

“The Convention on the Rights of Persons with Disabilities”: The Response of the Clinic

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Abstract

The Convention on the Rights of Persons with Disabilities (CRPD) which entered into force on 3 May 2008 offers the opportunity to people with a disability to press governments for change on the basis of rights accorded to them under the treaty. Article 13 of the Convention requires States to ensure effective access to justice for persons with disabilities on an equal basis with others. This article draws on the Australian experience. The Convention is particularly relevant in all States that have ratified it but can be used as an indicator of best practice by all States and organisations. Up to twenty per cent of all people have a disability and all clinics may have clients, staff and students with a disability. This paper examines the parameters of the right to access to justice as it relates to the clinic and proposes a set of guidelines drawn from the literature that enable clinics to assess their current practices.

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Repositioning disability as an inclusive concept embraces disability as a universal human variation rather than an aberration.¹

The Convention on the Rights of Persons with Disabilities (CRPD) and the associated Optional Protocol was adopted by the General Assembly of the United Nations on 13 December 2006. The Convention entered into force on 3 May 2008. The Convention lays down broad guidelines and each State has to determine how its provisions will be implemented. Each country that ratifies the Convention has to submit a comprehensive report on progress to an international monitoring body within 2 years.

The treaty has an Optional Protocol that sets up a communication procedure. This allows individuals, groups of individuals or people acting on their behalf to submit a communication to the Committee on the Rights of Persons with Disabilities (Committee) alleging violations of the substantive rights protected under the CRPD. The inquiry procedure under the Protocol allows the Committee to initiate inquiries into information indicating grave or systematic violations of the CRPD by a State. Parties to the Convention must separately sign and ratify the Optional Protocol and they must be parties to the Convention in order to become parties to the Optional Protocol.²

Why a special Convention?

Although other human rights conventions apply to people with disabilities, they have rarely been used to promote or protect their human rights. People with disabilities continue to experience widespread discrimination in healthcare, education, employment and other areas of their lives. Other treaties have not addressed the social, cultural, economic, and legal barriers that prevented people with disabilities from participating in their communities and fulfilling their human rights.

This treaty, the first human rights treaty to be adopted in the twenty first century, has a number of notable features in that;

- it involved a high level of participation by representatives of those directly concerned with the subject matter of the Convention—persons with disability and disabled persons organisations³
- was the most rapidly negotiated treaty ever⁴
- the Convention embodies an international movement away from a medical model or social welfare approach where people with disabilities are seen as passive recipients of services, and embraces a human rights-based understanding of disability.⁵

¹ Michael Ashley Stein, 'Disability Human Rights' (2007) 95 California Law Review 75.

² As at 2 January 2011, 97 countries had ratified the Convention. Australia did so on 17 July 2008 and ratified the Optional Protocol on 21 August 2009.

³ Rosemary Kayess, and Phillip French, 'Out of Darkness into Light? Introducing the Convention

on the Rights of Persons With Disabilities' (2008) 8(1) *Human Rights Law Review* 1, 3.

⁴ Kayess and French, above n. 3, 2.

⁵ Harvard Law School, *Why a Convention was needed* (2009) <<http://www.hpod.org/convention/why-a-convention-was-needed>> at 30 May 2009.

The text of the Convention was drawn up at the United Nations and disability rights advocates had an influential role at every step of the drafting process. People with disabilities represented not only themselves and their organisations, but governments as well. This was the first time that the United Nations allowed civil society to take such an active part in influencing how a human rights treaty was written.

In the past disability has been conceptualised through a medical model. This approach focuses on the particular attributes of a person with a disability with a view to providing treatment, or cures to help the person get as close as possible to what is regarded as a social norm.⁶ The social model of disability on the other hand “locates the experience of disability in the social environment, rather than impairment and carries with it the implication of action to dismantle the social and physical barriers to the participation and inclusion of persons with a disability”.⁷

In the past the most common approach to disability law has been what Fredman⁸ describes as a “minority approach” whereby a class of persons is identified that is entitled to protection from discrimination and to special measures to compensate for disadvantage. Fredman points out problems with this approach in:

- the difficulty in identifying who has a disability,
- that various minority classes are then competing against each other for scarce resources.

Another developing way of approaching disability issues is known as the universal approach. This approach recognises the fact that there is no precise social norm and humans come in an infinite variety of characteristics. Impairment is seen as “an infinitely various but universal feature of the human condition”.⁹

A universal approach then, is aimed at providing conditions in education, employment, health care etc that will work effectively for all people regardless of personal characteristics. The CRPD defines "Universal design" as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.¹⁰

This Convention establishes rights, but it does not include comprehensive standards setting out how rights are to be measured. Governments need to develop standards with people with disabilities, their representative organizations and other members of the community.

⁶ Kayess and French, above n 3,5.

⁷ Kayess and French, Phillip, above n 3,6. note also their comments on critique of this model at 7.

⁸ Fredman, ‘Disability, Equality and the Existing Anti Discrimination Paradigm- European Discrimination Law’ in *Disability Rights in Europe: From Theory to Practice* (2005) 211.

⁹ Bickenbach, ‘Minority Rights or Universal Participation: The Politics of Disablement’ in Jones and Basser Marks (Eds) *Disability Diversity and Legal Change* (London: Martinus Nijhoff 1999) 101, quoted in Kayess and French, above n 3,10.

¹⁰ Article 2 CRPD

What does this have to do with the clinic?

It is clearly difficult to give an accurate figure of how many people are living with a disability. Estimates range from around 10 to 20 per cent of the world's population (the world's largest minority)¹¹. In Australia it is estimated that approximately 20% of the population has a disability.¹² This figure is increasing through population growth, medical advances and the ageing process. According to data from the U.S. Census Bureau for 2005, which was released in December 2008, 54.4 million Americans were reported as having a disability—nearly one in five (19%)—with 6.5 million reporting a severe disability.¹³ In countries with life expectancies over 70 years such as Australia, individuals spend on average about 8 years, or 11.5 per cent of their life span, living with disabilities.¹⁴

The CRPD does not explicitly define disability but refers to persons with disabilities as including “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.¹⁵ Obviously there are also many people who by reason of accident, illness etc have impairments for short term periods.

What may be called impairments can be and have been classified in many ways. Categories may include: (a) physical impairments, including cerebral palsy, spinal cord injury, spina bifida, arthritis, head injury, epilepsy, multiple sclerosis, and other orthopaedic or chronic health impairments; (b) sensory impairments, which include vision, hearing, and language or communication impairments; (c) specific learning disabilities; and (d) psychiatric/addictive disorders, which consist primarily of people with long-term mental illness, but also include people with chronic alcohol and drug dependency.¹⁶

It stands to reason then, that there is unlikely to be any clinic that does not have people with a disability among their clients or among their target groups from which clients come. If clinics are representative of the population they will also have staff and students with disabilities. The diversity of possibilities means that staff of clinics have to be thinking about how to incorporate people into the clinic in all ways. Disability issues have largely been hidden in clinics except in the client population or occasional student and the marginalization of disability in human rights law has been noted.¹⁷ The advent of the CRPD allows clinics a framework for taking a step back and assessing their policies and practices to ensure they are in keeping with human rights.

¹¹ Disabled World. World Facts and Statistics on Disabilities and Disability Issues <<http://www.disabled-world.com/disability/statistics>> at 3 January 2011.

¹² ABS Disability Aging and Carers (2009) <<http://www.abs.gov.au/.../29ac3ed8564fe715ca256943002c4e3c!OpenDocument>> at 23 July 2009.

¹³ American Bar Association Commission on Mental and Physical Disability Law, ‘Goal III Report 2009- A report on the status of the participation of persons with disabilities in ABA Division, Section, and Forum leadership positions.’ (ABA, 2009), 4.

¹⁴ United Nations, *Factsheet on Persons with Disabilities*

(2009) <<http://www.un.org/disabilities/default.asp?id=18>> at 6 June 2009.

¹⁵ Article 1 CRPD.

¹⁶ Michael West et al., *Beyond Section 504: Satisfaction and Empowerment of Students with Disabilities in Higher Education; Section 504 of the Rehabilitation Act of 1973, 59 Exceptional Children 456* (1993).

¹⁷ Janet E Lord, ‘Disability Rights and the Human Rights Mainstream: Reluctant Gate Crashers’ in Clifford Bob (ed), *The International Struggle for New Human Rights* (2009)

Article 13 of the CRPD is of particular import to the Clinic. It deals with access to justice and states that:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Obviously clinics are not parties to the Convention and are therefore not legally bound to comply with the Convention but clinicians could be said to be in the business of justice and clinics should be run in accordance with human rights values and to the highest possible standard. Clinics are also in a potentially influential position in respect of the training of lawyers and have the capacity to make an impact in a number of ways. There are also of course questions as to whether clinics are discriminating against students with disabilities in their courses if they do not develop policies and approaches for students with disabilities. Law clinics are in a unique position at the crossroads of education and service provision. Their client base often has problems accessing justice due to endemic discrimination. Their students are in the formative years of their legal careers and are beginning to develop attitudes that will remain with them throughout their working lives. The Convention provides a catalyst for thinking about disability issues as human rights issues and enables clinics to enrich the education of faculty and students.

A catchcry of the Disability Rights movement is “Nothing about us without us”¹⁸ and clinics must include people with disabilities in their planning and implementing changes along the lines suggested in this article.

Direct and indirect participants in the justice system

The areas where clinics could examine their practices and approaches for compliance with the CRPD and particularly Article 13 are in relation to:

1. clients
2. law students
3. staff
4. the legal profession
5. the justice system

A survey of relevant literature on these issues and applying these concepts to the Clinic leads to 7 suggested guidelines for clinics. These provide a basic framework for clinics to assess their current practices.

¹⁸ See James Charlton *Nothing about us without us: disability oppression and empowerment*. (2004). Univ. of California Press.

Suggested Guidelines

1. Clinics should adopt a universal approach aimed at providing conditions in their education, employment, and service programs that will work effectively for all people regardless of personal characteristics.

Clinics should ensure as basic measures and as a priority that their facilities incorporate universal design – in physical accessibility - for instance teaching rooms with hearing loops and space for wheelchairs and other mobility devices in the main body of the room (not at the back or front), and staff and interview rooms, front counters and bathrooms, kitchens that are accessible for people with mobility impairments. Currently most websites and web software have accessibility barriers that make it difficult or impossible for many people with disabilities.¹⁹ Clinics should ensure that all internet and computer materials comply with accessibility guidelines so that clients students and staff can use them.²⁰ They should ensure that their telecommunications system allows easy contact with the clinic and that the staff and students are trained to use the technology.

Conditions for employees and students should be flexible and allow opportunities to discuss and implement accommodations that will allow people to complete their tasks well. Staff or students may need to do some work from home, or may need longer to undertake tasks or need time off for rest or medical treatment.

Information provided by clinics should be accessible - pamphlets, staff business cards, consultation times, libraries should be reviewed to determine how they could be more accessible e.g. Braille versions etc.

2. All clinical staff and students should undergo mandatory, skills-based disability awareness training.

One barrier that clients, staff and students with a disability face is the non disabled staff and students in the clinic and their knowledge and attitudes. A recommendation by the Disability Council of NSW in relation to legal aid services that is relevant to clinics was:

*all staff in private and public legal services undergo mandatory, skills-based disability awareness training. This was particularly important in community legal centres (where many clinics are located) where volunteers and students support advice services. It was also important for counter staff in legal aid services and private solicitors fulfilling a legal aid duty solicitor role in criminal courts.*²¹

All people in clinics will be working with people with a disability and the better informed they are the better they can perform their jobs. The Law Society of England and Wales has proposed the following statement of the core general characteristics and abilities that solicitors should have on

¹⁹ Ibid. See also Gerard Goggin and Christopher Newell, *Digital Disability The Social Construction of Disability in the New Media* (2003).

²⁰ See for instance WC3 Web Accessibility Initiative <<http://www.w3.org/WAI>> 1 July 2009.

²¹ Disability Council NSW, *A Question of Justice Access and Participation for People with Disabilities in*

Contact with the Justice System, (2003) <<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.html>> at 1 July 2009.

day one in practice.... “Demonstrate the capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client’s objectives”.²² The clinic is an ideal place for these skills to be learnt.

Everyone in the clinic should be aware of the CRPD and be encouraged to take time to reflect on what this means for clients, fellow students and the justice system generally. Training where possible should be run by people with a disability and could include information about different types of disability and associated behaviour, basic etiquette and issues to do with language about disability. While language may seem to be a minor issue as McCurdy points out:

*There has been a great deal of debate over the years regarding the acceptable way to refer to both individuals with disabilities and the aggregate population of people with disabilities. While this debate has often deteriorated into absurdity, and distracted people with disabilities from combating more palpable sources of oppression, we have learned that in a world of hierarchy and marginalization, words do matter. Newborns labelled as “defective” receive substandard care, adults marked as “incompetent” lose all autonomy, and “special needs” can mean social death.*²³

3. Clinical staff should work with Faculty on policies for getting more students with disabilities into law schools and encouraging colleagues to consider disability issues. The legal profession and the community needs lawyers with all types of disabilities. Legal educators are the gatekeepers to the profession for students with disabilities

Studies in the USA suggest that approximately ten percent of law students possess a physical or mental disability although most law students with a physical or mental disability apparently do not self-identify.²⁴ Statistics are not available in most jurisdictions although I suspect the figure would be somewhat lower in Australia. As has been pointed out ‘access and participation at all levels at schools and universities for people with disabilities still moves far too slowly’.²⁵

It can be difficult for people with a disability to get into law schools, complete studies and get jobs as lawyers. Clinicians cannot be expected to be able to achieve change in every aspect of the system but at the least could work with law school colleagues responsible for student entry into law school on looking at developing policies that will attract and make it possible for more students with disabilities to gain entry to law schools. Clinics have made many efforts to ensure more indigenous and people from other cultures are represented in clinics as students and staff²⁶ and need to do the

²² The Law Society, Second Consultation on a New Training Framework for Solicitors, § 4, ¶ 46 (Sept. 2003) [Law Society Second Consultation] [http://www.lawsociety.org.uk/documents/download s/becomingtfranalysisifirms.pdf](http://www.lawsociety.org.uk/documents/download/s/becomingtfranalysisifirms.pdf) at 17 July 2009..

²³ Allan H McCurdy, 'Disability Ideology and the Law School Curriculum' 4 *The Boston University Public Interest Law Journal* 443,457.

²⁴ Kevin Smith, Disabilities, Law Schools and Law Students: A Proactive and Holistic Approach, 32 *Akron L. Rev.* 1 (1999),2.

²⁵ Gerard Goggin and Christopher Newell, *Disability in Australia Exposing a social apartheid* (2005), 209.

²⁶ See Falk, P & Ruska, K (2006) Report on Indigenous Australian Legal Clinic Programs as part of the Effective Integration of Community-based Learning, and Lisa Pusey and Frances Gibson, Kingsford Legal Centre Christine Forster, Jill Hunter, Mehera San Roque, Sean Brennan, and Megan Davis (2003). Two programs to improve first-year indigenous law students' retention rate and communication skills: clinical legal education and a focused tutorial program University of New South Wales Faculty of Law < learningandteaching.unsw.edu.au/content/userDocs /fye_2003_pusey.pdf> at 4 January 2011.

same for people with disabilities. We can also advocate that our Law Schools have good accessible facilities in buildings, lecture theatres, libraries etc.²⁷

Rethinking on the part of legal educators will not come easy. Law professors, as a group, resist changes in the way that they teach. As Jolly Ryan points out

*This resistance is not surprising, given a number of factors designed to maintain the status quo in legal education. Very few law professors were effective educators before setting foot in the classroom. Nor is it likely that they had any formal training in education, including recognizing and accommodating their students' learning styles. However, they were successful law students and expect their own students to learn the same way that they learned in law school: through competition and rigor.*²⁸

Clinical staff can assist law school colleagues to experience and understand issues about disability through seminar programs on the issue, encouraging students with and without disabilities to present aspects of their work relating to disability rights, to encourage sessions at university level to be run for staff on disability issues and through collaboration on research on legal issues that incorporate issues of disability.

4. Clinics have an important role for students with disabilities and clinical staff should encourage students with disabilities to enrol in clinics. Clinical lecturers should publicize the essential functions required of student lawyers in the clinic so that staff and students with disabilities can make informed decisions about their participation and work.

Traditionally, law school clinics have played a key role in bridging the gap between the study of the law and its practice. Studies show that there are few lawyers with disabilities in practice and it is difficult for them to get jobs. Students with disabilities rarely disclose their impairments because of fear of discrimination. Research shows that students and graduates with disability often face significant barriers during their education, and have often never held a position of paid employment by the time they graduate. As a result, students with disability often miss out on the opportunity to develop skills and experience, build networks of contacts and develop a sense of 'job readiness' within a professional environment. This lack of work experience acts as a compounding disadvantage when it comes time for the graduate to begin their career in their chosen field.

²⁷ See for instance at the University of Melbourne Law School where the Law School has appointed a Disability Equal Opportunity Liaison Officer. The primary roles of the officer are:

- To address disability policy issues and to facilitate the progress of students with disabilities through the law programs.
- To liaise with and support students in academic and other related matters.
- To liaise between the DLU and the Faculty.

The law building has the following design features:

- All lecture theatres have hearing loop facilities and wheelchair access.

- Lifts include information in Braille and speaking facilities.
- The floor layout includes bumps to aid the visually impaired.
- Toilets for disabled people are available on every level of the building.

²⁸ Jennifer Jolly-Ryan, 'Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner' (2005) 6 Nevada Law Journal, 124.

Anderson and Wylie point out “Given this professional climate, it is critical that law students grappling with mental health and learning disabilities be able to use law school to help prepare them for the reality of practice.”²⁹ Buhai points out that clinical legal education provides exceptional benefits to law students in that it allows students to:

- (1) identify which type of law they wish to practice,
- (2) make connections in the legal field to foster future employment opportunities,
- (3) develop mentoring relationships,
- (4) learn many important skills, and
- (5) learn professional responsibility and competence. These benefits directly translate into increased opportunities for successful employment upon graduation.³⁰

These experiences and the opportunity to experiment and prove their skills may make the difference for a student with disabilities being able to go into practice or not.

Law school staff should review the subjects chosen by students who are receiving accommodations before they go into clinics in order to discuss with the students whether they will disclose their disability to the clinicians, and, if so, whether an accommodation will be necessary or possible. In law schools across the world,

*students with disabilities receive academic accommodations in their traditional law school classes on a regular basis. However, often those accommodations do not translate easily from the classroom to the clinic. To take but one example, more time on tests does not have any direct analogy to accommodations in practice.*³¹

Harder issues to grapple with may be adjustments to our teaching practices in the clinics. How do we encourage students to disclose their disabilities in the clinic? Clinical teachers lack the training to assist students with non-visible impairments even if they do elect to disclose.³² How do we work with students with disabilities in court matters? What approach do we take to matching up students and clients who may have certain expectations of their student lawyers that may not accord with reality?

As Jennifer Jolly Ryan points out:

*accommodations for students with disabilities result in good teaching for all students. It emphasizes that there are “many roads to learning” and reiterates a well-known principle for good teaching; good teaching requires a respect for “diverse talents and ways of learning.”*³³

²⁹ Alexis Anderson, Alexis and Norah Wylie, ‘Beyond the ADA: How clinics can assist law students with non visible disabilities to bridge the accommodations gap between classroom and practice’ (2008) 15 *Clinical Law Review* 1,10

³⁰ Sande L.Buhai, ‘Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements’ (1999) 36 *San Diego Law Review* 137.

³¹ Anderson, Alexis and Wylie, Norah, ‘Beyond the ADA: How clinics can assist Law Students with non visible disabilities to bridge the accommodations

gap between classroom and practice’ (2008) 15 *Clinical Law Review*, 3.

³² Anderson, and Wylie, above n 29,16.

³³ Jennifer Jolly-Ryan, ‘Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner’ (2005) 6 *Nevada Law Journal* ,117.

Anderson and Wylie suggest that to assist students, clinical lecturers should publicize the essential functions required of student lawyers in the clinic. One writer has stated her belief that there are no lawyering skills that are so fundamental to being a student attorney in a clinical program that a student has to perform all of them to be able to be in the clinic.³⁴ This approach means the door is open for all students. Anderson and Wylie's article describe a sample welcoming letter to all students which invites students to discuss any disability issues they feel relevant. Clinical lecturers should disseminate information about access to accommodation and protocols for triggering disability services for student lawyers.

Clinical law teaching can occur either in-house at the law school clinic, in legal aid organisations or in an externship placements with government departments, private firms etc. Law Schools need to ensure that they can offer students with disabilities placements at organisations that can accommodate their disabilities and give them a reasonable choice as is available to other law students

Clinics should have clear policies to assist and encourage students. A suggested plan of action would be to

- Draw up a list of tasks students may be engaged in at clinic and publicise this
- Consult the university's equity officer about ways of assisting students with disabilities to participate in these tasks
- Talk about disability in sessions promoting clinics in the law school and in promotional material.
- Identify and welcome students and encourage students to disclose their disability if they want to
- As with all students, decisions about the work allocated will be a balance of the needs of the student, needs of the clinic and needs of the clients

If the student can perform the essential functions of the legal role in the clinic that should be sufficient and the clinic can work around that basis.

5. Clinical lecturers should adopt a critical analysis of the law's approach to questions of disability.

McCurdy points out the:

*degree of invisibility faced by individuals with disabilities in the legal system. People with disabilities, if judged by the casebooks we use to educate young lawyers, play no role, have no legal interests, engender little substantive law, and need to be locked away as dangerous or vulnerable. The legal system, to be sure, reflects the society at large. Invisibility is a hallmark of the disability experience...*³⁵

There are very few areas of law where disability issues are not integral when one adopts a critical eye. We should be asking questions in our teaching such as -Why in some jurisdictions are charities excluded from disability discrimination laws, do migration laws deny entry to people with

³⁴ Jennifer Gundlach in Robert Dinerstein, 'Assisting Law Students with Disabilities in the 21st Century Brass Tacks: Panel 2 Clinical and Externship Programs' (2007) 15 *American University Journal of Gender, Social Policy & the Law* 817

³⁵ McCurdy, above n 23,449.

disability? What are the rules around capacity of people to give evidence in courts and who do they exclude? How are disability rights covered in existing and proposed Bills or Charter of Rights, how does disability affect employer/employee relationships and bargaining? What rules relate to disability in contract law? etc.

An examination of these issues will allow students to explore the operation of the law in practice and assumptions and stereotypes on which it may be founded. This will deepen their understanding of the law and encourage better practice.

6. Clinical staff should serve as a model for promoting diversity in law practice and the community, including employment of staff with disabilities.

One way in which law schools can enhance their students’ abilities to deal sensitively and effectively with diverse groups of clients and colleagues is by serving as a model for promoting diversity in law practice and the community, including having in the law school community a critical mass of students, faculty, and staff from minority groups that have traditionally been the victims of discrimination.³⁶ This is particularly important in the clinic and especially in the case of lawyers working in clinics. Clinics should be promoting employment of staff with disabilities and working with barristers and other legal professionals who have disabilities or have an understanding of the issues.

The legal profession

The legal profession in and outside the clinic is generally unrepresentative of the disability community and most lawyers are ignorant about disability issues.³⁷ Members of the legal profession may have no understanding or lack the skills to communicate with people who have particular disabilities. Unless lawyers and other spokespersons are sensitized to the needs, requirements, strengths and weaknesses of people with disabilities, they will not be good advocates for those people.³⁸

As the organisation People with Disabilities state:

*The scenario for many of our consumers is that of difficulty in accessing legal support and the reliance on duty lawyers who do not have the time or expertise to fully understand the impact disability may have on an individual’s ability to operate in the court the relationship between a particular disability and the ‘offending’ behaviour.*³⁹

In the USA the American Bar Association conducts an annual census of its lawyer members. In 2008 of the 30,400 respondents who answered the query “Do you have a disability?” only 2,033,

³⁶ Roy Stuckey and others, Best Practices for Legal Education Clinical Legal Education Association 2007,66.

³⁷ See for instance Susan Hayes *People with intellectual disabilities as victims of crime – the police and judicial response*. Paper presented at the 39th Annual Conference of the Australasian Society for the Study of Intellectual Disability, 9-12 November 2004, Adelaide SA.

³⁸ Issues of Fairness and Justice in Alternative

Dispute Resolution, Discussion Paper, National Alternative Dispute Resolution Advisory Council, Canberra, November, 1997.

³⁹ People with Disabilities (WA) Inc, ‘Report on Justice and People with Disabilities In Western Australia’ (2001)

or 6.69%, answered affirmatively. As the ABA point out this percentage is far lower than one would expect given the national statistics on the percentage of Americans with disabilities.⁴⁰ Past ABA President William H. Neukom has noted that “lawyers with disabilities, too, have greater difficulty getting a job after law school and have higher rates of unemployment than lawyers who do not have disabilities.”⁴¹

Statistics in Australia are hard to come by. In 2003 in NSW there were 18,434 solicitors and a further 12,000 or so law students. Among them there were roughly 650 lawyers and law students with disclosed disabilities, but the full-time employment success rate for these people is well below the average.⁴² As Laffan pointed out:

Newly qualified lawyers with disabilities are finding it very difficult to gain fulltime employment. The great achievement of having attained their degrees are muted by the fact that to take the next step to become a practicing lawyer and fully employed is continually frustrated by a reluctance of law firms to employ them.

*As intakes of fresh graduates are accepted by the big and small end of town those who have disabilities are left on the outside and their untapped potential is wasted.*⁴³

The Law Council in Australia does not collect information on the numbers of lawyers or law students with disabilities. The Law Council's Equalising Opportunities in the Law Committee is developing a statement of diversity for the Law Council and this will be an over-arching policy which will encompass race, ethnicity and disability. However, this project is in its very early stages of development and it is likely the policy will not be released publicly for some time.⁴⁴

Jolly Ryan hypothesises that the lawyer with a disability will

*likely have the empathy and sense of justice to serve clients and the public in an exceptional manner. The legal profession, and the society that it serves, is in need of lawyers with all types of disabilities, and it is up to legal educators in the first instance to clear the path to the profession for students with disabilities.*⁴⁵

As the Australian Employers' Network on Disability state:

*The biggest barrier to employment faced by people with disability is the attitude of employers. Changing attitudes comes down to raising awareness of disability issues, and repositioning disability as a business concern. Employers can help by providing mentoring, work experience and internships for people with disability.*⁴⁶

⁴⁰ ABA Disability Diversity Statistics -2009 <http://www.abanet.org/disability/resources/statistics.shtml> at 1 July 2009.

⁴¹ American Bar Association Commission on Mental and Physical Disability Law, 'Goal III Report 2009- A report on the status of the participation of persons with disabilities in ABA Division, Section, and Forum leadership positions.' (ABA, 2009),6.

⁴² Matt Laffan, *Equal Opportunity: Lawyers with disabilities seek access and opportunity* (2003) <http://www.mattlaffan.com.au/article_lawsocietyjournal_082003.html> at 31 May 2009.

⁴³ Disability Council of NSW, *Matt Laffan Creating*

opportunities for potential employees with disabilities: A personal experience (2001) at 2 July 2009

⁴⁴ Email from Nicole Pulvirenti Law Council of Australia 1 July 2009

⁴⁵ Jennifer Jolly-Ryan above n 28 , 132.

⁴⁶ Australian Network on Disability, Corporate Social Responsibility <<http://www.and.org.au/content/view/10/1>> at 4 January 2011.

Programs such as the *Stepping into Law Program* run by Australian Employers’ Network on Disability provide a paid internship program designed specifically for law students with disability. The program provides a “step into” practical work experience for students with disability who may otherwise face significant barriers to finding employment. Major law firms and Government Departments participate.⁴⁷

Clinical staff should consider participating in such programs and making positive attempts to include staff with disabilities in clinical programs in all capacities. This will not only enrich the workplace and but also provide role models for students.

7. Clinical staff should advocate to make the justice system accessible.

As we all know, there are many problems people face when they need legal assistance. The complexity of the legal system is intimidating. Free legal advice to avoid legal problems is often not available. Lawyers are very expensive and beyond the reach of most people. There is insufficient funding for legal aid services. Provision of legal aid services is generally obligatory only for criminal cases and strict eligibility criteria rule most people out anyway.⁴⁸ As Noone and Tomsen comment “The general demand for public legal assistance in the industrialised world remains massive and mostly unmet”.⁴⁹ People with disabilities will in many cases find it difficult to find out about sources of assistance, may have difficulty physically accessing services and information and may lack the confidence, experience or skill to communicate with potential advisers or advocates effectively.

The NSW Disability Council’s survey of experiences with the justice system⁵⁰ found that there are significant barriers for people with a disability trying to access information, advice or support. These barriers include inaccessible information formats; inappropriate consultation; negative staff attitudes; and lack of service continuity and that the procedures in the justice system are applied narrowly and inflexibly, to the disadvantage of people with disabilities. The financial, physical and emotional costs of legal action are major barriers. People with disabilities are less likely to be in a position to afford private legal advice and more likely to rely on the resources of community legal services, pro bono schemes, and Legal Aid.

There is a lack of access to AUSLAN interpreters and legal information websites are often inaccessible.⁵¹ People with intellectual or psychiatric disabilities may have their capacity to give instructions doubted. People with a disability may face additional problems in that they may not be able to physically access legal institutions such as courts or legal aid/lawyers’ offices.

⁴⁷ Australian Employers’ Network on Disability, *Stepping Into Law* <http://www.aend.org.au/index.php?option=com_content&task=view&id=242&Itemid=23> at 15 July 2009.

⁴⁸ United Nations Development Programme, *Programming for Justice: Access for All, A Practitioners Guide to a Human Rights based approach to access to Justice* (2005) at page 143. Also see Simon Rice, ‘A Right to Legal Aid; the Kyiv Declaration’ (2007) 32. *Alternative Law Journal* 169.

⁴⁹ Mary Anne Noone and Stephen Tomsen, *Lawyers in Conflict* (2006), 241.

⁵⁰ Disability Council NSW, *A Question of Justice Access and Participation for People with Disabilities in Contact with the Justice System*, (2003) <<http://www.disabilitycouncil.nsw.gov.au/archive/03/justice.html>> at 1 July 2009.

⁵¹ Schetzer, Louis and Henderson, Judith, ‘Access to Justice and Legal Needs Stage 1 Public Consultations’ (Law and Justice Foundation of New South Wales, 2003), xvi.

Some of the access solutions that are available in the courts include: pre-hearing orientation of the court room; formatting documents in alternative formats (for example, in large print or email for people with vision impairment); breaks and drinks of water; and accessible premises. For those with a hearing disability, the following services may be available: infra-red system for the courtroom; Auslan interpreters; real-time translation (captioning); and TTYs (teletypewriters). Those with speech impairments may require the use of their own augmented speech equipment or just patience from the listener.⁵²

Clinicians should be advocating to make Article 9 of the CRPD a reality as it applies to the justice system. This Article requires States to make buildings, transport, workplaces, information, communications, signage and interpreters accessible and provide other assistance and support to persons with disabilities to ensure their access to information. Perhaps apart from health care, nowhere can this be more important than in the machinations of the legal system which can have such significant effects on the lives of participants.

Conclusion

These guidelines provide a starting point for clinics that have not yet done so to improve their services both in education and community service. The advent of the Convention on the Rights of Persons with Disabilities can be the means to focus attention on these issues. Law students, lawyers and other people with disabilities are leading the call for change in many areas of the justice system and it is to be hoped that clinics will be in the forefront of productive change in this area.

⁵² People with Disabilities (WA) Inc, above n 39.