



Australian Centre for  
**Disability Law**



## Working with people with disability

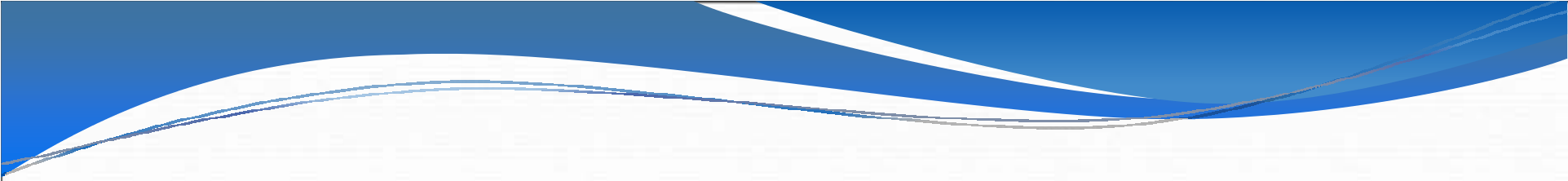
Empowering people with disability to access justice

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The public's view of disability is largely based upon misguided stereotypes relating only to obvious physical disabilities. However, chances are, most people have already worked with people with disability, whether it is of a physical, mental or intellectual nature. In turn, educating ourselves about disability is vital because not all people with a particular illness or disability are going to have the same skills and attitude. If people are given the opportunity to share these experiences in a practical manner they will not only have a better understanding but be better equipped to accommodate those with disability.



## Working with people with disability

### Abstract

What do you think of when you envisage someone with disability? Most of us have a preconceived idea of disability but the reality is a diverse range of disabilities exist. Taking positive steps to understand what it is like to cope with having a disability can have a positive impact on our ability to accommodate those who struggle with tasks that others take for granted. We will be running activities that will highlight and allow you to experience coping with disabilities and offer a practical insight into the challenges these people face everyday.



## Definition of disability

***disability***, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness;  
or
- (d) the presence in the body of organisms capable of causing disease  
or illness;  
or
- (e) the malfunction, malformation or disfigurement of a part of the  
person's body; or
- (f) a disorder or malfunction that results in the person learning  
differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought  
processes, perception of reality, emotions or judgment or that  
results in disturbed behaviour; and includes a disability that:
  - i. presently exists; or
  - ii. previously existed but no longer exists; or
  - iii. may exist in the future (including because of a genetic  
predisposition to that disability); or
  - iv. is imputed to a person.



## Reasonable adjustments

*One way of righting the balance is through reasonable adjustments*

But what is reasonable ?

A level playing field ?

Unfair burden ?

Action Plans

## Types of disability

- Intellectual
- Specific learning
- Autism
- Physical
- Acquired Brain Injury
- Neurological
- Sensory and Speech
- Psychiatric
- Developmental **Delay**

## Example – Bipolar Disorder

HIGH	LOWS
Increased energy	Loss of energy
Exaggerated self confidence	Feelings of worthlessness
Racing thoughts, rapid speech	Slowing down of thoughts
Impulsiveness	Difficulty making simple decisions
Reckless behaviour (e.g. driving dangerously)	Irritability
Grandiose ideas	Lack of motivation

### Imagine if you had difficulties with:

- Learning new words
- Spelling 'easy' or common words
- Ordering words sequentially in a sentence
- Short term memory
- Understanding instructions
- Making sense of printed word without substantial re-reading

### What would your world be like?



## Example – Learning disability

Think about that mosquito buzzing around your ear, or your work colleague on a phone call of which you can hear every word.

Trying to find your way to the bathroom, in a chair, with a cane, on crutches or you can't see the obstacles

The field of learning disabilities, like education in the main, is undergoing calls for reform and restructuring, an upheaval brought on in great part by the forces of opposing paradigms – reductionism and constructivism. In reexamining our past, we must begin to address the failures of traditional deficit models and their abysmally low "cure" rate. Several new theories have arisen that challenge traditional practices in both general and special education classrooms. Particularly influential has been the work of Howard Gardner, whose theory of multiple intelligences calls for a restructuring of our schools to accommodate modes of learning and inquiry with something other than deficit approaches. At last some current research in the field of learning disabilities has begun to focus on creativity and nontraditional strengths and talents that have not been well understood or highly valued by the schools.

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# The Official

## A-Z of DISABILITY

### Etiquette



ASK before you help;  
it may not always be wanted.



BE patient and don't pretend  
to understand or interrupt someone  
with a speech impediment.



COMMUNICATE naturally with  
your language and expressions.



Give specific DIRECTIONS  
considering distance,  
weather and obstacles eg steps.



Get down to EYE LEVEL  
during longer conversations  
by sitting or kneeling.



FOCUS on the person,  
not the disability.  
Don't bring it up unless relevant.



Avoid patronising GESTURES  
like patting a head or shoulder  
and back slapping.



A wheelchair is not a  
place to HOLD your bags  
without permission.



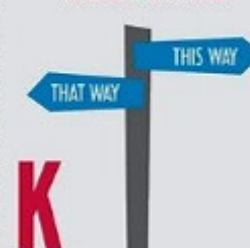
Always respect a person's  
dignity, individuality and  
desire for INDEPENDENCE.

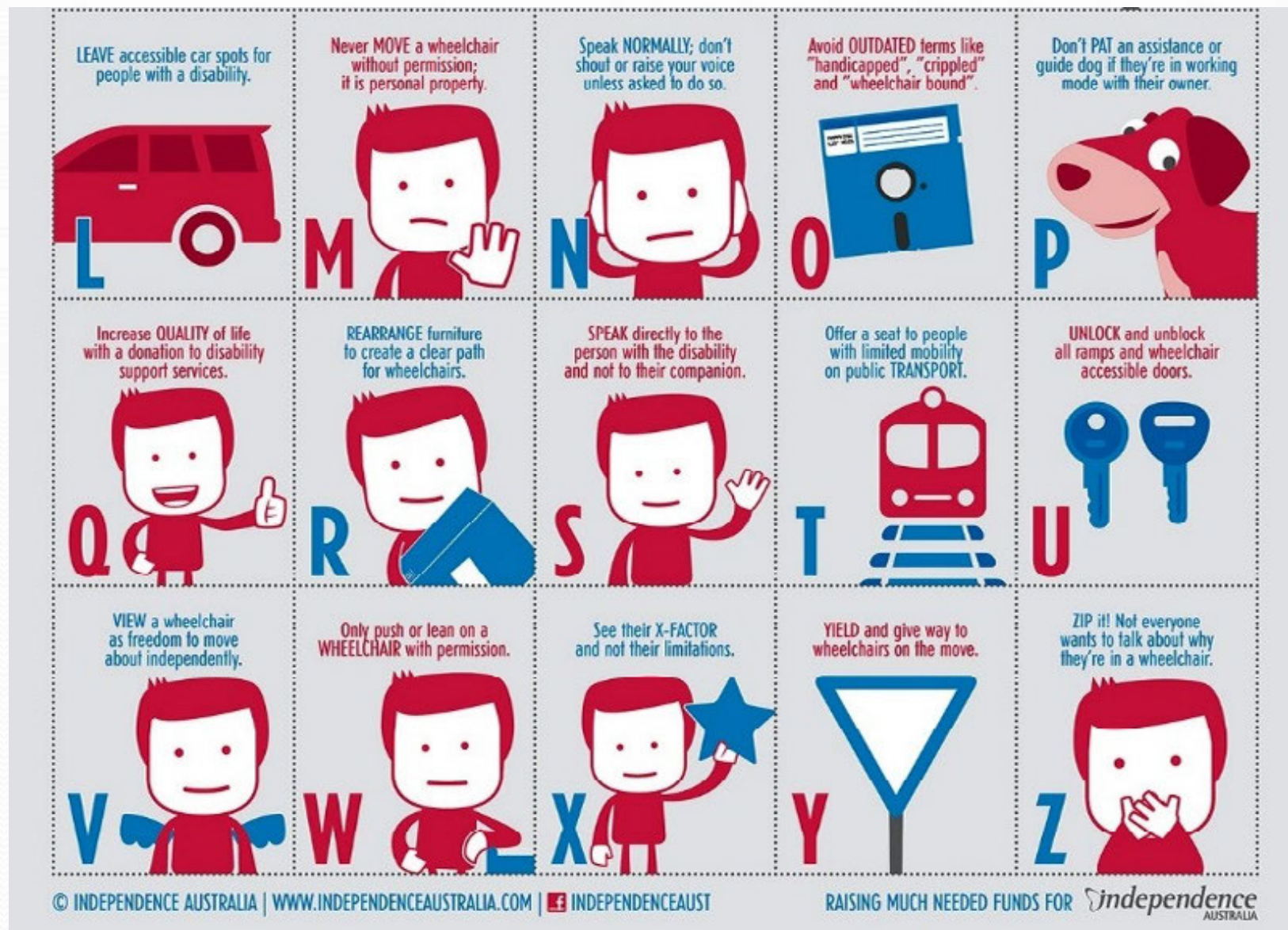


JOIN the conversation and talk  
as you would with anyone else.



KNOW that most people  
with a disability can make  
their own decisions.







## Access

Making a building accessible to people with disabilities is not difficult. But it does require an awareness of the specific needs of people with various disabilities. By solving accessibility challenges, everyone benefits. When people with disabilities have the same accessibility to facilities as everyone else, they are able to more fully contribute their talents and experiences and benefit everyone.

- It is important to maintain a positive attitude towards people with disability. Key features of a positive attitude include: –
- treating all people as equals
- focusing on what people can do
- recognising individuality
- consulting with the person directly about issues that affect them
- fostering participating and inclusion
- using information free from bias
- respecting rights and confidentiality
- providing access to services
- displaying attitudes and actions that recognise people with disability are in charge of their own lives, and have abilities and rights
- focusing on the person rather than the disability
- ensuring provisions are made so that a disability does not become a handicap
- using appropriate language and refraining from labelling people or situations.

## Barriers Checklist

A barrier is something that makes it difficult or impossible for a person with disability to get into or around a building. Is your office or building barrier free? Check the accessibility of your building.

- Does the facility have a ramp or a level entrance? o Yes o No
- Are the doorknobs of all main doors no more than three feet from the ground so people in wheelchairs can reach them? o Yes o No
- Do the hallways have handrails to help people walk? o Yes o No
- Are there parking spaces reserved for people with disabilities? Are these spaces near the building entrance? Are they 12 feet wide? Are at least two out of every 100 spaces reserved for people with disabilities? o Yes o No
- Are there curb cuts so that people with wheelchairs or with baby carriages or shopping carts are able to easily access walkways? o Yes o No
- Are there tactile markings (can be felt by touch) cut into the sidewalk to warn people who are blind? o Yes o No
- If your facility has more than one floor, does it have an elevator? o Yes o No
- Are the top floor buttons no more than three feet from the ground and are they marked with Braille or raised numbers? o Yes o No



## Barriers Checklist (cont.)

- Does the elevator have light and bell signals to help people who are blind or deaf to know when the elevator is ready? o Yes o No
- Are the doorways to all bathrooms at least 33 inches wide? o Yes o No
- Are the sinks low enough? (Get a chair and see if you can reach the sink while you're sitting in the chair.) o Yes o No
- Are the telephones in the building accessible? (Use the same test as for sinks.) o Yes o No
- Are there grab bars in the bathroom stalls so that people can lift themselves from a wheelchair to the toilet and back again? o Yes o No
- Are the windows 24 inches or 28 inches from the floor so that people who are short and people in wheelchairs can see out? o Yes o No
- If in a school building, are the aisles in the classrooms at least 32 inches wide so that people in wheelchairs, or on crutches, or with canes or walkers, can get around easily? o Yes o No
- Are there flashing lights for fire alarms so that people who are hearing impaired will know if there's a fire? o Yes o No
- Are there picture signs to show the purpose of each room so that people who cannot read will know where to go? o Yes o No

## Activities

### Autism

Autism is a developmental disability that usually appears during the first three years of life. The cause is unknown. It affects how a person's brain works, but not all people with autism are affected the same way. Autism is a "spectrum disorder." That means that not everyone with autism has all the problems.

When a person has autism, they may have problems:

- letting you know what they want;
- thinking;
- understanding what other people say or want;
- ignoring sounds;
- ignoring things or people that are moving;
- ignoring lights;
- being touched;
- understanding social rules;
- showing affection;
- controlling their feelings;
- knowing how to socialise with other people; and
- dealing with changes.



## Activities

### Communication Disorders

Communication disorders are disabilities that keep a person from being able to speak or makes their speech understood. This can be caused by many different disabilities or injuries.

Some people with difficulty speaking may use sign language, gestures or small pictures they carry with them.





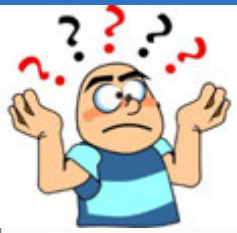
## Activities

### Hearing Impairments

Hearing impairments include everything from not being able to hear certain sounds to being totally deaf. In most cases, a hearing loss doesn't simply mean that sounds are not loud enough. It usually means that sounds are garbled or unclear. A hearing aid may make speech louder, but usually will not make speech clearer.



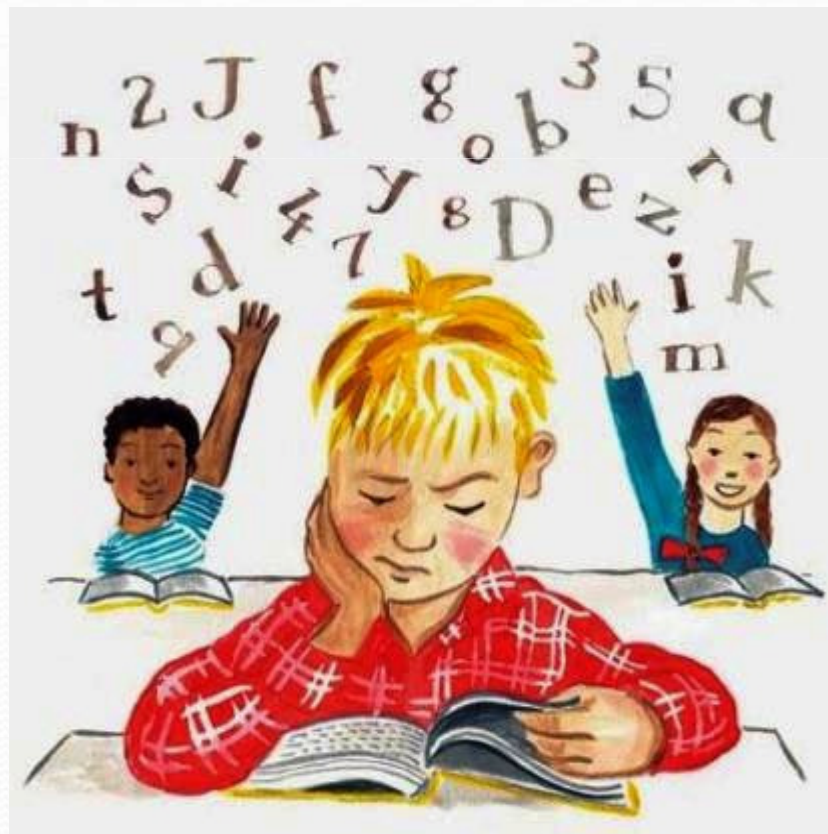




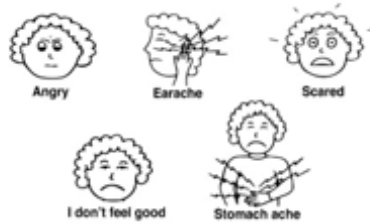
## Activities

### Learning Disabilities

There are many different kinds of learning disabilities and they can range from mild to severe problems. Activity 1 gives a general idea what it is like to have to struggle against what your brain may be telling you.



## Activities



### Intellectual Disability

When a person has an intellectual disability, it means that they learn slower. Because they learn more slowly, they don't learn as much as other people might. There are over 200 known causes for intellectual disability. About one-third of the time, no one knows what caused it. Not everyone with an intellectual disability is alike. One person can have mild problems while another may have severe problems.

A person with an intellectual disability may:

- have difficulty understanding what other people say or mean;
- may have difficulty saying what they mean or how they feel;
- understanding social cues (for example, if you turn away they may not know this means you don't want to talk to them);
- have difficulty learning and concentrating;
- have to do things many more times than average before they learn it;
- act younger than their age;
- not understand when someone is making fun of them;
- may find it hard to read or write; or
- may not understand when someone tells them to do something wrong.

## Activities

### Physical Disabilities

There are a large variety of different physical disabilities, all of which can range from a mild problem to complete immobility. Many people will have more than one disability, such as not being able to use their legs or hands.





## Activities

### **Vision Impairments**

Vision impairments include things like being short-sighted or far-sighted that are correctable with glasses. It can also mean more serious problems like blindness or problems that are only helped a little by glasses.





## Rights at work

All employees have workplace rights. A worker with disability has the same rights but they also have the right to have accommodations put in place so that they can carry out the inherent requirements of the job. Some of these rights are:

- Being represented by an advocate or a lawyer when there are problems at work
- Having wages assessed in a fair way (SWS)
- Getting fair pay
- Having a safe workplace
- Getting paid if you are sick or hurt at work
- Not getting sacked because you are sick or you need extra help in doing your job
- Having four weeks of paid holiday leave each year
- Being paid when you are sick and can't go to work
- Not being treated differently because of the disability.

## Rights at work

- Each person with disability should be given the help they need to be involved in their workplace.
- Every person with disability can develop and use their skills so that they can be a valuable part of their workplace.
- People with disability can make a complaint if they are not happy with something about the workplace, and that it is safe for them to do that.
- The Employer has quality management systems in place that gets the best outcomes for Employees with disability
- Every Employee with disability should have the same type of work environment as people who do not have a disability.
- Workers with disability are given training and the support so that they can be successful.
- Employers who employ a person with disability should have knowledge and experience to make the employment a success.
- Support organisations should do what they can to protect people with disability and prevent abuse and neglect. They will also make sure that the Employer works within the appropriate industrial and human rights legislation.

## Laws to protect people with disability

There are laws to protect the rights of people with disability.

### ***The Disability Discrimination Act (1992) (DDA)***

Disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances. (**direct discrimination**)

It is also disability discrimination when there is a rule or policy that is the same for everyone but has an unfair effect on a person with disability. (**indirect discrimination**)

It may not be against the law to refuse to employ a person with disability if, because of their disability, they cannot perform **the inherent requirements of a job**. However, an employer must consider how the person with disability could be provided with **reasonable adjustments** to help them do the job. An adjustment is reasonable if it does not impose 'unjustifiable hardship' on the employer.



## Laws to protect people with disability

In Victoria workplace rights and responsibilities are set out in the ***Equal Opportunity Act 2010***. Employers can be held legally responsible for workplace incidents of discrimination, bullying and victimisation.

Under the Act, an Employer has the following responsibilities:

- **a positive duty** to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. The aim is to be proactive rather than reactive; and
- make **reasonable adjustments** so that a person with disability can safely and productively perform the genuine and reasonable requirements of employment. Making reasonable adjustments requires an employer to balance the need for change with the expense or effort involved in making this change. If an adjustment requires a disproportionately high expenditure or disruption it is not likely to be reasonable. Some employees with disability will need only minor changes or adjustments to their work hours or the performance requirements of the job, while others may require specific equipment or some structural change to the workplace.



## Laws to protect people with disability

Under the *Fair Work Act 2009*, unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the following attributes of the person: physical or mental disability as well as others.

Adverse action can include action that is unlawful if it is taken for a discriminatory reason. Adverse action taken by an employer includes doing, threatening or organising any of the following:

- dismissing an employee
- injuring an employee in their employment
- altering an employee's position to their detriment
- discriminating between one employee and other employees
- refusing to employ a prospective employee
- discriminating against a prospective employee on the terms and conditions in the offer of employment.

## Laws to protect people with disability

### What are adverse action claims?

- In order to make a **general protections claim** under the Fair Work Act employees simply need to allege that they were 'adversely affected' by a management decision made because of their workplace rights, or because they possessed a discriminatory attribute, eg. disability.
- An example is where an employee alleges her employment had been terminated because of her disability. A 'reverse onus or proof' applies with the employer having to prove that the decision-making process followed was not for that reason, but for an acceptable reason, such as continued and well documented under-performance combined with a lack of improvement

## Laws to protect people with disability

### Why are adverse action claims so significant?

General protections present considerable risks for employers for a number of reasons:

- they are open to prospective and current employees as well as contractors and other workers;
- When compared with the minimum employment period needed to be served before having access to unfair dismissal remedies, general protections are accessible by a wider range of people without a time limit for employment;
- provide broader remedies including injunctions;
- While time limits for lodging claims are the same as for unfair dismissal, damages are uncapped; and
- the reverse onus of proof means the employer is effectively guilty until proven otherwise.



## What we do

- Negotiate workplace solutions with employees and employers
- Educate employees with disability on workplace laws
- Assist employees on how to disclose their disability to employers
- Draft complaints of discrimination or unlawful dismissal
- Provide legal representation at:
  - Fair Work Australia
  - Australian Human Rights Commission (AHRC)
  - Federal Court of Australia
  - Victorian Civil and Administrative Tribunal (VCAT)
  - Administrative Appeals Tribunal (AAT)
  - Magistrates Court

## Cases

- Unlawful termination of employment
- Jobs in jeopardy
- Special modifications
- Wages and working conditions
- Disclosure of disability
- Bullying or harassment
- Cases that are in the public interest



## What we achieve

- Job retention
- Entitlements
- Flexibility in work arrangements
- Greater disability awareness
- Financial compensation for pain/suffering
- Empowerment
- Improved mental well-being
- Self-esteem
- Confidence





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