

Australian Disability Law Journal

ISSN 1834-9609

16 July, 2007.

Issue #: 200701

Publisher: **Australian Law Publishers** Pty Ltd [ACN 010 615 933] [AuLP] E: AustLawPublish@AustLawPublish.com

<http://austlawpublish.com> 254 Hawken Drive, St Lucia, Qld. 4067.

Skype: russellmathews

Editor-in-Chief: **Russell G H Mathews BCom BSc LLB BA**

keywords: Disability Discrimination Act 1992 (Cth); Special Needs [SN]; SN assessments; Direct discrimination [DD] v. Indirect discrimination [ID]; definitions SN, DD, ID; Special Needs Certificates; New Journal from AuLP, **Special Needs Certificate for: with ISSN 1835-0038**; first issue 13 August, 2007; Centrelink; [email Centrelink on srt.mailbox@centrelink.gov.au]; Disability Support Pensions; Homelessness; Australia's water crisis; pain carrying buckets of water; srt.mailbox@centrelink.gov.au; Almost all organisations in Australia are duty bound by the DDA. :

Attention MEDIA BUYING AGENTS: Discover the cost-benefit imperative of advertising in our journals. <http://austlawpublish.com/austlawpublishAdvertising.html>

Special Needs Revolution

By Alex Gordon LLB

Denial of Special Needs [SN] of the disabled is the most prevalent abuse of the disabled in Australia. One does not need to qualify for the Disability Support Pension to be disabled. The definition of what is disabled in the Disability Discrimination Act 1992 [DDA] is very wide as you can see in the reproduction of it later in this journal, page 13.

So many of those who should know what constitutes SN, such as public servants, especially in the Commonwealth [Cth] Public Service/Sector, [the DDA is Cth legislation], are unaware of the impact of the DDA, and commit their ignorance to writing. For instance, Lynn Hyde, Investigation

Officer with the Cth Ombudsman in Brisbane, [Google will index all that detail from this print journal in our online archive – where it will be mainly read], has stated in an official letter of the Commonwealth Ombudsman, dated 21 May, 2007,

“According to our understanding of the DDA it appears that this would only be relevant if the ATO treated a person with a disability less favourably than a person without a disability in the same circumstances.”

Well that is only part of the discrimination against the disabled. That refers to DIRECT disability discrimination [ddd], as per Section 5, DDA. But there is also INDIRECT disability discrimination [idd] which is also illegal, as per Section 6, DDA, as reproduced on page 13 of this journal. Idd is basically denying a disabled person his/her SNs. This could be considered as equality of opportunity at different stages in the endeavour to access goods or services. Entities responsive to the DDA, must accommodate all SN of people with whom they deal, subject only to the so doing not imposing “unjustifiable hardship”.

We will discuss here, now, in this issue of ADLJ, **three prominent situations where the frequent ignorance and denial of the SNs of disabled people occurs currently:** firstly, **Centrelink [Clk]** and **Disability Support Pension [DSP]**, and secondly, something for which Australia should be so greatly ashamed, the very many **homeless people**, the majority of whom are disabled in a significant way, and thirdly, the Australia Wide water crisis and **water restrictions**, in particular the **carrying of buckets** by many with some physical ailments. There are particular unique characteristics of each of those three classes, but disability is common to all. Disability and SNs are very much a Health problem.

We are NOT health professionals, but we can do much to manage the situation with production and dissemination of important information and ORGANISE an attack on this Health problem through our print journals archived online.

Centrelink and Disability Support Pension:

[All Disability Support Pensioners have nothing to lose but much to gain by putting on the record with Centrelink that they require their Special Needs to be met by Centrelink, and to that end, that Centrelink [Clk] fund a Special Needs' Assessment [SNA] being undertaken for that Pensioner. A phone call to Clk does not guarantee that it is on the record. As well, you may have to wait on while on hold on the phone, until a Clk staffer believes s/he should do some work, and answer your call. Doing it in writing and with a record is essential, so you do not have to overcome their denial of receipt, and the best way of doing that is by email.

Centrelink can be emailed on:

srt.mailbox@centrelink.gov.au/.

That email actually goes to: Ministerial Team, Parliamentary and Executive Support Branch, Centrelink.]

If Clk receive a substantial number of email on that address, they are likely to disable it, a usual Public Sector parasite response. If that occurs such that your email is not sent, rather than waste that email, one option is to google, pages from Australia, the term <centrelink email>./ We have found that produces many email addresses of the form xxxxx@centrelink.gov.au /. While that may be a staffers “private” email inbox, each is duty bound to forward it to the relevant section. Each staffer should realise that you have a copy of the email that you have sent. Legally, each of those email addresses, is a centrelink address. Some may be already disabled, but it is unlikely that all are disabled.

All DSPers should realise that they are not obliged to supply Clk with a SNA, but Clk is DUTY bound, by its FIDUCIARY DUTY, to obtain a SNA so they KNOW they are DUTY BOUND to be accommodating of the SNs of the DSPer, as Clk is required to do per the DDA. Additionally, by its treaty obligations, the Federal Government is required to ensure that Clk is honouring its DDA obligations.

What is a FIDUCIARY DUTY??

To emphasize FD, we have assembled some detailed definitions, [we could write a book on FD, and still leave much uncovered].

Black's Law Dictionary describes a fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another." A fiduciary has a duty to act primarily for the client's benefit in matters connected with the undertaking and not for the fiduciary's own personal interest. Scrupulous good faith and candor are always required. Fiduciaries must always act in complete fairness and may not ever exert any influence or pressure, take selfish advantage, or deal with the client in such a way that it benefits themselves or prejudices the client. Business shrewdness, hard bargaining, and taking advantage of the forgetfulness or negligence of the client are totally prohibited by a fiduciary.

A fiduciary Duty is far more onerous for the Fiduciary [the one having the Fiduciary Duty], than is the Duty of Care, which can itself be quite onerous.

Wikipedia, the FREE encyclopedia defines [and we approve of this definition] fiduciary thus:

A fiduciary duty is the highest standard of care imposed at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom they owe the duty (the "[principal](#)"): they must not put their personal interests before the duty, and must not profit from their position as a fiduciary, unless the principal consents. The fiduciary relationship is highlighted by good faith, loyalty and trust, and the word itself originally comes from the [Latin](#) fides, meaning faith, and fiducia.

When a fiduciary duty is imposed, equity requires a stricter standard of behaviour than the comparable [tortious duty of care at common law](#). It is said the fiduciary has a duty not to be in a situation where personal

interests and fiduciary duty conflict, a duty not to be in a situation where their fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from their fiduciary position without express knowledge and consent. A fiduciary cannot have a conflict of interest. It has been said that fiduciaries must conduct themselves "at a level higher than that trodden by the crowd."^[1]

Because Centrelink is a corrupt organisation where the staff feel they have immunity to treat clients, especially the disabled, in an abysmal fashion, they are not afraid to do it. One cannot sue in Court, [and that would be useless as the courts cannot be relied upon to be fair], as the first avenue of complaint has to be the Human Rights and Equal Opportunity Commission [HREOC], WHICH WE KNOW TO BE CORRUPT, and has been for decades.

The HOMELESS:

By far the majority of homeless people are dysfunctional to some extent because they are disabled. It is usual that some single event can be identified that led to their homelessness. That is so often their being cheated because they are disabled and advantage is taken of that fact. That is disability discrimination in itself, but, so many individuals, including family members, are not responsive to the DDA. Often a criminal element/aspect is also involved, but police forces are corrupt and there is no graft opportunity for them is pursuing a case cheating of the disabled. In fact, police and other public servants often see a personal benefit to themselves in assisting to cheat the disabled person about to become homeless.

Homelessness is such a complex and many dimensional problem. It is unlikely for any situation/case to be replicated precisely. We, at AuLP, would like to be instrumental in reversing the problem. We do not believe we can offer the total solution for all homeless people, but we feel that the Special Needs Certificates [SNC] that we propose below, will relieve most, if not all of the homeless and disabled people, to some extent, and be a total solution for a few, being enough, together with their own efforts, to throw off the burden of homelessness. We do not for a moment pretend that it would be easy. Homelessness is regularly the result of a snowballing of problems.

People carrying buckets of water during our Australia Wide water crisis.

Many people who would not consider themselves to be disabled and who could definitely not qualify for the DSP, would still qualify under the definition of disabled in the DDA as shown as the end of this article. This would apply to people with arthritis, not necessarily severe [as per Section 6 (b), it would depend upon what is reasonable]. We would consider that infliction of ANY pain is unreasonable. Of course, the parts of the definition relating to a time other than the present, would not be applicable to reasonableness, except to the causing the possibility of injury and hence future disability. People with sore or injured joints, weakened bones and sore or injured muscles would be disabled per the DDA and provided the required evidence was provided, we will issue the Special Needs Certificates [SNC] as detailed below.

We, at AuLP believe that we can rely on only our own selves. We have to act. We, at AuLP intend to be in the forefront of that action. We intend to use our qualifications and knowledge and our media for that purpose. There is much we can do and on many levels. We will discuss that later.

Initially, we should investigate the nature of SN s. SN is not defined in the DDA. In fact is is mentioned in the DDA, only twice. So, what are special needs? SN is not a foreign concept. We googled with the phrase in quotes: “special needs”. WWW produced 17.3 million heads, and pages from Australia produced 1.57million heads.

A clear example of a SN is the provision of wheelchair access ramps. These are a Special Need for people who are in wheelchairs. The effect of being in a wheelchair is that access to many places would be unavailable if access was by stairs. To alleviate that effect, not having access in a wheelchair, is the provision of wheelchair ramps. The important phrase is to “alleviate the effects of the disability”. For almost each disability there will be ways of alleviating the effects of that disability. There may be one of more ways.

Often, the special need does not need to be a special provision as it is already standard, such as flat ground level access so that a wheelchair can readily enter or exit, such as say, in a car service station, for example. However, if there is a “requirement or condition”, as per Section 6, DDA, that adversely affects only a disabled person with any disability, then that

“requirement or condition” amounts to “Indirect discrimination” of Section 6 DDA, of that disabled person. Examples would be stair access, a requirement that animals are forbidden, or a requirement that any information that a person is permitted to transcribe by hand cannot be transcribed by camera. In sequence, these would amount to Indirect Discrimination of disabled persons who are respectively, in a wheelchair, blind, or unable to hold a pen to write. The alleviation does not need to be complete. A wheelchair ramp does not enable a paraplegic to walk. It is also illegal for an organisation to require a disabled person to prove that they can not have equivalent “alleviation” by another means. That could be requiring a blind person to prove that a white cane would not provide them with equal alleviation as does their guide dog.

This was the situation with Douglas Porter, the Registrar of The University of Queensland. A disabled student, not blind nor hearing impaired, but still disabled, had assistance dogs. Porter wanted the disabled student to prove, with a medical report from a doctor, that the student's disabilities could not be “alleviated” with drugs. That actually occurred. That was disability discrimination in itself.

Porter had also seen on the HREOC website, that “companion dogs” were not covered by the DDA. Porter attempted to show that the student obtained benefits of companionship from the dog, so therefore, Porter claimed that the dog was not an “assistance dog” but a companion dog and not covered. That is an example of a logical fallacy. It is undoubted that all disabled persons with assistance dogs, have some emotional attachment to those dogs.

HREOC is responsible for implementing the DDA. We believe HREOC should be providing DSPers who have SNs with Special Needs Certificates [SNCs], because often, SN are not apparent. It has come to our attention, that when SNs are not obvious, and disabled people are addressing their special needs, they are given grief and the SN refused.

Two examples spring to mind. One is where a Disabled person who has a SN of having assistance dogs. He is neither blind nor hearing impaired. All that is required is that his assistance dogs “alleviate the effects of his disability”. He has expert documentary evidence that that is the case. Many people see him, able bodied, and not blind, as not entitled to take his dogs where he is legally entitled to do by the DDA. He is repeatedly asked

for “evidence”. The people asking are not lawyers. They could not interpret that evidence. We will advise you shortly, of what WE WILL DO to address this shortfall.

Another example occurs where the disabled person has a writing disability, and cannot properly hold a pen, despite repeated attempts to address his disability. He has been diagnosed as having an orthopaedic disability in his right hand/thumb. He cannot take notes in lectures nor write exams, nor write to transcribe written or printed material. He uses a keyboard with RAM memory to take notes in lectures, a computer/word processor to answer exam questions, and a digital camera on “closeup” setting, to transcribe printed text, but only where he and everyone, is permitted to transcribe the printed text. He was recently in the Australian Electoral Office in Brisbane, and transcribing details from the monitor screen with his digital camera on “closeup”, setting, when he was accosted by public servants and prevented from transcribing the details when everyone else not similarly disabled, could. **He has sent repeated communiques to The Hon. Gary Nairn MP, Special Minister of State with Ministerial Responsibility for Australian Electoral Commission, and not even received an acknowledgement despite his request for that initially.** He has just been ignored.

We propose to issue Special Needs Certificates [SNCs] to all disabled persons who apply to us for them, provided they supply the evidence as we direct. Although we, at AuLP are all qualified with LLBs, our Editor-in-Chief Russell Mathews, has agreed to sign all certificates. Russell has chosen to not seek admission to the Supreme Court of Queensland as a Lawyer, although he is fully qualified and has substantial experience in courts, business and the law. He has the skill to do that; issue SNCs, [and to be a practising lawyer]. These will be of great assistance to the disabled persons who apply to us for those certificates. As the disabled person requesting these certificates, are disabled and so owed a Fiduciary Duty by anyone and so everyone who can assist them, Russell feels he is duty bound to provide the SNC provided it is valid to do so. Hence, Russell will do that. Legal bodies and lawyers' “clubs” may attempt to sue Russell for “practicing law” while not admitted to the Supreme Court. We will ensure that should they try that, it will be widely publicised by us. HREOC should be doing this, but have abrogated their responsibility. Such action as suing Russell to prevent his signing these Special Needs Certificates,

[SNC] by those “legal parasites” will be hurting disabled people and so amount to Disability Discrimination.

We will produce those SNCs as our new Journal titled **Special Needs Certificate for:** with **ISSN 1835-0038**. We will publish the first Issue of **Special Needs Certificate for:** with **ISSN 1835-0038** next month on Monday, 13 August, 2007. Also, next month on Monday, 13 August, 2007, we will publish in ADLJ the specific evidence we require to be able to “issue” a SNC.

These **Special Needs Certificate for:** with **ISSN 1835-0038** Journals will be obtained by and held by, the National Library of Australia in Canberra, the State Library of Queensland in Brisbane and the Queensland Parliamentary Library. Importantly, they will be archived on our AustLawPublish.com site, in colour. In that way, when ever a Disabled person with SNs, and who has an Issue of SNCf: devoted to their Special Need, they will be able to include the hyper-link to those facts, in their communications. If you are the disabled person, this will prevent your needing to explain your disability and Special Need. We will be stating that we have seen the evidence of your disability and the evidence of your SNs. We will not be dishonest so we will need to see that, and be confident that the evidence is bona fide. Each Journal will relate to only one person, but there will be no limit on the number of journals with that title we will publish, at the one time, even with the same date. The issue number of each will be of the form 200701.alpha.numeric, with your name part of the alpha.numeric, as with many of our other journals. [Google should index that from our archived copies.]

We will have a summary on the front page and if more detail is needed it will be carried in subsequent pages. We will suggest to persons that they print the first page, in colour if possible and have it laminated. Those people can then carry it with them and produce it, whenever someone attempts to deny them their SNs. We would also suggest that if the person is a Disability Support Pensioner [DSPer], he or she should provide a copy of that front page, [or even better, the whole articles] [we intend to have its URL listed on that page] to Centrelink [Clk], and advise Clk that they wish Clk to accommodate their SNs. In fact, once Clk has the detail of the SNs they are obligated to accomodate them. We suggest that the best way to provide that to Centrelink is to send Clk a .pdf copy of the journal which people can download from the internet, by email. They could also advise Clk of the URL of the page, again by email. The email address for Clk is

srt.mailbox@centrelink.gov.au /.

Centrelink's classification of "disabled", for DSP purposes, is far more restrictive than the DDA's. Hence all DSPers will be covered by the DDA. Centrelink is an organisation that is responsive to the DDA. Thus, Clk is obligated to meet the SNs of all DSPers. Under the Fiduciary Duty [FD] of Common Law [CL], at least and probably also per the DDA, Clk is obligated to KNOW the SN of its disabled "clients", so that Clk can accommodate them. Clk can hardly claim ignorance of the fact that Disability Support Pensioners [DSPers] are disabled. While it may be obvious to know the SNs, or one anyway, of a paraplegic in a wheelchair, [that is a wheelchair ramp], in most cases the SN is not so apparent. In fact, we, at AuLP, believe that there needs to be only one case of one DSPer having their SNs denied, to justify Clk's being required to undertake for ALL DSPers, a Special Needs Assessment [SNA], so that Clk knows the nature of all the SN that it is required to accommodate by the DDA. The DDA implicitly requires this course of action for the DDA to be workable.

It would make practical sense, to do the SNA at the same time as the "client" is assessed by Clk as being "disabled" for the purposes of the DSP. Clk staffers are not equipped or qualified to undertake a SNA. As the SNA is required for Clk's benefit, [so they know how to treat the pensioner so as not to be in breach of the DDA]. Hence, it should not be required of the DSPer to pay for the cost of the SNA.

Clk needs to be taken to task on the matter of Special Needs. We, at AuLP know of a case where the DSPer has supplied to Clk, his SNA, yet Clk, just ignored it, denied him his SNS, which, as a direct consequence, put him in breach of their demands, so Clk could take a heavy hand to the DSPer, and cancel his pension, which they did.

In this case, the DSPer appealed his case to the Social Security Appeals Tribunal [SSAT]. The SSAT in its reasons, stated that it did not propose to consider the DDA or the necessity for a SNA. Clearly, the SSAT abrogated its responsibility. It is required to apply the law to the situation, but it did not.

We, at AuLP are all trained as lawyers with LLBs. We are better trained and qualified than by far the majority of Lawyers in Australia. We do not

work in the Court/Legal system. Hence we are not dependent upon it for our living. We have the skill to know that the Government Administration, Legal, Court and Judicial System [each system is part of a larger system] is corrupt, but we do NOT have the need to be silent about it for the sake of our livelihood.

This means we cannot rely upon the legal system. We need to act ourselves. We will explain the acts that people can do themselves and the measures we will take on a collective basis.

As we state above, but repeat here, [as the reality is that few people will read this article in its entirety, but will read it online and probably from a Google search and a search within the articles], **we propose to issue Special Needs Certificates [SNCs] to all disabled persons who apply to us for them**, provided they supply the evidence as we direct. Although we, at AuLP are all qualified with LLBs, our Editor-in-Chief Russell Mathews, has agreed to sign all certificates. Russell has chosen to not seek admission to the Supreme Court of Queensland as a Lawyer, although he is fully qualified and has substantial experience in courts, business and the law. He has the skill to do that; issue SNCs, [and to be a practising lawyer]. These will be of great assistance to the disabled persons who apply to us for those certificates. As the disabled person requesting these certificates, are disabled and so owed a Fiduciary Duty by anyone and so everyone who can assist them, Russell feels he is duty bound to provide the SNC provided it is valid to do so. Hence, Russell will do that. Legal bodies and lawyers' "clubs" may attempt to sue Russell for "practicing law" while not admitted to the Supreme Court. We will ensure that should they try that, it will be widely publicised by us. HREOC should be doing this, but have abrogated their responsibility. Such action as suing Russell to prevent his signing these Special Needs Certificates, [SNC] by those "legal parasites" will be hurting disabled people and so amount to Disability Discrimination.

We will produce those SNCs as our new Journal titled **Special Needs Certificate for:** with **ISSN 1835-0038**. We will publish the first Issue of **Special Needs Certificate for:** with **ISSN 1835-0038** next month on Monday, 13 August, 2007. Also, next month on Monday, 13 August, 2007, we will publish in ADLJ the specific evidence we require to be able to "issue" a SNC.

These **Special Needs Certificate for:** with **ISSN 1835-0038** Journals will be obtained by and held by, the National Library of Australia in Canberra, the State Library of Queensland in Brisbane and the Queensland Parliamentary Library. Importantly, they will be archived on our AustLawPublish.com site, in colour. In that way, when ever a Disabled person with SNs, and who has an Issue of SNCf: devoted to their Special Need, they will be able to include the hyper-link to those facts, in their communications. If you are the disabled person, this will prevent your needing to explain your disability and Special Need. We will be stating that we have seen the evidence of your disability and the evidence of your SNs. We will not be dishonest so we will need to see that, and be confident that the evidence is bona fide. Each Journal will relate to only one person, but there will be no limit on the number of journals with that title we will publish, at the one time, even with the same date. The issue number of each will be of the form 200701.alpha.numeric, with your name part of the alpha.numeric, as with many of our other journals. [Google should index that from our archived copies.]

This is the inaugural edition of the Australian Disability Law Journal. We believe this will become our flagship journal. Much of Australia's population believe that disability law has arisen only since the advent of the Disability Discrimination Act 1992 [DDA], of the Australian Parliament using its treaty power in the Australian Constitution.

For centuries Common Law [CL] has had the concept of Fiduciary Duty. Wikipedia, the FREE encyclopedia defines [and we approve of this definition] fiduciary thus:

A fiduciary duty is the highest standard of care imposed at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom they owe the duty (the "principal"): they must not put their personal interests before the duty, and must not profit from their position as a fiduciary, unless the principal consents. The fiduciary relationship is highlighted by good faith, loyalty and trust, and the word itself originally comes from the Latin fides, meaning faith, and fiducia.

When a fiduciary duty is imposed, equity requires a stricter standard of behaviour than the comparable tortuous duty of care at common law. It is said the fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where their fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from their fiduciary position without express knowledge and consent. A fiduciary cannot have a conflict of interest. It has been said that fiduciaries must conduct themselves "at a level higher than that trodden by the crowd."^[1]

By Section 4 Interpretation: for definitions:

"disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness;

or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

DDA, Section 6 Indirect disability discrimination

6 Indirect disability discrimination

For the purposes of this Act, a person (*discriminator*) discriminates against another person (*aggrieved person*) on the ground of a **disability of the aggrieved person** if the discriminator **requires the aggrieved person to comply with a requirement or condition:**

- (a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and
- (b) which is **not reasonable having regard to the circumstances of the case**; and
- (c) with which the aggrieved person does not or is not able to comply.

srt.mailbox@centrelink.gov.au

This is the new **email address** for Centrelink.

Attention MEDIA BUYING AGENTS: Discover the cost-benefit imperative of advertising in our journals. <http://austlawpublish.com/austlawpublishAdvertising.html>