

Canberra November 4, 2013

Dear Commissioners,

Re: Access to civil justice for Australians with disabilities

Disability Advocacy Network Australia (DANA) is a national representative body for over 70 disability advocacy organisations, and aims to support and strengthen independent disability advocacy agencies in their work advocating for and with people with disabilities, ensuring their fundamental needs are met and protecting and advancing their human rights.

DANA is greatly interested in the Productivity Commission's inquiry into access to civil justice in Australia. In relation to people with disabilities, we are strongly of the conviction that access to advocacy (which includes legal advice, support and/or representation) is an important part of the picture for identifying and addressing current systemic problems.

The evidence suggests that a substantial proportion of persons with disabilities cannot afford to secure legal services and that legal assistance services are not meeting their needs. The high costs of accessing justice services impacts disproportionately on the lives of people with disabilities, as they often experience multiple forms of disadvantage, disempowerment and human rights abuse. This lack of access has high economic and social impact.

In the recent NSW Law and Justice Foundation survey of over 20,000 Australians, people with disability stood out as the disadvantaged group that most reliably had high prevalence of legal problems. The survey also showed that people with disability had significantly higher odds of taking action and seeking advice, but significantly lower odds of finalising their legal problems.¹ The Victorian Parliament's recent *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*² identified that people with an intellectual disability faced similar barriers to other people with disability, but also additional unique barriers. Other work by the NSW Law and Justice Foundation has also pointed to the significant barriers to accessing legal support and justice faced by people with mental illness, which again are in some aspects similar and in others unique to those faced by people with other disabilities.

The often severely compromised or limited access to justice experienced by people with disabilities in contemporary Australia is well-established. A complex myriad of factors create barriers and challenges for people with disabilities in accessing civil justice, pursuing legal remedies and defending their legal rights. Discrimination, a lack of financial resources or of adequate services or support may be the major compounding factors in a given context, as Australians with disabilities are often among the most marginalised, economically disadvantaged and socially excluded members of our community. Beyond these factors, the research quoted above shows that poor accommodation of the differences and needs of people with disabilities, in a wide range of legal processes, exacerbates the difficulties faced. These factors include cultural and attitudinal issues among legal

¹ Law and Justice Foundation of NSW, *Legal Needs of people with a disability in Australia* (November 2012, Law and Justice Foundation of NSW, Sydney) [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_16_Disability_AUS_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_16_Disability_AUS_FINAL.pdf).

² Law Reform Committee, Parliament of Victoria, *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers* (Melbourne, March 2013) 4-7.

professionals and in the broader community, as well as the nature of the legal system, which further disadvantages those with a real or perceived lesser capacity to participate in the highly formalised and ritualised structures of the justice system.

DANA would like to acknowledge the excellent work done by many Community Legal Centres, including specific disability legal services, who adapt their practice to be able to advise and support people with disability and in some cases have made it their mission to support and represent people with disability. We also recognise the importance of Legal Aid services around Australia in making legal support more accessible. Without these thousands of people with disability would have been unable to access justice, exercise their rights or pursue crucial precedence setting cases. The sad truth remains however that the capacity of these services is highly constrained and thousands of other people with disability remain unable to challenge the sometimes horrific rights abuses of which they have been victims.

DANA believes that improved access to disability advocacy, including non-legal advocacy, presents a cost-effective component of a solution that would contribute to improved equity and access to justice, to the achievement of earlier and lower cost civil dispute resolution and not least to crucial support for people with disabilities that would contribute to the avoidance of legal disputes before they arise.

We believe that further investigation, including consultation with our members and other disability advocacy organisations, would strongly corroborate the economic value of the outcomes of advocacy, by providing examples of how effective advocacy delivered early can enable people with disabilities to claim and defend their legal entitlements, and help to avert legal problems before they arise, thus avoiding the need for expensive intervention and legal fees or costs later.

Unfortunately, the closing date for submissions has fallen very close to the dates of DANA's National Disability Advocacy Conference. This timing has prevented the preparation of a more extensive submission. The chronic under-resourcing of disability advocacy in Australia means other disability advocacy organisations are similarly limited in their capacity to produce submissions. We hope that both the existing and potential contributions of the disability advocacy sector to justice, fairness, and economic efficiency in Australia are not overlooked as the public inquiry progresses

For questions or more information please do not hesitate to contact me on (02) 6175 1300 or ceo@dana.org.au

Sincerely,

Simon Viereck
A/g Chief Executive Officer
Disability Advocacy Network Australia (DANA) Ltd.