



Discrimination and Intellectual Handicap: A Report of the Anti-Discrimination Board of New South Wales, December, 1981

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This report, issued in December 1981, follows on the report which the New South Wales Anti-Discrimination Board on physical handicap, which was published in 1979, and will be followed by a study on mental illness, which the Board has firmly and correctly distinguished from intellectual handicap. The report, which is clearly written and well organised, contains recommendations for changes to the anti-discrimination law in New South Wales, and for new directions in the general policies and practices regarding the handicapped. It discusses a number of complex problems in depth and is of wider interest than its provenance suggests.

The sections concerning the normalisation of sexual relations among the handicapped may be those most likely to attract public interest. The Board endorses "rights" to rewarding relationships as part of its general strategy of normalisation. In practice this means the right to privacy in institutions where accommodation and facilities are largely communal and private needs not catered for. It is not uncommon, as they point out, for "strong prohibitions to exist against the development of effective relationships in institutions." (289)

They refer also to existing prejudices against marriage and childbearing by the intellectually handicapped, in particular to the fear of the genetic inheritance of handicap. Their referencing on this subject appears to be a little lighthearted and not sufficient to give a non expert confidence that their research was seriously undertaken. Nonetheless the conclusion that the genetic fears have been overestimated are probably correct. Problems remain, which are considered by the report, about the effects of the environment of intellectual handicap on the children of handicapped parents.

Their conclusion is that handicapped couples should be given adequate counselling; that there should be a right of consent to the termination or otherwise of pregnancy; a right to consent to adoption or retention of a child; and a right of consent or refusal to the administration of contraceptives. They deplore the routine administration of contraceptives to all women in institutions; and the practice of non-therapeutic sterilisation, performed with the consent of the parents of minors, as a precautionary measure prior to sexual activity.

Discrimination in the areas of provision of goods and services is also extensively discussed. But the problem with regard to matters like the provision of credit, rented accommodation, and insurance, is not a simple one. The free extension of credit, for example, can lead to handicapped people being exploited and rendering themselves liable to large debts about which they could not make coherent calculations or rational provision. And while it is true that in current law a handicapped person would probably be able to release from such a contract, such distress and hardship can be caused before that point is reached, if it ever is. On the other hand of course, the widespread denial of credit means cutting the handicapped off from a wide range of goods which most members of the community acquire through credit. The recommendation that discrimination in the provision of goods and services be rendered unlawful does not seem to address the dilemma of exploitation, on the one hand, and the question of what are legitimate judgements for firms to make, on the other. The Board seems to want it both ways. But if a handicapped person can have an unfair contract voided it is not unreasonable to blame firms about being hesitant over entering into contracts of this sort.

The report is informed by the fundamental philosophy that the handicapped have a "right to lead lives which are as close to normal as possible". The "principle of normalisation", they write, "implies that legal and other arrangements should positively contribute to the participation of intellectually handicapped people in the community, while allowing for their special needs

and vulnerabilities." (282/3) There is an emphasis on the need to encourage independence; to participate in decision making about their own futures; to provide for integration, wherever possible, of children into normal school life; and to provide employment opportunities and income support. In the area of normalisation perhaps the most important recommendations are those relating to residential care. It is not surprising that the report strongly and effectively condemns large scale institutionalisation as both detrimental to the development and quality of life of the occupants and as leading to unnecessary restrictions on their 'rights', such as privacy. They urge a far less restrictive residential provision, based on small scale community integrated group homes backed by residential services.

A final comment might be made about a strategy based upon enforceable legal rights. Experience of anti-discrimination law generally is reasonably positive but there is room to doubt how far it has helped groups without other forms of political clout. However much one supports the principle of normalisation, and agrees that it is good to align the law with this principle, it must be remembered that in the last resort the welfare of the handicapped cannot depend on 'rights' to be 'enforced' for they continue to be to an extent dependent on the care and goodwill of families, welfare workers and institutions. Given the sympathetic understanding of family situations and needs in some parts of the report it is surprising to detect in others an undercurrent of hostility towards parents, guardians and others which mars this otherwise humane and lucid document. For the co-operation and goodwill of these people will remain at the very least as important in the lives of the handicapped as any notional rights in law that are established.

