

Submission

Access to justice in the criminal justice system for people with disability

Enquiries to:

Jan Ashford
Chairperson
Disability Advocacy Victoria
c/- Shop 4
3 Tuck Street
Moorabbin Victoria 3189

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Disability Advocacy Victoria is the peak body for independent disability advocacy organisations.

Our vision.

Disability Advocacy Victoria is an active participant in the creation of a fully inclusive society in which people who have a disability are included as equally valued and contributing citizens.

The following Disability Advocacy Victoria members present this submission to the Australian Human Rights Commission.

Communication Rights Australia

Deaf Victoria

Disability Advocacy Information Service

Disability Discrimination Legal Service

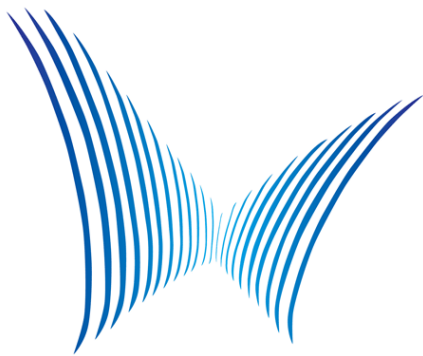
Disability Resource Centre

Leadership Plus

STAR Victoria

Villamanta Disability Rights Legal Service

Women with Disabilities Victoria



Communication Rights Australia

ABN: 25120 926 829

Deaf Victoria Inc



Villamanta Disability Rights Legal Service Inc.



Access to justice in the criminal justice system for people with disability

BARRIER 1. Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disability. This means that people with disability are left without protection and face ongoing violence, or have repeated contact with the criminal justice system because appropriate programs and community support are not available.

Disability Advocacy Victoria are concerned that notwithstanding well-established research regarding the links between disability and involvement in the criminal justice system, government organisations such as Departments of Education continue to fail to provide quality education services to students with disabilities. While the research covers a plethora of causal links, Disability Advocacy Victoria wishes to bring the Commission's attention to support programs that could be provided to children with disabilities, as intervention and prevention are clearly preferable to responding after people with disabilities are already involved in the Justice system.

We offer two examples to illustrate this point.

In 2006, Speech Pathology Australia put forward a Briefing Paper "*Students with Severe Language Disorder in Victorian Government Schools*" to the Minister for Education. It contained, amongst other things, the following:

This link between speech and language disorder and literacy has long-term implications for employment and social integration. In an Australian study of thirty male juvenile offenders, ten of the thirty subjects "reported having been identified as "below average" at school with respect to reading and writing skills" (Snow & Powell, 2004). In a Swedish study of 163 institutionalised juvenile delinquents, more than 70 % of the pupils showed some problems with reading and spelling (Svensson et al., 2001) and a screening program of young offenders in Scotland found 25 of the 50 young offenders were dyslexic to some degree (Kirk & Reid,2001).¹

The context of this paper was the Victorian Department of Education and Early Childhood Development cutting its eligibility criteria for children with language disorders to access individual funding, resulting in approximately 2500 out of 2700 losing their funding.

Similarly, there is a plethora of research setting out the high rates of people with Asperger's Syndrome in the criminal justice system, and a lack of treatment available to them.²

Simply the link between juvenile offenders and poor literacy and numeracy skills provides us an insight into the numbers of children with disabilities who are potentially at risk unless they

¹ "Students with Severe Language Disorder in Victorian Government Schools" Speech Pathology Australia Background Document p3

² For example "The prevalence and treatment of people with Aspergers in the criminal Justice system" Browning and Crawford 2011

received an education that is effective. This would apply to children with Dyslexia, Learning Disabilities, ADHD, Oppositional Defiant Disorder, Autism Spectrum Disorder, Intellectual Disability and Language Disorder to name a few.

Poor levels of literacy and numeracy for deaf students, placing them in the same risk category, has also been the subject of much research. Yet there is no right for deaf students to be provided with Auslan Interpreters in Victorian schools. The typical funding level for deaf students is approximately half of the wage of a full-time Auslan interpreter. Despite successful Australian education disability discrimination complaints on the subject, the Victorian Department of Education continues to withhold a commitment to provide this vital support to Deaf students.

Despite widely reported research on this broader subject of causal links between disabilities/illiteracy/juvenile justice, recent reports in Victoria by the Victorian Equal Opportunity and Human Rights Commission³ and Victorian Auditor General's Office⁴ confirm that the quality of education for children with disabilities in Victoria is poor, and more importantly, includes practices that are conducive to trauma (Chapter 10 - Restrictive Practices).

Therefore what we know is that there are a number of risk factors associated with children simply having certain disabilities, and later involvement in the criminal justice system. Yet, there is little well directed effort made to ensure that the common avoidable consequences of those disabilities are addressed.

To improve the level of education for children with disabilities in schools, and commence providing educational through programs that are evidence based and best practice, is not a difficult endeavour. This is one of the most straightforward interventions that could potentially cause a significant reduction in the number of people with disabilities in the criminal Justice system, yet it is not done.

The failure of lawmakers to require schools by law to adhere to comprehensive and detailed antidiscrimination education legislation is one of the reasons that the education system for many children with disabilities is ineffective and harmful. There is no comparison between the laws of other countries governing education such as the American *Individuals with Disabilities and Education Act 2004* and Australia's *Disability Discrimination Act*, even with the *Disability Standards Education 2005*.

While the other points of this submission deal with alternative barriers for people with disabilities in accessing the criminal justices system, surely the main objective is to ensure to the greatest extent possible that people with disabilities avoid the criminal justice system at all costs. Preventative and proactive measures on behalf of children with disabilities that aim to reduce the risk factors that we are already reliably informed of should surely be a priority over and above other measures that can be taken after people with disabilities become involved in the criminal justice system.

BARRIER 3. Negative attitudes and assumptions about people with disability often result in people with disability being viewed as unreliable, not credible

³ "Held Back- experiences of students with disabilities in Victorian schools" Victorian Equal Opportunity and Human Rights Commission 2012

⁴ "Programs to Children with Special Learning Needs" Victorian Auditor General's Office 2012

or not capable of giving evidence, making legal decisions or participating in legal proceedings.

There exists an unfortunate subjective presumption that people with certain disabilities are unreliable in relation to giving evidence, and will not present as credible witnesses. This presents itself in many forms.

- A. It is common that incorrect assumptions are made about the intelligence of people based on a particular disability. These assumptions are made both by the public in general, and Victoria Police members. For example people with cerebral palsy are often assumed to have an intellectual disability. The same can be said for attitudes towards people with Autism Spectrum Disorder, or those with complex communication needs who use Augmentative and Alternative Communication.

Our position is that in any event, people with an intellectual disability under many circumstances are able to give truthful and coherent evidence, and therefore even intellectual disability should not preclude them from being able to proceed with their involvement in, say, the reporting of a crime. However in the current climate it is unhelpful for people with different disabilities to have an intellectual disability attributed to them incorrectly.

- B. There is a common view amongst Victoria Police members, that if obtaining evidence is too challenging, it is not constructive to proceed with formal interview. A person the with Autism Spectrum Disorder may need a number of supports and adjustments in order to provide evidence to police, including:
- i. training of police members by people expert in Autism Spectrum Disorder immediately prior to conducting an interview;
 - ii. specifically designed questions;
 - iii. Independent Third Person trained in Autism Spectrum Disorder;
 - iv. numerous interview opportunities in order to complete evidence.;
 - v. flexibility in interviewing process.

Such supports are often seen as painstaking, time wasting and ultimately of little utility due to the subjective view that the practicalities of taking the matter further are outweighed by the work required to be done to ensure the process is accessible.

Most people with disabilities, if appropriately supported, are able to give evidence. They may not be able to give it in the same manner as others, but this must simply be accepted, and accommodations made.

- C. There is no evidence that people with mental illness or intellectual disability are more prone to falsifying evidence or being mistaken about certain events that anyone else, however it is often implied that this is indeed the case, and such people with disabilities are often dissuaded from proceeding with a charge at best, or at worst their attempt to proceed is obstructed.

This is particularly so with children who as victims of crime are often not taken seriously or disbelieved. The Commission may wish to refer to the publication "*Enabling and Protecting*" Children with Disability Australia. The fact that children with disabilities are often not protected against violence, feeds back into the issues of early intervention. It is well-known that those who are abused can become the abusers.

Summary

In summary, the Disability Advocacy Victoria members above wish to highlight most strongly the issue of prevention and avoidance as being one of the most crucial issues to focus on in relation to the involvement of people with disabilities in the criminal justice system.

When easily implemented protective measures can be undertaken but are not, we are left to wonder about the seriousness with which these issues are regarded by government bodies, which are largely responsible for the impediments we raise.

It is our position that a timely response to these matters would reflect the commitment that government already has to its international human rights obligations to people with disabilities.