

Topic 3: Law in Practise

Focus on the **mechanisms for achieving justice** and the **responsiveness of the legal system** when attempts are made to achieve justice.

- Disabled People -

The issue:

Disabled individuals are treated as inferior people with few rights; patronising prejudicial attitudes inhibit their pursuit of equality and the achievement of justice.

Disabled people suffer from significant discrimination, commonly in employability, educational enrolments and court proceedings. This derives from commonly negative social assumptions, where it is believed that disabled people are *'incapable of fulfilling tasks, linked with criminal activity and unreliable in what they say'*. ↓

In regards to disabled people, the Australian legal system undermines the legal concept of 'natural justice' – which encompasses the right to be heard, and the right to a fair trial conducted by an unbiased decision-maker.

Disabled people are naturally vulnerable individuals, they suffer from physical mistreatment, financial exploitation and misunderstood intentions. As a result, they are overrepresented within the judicial system as either victims, witnesses or accused offenders.

Whilst in court, disabled people are often less able to satisfactorily explain incriminating circumstances to police, judges and juries. Raising assumptions of guilt and dishonesty.

Australian legal system is continually scrutinised by the United Nations, and its Secretariat 'Division for Social Policy and Development Disability'; for failing to achieve justice for disabled individuals, and in the process, numerous **breaching their human rights**.

Disabled people are subjected to lower levels of education and subsequently suffer employment complications. Disabled children suffer inadequate access to specialised learning and their enrolment to schools are obstructed.

According to Children with Disability Australia (CDA);

- 20% of all students with disabilities are enrolled only part-time.
- 42% of disabled children are excluded from school activities (excursions/camps)
- Only 52% of all disabled students complete school.

According to a 2009 Australian Bureau of Statistics (ABS) report, only 51% of all people with disabilities are employed; which ranks Australia 21st out of 29 OECD countries in disability employment participation rates. (*'Employment and Disability; a complex problem with no simple solution'*, ABC, 2014)

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Legal responses to the issue:

[Disability Services Act 1986 \(Cwlth\)](#) – Empowered the [Australian Human Rights Commission](#) to investigate disabled injustice, and subsequently develop reports and recommendations.

Although principle 2 of the Act stipulates that, *‘people with disabilities have the same fundamental rights all members of Australian society’*, much remains inaccessible to them.

Disabled people do not receive equal treatment within the criminal justice system, as they are patronised by prejudicial attitudes which assume unreliability and links with criminal activity. This is exemplified through the flawed common law principle of being *‘unfit to plead’*, which **removes** disabled people from the trial process and instead incarcerates them into supervised prisons or hospitals.

This legal injustice violates the [Disability Discrimination Act 1992 \(Cwlth\)](#), whereby unconvicted sentencing and the presumption of guilt not only invokes individual’s rights to liberty; but it also obstructs their pursuit of justice and most importantly their self-determination. Moreover, it empowered the Australian Human Rights Commission to investigate and work towards achieving disabled justice;

Non-legal responses to the issue:

[Intellectual Disability Rights Service \(IDRS\)](#) – Offers free legal aid and support to disabled individuals. This is due to the many situations where disabled people fail to accurately interpret legal processes as either witnesses, victims or accused individuals.

The organisation is however suffering from progressively decreased funding, which has an adverse effect on the community framework to provide disabled people with access to the legal system. (*Journal of Policy and Practise in Intellectual Disability, SMH, 2013*)

Evaluate the effectiveness of the legal and non-legal responses to this issue:

The underlying implications can be examined in the case of ‘Maria’, who suffers from cerebral palsy and speech impairments. After falling victim to sexual assault, no communication support staff were available whilst reporting the incident to her local police station. This resulted in a **legally incomplete statement** and subsequently in a **non-conviction** during the court process. (*AHRC, ‘Equal Before the Law’, 2014*)

Had there been stationed IDRS staff available, Maria’s rights may have been upheld and justice ultimately achieved.

Accessibility, Protection of individual rights, Application of the rule of law

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- Women -

The issue:

Have been historically subjected to discrimination and perceived as powerless, whereby traditional roles of child-rearing and 'homemaking' obstruct women from achieving equality within society.

United Nations proclaimed 1975 as 'International Women's Year', which raised awareness and promoted issues experienced by women around the world. It **acknowledges discrimination faced by women.** ↓

This prompted the UN's - [Convention on the Elimination of All forms of Discrimination Against Women](#). (CEDAW) acknowledges the [Universal Declaration of Human Rights](#) as the basis of eliminating discrimination faced by women. CEDAW aims to provide women an equal place in society; whereby they are respected and not discriminated against in all forms of life.

The '**Glass ceiling**' relates to the invisible barriers obstructing women from progression; the concept is common in workplace scenarios where women fail to climb the corporate ladder.

The '**Sticky floor syndrome**' refers to women who occupy low-paying, low-mobility positions such as clerical and administrative assistants, mental health-care and child-care workers, and service and maintenance employees.

According to the Australian Bureau of Statistics, the **labour force participation rate** in **2014-2015** for people between the ages of 20 and 74 were; **65% for women and 78% for men.**

The '**Glass cliff**' is a concept of setting women up for failure in high-risk / high-responsibility jobs. It provides a false sense of equal leadership opportunity. (*SMH, 'Forget the glass ceiling: women in leadership are facing the glass cliff', 13/7/16*)

Legal responses to the issue:

[Administrative Decisions Tribunal Act 1997 \(NSW\)](#)

The **Equal Opportunity Division** of the **NSW Administrative Tribunal** hears complaints of discrimination. This creates a process of investigation whereby women can formally raise an issue of discrimination and work towards a negotiated resolution.

If this is unsuccessful, women can take their case to the **Equal Opportunity Division** of the **Administrative Decisions Tribunal**, which has the power to pass judgements and make binding decisions like a court.

[Sex Discrimination Act 1984 \(Cwlth\) – Section 7B](#)

Aims to eliminate discrimination on the basis of sex, marital status or pregnancy; in provisions of goods and services, along with accommodation and housing.

It makes sexual harassment behaviour as a form of discrimination, in employment and education illegal.

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'A person does not discriminate against another person by imposing, or proposing to impose, a condition, requirement or practice that is **reasonable** in the circumstances'.

The act allows the justice system to determine if discrimination is reasonable, which can be seen as an impediment to women's career prospects. It essentially allows some forms of discrimination to go unpunishable, ultimately **failing to protect women's rights**.

[Workplace Gender Equality Act 2012 \(Cwlth\)](#), aims to promote the principle of equal employment opportunity (EEO) for women.

It is a Federal Government attempt incorporating *Affirmative Action*, which encourages policies in organisations that eradicate barriers against women in the workplace.

Equal opportunity reflects women's right to;

- Equitable access to jobs.
- Career paths, training, and staff development.
- Equitable conditions of employment. (*Equal pay for the same job*)
- Flexible work hours to cater for family and caring responsibilities.

This legal response **aims to shift societal attitudes** through promoting;

- Treatment of people with dignity and respect.
- Unbiased management decisions.
- Job selection based on merit. (*The best person for the job*)

Non-legal responses to the issue:

Changing social attitudes and cultures have begun including mothers back into the workplace. This is supported by the growing occurrence of Child Care Services being introduced within the workplace itself, making coming back to work from maternity leave an easier process. [Westpac has incorporated this policy.](#)

The NSW Government's "***It Stops Here***" initiative aims to end family violence by means of raising awareness. The scheme helps coordinate the way government and non-government agencies respond and work together to prevent domestic violence.

The **Domestic Violence Disclosure Scheme** is a NSW Police Local Area Command pilot program which helps people who may be at risk of domestic violence. It is currently in effect between 2016 and 2018 in Oxley, Shoalhaven, Sutherland and St George local commands.

The **Women's Electoral Lobby (WEL)** is dedicated to creating a society where women's participation and potential are unrestricted, acknowledges and respected – and where women and men share equally in society's responsibilities and awards. This is achieved by;

- Lobbying governments to make legislative change.
- Publishing research papers and conducting campaigns – both to raise awareness.

[WEL's 'Women and Children's Safety Program' \(WCSP\)](#) offers 24-hour frontline support services as well as crisis and transitional accommodation for women and children suffering

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The **Australian Council of Trade Unions** campaigned to provide women with the right, and opportunity, to appeal an employer's unreasonable decision in refusing family flexible work arrangements. **Major flaw** in the *Fair Work Act 2009 (Cwlth)*.

United Nations' (CEDAW) has **influenced** Australia's provision of '**Maternity leave**' and other forms of '*paid parental leave*'.

The **Australian Human Rights Commission Conciliation Process** has a 70% success rate in resolving discrimination disputes through conciliation, **highly-effective**. Easily accessible through online complaints, which are guaranteed to be investigated within 14 days of first contact - and are completely free of charge. **Responsiveness, accessibility, Protection of individual rights.**

Evaluate the effectiveness of the legal and non-legal responses to this issue:

Accessibility, Protection of individual rights, Meeting society's needs

Legislative Domestic Responses:

Anti-discrimination legislation, both state and federal, provide far-reaching protection for women; this ensures that there are –

- Fewer restrictions as to what women can do.
- Women moving into the workforce in unprecedented numbers.

Women may however be limited by a lack of knowledge of rights or reluctance to exercise those rights. Reasons

for this include fear of dismissal (*Common in migrant casual worker scenarios*)

Although legislation has gone some way to protect women in the workplace; its ultimate effectiveness is undermined due to –

- The power imbalance between employer and employee.
- The reluctance to report discrimination.
- Lack of knowledge of rights or how to exercise those rights.

Blatant forms of discrimination have however started to disappear due to;

- Complaints against employers.
- Preventative effects of education and awareness campaigns and policies adopted by employers. (*Leads to gradual cultural and societal attitude change*)