

By Graeme Innes

This edition of *Precedent* comes at a time when Australia is increasing its focus on the rights of people with disability. For too long, and for numerous reasons, people with disability have been discriminated against and misunderstood, resulting in disadvantage and exclusion. Change has been piecemeal and slow. This edition provides lawyers with information about how the landscape may be about to change, and practical suggestions to ensure that the rights of people with disability are protected in our community now.

Phillip French and Rosemary Kayess kick off the edition with information about the new Convention on the Rights of Persons with Disabilities, which has been signed by the Australian government. This Convention is described as 'a great landmark'. An overview of the Convention is provided, and the pre-ratification process for Australia is outlined.

The next two articles provide lawyers with strategies to ensure that people with intellectual disability have meaningful access to justice, and alternatives to jail if convicted. Linda Steele presents evidence indicating that between 23-37% of people appearing before Local Courts could have an intellectual disability. Information about what it means to have an intellectual disability, strategies to enhance communication, the benefits of having a support person and an overview of available support services are outlined. Peter McGhee and Siobhan Mullany describe strategies to enable the court to consider a therapeutic rather than a punitive approach to sentencing.

Ben Fogarty explores the complex issue of disclosure of disability in the workplace. A number of important practical

and legal considerations are analysed to help weigh up the often competing benefits, risks, obligations and rights of jobseekers and employees with disability.

For many people with disability, an inaccessible built environment prevents full economic and social participation. Michael Small explores the inconsistencies between current building and discrimination laws and describes the progress being made in this area. Details are also provided to assist lawyers representing complainants and respondents to understand discrimination complaints processes.

Many people with disability and families suffer hardship as a result of the *Migration Act* 1958 being exempt from the operation of the *Disability Discrimination Act* 1992. Elizabeth Waldeck and Robert Guthrie examine the health criteria and assessment of 'significant cost' to the Australian community, and provide examples where cases have been reconsidered due to jurisdictional error.

And finally, Patrick Mugliston examines the law in relation to undue influence and explores the merits of creating a discretionary trust as a way of protecting assets from 'opportunists', which can be a very real problem for many people with disability.

As the Commissioner responsible for disability discrimination, I commend these articles to you. ■

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