



people with disability

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People with Disability Australia (PWDA)

**Productivity Commission Issues Paper
Access to Justice Arrangements**

**Submission
November 2013**

About Us

People with Disability Australia (PWDA) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated.

PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

Advocating for the rights of people with disability

PWDA is also a coordinating member of the Australian Civil Society Parallel Report Group. In 2009 the Parallel Report Group was formed in order to prepare a report from civil society on Australia's compliance with, and progress in implementation of, the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

The Parallel Report Group brought together Disabled Peoples Organisations (DPOs), disability advocacy organisations, disability legal advocacy centres and human rights organisations in order to conduct research and consult with people with disability to gain their perspective and gather their experiences. Specific input was sought from representatives of people with disability in rural and remote Australia and Aboriginal and Torres Strait Islander people with disability; and consultations were held in each State and Territory.

The final report, *Disability Rights Now*, was launched in August 2012 and has been endorsed by over 80 organisations. It was provided to the CRPD Committee as information to consider for its review of Australia's compliance with the CRPD during its 10th session in September 2013. For more information see <http://www.disabilityrightsnow.org.au/>

Access to justice for people with disability

PWDA welcomes the Productivity Commission's Inquiry into Access to Justice Arrangements, and is pleased to have the opportunity to contribute to this process. People with disability experience a variety of barriers to accessing justice including limited capacity to pay, limited access to information and legal services, and through the denial of reasonable accommodation throughout legal proceedings. The extent to which these barriers are experienced differs significantly across Australia, depending on where the person with disability lives, and the other supports available to them. The information in this submission reflects this diversity of experience and disadvantage.

This submission consists of:

- 1) the section of the Disability Rights Now report that addresses article 13 of the CRPD, Access to Justice;
- 2) the Response to the List of Issues, including recommendations, made by the Parallel Report Group to the CRPD Committee regarding Access to Justice for people with disability during the Committee's 10th session in September 2013; and
- 3) the paragraphs of the CRPD committee's Concluding Observations to Australia regarding Access to Justice for people with disability published in October 2013.

PWDA encourages the Commission to strongly consider the genuine views and experiences of people and their representative organising as expressed in the material drafted to support the CRPD monitoring process, and the Concluding Observations made by the CRPD Committee in response to those concerns.

Disability Rights Now, Article 13 Access to Justice¹

Status in Australia

People with disability are over-represented in the justice system whether as complainants, litigants, defendants, victims or other witnesses. They also encounter significant barriers in undertaking roles as officers of the courts, such as jurors², lawyers, administrators and adjudicators.³

Some of these issues are acknowledged as areas for action in the National Disability Strategy (NDS)⁴ and Australia's National Human Rights Action Plan Exposure Draft (NHRAP Exposure Draft).⁵ However, the NDS contains no specific measures to address these issues and the NHRAP Exposure Draft had not at March 2012 been endorsed by Australian governments.

Australian governments fund some legal services specifically for people with disability and Australian courts are introducing disability access schemes.⁶ However, people with disability participating in the legal system often experience significant barriers,⁷ with many finding access to justice too difficult, hostile or ineffectual.⁸ As a result, people with disability are often left without legal redress.⁹

Australian governments fund disability advocacy services to provide support to people with disability to safeguard and exercise their rights.¹⁰ However, there are some gaps in advocacy funding, such as the lack of funding from the South Australian Government for the provision of advocacy, and the lack of funding for a specific Aboriginal and Torres Strait Islander self-governing disability advocacy program.

Legal Representation

Access to justice often relies on access to legal representation. Increased living costs and difficulties securing employment often result in people with disability being unable to pay for legal services or bear cost risks of not succeeding.¹¹ Underfunding of public legal services has resulted in a significant tightening of eligibility criteria. As a result, legal representation is primarily available only to the very poor and generally only in criminal matters.

¹ Disability Rights Now paragraphs 197 – 223. Full report available at <http://www.disabilityrightsnow.org.au/node/65>

² This also interferes with their CRPD Article 12 right to equality before the law, and Article 29 right to participation in political and public life.

³ Phillip French, 'Disabled Justice: The Barriers to Justice for Persons with Disability in Queensland' (Report, Queensland Advocacy Incorporated, 22 May 2007); Disability Council of NSW, 'A Question of Justice: Access and Participation for People with Disabilities in Contact with the Justice System' (Report, 2003); Intellectual Disability Rights Service in conjunction with the Coalition on Intellectual Disability and Criminal Justice & NSW Council for Intellectual Disability, 'Enabling Justice: A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System' (Report, May 2008).

⁴ Council of Australian Governments, *National Disability Strategy*, above n **Error! Bookmark not defined.**, 36-40

⁵ Attorney-General's Department, 'Australia's National Human Rights Action Plan Exposure Draft' (Draft Report, Australian Government, 2012) 3.

⁶ See, for example, NSW Attorney General's Department, 'Disability Strategic Plan 2006–2008: Summary' (Report, undated) <[www.lawlink.nsw.gov.au/Lawlink/DiversityServices/II_DiversitySrvces.nsf/vwFiles/Summary%20DSP.pdf/\\$file/Summary%20DSP.pdf](http://www.lawlink.nsw.gov.au/Lawlink/DiversityServices/II_DiversitySrvces.nsf/vwFiles/Summary%20DSP.pdf/$file/Summary%20DSP.pdf)> and Victorian Department of Justice, 'Disability Action Plan 2009–2011' (Report, undated) <www.justice.vic.gov.au/wps/wcm/connect/1fa77b80404a83bf91bdfbf5f2791d4a/DAP2009–2011_word_large_print.doc?MOD=AJPERES>.

⁷ Submission by attendee at the CRPD Shadow Report consultation in Adelaide, SA (25 November 2009).

⁸ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

⁹ Submission by attendee at the CRPD Shadow Report consultation in Perth, WA (30 November 2009).

¹⁰ Council of Australian Governments, *National Disability Strategy*, above n **Error! Bookmark not defined.**, 40.

¹¹ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

Case Study: AG was placed on a Compulsory Treatment Order (CTO) which required involuntary treatment with the anti-psychotic drug Risperdal, and oversight by a psychiatrist appointed by the Mental Health Review Tribunal. AG was not represented at the tribunal hearing when he was placed on a CTO. After some time on the medication, AG formed the view that his mental state was worse and the drug was having substantial detrimental effects. AG sought assistance from Legal Aid New South Wales to appeal the CTO. Legal Aid applied a merit test to his request for assistance and declined to represent him because he had no medical evidence to support his assertion the dosage was incorrect. AG then approached a pro bono legal service that sought to obtain a report from a psychiatrist. The only income received by AG was a disability support payment, and as such AG could not afford to fund the cost of a psychiatrist's report, and there was no funding available to pay for one. Ultimately, a law firm agreed to provide free legal representation and pay for the cost of the medical report. The medical report confirmed that the dosage could be reduced. AG was represented at a further hearing by the pro bono provider, and his CTO was varied.¹²

Civil and administrative claims for people with disability receive minimal support, even when such claims involve important human rights issues. Funding for community legal centres fell 18 per cent between 1998 and 2008.¹³ As a result of this decline, the burden on community legal centres, pro bono services and other community organisations has increased.

Consequently, many people with disability are continually referred from one service to another whenever services have inadequate resources or expertise to deal with disability legal issues.

Gaps in the provision of legal services are further magnified in regional and remote parts of Australia.¹⁴ Such shortages particularly affect Aboriginal and Torres Strait Islander people with disability, who also experience gaps in health and education. For example, a lack of funding means the Aboriginal Legal Service in New South Wales and the Australian Capital Territory no longer provides civil and family law services.¹⁵

Cost Barriers¹⁶

If a complaint under the *Disability Discrimination Act 1992* (Cth) (DDA) fails to be conciliated by the Australian Human Rights Commission (AHRC), it can be referred to the Federal Court for adjudication. The Federal Court is a cost jurisdiction, which means people with disability making complaints risk having to pay the other party's costs if their case is unsuccessful. While this provides a safeguard against potentially vexatious litigants and frivolous claims, the current costs regime creates a barrier for people with disability who wish to pursue litigation matters in the public interest. The Australian court costs regime in effect acts as a disincentive to the enforcement of disability rights, and hampers access to justice as provided under Article 13(1).

Case Study: *"The DDA is good but the problem is what you have to do to get your rights under it. Because there are [usually] no protective costs orders, [people with disability] won't go to the Federal Court and risk losing their house and everything they have got just to get their right to ride on a plane. Why would you risk it? Especially when you are*

¹² Case study provided by Nicolas Patrick, Pro Bono Partner, DLA Piper.

¹³ National Association of Community Legal Centres, 'An Investment Worth Protecting': Funding Submission to the Commonwealth Government 2007–2010, 1 January 2008, Executive Summary, 2 <http://www.naclc.org.au/resources/NACLC_fund08_CMYK.pdf>.

¹⁴ Senate Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Access to Justice* (2009) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/access_to_justice/report/index.htm>.

¹⁵ Nicolas Patrick, Submission to the Senate Legal and Constitutional Affairs Committee, *Inquiry into Access to Justice*, 2009 <<https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=fae67931-c2a4-448a-9dc8-0ab803c08780>>.

¹⁶ This also impacts upon the CRPD Article 5 right of equality and non-discrimination for people with disability.

*dealing with government, the biggest providers of services to persons with disability, their attitude can often be 'We are not going to budge, come on and sue us', because they can get away with it.'*¹⁷

It is possible to seek a protective cost order in some jurisdictions. Such orders place a limit on costs that the unsuccessful party has to pay. These orders are discretionary and the burden falls on the person with disability making the claim.¹⁸

Systemic Barriers

Only some Australian governments have established court diversion programs that provide interventions and supports to people with disability to prevent unnecessary contact with the criminal justice system. Inappropriate and unnecessary contact with the criminal justice system often leads to multiple offences, fines and incarceration.¹⁹

A key factor contributing to the higher than average arrest rates for people with disability is insufficient police training. Currently, police training primarily deals with discrete disability issues instead of taking into account the ongoing social supports and needs of people with disability.²⁰ Experience and statistics also indicate that Australia has failed to train prison system personnel and police to facilitate access to justice.

Training in providing accommodations and supports to people with disability is neither compulsory nor consistent across different jurisdictions for judicial officers, legal practitioners and court staff.²¹ A lack of awareness about disability issues leads to discrimination and negative attitudes which create barriers to accessing justice.²²

People with disability can face barriers to establishing credibility when interacting with the justice system. Assumptions about the credibility of people with disability, in particular people with cognitive disability are constantly made by police and court officers, such as prosecutors, judges and magistrates.²³

Case Study: *In a case recently profiled on a national ABC TV investigative report, a bus driver employed by a church operated special school for children with disability was not charged with a series of sexual assault charges against a number of young boys with disability over a period of time as police did not believe that these charges would be upheld in a court due to questions about the competence of witnesses on the grounds of their intellectual disability. Despite action taken to pursue a number of serial rapists and paedophiles who preyed on children without disability in church run schools in recent times, cases involving children with disability, such as this one have not been pursued by authorities.*²⁴

Reasonable Accommodation

People with disability are often not provided with the supports they require to engage effectively in all processes of

¹⁷ Submission by attendee at the CRPD Shadow Report consultation in Melbourne, Victoria (16 November 2009).

¹⁸ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

¹⁹ Submission by attendee at the CRPD Shadow Report consultation in Perth, WA (30 November 2009).

²⁰ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

²¹ For different examples of training programs for Court staff see NSW Attorney General's Department, 'Disability Strategic Plan', above n 6 and Victorian Department of Justice, 'Disability Action Plan', above n 6. Disability issues or discrimination law is currently not compulsory for Australian law graduates.

²² Louis Schetzer and Judith Henderson, 'Access to Justice and Legal Needs, Stage 1 Public Consultations' (Report, Law and Justice Foundation of NSW, 2003) 216, 225 <www.lawfoundation.net.au/report/consultations>.

²³ Phillip French, 'Disabled Justice', above n 3.

²⁴ ABC, 'Four Corners Reveals Story of Abuse at St Ann's Special School', *ABC Four Corners*, 26 September 2011 (Bronwyn Herbert) <www.abc.net.au/pm/content/2011/s3326103.htm>.

the justice system.²⁵ Many people are unable to access police and court premises or communicate with, police, lawyers or court staff²⁶ in the method of their choice.

Case Study: *Helen has multiple chemical sensitivity and was retired from her job. During a worker's compensation hearing, the judge said that Helen would be held in contempt if she did not attend court. Unable to obtain information about pesticides used on the premises, Helen became sick upon entering the foyer.*

Initiatives to improve access to courts do not include preliminary and investigative stages of proceedings, while access to such initiatives often involves an element of luck.²⁷

Furthermore, training for judicial officers, legal practitioners and court staff about how to accommodate people with disability is not compulsory or consistent across Australian jurisdictions.²⁸

People with cognitive impairment also face significant barriers at all stages of the justice system, often not receiving adequate or appropriate support to:

- communicate instructions to legal representatives;
- understand the substance and significance of legal issues and documents; or
- understand formal court processes.²⁹

Over-Representation in the Prison System

While data is not uniform or consistent across jurisdictions, available data suggests that almost half to 78 per cent of prisoners have experienced a 'psychiatric disorder' compared with 11 per cent of the general population; and 20 per cent of prisoners have an intellectual disability compared with 2–3 per cent of the general population.³⁰

As research and data tends to focus on people with intellectual and psychosocial disability, it is suggested that there is a tendency to overlook the significant over-representation of people with acquired brain injury in the criminal justice system, as well as ignore specific issues, and perhaps over-representation of Deaf people.³¹

Women with disability consist of between 30 to 50 per cent of the prison population. Research also indicates that the percentage of women with disability in prisons is greater than men with disability and that rates for women with disability from Aboriginal and Torres Strait Islander background is also higher than equivalent figures for men.³²

Aboriginal and Torres Strait Islander people with disability are almost 14 times more likely to be imprisoned than the rest of the population.³³ Given that it is estimated that the incidence of disability in Aboriginal and Torres Strait

²⁵ Legal Aid Queensland, 'Developing a National Disability Strategy', 2008, 4 <www.legalaid.qld.gov.au/about/policy/Policy%20submissions%20and%20research/national-disability-strategy-submission.pdf>.

²⁶ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

²⁷ Submission by attendee at the CRPD Shadow Report consultation in Sydney, NSW (10 November 2009).

²⁸ Awareness raising of the rights of people with disability is also an obligation under CRPD Article 8. For different examples of training programs for Court staff see NSW Attorney General's Department, 'Disability Strategic Plan', above n 6 and Victorian Department of Justice, 'Disability Action Plan', above n 6. Disability issues or discrimination law is not compulsory for Australian law graduates.

²⁹ Legal Aid Queensland, 'Developing a National Disability Strategy', above n 48, 2.

³⁰ NSW Law Reform Commission, 'People with Cognitive and Mental Health Impairments in the Criminal Justice System: An Overview' (Consultation Paper No 5, January 2010) 13–15.

³¹ Phillip French, 'Disabled Justice', above n 3, 25

³² See <www.sistersinside.com.au>.

³³ Senate Select Committee on Regional and Remote Indigenous Communities, Parliament of Australia, *Indigenous Australians, Incarceration and the Criminal Justice System* (March 2010) 5.

Islander communities is twice that of the general community, it can be assumed that there is significant over-representation of Aboriginal and Torres Strait Islander people with disability in Australian prisons.

Over-Representation in the Juvenile Justice System

In 2005 the UN Committee on the Rights of the Child expressed concern about the over-representation of children with disability in the juvenile justice system in Australia. It recommended that Australia address issues for children and young people in conflict with the law “without resorting to judicial proceedings”.³⁴ Despite this recognition there has been no coordinated approach to research and implement measures to address this issue.

Available evidence from 2010 suggests that nearly “half the young people in New South Wales juvenile detention centres have an intellectual or ‘borderline’ intellectual disability”.³⁵ A higher proportion of Aboriginal and Torres Strait Islander young people were represented in this group — 39 percent compared to 26 percent.³⁶ The majority of young people were found to have a ‘psychological condition’ (85 percent), with two thirds (73 percent) reporting two or more ‘psychological conditions’. There were a significantly higher proportion of young women and Aboriginal and Torres Strait Islander young people in this group.³⁷ The study also found that 32 percent of young people in New South Wales juvenile detention centres had a traumatic brain injury or a head injury, and that this incidence had increased significantly for young women since the previous survey in 2003 (from 6 to 33 percent).³⁸

The increased risk of young people with disability entering the juvenile justice system is linked to failures that breach rights contained in Article 13, as well as Articles 14, 15, 16, 23 and 26. These failures include:³⁹

- lack of support services, appropriate treatment and behaviour intervention programs, family based out of home care services and accommodation options;
- the use of inappropriate and harmful service practices, such as physical restraint and medication;
- the risk or actual occurrence of physical and sexual assault; and
- the reliance on the police to resolve ‘challenging’ behaviour.⁴⁰

Case Study: *Jack has an intellectual disability and attention deficit disorder, has been a victim of abuse and is homeless. Much of Jack’s contact and interaction with police has resulted in additional charges, including resisting, assaulting or intimidating police. When being fined for riding a bike without a helmet, Jack was cooperative until the police also searched him for drugs. He became verbally abusive, and continued to swear when walking away. The Police followed and grabbed him and told him he was under arrest for offensive language. The actions of the police escalated the situation and Jack was charged with intimidating police and resisting arrest. Things would have turned out differently if the Police had been less confrontational and more experienced in working with young people with disability.*⁴¹

³⁴ Committee on the Rights of the Child, *Concluding Observations: Australia*, 40th sess, UN Doc CRC/C/15/Add.268, (20 October 2005) page 15.

³⁵ Adele Horin, ‘Report Finds Disability and Disadvantage Common in Young Offenders’, *Sydney Morning Herald* (Sydney), 27 February 2010 <www.smh.com.au/nsw/report-finds-disability-and-disadvantage-common-in-young-offenders-20100226-p95r.html>.

³⁶ Devon Indig et al. ‘2009 NSW Young People in Custody Health Survey: Full Report’. (Report, Justice Health, NSW Health and Human Services Juvenile Justice, NSW Government, 2011) 15.

³⁷ Ibid 15.

³⁸ Ibid 77.

³⁹ People With Disability Australia, Submission to the Senate Community Affairs References Committee, *Protecting Vulnerable Children: A National Challenge — Second Report on the Inquiry into Children in Institutional or Out-of-Home Care* (March 2005) 173.

⁴⁰ Ibid.

⁴¹ Intellectual Disability Rights Service, ‘Enabling Justice’, above n 3.

Trial by Jury

People with disability are often ineligible for jury service on the basis of their disability.⁴² The exclusion of people with disability from jury service means that juries are not composed of the full diversity of the Australian community.⁴³ This means that the experience of disability is not available to the jury for consideration during trials, and defendants with disability cannot face a trial by peers.⁴⁴

Recommendations Article 13

- **That Australia prescribes an effective Protective Costs Order jurisdiction for public interest matters.**⁴⁵
- **That adequate funding is provided to Community Legal Centres to ensure access to justice to people with disability, and a National Disability Rights Centre be established.**
- **That standard and compulsory modules on working with people with disability are incorporated into training programs for police, prison officers, lawyers, judicial officers and court staff.**
- **That all people with disability be made eligible for jury service.**
- **That Australia develops comprehensive, gender and culture specific social support programs and systems to identify and prevent the circumstances that contribute to children and young people with disability coming into contact or entering the juvenile justice system.**
- **That Australia implements a range of gender and culture specific diversionary programs and mechanisms and community based sentencing options that are integrated with flexible disability support packages and social support programs to prevent adults with disability coming into contact or entering the criminal justice system.**

Australian civil society parallel report group Response to the List of Issues⁴⁶

ACCESS TO JUSTICE List of Issues Questions 15 and 16⁴⁷

Disability Rights Now paragraphs 197-223 (article 13) and 373-386 (article 21)

⁴² *Federal Court of Australia Act 1976* (Cth) ss 23DQ, 23DR (sheriff may excuse juror who is unable to perform duties of a juror, considering the *Disability Discrimination Act 1992* (Cth)); *Juries Act 1967* (ACT) s 10 (mental or physical disability), sch 2 (person who is totally or partially blind or deaf may claim exemption); *Juries Act 1980* (NT) sch 7 (person who is blind, deaf or dumb or otherwise incapacitated by disease or infirmity); *Juries Act 1977* (NSW) sch 2 (a person who is unable because of 'disability'); *Juries Act 1995* (Qld) s 4(l) (person with a physical or mental disability); *Juries Act 1927* (SA) s 13 (mentally or physically unfit); *Juries Act 2003* (TAS) sch 2 (physical, intellectual or mental disability); *Juries Act 2000* (Vic) sch 2 (persons with a 'physical disability' or 'intellectual disability'); *Juries Act 1957* (WA) s 5 (incapacitated by any disease or infirmity of mind or body, including defective hearing); sch 4 (potential juror to disclose to the summoning officer any incapacity by reason of disease or infirmity of mind or body, including defective hearing).

⁴³ This also interferes with the CRPD Article 12 right to equality before the law, and Article 29 right to participation in political and public life.

⁴⁴ Submission by attendee at the CRPD Shadow Report consultation in Brisbane, Queensland (12 November 2009).

⁴⁵ This is in contrast with the approach in Australia where protective costs orders apply equally to both parties.

⁴⁶ Available at <http://www.disabilityrightsnow.org.au/node/94>

⁴⁷ Question 15) Which specific areas of access to justice by persons with disabilities have been targeted for improvement under the September 2009 Strategic Framework for Access to Justice under the reforms of the Federal Civil Justice System (para. 65)? Question 16) Please provide information on access to augmentative and alternative modes of communication (AAC) by persons with disabilities and their human readers (para. 67), and how people with intellectual, mental and/or psychosocial disabilities also enjoy full access to the justice system as both litigants and witnesses (para. 68). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fQ%2f1&Lang=en

Australian governments fund some legal services specifically for people with disability and Australian courts are introducing disability access schemes. However, people with disability participating in the legal system often experience significant barriers, with many finding access to justice too difficult, hostile or ineffectual. As a result, people with disability are often left without legal redress. The Strategic Framework for Access to Justice (2009) has not fostered any substantive changes, and efforts to address these barriers remain elusive.

Denial of reasonable accommodation (paras 212-215 DRN)

There is no compulsory or consistent training for judicial officers, legal practitioners and court staff about how to accommodate people with disability across Australian jurisdictions, nor guidelines outlining how people with disability can be supported to participate in all aspects of legal proceedings. The absence of this framework means that people with disability are often not provided with the support they require to engage effectively in all processes of the justice system,⁴⁸ and negative attitudes which create barriers to accessing justice persist.⁴⁹

Regarding full and effective participation in court proceedings, the approach towards people with disability varies significantly across States and Territories. For example, there is no common law precedence or legislation that allows for Deaf people to access sign language interpreters in civil courts, and if one is required then it must be paid by the Deaf person themselves. In South Australia, the law does not allow the use of Augmentative and Alternative Modes of communication (AAC), communication support workers or sign language interpreters which greatly reduces the ability and opportunity for some people with disability to give evidence.

Inadequate funding of legal services (paras 201-207)

People with disability in Australia are over-represented in the justice system whether as complainants, litigants, defendants or victims. Underfunding of community legal services has resulted in legal representation primarily being available only to the very poor and generally only in criminal matters. Civil and administrative claims for people with disability receive minimal support, even when such claims involve significant human rights issues.

Recommendations

- **That adequate funding is provided to Community Legal Centres to ensure access to justice to people with disability, and a National Disability Rights Centre be established.**
- **That standard and compulsory modules on working with people with disability are incorporated into training programs for police, prison officers, lawyers, judicial officers and court staff.**
- **Legislation and policy across States and Territories must be amended to allow people with disability to participate in legal proceedings, including through the use of Augmentative and Alternative Modes of communication (AAC), communication support workers and sign language interpreters.**

UN CRPD Committee Concluding Observations to Australia⁵⁰

Access to justice (art. 13)

27. The Committee is concerned at the lack of training for judicial officers, legal practitioners and court staff on ensuring access to justice for persons with disabilities, as well as the lack of guidance on access to justice for persons with disabilities. The Committee is further concerned that access to sign language interpreters or the use of

⁴⁸ Legal Aid Queensland, 'Developing a National Disability Strategy', 2008, 4 <www.legalaid.qld.gov.au/about/policy/Policy%20submissions%20and%20research/national-disability-strategy-submission.pdf>.

⁴⁹ Louis Schetzer and Judith Henderson, 'Access to Justice and Legal Needs, Stage 1 Public Consultations' (Report, Law and Justice Foundation of NSW, 2003) 216, 225 <www.lawfoundation.net.au/report/consultations>.

⁵⁰ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f1&Lang=en

Augmentative and Alternative Modes of Communication is not supported in all Australian states and territories.

28. The Committee recommends that standard and compulsory modules on working with persons with disabilities be incorporated into training programmes for police officers, prison staff, lawyers, the judiciary and court personnel. It further recommends that legislation and policy across the states and territories be amended to ensure access to justice for persons with disabilities, in line with article 13 of the Convention.

Freedom of expression and opinion, and access to information (art. 21)

43. The Committee is concerned by the State party's failure to provide all information in accessible formats and effectively promote and facilitate the use of Australian Sign Language (Auslan) as Australia's official sign language, as well as the use of all other forms of accessible formats of communication (deaf-blind interpretation, Braille, easy and plain English, audio description), in particular when persons with disabilities are engaged in official interactions.

44. The Committee recommends that the State party recognize Australian Sign Language as one of the national languages of Australia, and develop the use of other accessible formats of communication by allocating adequate funding for their development, promotion and use, in accordance with articles 24, paragraph 3, and 29 (b) of the Convention.

Thank you for the opportunity to make this submission.