

SCOTTISH DISABILITY TEAM

MONDAY 13TH MAY 2003

DDA PART IV

The Australian Experience

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Slide 2

Remedies Under UK Legislation

- ▶ **Raised with Institution**
- ▶ **Conciliation**
- ▶ **Court Action**
- ▶ **First UK Court Action - DDA Part IV**

Slide 3

Why Australia?

- ▶ **Disability Discrimination Act 1992**
- ▶ **Similar Language**
- ▶ **Government Policy**

Slide 4

Disability Discrimination Act 1992

Discrimination occurs where:

- ▶ **Due to a persons disability**
- ▶ **They are treated less favourably**
- ▶ **Than a person without a disability**
- ▶ **Similar to UK "less favourable" treatment"**

Slide 5

Disability Discrimination Act 1992

Discrimination occurs where a disabled student is:

- ▶ **Denied access to any benefit provided by an education authority**
- ▶ **Subject to any other detriment**
- ▶ **Similar to UK "reasonable adjustments"**

Slide 6

Some Case Studies

Slide 7

Kinsela v Queensland University of Technology (1997)

- ▶ **Graduation Ceremony**
- ▶ **Access to Venue**
- ▶ **Funds Already Spent on Improvements**
- ▶ **What is Reasonable?**

Slide 8

Bishop v Sports Massage Training School (2000)

- ▶ **Dyslexia**
- ▶ **Disclosure**
- ▶ **Adjustments**

Slide 9

H v S (1997)

- ▶ **Physical Disability**
- ▶ **Threatening Behaviour**
- ▶ **Restrictions to Access**
- ▶ **Knowledge of University**
- ▶ **Onus of Proof**

Slide 10

CONCILIATED OUTCOMES

- ▶ **Access to University Transport**
- ▶ **Physical Access to Classes**

Slide 11

Complaints Declined

- ▶ **Reasonable Attendance Requirements**
- ▶ **Failure to Ask Disability Status**
- ▶ **Move of Campus**

Lessons

- ▶ **Few Cases Reach Court**
- ▶ **Most Common Causes of Complaint**
 - **teaching, learning, assessment**
 - **access to materials**
 - **refusing entry to courses**

Slide 13

Additional Considerations

Confidentiality and Disclosure

- ▶ **Did not know**
- ▶ **Could not reasonably have known**
- ▶ **Failure to take step due to lack of knowledge**
- ▶ **Onus on the institution**
- ▶ **Knowledge of employee is knowledge of institution**
- ▶ **Knowledge is not relevant in every case**

Slide 15

Confidentiality & Disclosure - Types of Disclosure

- ▶ **Application forms**
- ▶ **Admissions/Enrollment**
- ▶ **Members of Staff**
- ▶ **Unofficial Disclosures**

Confidentiality/Disclosure/ Data Protection

- ▶ **Confidentiality - common law**
- ▶ **Data Protection - legislation**
- ▶ **Govern and prevent disclosure and use of information**

Data Protection Compliance - Disability Data

- ▶ **Consent from student - unless exemption applies**
- ▶ **Specified and lawful purposes**
- ▶ **Adequate, relevant and not excessive**
- ▶ **Accurate and kept up to date**
- ▶ **Not kept for longer than necessary**
- ▶ **Security**

Confidentiality and Disclosure - Action Points

- ▶ **Encourage written disclosures**
- ▶ **Obtain necessary consent**
- ▶ **Disability, confidentiality and data protection policies**
- ▶ **Practices and procedures**
- ▶ **Staff training**
- ▶ **Rely on defences as a last resort**

Status of Personnel hired to Assist Disabled Students

- ▶ **Personal assistants**
- ▶ **Auxiliary aids/services**
- ▶ **Where student in receipt of DSA**

Slide 20

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