

Submission No. VL/24
Received 27/06/2008
Law Reform Committee



27 June 2008

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Dear Sir/ Madam,

INQUIRY INTO VEXATIOUS LITIGANTS

The Disability Discrimination Legal Service ("DDLS") has considered the terms of reference of the inquiry into Vexatious Litigants in Victoria, and makes the following comments and recommendations in relation to the potential impacts on people with a disability in Victoria.

1. TERMS OF REFERENCE

- a) To inquire into the effectiveness of current legislative provisions in dealing with vexatious litigants
- b) To make recommendations which better enable the courts to efficiently and effectively perform their role while preserving the community's general right of access to the Victorian Courts.

2. COMMENTS AND RECOMENDATIONS REGARDING PERSONS DISABILITY

DDLS notes the following:

2.1 Poor service levels Any proposed legislative measure should be careful to ensure that legitimate complainants – even if they are serial complainants - are not statue barred from pursuing legal action under discrimination or equal opportunity legislation. Some persons with a psychiatric disability may engage in serial complaint making due to their illness. However, in our experience, this is frequently a reflection of the poor level of services provided to people with a disability.

In particular, people with mental illness for whom general services are renown for being poor, may be more likely to attempt to address systemic problems through the courts simply in an effort to achieve an outcome.

Paucity of quantity and quality of services can lead to frustration, and in the light of poor preliminary dispute resolution procedures, may contribute to a pattern of regular complaints through formal legal channels.

People with disabilities, carers, and disability advocacy organisations have been highlighting for years the underfunding of general services, and lack of support for basic human rights such as respite, education and recreation.

Clearly, 'vexatious' should under no legislative test be conflated with 'regular'.

2.2 Poor Internal Grievance Mechanisms These patterns may be a reflection of poor internal complaints mechanisms in public bodies. DDLS submits that if the aim of the reform is to reduce the incidence of litigation with a poor legal grounding, then ***increased regulation of standards for internal grievance procedure for public bodies in Victoria*** is called for. Indeed, such a step should clearly precede any further legislative steps to infringe the common law or statutory rights of potential litigants.

Indeed, it is our experience that people with disabilities in general, and parents of children with disabilities are seeking legal assistance to address matters which would be more properly be dealt with internally.

An example is the Department of Education & Early Childhood Development, which has no grievance procedure, and simply names three levels within the department to complain to. In comparison with private business where detailed grievance procedures, time lines, investigation process and so on are clearly enumerated, such a lack of proper procedure is grossly out of step with best practice and contributes to people seeking legal redress to issues which ought properly be dealt with by other methods.

Internal complaints and merits review mechanisms are important means of separating legally actionable issues from policy-related and other complaints, and equally, of resolving legitimate complaints before clients feel they need to seek legal advice.

DDLS strongly believes that many instances of 'vexatious' litigation stem from the feeling that a person is 'not being heard' at the pre-litigation arenas of first complaint.

2.3 Poor Internal Grievance Mechanisms: Case Studies Generally speaking, DDLS clients are often in the worst position to cope with the stressors of legal action, due to poor socio economic status, and often the impact of the disability itself. In view of this, it is notable that so many people take the very difficult step of legal action when in theory there are numerous internal complaints procedures and independent complaints bodies designed to address the many problems people with disabilities face.

DDLS submits that scrutiny of these procedures and bodies sheds light on this apparent conundrum. Indeed, the issue of poor internal complaints mechanisms is now such an important one that it was the subject of an article in the Autumn 2008 edition of the *DDLS Advocate*, earlier this year.

Below we note some clear deficiencies in relevant internal complaint mechanism in key public bodies, relevant to DDLS clients.

2.3.1 Ombudsman

Several parents in the last 12 months have complained to the Ombudsman about the Department of Education & Early Childhood Development "DEECD", and have found themselves being told that after a call from the Ombudsman's office to DEECD they should simply go back to DEECD to sort out their problem. This is hardly the sort of investigation and assistance people seek when complaining to the Ombudsman. Two out of three of those parents have lodged discrimination claims and the third one is considering doing so.

2.3.2 Auditor General

The Auditor General's limited report last year on the Program for Students with Disabilities run by DEECD was a huge disappointment to people with disabilities and their families. With education one of the most common complaint areas year after year in relation to support for students with disabilities in primary and secondary schools, the lost opportunity to address those problems in a constructive way rather than leave parents to continue to fight issues in the courts was curious at best. The report caused much consternation in disability and child advocacy organisations and raised questions about independence.

2.3.3 Disability Services Commissioner

While the office of the DSC has only recently been established, there seems to already be a significant amount of disappointment and frustration with the ability of, or lack of enthusiasm from, the DSC to tackle hard issues in a meaningful way. Reports suggest that the DSC's powers are so limited that it simply becomes an extension of current grievance procedures which already exist, and fail to assist, complainants. The inability to appeal a DCS decision, and the lengthy time they take to respond to issues has already created a negative impression within the disability advocacy sector.

2.3.4 Department of Education & Early Childhood Development

The DEECD has a 'grievance procedure' which simply refers a person to three different levels within DEECD to complain to. There are no processes, timelines or investigatory requirements. Complaints to the regions about principals are

returned to the principal for addressing. Complaints about region to the Secretary, boomerang back to the Region to respond to the complainant. There is no surprise then at the high number of complaints against the DEECD under disability discrimination legislation.

3. SUMMARY

While DDLS recognises that vexatious litigants can create difficulty for an already overextended judicial system, we believe that it is important to focus on root causes of the problem rather than just its symptoms.

Many people with disabilities and their families who over a lifetime have multiple contacts with some of the above organisations have formed a view that the lack of accountability and goodwill within government agencies to treat complaints with respect and in a professional manner is actually contributing to legal action. The inability of 'independent' organisations to address complaints in a robust and decisive manner creates an impression of different government funded agencies simply supporting each other's conduct rather than having any fearless investigation powers and intent.

This result is a very poor one for people with disabilities. When organisations such as the DDLS are funded for 2.7 EFT staff, theoretically covering the state of Victoria, it becomes apparent that from a broad perspective, there is no effective plan by government to protect the rights of people with disabilities.

In view of these issues, DDLS submits that it is no surprise that people with a disability have increasing recourse to use discrimination or human rights legislation to enforce their rights.

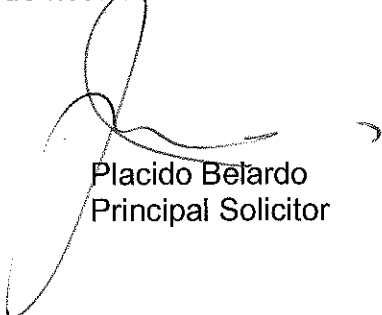
If these systemic issues are not adequately addressed, any legislative restrictions on the right to litigate would appear unwarranted and preemptory, with the potential to unacceptably limit the rights of even the most apparently serial litigant. People with disabilities face a far greater range of challenges in daily life, and this in itself leads to an increasing number and regularity of complaints.

If the DDLS can be of further assistance please do not hesitate to contact us.

Yours sincerely



Julie Phillips
Manager



Placido Belardo
Principal Solicitor