

Submission to:  
Parliament of Victoria, Family and Community Development  
Committee

## Inquiry Into Services for People with Autism Spectrum Disorder

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## **Introduction**

The Disability Discrimination Legal Service (“DDLs”) is a state wide independent community legal centre that specialises in disability discrimination legal matters.

Our goal is to work towards the eradication of unlawful disability discrimination, and to facilitate and promote justice for people with disabilities. We do this through casework, advice and community legal education to both professional and community groups to raise disability awareness and provide information on the *Disability Act 1992* (Cth) and the *Equal Opportunity Act 1995* (Vic).

DDLs receives calls and enquiries about and from people with a range of disabilities. Overall, it is our view that people with Autism Spectrum Disorder suffer from discrimination and mistreatment in all aspects of public life, including in the provision of goods and services, accommodation and employment. We discuss some of the recurring themes evident in the approaches to our office involving community members with Autism Spectrum Disorder, and attach some case studies as support.

Generally speaking, we focus on inadequate services for people with Autism Spectrum Disorder/Asperger’s Syndrome.

1. **Inadequate Services for Individuals with Autism Spectrum Disorder ("ASD")**
2. **Legal Proceedings**
3. The evidence seems to suggest that there is a strong requirement for Government Departments and Courts to be educated about ASD.
4. Whether people with ASD are victims, witnesses, or the subject of custody disputes, it seems there is little understanding of ASD and its implications. While disabilities such as physical disabilities which require wheelchair use, deafness and vision impairment, are easy to grasp due to their long-standing profile, it is fair to say that ASD is not. Due to misunderstandings of ASD, courts:
  - a. may not understand that adjustments need to be made in the normal course of giving evidence due to communication impairments being part of the ASD diagnosis;
  - b. may not understand whether any special considerations are required in custodial disputes involving children with ASD;
  - c. may not understand that there are certain idiosyncrasies associated commonly with ASD which are "normal" to the disability and should not be interpreted with cynicism.

## 5. Education

6. Lack of expertise in dealing with ASD and failure to bring such expertise into schools
7. Autism Spectrum Disorder presents itself as a challenge due to the complexity of its nature and the commonality of comorbid disabilities. Even those schools claiming to specialise in ASD fail to meet these challenges.
8. The inability of teachers to effectively address behaviours of concern should perhaps be expected, given the low requirements in obtaining teaching degrees<sup>1</sup>. However given that, it is of greater importance that schools are sufficiently resourced in order to bring high-level expertise into schools when required.
9. School staff appear unable to understand that the behaviours of concern exhibited by students with ASD are usually environmental, that is, the behaviour is exhibited in response to the school environment including teaching staff responses. Thus, as a first step, teachers need to look at what they are doing, rather than blame the student.
10. The very fact of continuing behaviours of concern is evidence that school staff do not have the skills to adequately address those behaviours, and are an indication that urgent assistance is required. When a school is imposing detention, suspension or expulsion on students with ASD due to behaviours of concern, this indicates that the school should have brought in the assistance it required long before such punitive measures were put in place. Such punitive measures do not address behaviours of concern and achieve nothing but a break for teaching staff.
11. In 2009, the *Disability Discrimination Act 1992* (Cwth) was altered to include "behaviour that is a symptom or manifestation of the disability" in the definition of disability (s 4). In 2010, the *Equal Opportunity Act* (Vic) was altered in a similar fashion (s 4).
12. Since that time therefore, schools that act punitively against students with ASD due to behaviours of concern put themselves at risk of discrimination claims.
13. The reasonable adjustments required to ensure that children with ASD have access to their education, pursuant to s.5 of the *Disability Discrimination Act 1992* (Vic), are harder to discern for school staff who are used to more "straightforward" adjustments being requested, such as ramps, sign language

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<sup>1</sup> <http://www.aeufederal.org.au/news-media/media-releases/2016/january/190116>  
<http://www.aeufederal.org.au/news-media/media-releases/2015/november/301115>  
<https://www.eduweb.vic.gov.au/edulibrary/public/commrel/about/teachingprofession.pdf>  
<http://www.abc.net.au/news/2015-02-13/teaching-students-to-sit-literacy-and-numeracy-test-to-graduate/6090062>

interpreters, software to enable visually impaired students access computers, and so on. Modifying the school environment by making adjustments such as:

- a. controlling auditory and visual stimuli;
- b. ensuring structure and routine;
- c. bringing in qualified professionals to address behaviours of concern;
- d. seeking the input of speech pathologists whose expertise is working with students with ASD;
- e. providing transition spaces for children arriving at school;
- f. providing quiet and welcoming breakout areas for students who temporarily have to leave the classroom for a break;
- g. modifying the teaching of the curriculum;

and other adjustments are perhaps not viewed in the same way as the more traditional adjustments, and sadly, school staff at times are not prepared to make these adjustments.

14. Students with ASD who have to move from school to school, sometimes numerous times within their primary school life, provide us with a strong indication that they are not being provided with the adjustments they require. Parents making legal discrimination claims against the Department of Education and Training and the private schooling sector, constitute a poor substitute for preventative support for students with ASD.
15. The failure to fund schools adequately for students with disabilities generally, has been well documented<sup>2</sup>. However by its very nature, ASD can require a generally high level of support, particularly when the student themselves is faced with inexperienced teaching. Given that ASD is a social and communication disorder, and requires a language impairment for diagnosis, a range of professionals may be required to competently assist in the drawing up of Individual Education Plans in order to be educationally proactive. Speech Pathologists, Paediatricians, Psychologists and Behaviour Analysts may be required to assist in supporting schools in ensuring their education environments are accessible to students with ASD. The ongoing complaints about education received by DDLS indicate that school employed therapists have not been sufficiently skilled to address presenting problems in the education of students with ASD. In addition, clearly a conflict of interest exists for therapists working for education authorities and making recommendations about individual students that incur significant costs. The funding associated with this level of support is not available to most schools, which are ostensibly not able to directly access extra funds from the Department of Education and Training.
16. Issues associated with not having the funds or expertise to expertly address the education of students with ASD not only result in punitive decisions being made, but also restrictions such as part-time attendance due to not having sufficient funding for an aide - the most common response to a school receiving funding for a child with ASD.

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<sup>2</sup> "Held Back-the Experience of Students with Disabilities in Victorian Schools" Victorian Equal Opportunity in Human Rights Commission, p 152.

## 17. Funding

18. As indicated above, funding of individual students has been highlighted for many years. Changes in 2009 to the communication impairment guidance notes for speech pathologists, which effectively altered the Department Of Education & Training's individual funding criteria for ASD resulted in "high functioning" ASD students losing access to funding.

19. The funding program used by the Department of Education and Training is the Program for Students with Disabilities. Due to community pressure, it was reviewed last year however the disability and parent communities continue to wait for any outcomes.

## 20. Recommendation:

21. Funds be made available by the Department of Education and Training, and schools in the private sector, to support the full inclusion of students with Autism Spectrum Disorder in Victorian schools. The funds should be responsive to individual education need, not diagnosis.

## 22. **Bullying**

23. Bullying in both "special" and mainstream schools of students with ASD is common and has been the subject of much research<sup>3</sup>. Parents not only complain of bullying of their children by other students, but by teaching staff.

24. Particularly with "high functioning" ASD, there is often a disbelief/lack of acceptance/cynicism about the genuine nature of the disability. Staff and students often refuse to accept that a student who can be of average/high intelligence can also have social impairments that affect their ability to act as others do (even if such a thing is desirable).

25. Acceptance and celebration of difference, and the hurtful nature of bullying to all, does not seem to be ingrained in bullying programs. In fact, "no bullying" policies and "restorative justice" responses do not assist. Policies, particularly for young children, are meaningless. Restorative justice programs are reactive rather than proactive. The continuing high statistics of bullying against students with Autism Spectrum Disorder indicate that school approaches are not succeeding. Cyber bullying has been known in some instances to result in suicide attempts and therefore dealing with this issue is of extreme importance.

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<sup>3</sup> <http://link.springer.com/article/10.1007/s10803-011-1241-x>  
<http://www.amaze.org.au/uploads/2011/08/Fact-Sheet-Bullying-and-Autism-Spectrum-Disorder-Aug-2011.pdf>

26. Recommendation:

That Victorian School Bullying programs are reviewed by an external working group whose responsibilities will be to look at successful anti-bullying programs in other countries.

27. Autism Spectrum Disorder and Legal Issues reported to DDLS

28. **Case Study No 1.**

29. Jimmy was diagnosed with Asperger's Syndrome in 2009. Jimmy has a low IQ compared to others his age and low verbal skills. As a result of his Asperger's Syndrome, Jimmy sees a paediatrician who oversees his development. He also sees a psychologist.

30. Jimmy's behaviour had been professionally linked to his disability.

31. Jimmy was enrolled in the local school.

32. His parents alleged that the school (teachers, principal, and administration) behaved in a way that victimised Jimmy and his parents because of Jimmy's Asperger's Syndrome. His parents also allege that the school did not accommodate Jimmy's needs.

33. On numerous and separate occasions, school staff belittled Jimmy's behaviour in front of Jimmy and his classmates. Some staff (including the principal) did not acknowledge Jimmy's disability as being genuine/important.

34. Jimmy was subjected to school disciplinary processes on various occasions because of his behaviours. On one occasion Jimmy was disciplined for whistling in class. As a result, he was excluded from class and reprimanded by his teacher. Parents and his doctor had linked Jimmy's whistling with him feeling happy.

35. Jimmy's teacher told his mother that despite Jimmy's disability, she would not treat him differently.

36. When speaking to Jimmy, a staff member likened his disability to 'a game'. A senior school staff member questioned his diagnosis and requested his parents to send medical records more than once proving the disability.

37. Jimmy ultimately was removed from the school by his parents.

38. Jimmy's parents allege discrimination and are seeking an apology, compensation for pain and suffering linked to school staff failing to meet his individual needs, victimising him, and requiring him, by those failures, to move to another school.

39. **Case Study No 2**

40. Morris's daughter was taken from his care by the Department of Health and Human Services (DHHS) on the basis that he was not fit to be a parent. Morris argues that this is contrary to numerous reports. Both Morris and his daughter have Asperger's Syndrome. Morris also has a history of mental illness.

41. As a result of his Asperger's Syndrome and his developing depression, Morris is struggling to represent himself in court and is finding it difficult to cope with the relevant legal processes and government departments.

42. Morris feels stigmatised because of his disability and mental health issues by the Courts and Government Departments. He feels 'worthless'.

43. **Case Study No 3**

44. Kate has Asperger's Syndrome, severe depression and suicidal tendencies. There is currently a dispute between Kate's parents as to legal custody. One party (Kate's biological father and his partner) claim that the other party (Kate's biological mother and her partner) should not have custody of Kate. The mother's partner has ADHD. Kate's father also claims that the mother's parenting has contributed to Kate's disabilities and should therefore be removed from her care. He is refusing to authorise medical assistance for Kate.

45. Kate's biological father and his lawyers claim that Kate's mother's partner's ADHD is a reason as to why Kate should not be in her mother's care. However, the mother's position is that having ADHD is no contributory factor to Kate's current disabilities and certainly no cause.

46. **Case Study No 4**

47. Belinda is a teenager who has just started high school. Belinda has Autism Spectrum Disorder, auditory difficulties and a suspected learning disorder.

48. When Belinda's mother was searching for a school for Belinda she approached the high school who assured Belinda's mother that her disability

would be accommodated and staff were committed to offering an education environment suitable for Belinda's needs.

49. After enrolment, it was quickly apparent to Belinda's mother that the school was not equipped to accommodate Belinda. The school had not used visual tools as recommended to accommodate Belinda's learning style. Belinda's anxiety, associated with her Autism, was heightened by her move to secondary education and was not addressed by the school.

50. Other students had quickly learnt enough about Belinda's Autism to know how to upset her, and regularly did so. As a result, Belinda became sufficiently stressed to start having suicidal thoughts. School staff were unmoved by the situation and offered nothing more constructive.

#### 51. **Case Study No 5**

52. Rowena is in primary school and has Autism Spectrum Disorder and associated behaviours of concern. She attends a Specialist School.

53. The Principal told Rowena's mother that Rowena would be finishing at the end of the term as it "wasn't working out". The principal said that the problem was that Rowena didn't listen when they told her what the consequences of her behaviours would be and continued to exhibit behaviours of concern.

54. On one occasion Rowena had a "meltdown" for an hour, and three staff were unable to effectively address the issue. Rowena ran out of the school and absconded.

55. The principal said that the meltdown was too loud, they had to close the door downstairs, and it had upset other children.

56. The principal said that Rowena should be taught at a specific autism school. Rowena's IQ was too high for a special development school.

57. Previous to this, Rowena had attended a Catholic school successfully.

#### **Recommendations**

A. Funds be made available by the Department of Education and Training, and schools in the private sector, to support the full inclusion of students with Autism Spectrum Disorder in Victorian schools. The funds should be responsive to individual education need, not diagnosis.

B. That Victorian School Bullying programs are reviewed by an external working group whose responsibilities will be to look at successful anti-bullying programs in other countries.

C. Training in ASD be provided for the judiciary.