



# 'Handicapped'

Use of outdated terminology in  
Social Security law and policy

# Acknowledgments

This research report was authored by Economic Justice Australia (EJA) with significant legal research and drafting assistance from its major pro bono partner, Hall & Wilcox. EJA particularly thanks its Law Reform Officer, Linda Forbes, and Senior Manager of Policy at People with Disability Australia, Giancarlo de Vera, who reviewed the report prior to finalisation.

This research is one of the projects EJA is funded to undertake by the Department of Social Services (Department) as part of its grant agreement and EJA appreciates the Department's support and engagement.

EJA thanks its major pro bono partners



*Handicapped* was published in August 2022 by Economic Justice Australia, 321/410 Elizabeth St, Surry Hills, NSW 2010 Australia

© Economic Justice Australia

This publication is copyright. Apart from fair dealing for the purpose of private study, research, criticism, or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be addressed to the Chief Executive Officer, Economic Justice Australia.



# Contents

## Acknowledgments

- 1 About Economic Justice Australia
- 2 Introduction
  - 2.1 Historical use of the term 'handicapped'
  - 2.2 Using 'people first' and inclusive language
  - 2.3 Using language to empower
  - 2.4 Other Government departments
  - 2.5 Reports on language
  - 2.6 Examples of legislation where the term '*handicapped*' has been replaced
  - 2.7 Examples of legislation that still refers to '*handicapped*'
- 3 Discontinuing use of the term 'handicapped'
- 4 Use of 'handicapped' in the *Social Security Act 1991* (Cth) (SSA)
- 5 Attempts to amend SSA
- 6 Recommendations

# About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres, providing specialist advice to people on their social security issues and rights. EJA members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Its law and policy reform work:

- strengthens the effectiveness and integrity of our social security system;
- educates the community; and
- improves people's lives by reducing poverty and inequality.

EJA's policy positions are informed by its members' unique access to client-related experience, and research projects examining structural and systemic issues affecting access to social security rights and entitlements.

See our website for more information at [www.ejaustralia.org.au](http://www.ejaustralia.org.au).

## Introduction

Language relating to disability generally, and to people with disability, has significantly changed since the introduction of the *Social Security Act 1991* (Cth). This has occurred due to a shift in society's understanding of the impact that the use of certain terms has on people with disability.

People with Disability Australia (**PWDA**) has developed a Language Guide (**Guide**) to assist in talking about and reporting on disability. PWDA says that:

*The choices people make about language have an impact on the way people with disability feel and are perceived in society. It is important that there is awareness of the meaning behind the words that are used when talking to, referring to, or working with people with disability. Disrespectful language can make people with disability feel hurt and excluded, and be a barrier to full participation in society.*

...

*People with disability are often described in ways that are disempowering, discriminatory, degrading and offensive. Negative words such as 'victim' or 'sufferer' reinforce stereotypes that people with disability are unhappy about our lives, wish we were 'normal', and should be viewed as objects of pity.*

*These harmful stereotypes are simply not true. People with disability are people first – people who have families, who work, and who participate in our communities. People with disability want our lives to be respected and affirmed. In addition, many people with disability are proud of being disabled, and want that identity respected.<sup>11</sup>*

Regrettably, outdated and arguably offensive language such as 'handicapped' continues to be used in social security law.

---

<sup>11</sup> <https://pwd.org.au/resources/disability-info/language-guide/>

# Historical use of the term 'handicapped'

The term '*handicapped*' was traditionally used in relation to horse races to describe the process where an umpire would require extra weight to be carried by some horses in order to ensure each horse and rider weighed a similar weight. The jockeys whose horses carried extra weight would be referred to as having a '*handicap*'. Consistent with horse racing origins, the Macquarie Dictionary defines the word '*handicap*' as '*any encumbrance or disadvantage that makes success more difficult*'.

Using this term in relation to a person is clearly derogatory and could be taken to suggest that, on account of disability, they are unlikely to succeed.

## Using 'people first' and inclusive language

Many organisations have encouraged people to use language that focuses on the person rather than focussing on disability, on the grounds that a person with disability should not be reduced to or defined by the disability.

People with Disability Australia (**PWDA**) does not support the use of euphemisms such as '*handicapable*' to refer to people with disability. This term is specifically listed by PWDA as a derogatory term for people with physical or mobility related disability, regardless of the context in which it is used. PWDA emphasises that '*handicapped*' and other like terms tend to support the position that people are:

*'reduced to just their disability. Defining people by their disability is often used as an excuse to ignore our humanity - to put us in a separate and lesser category so that non-disabled people do not have to think about the wants, needs, rights or feelings of people with disability.'*<sup>2</sup>

The Australian Network on Disability (**AND**) also considers that '*person first language is the most widely accepted terminology in Australia [for people with disability]*'.<sup>3</sup> This means placing continued focus on the person and to avoid referring to people with disability as the disability. For instance, instead of saying a 'deaf person', the appropriate term is a 'person who is deaf'. Some might consider these small changes, however they can make a huge impact.

Cerebral Palsy Australia similarly encourages the use of people first language by noting that using terms such as '*handicapped*' is often seen as a label:

*'In most cases, it just doesn't occur to many of us that such a statement is a label. It amounts to labelling a person by their condition without taking into account his or her abilities, feelings or aspirations.'*<sup>4</sup>

Cerebral Palsy Australia considers that the use of people first language combats the problem of labelling:

---

<sup>2</sup> PWDA, 'Identity-First Vs Person-First Language', <https://pwd.org.au/resources/disability-info/language-guide/identity-vs-person/>.

<sup>3</sup> AND, 'Inclusive language', <https://www.and.org.au/pages/inclusive-language.html>.

<sup>4</sup> Cerebral Palsy, 'Disability Etiquette', <https://www.cerebralpalsy.org/information/disability/etiquette>.

*'Terms like physically challenged, differently-abled, physically-handicapped and wheelchair-bound are outdated. The current trend is to limit the use of labelling terms with negative connotations.'*<sup>5</sup>

The use of people first and inclusive language further prevents labelling and depersonalisation. AimBig Employment states that by using inclusive language, and avoiding the use of offensive terms such as *'handicapped'*, all people are treated with *'respect, dignity, and impartiality.'*<sup>6</sup>

## Using language to empower

It is important that people with disability are not made to feel that their lives are in any way overshadowed by their disability. The use of the word *'handicapped'* works against creating a sense of empowerment.<sup>7</sup> In particular, shifting the focus from disability to accessibility can help to enable people with disability to feel a sense of liberation, and encourages others to consider and assist in ensuring accessibility.

*'Handicapped'* being used in relation to parking spots and entrances to buildings provides a useful example of why the term is not appropriate and should not be used. The use of the term in this context simply does not make sense, as a parking spot is not *'handicapped'*. There is nothing wrong with the spot, there is no obstacle to its use, it is merely an accessible spot and should be labelled as such. By describing a parking spot intended for use by people with disability as an accessible spot rather than *'handicapped'*, we are using language which presents a more positive perspective and avoids the negative connotations associated with *'handicapped'*.

---

<sup>5</sup> Cerebral Palsy, 'Disability Etiquette', <https://www.cerebralpalsy.org/information/disability/etiquette>.

<sup>6</sup> AimBig Employment, 'Why disability-inclusive language matters', <https://www.aimbigemployment.com.au/why-disability-inclusive-language-matters/>.

<sup>7</sup> AND, 'Inclusive language', <https://www.and.org.au/pages/inclusive-language.html>.

## Other Government departments

Our search of other Government departments' websites had nil references to the term '*handicapped*'.<sup>8</sup>

## Reports on language

The '*New Direction Report of the Handicapped Programs Review*'<sup>9</sup> was Australia's first national consultation with people with disability, their families and service providers. The report's major focus was to establish appropriate long term goals and develop program options based on the aspirations of consumers. The consumer approach aimed to deliver new programs for people with disability to be established by the Commonwealth.

At the time, there was a lack of statistical data regarding people with disability in Australia. The most comprehensive information available was in the Australia Bureau of Statistics' (ABS) survey, *Handicapped Persons Australia 1981*, but the results of the '*severely handicapped*' groupings were generally descriptive of people with disability.

The report resulted in the replacement of the *Handicapped Persons Assistance Act 1974* (Cth) with the *Disability Services Act 1986* (Cth).

The report posed objectives of community awareness, understanding of disability and to increase community acceptance of people with disability. The report acknowledged that, at that time in Australia, the terms '*disability*' and '*disabled*' were generally acceptable to the people involved, rather than the terms '*handicap*' and '*handicapped*'. The report acknowledged the need to change the language used by the media and by the community generally. In order for that to occur, it was suggested that phrases such as "*the handicapped*" or "*the deaf*" be replaced with "*people with disabilities*" or "*people with hearing impairments*".

It is noted that, previously, the Commonwealth and State Governments contributed to public awareness campaigns during the International Year of Disabled Persons in 1981. At the time of the report, there was no financial support for community education under the former *Handicapped Persons Assistance Act*.

The Productivity Commission's Interim Report on Disability<sup>10</sup> facilitated the enactment of the National Disability Insurance Scheme (**NDIS**). The report does not mention the word '*handicapped*'. The Commonwealth Government has acknowledged that the term is no longer used in the community and therefore is no longer referenced in legislation addressing the needs of people with disability.

---

<sup>8</sup> This included: Administrative Appeals Tribunal, Australian Digital Health Agency, Australian Commission on Safety and Quality in Health; Australia Hearing Services, Australian Institute of Health and Welfare, Cancer Australia, and National Disability Insurance Scheme.

<sup>9</sup> Handicapped Programs Review (Australia). & Australia. Department of Community Services. (1985). *New Direction Report of the Handicapped Programs Review*. Canberra: Australian Govt. Pub. Service

<sup>10</sup> Productivity Commission (2011), Disability Care and Support, Report no. 54, Canberra.

## Examples of legislation where the term 'handicapped' has been replaced

Before	After
<b>Supreme Court (General Civil Procedure) Rules 2005 (VIC)</b>	
ORDER 15 PERSON UNDER DISABILITY 15.01 Definitions In this Order— handicapped person means a person who is incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the proceeding; person under disability means minor or handicapped person.	ORDER 15—PERSONS UNDER DISABILITY 15.01 Definition In this Order, person under disability means— (a) a minor; or (b) a person who is incapable, by reason of injury, disease, senility, illness or physical or mental infirmity, of managing that person's affairs in relation to the proceeding.
<b>Copyright Act 1968 (Cth) to the Copyright Amendment Act (No.1) 1998 (Cth)</b>	
The Copyright Act 1968 (Cth) used the terms 'handicapped persons' and 'handicapped readers'	The Copyright Amendment Act (No.1) 1998 (Cth) replaced those terms with 'persons with an intellectual disability' and 'persons with a print disability'.
<b>Local Government Act 1994 (No.3) 1993 (NSW)</b>	
'physical impairment' and "physically handicapped persons"	In 1998, the terms were replaced with "disability" and "persons with disabilities". The act also refers that the term disability has the same meaning as in the Disability Discrimination Act 1992 (Cth).

## Examples of legislation that still refers to 'handicapped'

Unfortunately, there are other legislative instruments that continue to use the term 'handicapped'.

- Section 126 of *Criminal Code Act 1983* (NT) states:

*Definitions*

*In this Subdivision:*

**in public** means with more than one other person present or within the view of a person not a party to the act.

**mentally ill or handicapped person** means a person who, because of abnormality of mind, is unable to manage himself or herself or to exercise responsible behaviour.'

- Section 27 of the *Property (Relationships) Act 1984 No 147* (NSW) states:

*Order for maintenance*

(1) On an application by a party to a domestic relationship for an order under this Part for maintenance, a court may make an order for maintenance (whether for periodic maintenance or otherwise) where the court is satisfied as to either or both of the following:



(a) that the applicant is unable to support himself or herself adequately by reason of having the care and control of a child of the parties to the relationship or a child of the respondent, being, in either case, a child who is, on the day on which the application is made:

(i) except in the case of a child referred to in subparagraph (ii)—under the age of 12 years, or

(ii) in the case of a physically **handicapped** child or mentally handicapped child—under the age of 16 years...'

## Discontinuing use of the term 'handicapped'

There is clear consensus that 'handicapped' is a term which should no longer be used.

- The Australian Federation of Disability Organisations specifically lists 'handicapped' as a term not to be used when talking about people with disability;<sup>11</sup>
- UN guidelines list 'handicapped' as a term to be avoided when speaking about people with disability;<sup>12</sup> and
- National Youth Leadership Network and Kids as Self Advocates lists 'handicapped' as outdated language and provides guidelines which encourage the use of 'accessible' instead of 'handicapped'.<sup>13</sup>

## Use of 'handicapped' in the Social Security Act 1991 (Cth)(SSA)

Overall, there are 15 occurrences of the term 'handicapped' within 7 sections of the SSA, all of which are contained in the first 2 volumes. They are extracted below for ease of reference (**our emphasis added**):

Volume 1 - Part 1.2 - Section 8 - Definitions

*'Excluded amounts—general*

(8) *The following amounts are not income for the purposes of this Act:*

...

(e) a payment under the **Handicapped** Persons Assistance Act 1974;'

Volume 1 - Part 1.2 - Section 10A - Definitions

*'Definitions for carer allowance and seniors' health card provisions*

(2) *In this section and in Parts 2.19, 3.9 and 3.12A, unless the contrary intention*

<sup>11</sup> Australian Federation of Disability Organisations, 'Language Guide', <https://www.afdo.org.au/news/language-guide/>.

<sup>12</sup> United Nation Office Geneva, 'Disability-inclusive language guidelines', <https://www.un Geneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf>.

<sup>13</sup> National Youth Leadership Network and Kids As Self Advocates, 'Respectful Disability Language', [http://www.aucd.org/docs/add/sa\\_summits/Language%20Doc.pdf](http://www.aucd.org/docs/add/sa_summits/Language%20Doc.pdf).

appears:

...

*disadvantaged person means a person who is intellectually, psychiatrically or physically **handicapped**.*

#### Volume 1 - Part 1.2 - Section 19 - Definitions

*'Mobility allowance definitions*

...

**handicapped person** means a person who:

(a) *has a physical or mental disability; and*

(b) *has turned 16.'*

#### Volume 1 - Part 1.2 - Section 23 - Definitions

*'Definitions*

...

**handicapped person:** *see section 19'.*

#### Volume 2 - Part 2.21 - Section 1035 - Mobility allowance

*'Qualification for mobility allowance (rate specified in subsection 1044(1))*

(1) *A person is qualified for a mobility allowance at the rate specified in subsection 1044(1) if the person satisfies the travel test set out in subsection (2) and:*

(a) *all of the following apply:*

(i) *the person is a **handicapped** person;*

...

(b) *all of the following apply*

(i) *the person is a **handicapped** person;*

...

(c) *all of the following apply:*

(i) *the person is a **handicapped** person;*

...

(d) *all of the following apply:*

(i) *the person is a **handicapped** person;*

...

(e) *all of the following apply:*

(i) *the person is a **handicapped** person;*

...

- (f) all of the following apply:
  - (i) the person is a **handicapped** person;
  - ...
- (g) all of the following apply:
  - (i) the person is a **handicapped** person;
  - ...
- (h) all of the following apply:
  - (i) the person is a **handicapped** person;
  - ...

Volume 2 - Part 2.21 - Section 1035A - Mobility allowance

*'Qualification for mobility allowance (rate specified in subsection 1044(1A))*

*General Principle*

(1) A person is qualified for a mobility allowance at the rate specified in subsection 1044(1A) if:

- (a) the person is a **handicapped** person;
- ...

Volume 2 - Part 2.210 Section 1039AA - Mobility allowance

*'Newly arrived resident's waiting period*

...

(4) Subsection (1) does not apply to a person who becomes a **handicapped** person while in Australia.

Note: For **handicapped person** see section 19.'

## Attempts to amend SSA

The term handicap has mostly been removed from social security law, as different types of disability payments and eligibility criteria evolved over the past 40 years.

The Handicapped Child Allowance became the Child Disability Allowance in 1987. The distinction between 'severely handicapped child' and 'handicapped child' disappeared on that occasion and the allowance became payable for any disabled child within the meaning of section 101 of the *Social Security Act 1947*. This payment has now been replaced by the Carer Allowance, which does not use person first legislation, as the defined terms include 'disabled adult' and 'disabled child'.

The Spouse Carer's Pension, (later the Carer Pension and now the Carer Payment) was originally payable to the husband of a 'severely handicapped' age or invalid pensioner or rehabilitation allowee<sup>14</sup>. It became the Carer's Pension in 1985, which was payable to anyone caring for a 'severely handicapped' relative. Reference to severely handicapped person was eventually abandoned with the introduction of the Adult Disability Assessment Tool in 1999<sup>15</sup>.

The Disability Support Pension was introduced in 1991 to replace the Invalid Pension (as well as other payments) and did not refer to the term handicap from its implementation.

The Mobility Allowance payment is the last Commonwealth social security payment for people with disability which, in 2022, continues to include the criterion that '*the person is a handicapped person*', under sections 1035(1)(a)(i) and 1035A(1)(a) of the SSA (as defined at section 19 of the SSA), . This payment was first introduced by the *Social Security Legislation Amendment Act 1982* in 1983. It provides financial assistance to people who cannot use public transport without substantial assistance and are required to travel to and from their home in order to undertake approved activities, which include work, study, training or job search<sup>16</sup>.

Very little change has been introduced to that payment since its introduction in 1983. The payment was extended to people undertaking job search activities under a Competitive Employment, Placement and Training Program (CETP) in 1994, and to '*handicapped recipients*' of the Newstart Allowance, Jobseeker Allowance and Youth Training Allowance in 1995. The eligibility criteria, including that a person be a '*handicapped person*' were not amended on these occasions.

A proposed amendment was introduced in 2016 with the *Social Services Legislation Amendment (Transition Mobility Allowance to National Disability Insurance Scheme) Bill 2016* (2016 Bill) to transition the Mobility Allowance to the NDIS from 1 July 2020. The Bill contained an amendment repealing the definition at section 19 of the SSA and amending the criterion at sections 1035(1)(a)(i) and 1035A(1)(a) to '*the person has a physical or mental disability and the Secretary is of the opinion that the disability is either permanent or likely to last for at least 12 months*'. In addition to the current requirement that a person has turned 16, the 2016 Bill proposed that a person also needs to be under 65 years of age<sup>17</sup>.

As mentioned in the second reading speech of the Minister of Social Services on 13 October 2016, the proposed amendment's principal objective was to align the disability criteria of the SSA with the NDIS, thereby significantly limiting the eligibility criteria for new applicants (for instance people under 65 would no longer be entitled to the allowance).

This proposed amendment eventually lapsed on 1 July 2019 due to the uncertainty surrounding the continued eligibility to recipients and applicants who are ineligible for NDIS assistance<sup>18</sup>.

As a result the 2016 Bill lapsing, the eligibility criteria for the Mobility Allowance remains unchanged 38 years after it was first introduced in 1983 and still refers to the term '*handicapped person*'. There is

---

<sup>14</sup> Section 13 of the Social Security Legislation Amendment Act **1983**

<sup>15</sup> Schedule 1 Assistance for Carers Legislation Amendment Act 1999.

<sup>16</sup> <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability/mobility-allowance-mob>

<sup>17</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1617a/17bd046](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd046)

<sup>18</sup> <https://pwd.org.au/cuts-to-mobility-allowance/>

currently no legislation before the Parliament<sup>19</sup> to enact the transition of the Mobility Allowance to the NDIS or to amend the eligibility criteria to delete any reference to the term ‘*handicapped person*’.

## Recommendations

As outlined in this research, there is clear consensus across government and organisations of and for people with disability that the term ‘handicapped’ should not be used in relation to disability, and that there is a need to expunge the term from legislation, policy documents, guidelines and information resources. Whilst the term has been replaced in most social security legislation and associated policy documents, further changes are needed to ensure that all language relating to disability and people with disability is respectful and in line with language used in Commonwealth legislation that has been appropriately updated. We recommend that:

- A. the Department of Social Services review the 15 occurrences of the term ‘handicapped’ and ‘severely handicapped’ within 7 sections of the SSA (as referenced above), and draft amendments to replace the term with person first language;
- B. where reference to ‘handicapped’ persons relates to provisions and definitions in another piece of legislation, such as the *Handicapped Persons Assistance Act 1974*, DSS should liaise with the relevant Department/agency toward developing complementary amendments to linked legislation. In the case of all of the *Handicapped Persons Assistance Act 1974*, this would mean renaming of the Act and entitlements under that Act, including by replacing definitions of ‘handicapped’ adults and children with person first language;
- C. definitions for carer allowance and seniors’ health card provisions of the SSA be amended, including by revising the definition of a ‘disadvantaged person’ (as referenced above); and
- D. definitions regarding Mobility Allowance be amended, to replace the term ‘handicapped person’ and associated references to ‘handicapped’ (as referenced above).

---

<sup>19</sup> <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability/mobility-allowance-mob>



[www.ejaustralia.org.au](http://www.ejaustralia.org.au)