

# ‘STICKS AND STONES’

## The lack of disability vilification law in Australia

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People with disabilities have long been the victims of society’s fear of difference. Widespread practices of insulting, shunning, and even killing people with disabilities can be traced back to ancient times. Aristotle wrote in *Politics* that, ‘as goes the exposure and rearing of children, let there be a law that no deformed child shall live’. Similarly, in *The Republic*, Plato wrote that ‘the offspring ... when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be’. Unfortunately, even today remarks about disabilities are commonly used as an expression of contempt and derision. Derogatory comments, such as ‘you’re such a spastic’ or ‘that’s retarded’, are generally made in jest, however they nevertheless evidence a problem with the manner in which disability is perceived within society. Further, these attitudes may act as a launching point for more serious instances of discrimination against people with disabilities.

Vilification on grounds including race, religion and sexual orientation has long been the subject of legislation. These laws are considered necessary in order to protect the vulnerable from harassment and vilification; to create a peaceful society; to promote fairness and tolerance;<sup>1</sup> and to ‘reinforce the social unacceptability of such conduct.’<sup>2</sup> While these justifications might equally apply in the case of people with disabilities, Australia’s vilification laws offer no real protection for people with disabilities. This is disconcerting given that people with disabilities are Australia’s largest minority and, arguably, the most vulnerable.

The lack of disability anti-vilification laws in all Australian jurisdictions except Tasmania is an identifiable, stark gap in the national statutory regime. Bridging this gap is an obvious starting point towards redressing society’s negative perceptions of people with disabilities, and thereby also addressing some of the great difficulties that confront people with disabilities on a daily basis.

Having identified this lacuna in the framework of Australian anti-vilification laws, this article adopts a sociological approach in arguing there is a need for the introduction of disability vilification laws. Particular consideration has been given to the attitudes surrounding the case of Bernhard, Isabella, Sarah, Felix & Lukas Moeller (‘the Moeller Case’)<sup>3</sup>, on the basis that this case provides a useful framework for examining this issue, given its recent extensive reporting in both in the national and international media. The Moeller case is discussed in relation to the social construct

of normality, the different models of disability and the negative treatment of people with disabilities. Consideration is then given to the power of language in shaping society’s perceptions of disability, particularly via popular culture and the media. The circumstances surrounding disability vilification are then examined by reference to the state of affairs prior to the enactment of racial vilification laws in Australia. Finally, consideration is given to the challenges surrounding the implementation of disability vilification laws at both federal and state levels.

### A sociological approach

Formally recognised as the ‘International Year of Disabled Persons’, 1981 was dedicated to raising public awareness of the systematic exclusion and stigmatisation of people with disabilities. It was hoped that, by raising this awareness and promoting the rights of people with disabilities, the invisible barriers separating people with disabilities from mainstream society would soon disappear.<sup>4</sup> However, nearly 30 years on, the general attitude and perception of society to people with disabilities remains largely unchanged.<sup>5</sup> A sociological approach is ideal for determining why attitudes towards people with disabilities have remained so intractable. This approach is one that provides consideration of the meanings of social actions; that is, the emotions, feelings, attitudes and perspectives of individuals — and society more generally — and may thereby serve to demonstrate how the actions of able-bodied persons can affect the lives of people with disabilities.<sup>6</sup>

The nature of this social relationship was recently demonstrated during the Moeller case.<sup>7</sup> This case concerned the appeal of a decision to reject the Moeller family’s application for Australian permanent residency visas on the grounds that one of the children, Lukas, is a person with Down Syndrome and therefore does not meet the health requirement for visa applicants. Although there are numerous legal and social issues surrounding the treatment of disability in an immigration context, a complete examination of Australian migration laws is beyond the scope of this article. The Moeller case does, however, raise some interesting issues concerning society’s perceptions of people with disabilities. The media coverage surrounding Moeller — and the subsequent responses of the Australian public — highlight the negative social attitudes towards people with disabilities, including a fear of abnormality and a continuing perception of

#### REFERENCES

1. Katharine Gelber, ‘Hate Speech in Australia: Emerging Questions’ (2005) 28 *University of New South Wales Law Journal* 861, 861.
2. Explanatory Memorandum, Anti-Discrimination Amendment Bill 2001 (Qld) 1.
3. Bernhard, Isabella, Sarah, Felix & Lukas Moeller [2008] MRTA 1051 (25 November 2008) (‘Moeller’).
4. See UN Enable ‘The International Year of Disabled Persons’ 1981’ <un.org/esa/socdev/enable/disydp.htm> at 12 May 2010.
5. Gerard Goggin and Christopher Newell, *Disability in Australia: Exposing a Social Apartheid* (2005) 18.
6. Colin Barnes, Geof Mercer and Tom Shakespeare, *Exploring Disability: a sociological introduction* (1999) 31.
7. Moeller [2008] MRTA 1051 (25 November 2008).

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people with disabilities as persons who are outside the social mainstream.

### (Ab)normality

The concept of disability is a direct consequence of the way in which society understands normality.<sup>8</sup> When a person fails to conform to society's notion of normality they are perceived as different, and consequently become shunned. This is the common experience of people with disabilities who are generally identified as having abnormal and thus undesirable traits.<sup>9</sup> The 'problem' of disability, therefore, largely exists within this social perception of normality. While our 'enlightened' society has taken large steps towards a greater acceptance of difference, including race, religion and sexuality, it falls considerably short in its acceptance of people with disabilities who remain the hallmark of abnormality and 'otherness'.<sup>10</sup>

The fearful observer is one who seeks to dehumanise people with disabilities. Dehumanisation makes it easier to separate people with disabilities from society and categorise them as 'others'. This rationalisation allows the person to legitimise the inhumane treatment of people with disabilities.<sup>11</sup> The adoption of such rationalisation is evident in several online comments made in response to the news article 'Bernhard Moeller denied residency because of Down syndrome son Lukas'.<sup>12</sup> Such comments include: 'if the government is serious about keeping him [Lukas] then they will need to setup some sort of detention home because trust me if we let downies run free then we as a country are in for some big problems' and 'I don't wanna [sic] pay for some downy @ \$500k so his father can put bandaids on some hillbillies...What a joke. Get rid of him'.<sup>13</sup> These comments are demonstrative of the fear of a perceived abnormality: that is, Down Syndrome. Following this fear is the desire to separate the person with the supposed abnormality from the rest of society. Such attitudinal barriers are widespread in Australian society and need to be rectified before there can be any improvement with respect to the acceptance of people with disabilities within all areas of social relations.<sup>14</sup>

In contrast to the fearful observer, the average well-meaning observer is a person who does not have a disability and thus perceive themselves to be normal.<sup>15</sup> Their attitude is generally one of empathy, while at the same time giving thanks for their own normality. However well-meaning, such people tend to underestimate the abilities of people with disabilities

and instead, consider the disability to be a tragedy requiring the support of charities and governments.<sup>16</sup> The majority of comments posted in response to the above news article reflect this response. In particular, there is the common expectation that the Australian government should be offering support for people with disabilities. Comments include: 'I do not know exactly what our taxes gets spent on but I would have absolutely no problem knowing it was going to this family'<sup>17</sup>; 'I would rather my tax money being spent on children like this ... than the local Australian doll [sic] bludgers!!!';<sup>18</sup> and 'it is unbelievable that my country ... should act in such a despicable manner, and my taxes would be far better deployed if necessary towards Lukas' future than that of early superannuated politicians who never really earned [sic] it anyway'.<sup>19</sup> While these comments are well-intentioned, they nevertheless still place people with disabilities in that 'other' category. By distinguishing a person on the grounds of their disability, their difference, or abnormality, becomes the central focus and their incapacity is immediately generalised.<sup>20</sup> As a result, people with disabilities become victims of the oppressive nature of society's conception of normality.

### Disabling language

Language is a powerful tool in shaping attitudes and perceptions towards people with disabilities, as both reflect and alter social attitudes.<sup>21</sup> It is, for example, common for persons to be categorised in conversation by their race, religion, sexuality or disability (ie 'the black guy', 'the lesbian', or 'the little boy with Down's'). This creates division in society, by creating the perception that the particular group is not normal. In the case of people with disabilities, such language can have damaging effects upon the way in which people with disabilities perceive both themselves and the identity of the disabled community in general.<sup>22</sup> Detrimental language, where disability is used as an expression of contempt and derision, is commonplace;<sup>23</sup> such expressions include, 'what are you, retarded?'; 'you're such a spaz'; 'you're "special" '; and 'you're mental'.<sup>24</sup> Even when used with reference to persons who do not have a disability, the choice of such derogatory language results in a negative portrayal of disability. A recent media example can be found in the lyrics from the popular song 'Let's get retarded' by The Black Eyed Peas, which include the lines, 'Get stupid! Get retarded! ... Let's get cuckoo ... Bob your head like Epilepsy ... So, come get dumb now don't

8. Leonard Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (1995) 24.

9. Sara Green, 'What do you mean "what's wrong with her"? Stigma and the lives of families of children with disabilities' (2003) 57 *Social Science & Medicine* 1361, 1361.

10. Goggin and Newell, above n 5, 25.

11. Richard (Dick) Sobsey, *Violence and abuse in the lives of people with disabilities, The end of silent acceptance?* (1994) 312.

12. See 'Bernhard Moeller denied residency because of Down syndrome son Lukas', <news.com.au> 30 October 2008, at 13 August 2009.

13. *Ibid.*

14. Kathleen Ball, 'The 20th Anniversary of the International Year of Disabled Persons' (2001) 10(4) *Link Magazine* 14, 14.

15. Davis, above n 8, 24.

16. *Ibid.*

17. Bernhard Moeller denied residency because of Down syndrome son Lukas, above note 12.

18. *Ibid.*

19. *Ibid.*

20. Carol Thomas, *Sociologies of Disability and Illness* (2007) 132; Goggin and Newell, above n 5, 24. See further Mark Sherry, *Hate Crimes Against People with Disabilities* (2000) <wwda.org.au/hate.htm> at 12 May 2010; Barnes et al, above n 6, 21.

21. Mark Priestly, 'Discourse and identity: disabled children in mainstream schools' in Mairian Corker and Sally French (eds) *Disability Discourse* (1999) 92, 92.

22. *Ibid.* 93.

23. Susan Peters, 'Transforming disability identity through critical literacy and the cultural politics of language' in Mairian Corker and Susan French (eds) *Disability Discourse* (1999) 103, 103.

24. Beth Haller, Bruce Dorries and Jessica Rahn, 'Media labeling versus the US disability community identity: a study of shifting cultural language' (2006) 21(1) *Disability & Society* 61, 65.

correct it'.<sup>25</sup> Due to the offensive nature of the lyrics, they were edited for radio broadcasting. However, the original version of the song reached number two on the Australian Recording Industry Association charts.<sup>26</sup> If no effort is made to curb the use of such offensive language, then it will continue to be a part of Australia's verbal culture.

The use of marginalising disability language is not just found in the Australian general community, it is also evident in Australian politics, where disability has been used opportunistically and thoughtlessly by national leaders as an expression of derision and contempt. In 1999, then Liberal member Tony Abbott called then Opposition Leader Kim Beazley a 'policy cripple'.<sup>27</sup> In 2002, then Labor member Mark Latham accused Liberal member Tony Staley of being a 'deformed character'; conduct that caused considerable media backlash as Staley was, in fact, a person who uses a wheelchair. In response to the backlash, Latham claimed that he was not making reference to Staley's disability, but was rather making reference to his character, which Latham described as morally lacking.<sup>28</sup> However, this distinction is inconsequential as the use of disability language as an expression of derision effectively relates disability to moral deficiency and creates the perception that people with disabilities are morally deficient. The repercussions of this association is a culture in which people with disabilities are stereotyped as 'others' and kept separate from the rest of society. If Australia's politicians do not have the foresight to realise these repercussions, then this impact can hardly be expected to reach the national consciousness.

A change in the way in which the Australian community refers to people with disabilities is necessary if perceptions of disability are to change. This change, while difficult, is not impossible. Similar challenges have been overcome with respect to how the media refers to race. Racial terms which were once common racial slurs, such as, for example, 'nigger' and 'wog' are no longer acceptable in Australian society. As Blaser notes, 'old habits die hard, in part because they are reinforced by the media ... but they do die.'<sup>29</sup> While the unacceptability of racial language started at a political level with the enactment of racial discrimination and vilification laws, the consequence of the use of such language has now reached the national consciousness, resulting in a change to society's attitudes and perceptions towards race.<sup>30</sup> Unfortunately, this is not yet the case for disability.

### Disability vilification online

Disability vilification is rife on the internet, which has become a new avenue for people to exercise what is commonly referred to as a right to 'freedom of speech'. However, it is increasingly being used as a forum in which to express abusive, offensive, demeaning and ridiculing language. In many instances this may amount to vilification, and yet such behaviour is unchecked under existing legislative frameworks. Beyond the exemplar afforded by *Moeller*, comments of

a similar nature are regularly posted on personal blog sites, such as the following example:

When you're thinking about which one of your friends you want to invite to your party, you never put the retard first, when you're drafting your high school dodgeball team, who gets picked last? It's always the retard. When you're at a bar or nightclub, have you ever hit on the reatard [sic] in the corner? Of course not...

We all know retards add costs to the government. And with today's financial mess, we need to be more sympathetic to our elected officials trying to alleviate the pain on its citizens who can comprehend their surroundings. Unless they're bringing back 'Life Goes On', 'Corky and his coterie of retards will have to limit themselves to drooling in their chairs and pooping in their diapers.'<sup>31</sup>

Comments of this ilk compound the social exclusion of people with disabilities. Further, they insinuate that people with disabilities have no practical or social utility (other than their role as objects of derision), and suggest that people with disabilities in all instances lack social awareness, ultimately concluding that people with disabilities are a drain on the Australian economy. Comments of this nature, which ridicule and degrade people with disabilities, are deplorable and would not be legal if made on the basis of gender, sexuality or race.

These attitudes are also reflected within online social networks, including Facebook. Numerous Facebook 'fan groups' have been created for the sole purpose of ridiculing people with disabilities. These groups are too numerous to list, however examples include: 'The Retards'; 'Retard Nation'; 'Retards'; and 'Being cool at Purdue is like being the coolest kid with down syndrome'<sup>32</sup>. The fan group, 'Not Being Disabled — join this group if you like not being disabled'<sup>33</sup> has several particularly demeaning comments posted on its 'wall', including, 'I just love being able to wipe my own dribble from my own chin ... having someone else do it is sooooo undignified' and 'I like having the ability to laugh ... at those less able bodied than me. Some of them are so funny and some are so bad they don't even KNOW they are disabled, it's hilarious to watch'. Further derogatory comments found on internet discussion forums include the following, made in response to the definition of 'retard': 'all retards should be killed... People with Downs [sic] Syndrome should be burned alive ... they smell and are ugly and ain't worth shit... The female retards should be allowed to live so they can be fucked like whores'.<sup>34</sup> Again, it is likely that had these comments been made solely on the grounds of race or sexuality, rather than disability, they would amount to vilification.<sup>35</sup>

Similar circumstances surrounded the case of *Suncol v Collier (EOD) [2006] NSWADTAP 51* where the NSW Appeal Panel considered whether online comments amounted to homosexual vilification. The comments were posted by way of contribution to 'chats' with other web-users and included, 'faggots are all wicked evil people' and 'God will burn Sydney to the ground because of the evilness of these fags'. The Tribunal found that such comments satisfied the elements of vilification pursuant to s 49ZT of the *Anti-Discrimination*

25. Black Eyed Peas, 'Let's get Retarded' Track 4 on the album *Elephunk*, (2003) Interscope Geffen (A&M) Records.

26. See *The Black Eyed Peas — Let's Get It Started* <australian-charts.com/showitem.asp?interpret=The+Black+Eyed+Peas&title=Let%27s+Get+It+Started&cat=s> at 12 May 2010.

27. Goggin and Newell, above n 5, 155.

28. *Ibid.*

29. Arthur Blaser, 'Changing the meaning of disability' (2002) *Ragged Edge* 25, 25.

30. Haller, Dorries and Rahn, above n 24, 62.

31. 'Augustus', *Australia: No residency for boy with Down syndrome*, Personal Blog, 31 October 2008 <<http://dcimperium.blogspot.com/2008/10/australia-no-residency-for-boy-with.html>> at 12 May 2010.

32. See <<http://www.facebook.com>> at 9 October 2009

33. *Ibid.*

34. See <[http://gurl.typepad.com/label\\_it/2007/08/retard.html](http://gurl.typepad.com/label_it/2007/08/retard.html)> at 12 May 2010.

35. *Anti-Discrimination Act 1977 (NSW)* ss 20B-D, 38R-T, 49ZS-ZTA, 49ZA-49ZTA; *Anti-Discrimination Act 1991 (Qld)* ss 124A, 131A; *Racial Vilification Act 1996 (SA)*; *Racial and Religious Tolerance Act 2001 (Vic)*; *Anti-Discrimination Act 1998 (Tas)* ss 17(1), 19; *Criminal Code 1913 (WA)* ss 76-80H; *Discrimination Act 1991 (ACT)* ss 65-7; *Racial Discrimination Act 1975 (Cth)* ss 18B-F.

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Act 1977 (NSW) and ordered that the comments be removed and an apology given. These comments are not dissimilar to the disability comments discussed above. Despite the seemingly positive effects that may result from the enactment of disability vilification laws, Tasmania is the only Australian jurisdiction to prohibit vilification on the grounds of disability.<sup>36</sup> Persons with disabilities, therefore, have little, if any, protection from such conduct. In the absence of legal or social condemnation, comments that ridicule and demean people with disabilities will continue to circulate.

### The role of racial vilification laws

As society's attitudes change, certain language falls in and out of favour. This is evidenced by the way in which racist language has largely fallen out of favour in Australian society. To a significant degree, this change may be traced to the enactment of racial vilification laws throughout Australia, which brought the unacceptability of racist language to the national consciousness.<sup>37</sup>

Racial vilification laws have been enacted in an effort to re-educate Australian society on the unacceptability of racist language.<sup>38</sup> The educative role of vilification laws was expressed by Mr Peter Duncan, the then Parliamentary Secretary to the Attorney-General, in the Second Reading speech of the Racial Discrimination Amendment Bill 1992 (Cth):

the role of the law as an educational force is often underestimated. The simple fact that an act is known to be unlawful will dissuade most citizens from performing that act... Laws can also change attitudes over time; and it is not necessarily the case that an overall attitudinal change has to precede a change in the law...<sup>39</sup>

The Explanatory Notes to the Anti-Discrimination Amendment Bill 2001 (Qld) conveyed similar insights, noting that vilification laws would 'reinforce the social unacceptability of such conduct'.<sup>40</sup> These comments recognise that legislative measures do not necessarily have to reflect current attitudes within society, but instead can set the standard by redirecting social attitudes and perceptions.<sup>41</sup>

The circumstances surrounding the enactment of racial vilification laws are not dissimilar to the present circumstances that confront people with disabilities. Society continues to perceive people with disabilities as abnormal, and people with disabilities are dehumanised and shunned from mainstream society. Their abilities are subsequently considered to be minimal and their social circle becomes limited. Such misconceptions can then result in both the verbal and physical abuse

of people with disabilities. Given the success of racial, homosexual and religious vilification laws in improving social justice, the present lack of disability vilification laws as a means of re-directing society's attitudes and perceptions of people with disabilities is negligent.

### Overcoming the obstacles to disability vilification laws

Various disability groups have, over the years, made submissions for the enactment of disability vilification laws in an effort to protect people with disabilities from such conduct, to no avail.<sup>42</sup> With respect to submissions made to the Productivity Commission's Inquiry into the *Disability Discrimination Act 1992* (Cth),<sup>43</sup> the Australian Government Solicitor advised the Commission that the federal government could not legislate on disability vilification laws generally, as such laws could not be supported by the external affairs power, being s 51xxix of the *Australian Constitution*.<sup>44</sup> At the time, Australia was not a party to an international instrument which provided for the prohibition of disability vilification. However, the advice did note that should Australia become a party to a convention designed to promote and protect the rights of people with disabilities, then the Federal government may have power to enact disability vilification laws.<sup>45</sup> As is happens, Australia was one of the first parties to sign and ratify the 2007 *Convention on the Rights of Persons With Disabilities* ('CRPWD').

Unlike the *International Convention on the Elimination of all Forms of Racial Discrimination* which, by way of Article 4, provides an obligation to eradicate all incitement to acts of racial hatred, the CRPWD has no such provision. However, it is more than likely that Article 8 of the CRPWD provides the necessary authority for the enactment of disability vilification legislation. Article 8 obliges parties to the Convention to adopt measures to 'raise awareness throughout society ... combat stereotypes, prejudices and harmful practices relating to persons with disabilities ... promote awareness of the capabilities and contributions of persons with disabilities'.<sup>46</sup> Despite these obligations, disability vilification laws were not included in the *Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008* (Cth) which amended the *Disability Discrimination Act 1992* (Cth) to conform with Australia's new obligations under the CRPWD. In the Second Reading Speech of the Amendment Bill, Liberal Senator for Victoria and Shadow Parliamentary

36. *Anti-Discrimination Act 1998* (Tas) s 19.

37. *Anti-Discrimination Act 1977* (NSW) ss 20B-D; *Anti-Discrimination Act 1991* (Qld) ss 124A, 131A; *Racial Vilification Act 1996* (SA); *Racial and Religious Tolerance Act 2001* (Vic); *Anti-Discrimination Act 1998* (Tas) ss 17(1), 19; *Criminal Code 1913* (WA) ss 76-80H; *Discrimination Act 1991* (ACT) ss 65-7; *Racial Discrimination Act 1975* (Cth) ss 18B-F.

38. Chris Ronalds, *Discrimination Law and Practice* (3rd ed, 2008) 105; Luke McNamara and Tamsin Solomon, 'The Commonwealth Racial Hatred Act 1995: Achievement or Disappointment?' (1996) *Adelaide Law Review* 259, 259.

39. Commonwealth, *Racial Discrimination Amendment Bill: Second Reading Speech*, House of Representatives 16 December 1992, 3888 (Peter Duncan, Parliamentary Secretary to the Attorney-General).

40. Explanatory Memorandum, *Anti-Discrimination Amendment Bill, 2001* (Qld) 1; Gelber, above n 1, 861.

41. Simon Keeley, *Racial Vilification: Case Study in Changing the Law* (1995) 53.

42. NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977* (NSW), Report No 92 (1999) [7.92]; People with Disability Australia, *Submission to Senate Legal and Constitutional Affairs Committee - Inquiry into the Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008* (2009) 9; Disability Discrimination Legal Service Inc, *Submission for the National Human Rights Consultation* (2009) 5.

43. Productivity Commission, *Review of the 'Disability Discrimination Act 1992: Productivity Commission Inquiry Report*, Report No 30 (2004).

44. Australian Government Solicitor, *Advice on the Productivity Commission's Inquiry into the 'Disability Discrimination Act 1992: Vilification* (1 March 2004) 10; *Australian Constitution*.

45. *Ibid.*, 17.

46. *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, Article 8 (entered into force 3 May 2008)

Secretary for Disabilities, Carers and the Voluntary Sector, Mitchell Fifield, noted:

to the greatest extent possible, we need to break down the social and economic barriers that prevent participation in mainstream community life by people with a disability... People with disabilities are underrepresented in the workforce due to the attitudes of society...one of the biggest challenges facing people with disability is acceptance by the community.<sup>47</sup>

These comments acknowledge the role that society's attitudes play in creating barriers to the acceptance and inclusion of people with disabilities. Despite this, the Federal government has failed to utilise vilification laws as an educative tool. Given the success of vilification laws in re-directing society's attitudes and perceptions of other minority groups, this is a serious failing on the part of the Federal government.

However, the failing also lies with state governments who have not been subject to constitutional restrictions and as yet, with the exception of Tasmania, have not enacted disability vilification laws. The New South Wales government, for example, has been particularly reluctant.<sup>48</sup> In its 1999 review of the *Anti-Discrimination Act 1977 (NSW)*, the NSW Law Reform Commission considered the enactment of disability vilification laws to be unwarranted. In its general conclusions, the Commission noted that, given the lack of reported incidents of disability vilification, there was insufficient evidence to indicate that there was a practical problem which needed to be addressed.<sup>49</sup> This advice was short-sighted as, prior to the enactment of racial vilification laws, there was also a lack of evidence indicating the prevalence of racial vilification.<sup>50</sup> In the same way that the existence of acts of violent racial hatred indicated the inevitable prevalence of racial vilification, the abuse of people with disabilities indicates the inevitable prevalence of disability vilification. Any apparent lack of evidence may also be attributable to the nature of disabilities, particularly intellectual disabilities, where the person being vilified may not be aware that they are, in fact, being vilified, or, alternatively, may not know what to do about it. Given these considerations, the decision not to enact disability vilification laws because of a lack of evidence of its prevalence is unreasonable and fails to take proper account of the relevant matrix surrounding disability.

## Conclusion

The enactment of disability vilification laws would provide the foundation for the much needed change in the way that society treats people with disabilities. While these laws may not necessarily result in an increase in complaints of disability vilification, they would represent a symbolic stance against the abuse of people with disabilities and bring the issue of disability vilification to the national consciousness. Once society becomes aware of the long-term effects that vilification has on people with disabilities, there would be a natural decline in the use of ridiculing and derogatory language, especially in public places, including the internet.

As demonstrated by the introduction of racial vilification laws, when the use of vilifying language declines, the regularity in which negative stereotypes and stigmas are reinforced also diminish and society's attitudes begin to change. In the case of disability, the introduction of disability vilification laws would undoubtedly prompt a shift in the disability paradigm which currently shapes society's attitudes and perceptions of disability and people with disabilities.

Given the proven educative qualities of vilification laws, it is hoped that not only would instances of disability vilification decline, but so too would the marginalisation, victimisation and abuse of people with disabilities. If people with disabilities are no longer defined by their difference, the barriers to inclusion within society would diminish and the way in which people with disabilities perceive themselves and the wider disabled community would also improve. The change likely to flow from the enactment of disability vilification laws would therefore result in a society in which people with disabilities are no longer defined by notions of normality, but instead would be accepted, included and treated with dignity and respect. Such reform should be considered as a matter of national priority.

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47. Commonwealth, Parliamentary Debates, Senate, 25 June 2009, 4314–4315 (Mitchell Fifield, Senator for Victoria).

48. NSW Law Reform Commission, above n 42, [7.92] – [7.96].

49. *Ibid.*

50. Luke McNamara, *Regulating Racism: Racial Vilification Laws in Australia*, (2002) 12.