within networks and individual agencies. These included:

- Disability Working Group of the Federation of Community Legal Centres (Victoria)
- Rural, Regional and Remote Working Group of the Federation
- National Network of DDA Legal Services
- National Association of Community Legal Services
- Yooralla Parents With a Disability Community Project, Reference Committee
- Victorian Law Reform Commission
- Victoria Legal Aid
- Office of the Public Advocate
- Victorian Children's Court
- Human Rights and Equal Opportunity Commission
- Victorian Equal Opportunity Commission
- Department of Human Services Disability Services and Child Protection Branches
- Villamanta Legal Service
- Mental Health Legal Service
- Brimbank Community Legal Service
- Consumer Credit Legal Centre
- Public Interest Law Clearing House
- Women's Legal Resource Group
- Federation of Community Legal Services
- Women with Disabilities
- Victoria Law Foundation
- Voluntas
- Victorian Mental Illness Awareness Council
- Bear in Mind
- Victorian Council of the Deaf
- Blind Citizens Australia
- Coalition for Fair and Equitable Employment
- Ararat Stawell Advocacy Services
- Disability Rights Victoria
- Disability Resources Centre
- STAR
- AMIDA
- Action for Community Living

- Vision Australia (Volunteer Programs)
- Inner West Migrant Resource Centre
- University and TAFE Disability Liaison Officers

AUDITOR'S REPORT AND FINANCIAL STATEMENTS

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