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Access to Justice
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email: access.justice@pc.gov.au

4 November 2013

Dear Sir or Madam,

RE: Submission on Access to Justice Arrangements

The Central Coast Community Legal Centre (CCCLC) is a generalist Community Legal Centre based in Wyong on the Central Coast of New South Wales. CCCLC provides free legal advice and assistance to disadvantaged people that live, work or study on the Central Coast.

In the 2012/13 financial year, over 30% of our clients reported having either a physical, psychological or intellectual disability. CCCLC regularly comes into contact with disadvantaged clients who are not able to access legal aid services but are unable to pay a private solicitor.

Based on our experience and observations we make the following submission to the inquiry in regards to self-represented litigants:

Self-Represented Litigants

CCCLC regularly encounters people in the local court who experience disadvantage, often on multiple levels. The most common of these include:

- economic disadvantage
- intellectual disability or serious cognitive impairment;
- illiteracy;
- English as second language;
- drug and alcohol abuse problems; and/or
- physical disability

It is our observation that these people often cannot understand court process and procedures,

leaving them at a significant disadvantage when interacting with the courts. Their ability to effectively self-represent is often further compromised by their inability to grasp the complexity of legal reasoning and argument.

It is our observation that people with one or multiple levels of disadvantage have difficulty;

1. identifying that they have a legal problem which requires attention and legal assistance
2. accessing legal assistance, often at short notice when they realise they have a legal problem
3. interacting with the court system, from court officers to the judiciary

Furthermore, it follows that many of these disadvantaged clients do not understand legal concepts, such as admissibility of evidence, and in our observation more often than not, fail to understand what is and is not relevant to the legal problem at hand. It is our observation that often, disadvantaged clients have little to no understanding of what their legal matter is about and often place irrelevant information and material before the court. This places considerable strain on the unrepresented litigant, on the judiciary and court resources and serves to lengthen and complicate the court process.

We have observed that through directions from the bench or assistance from court officer's often self-represented litigants are able to get to a hearing date. However many self-represented litigants, having reached the hearing, have only a very slight grasp of the legal issues, what they need to prove and the standard to which it should be proved, what evidence to bring before the court or how to obtain it. Often this leads to the withdrawal or dismissal of the matter and in this way equity in access to the civil dispute resolution system is significantly impeded.

Case Study

Mr F. is a 96-year-old Ukrainian gentleman who speaks English as a fifth language and has a limited command of the English language. Due to his advanced age Mr F. also has difficulty with his eyesight. Mr F is in receipt of an aged pension from Centrelink.

Mr F. was alleged to have been involved in an accident involving another vehicle. The other party lodged a claim with their insurance company against him. Their insurance company sent Mr F a letter requesting he pay their client's repair costs of \$703. Mr F strongly denied ever having been involved in this accident.

We assisted Mr F to lodge a claim with his own insurance company and made representations on his behalf regarding the lack of evidence found by the police that he had been involved in the accident. The NRMA commenced an investigation and the other party's insurance company ended up discontinuing the claim due to insufficient evidence that he was involved in the accident. Mr F did not have to pay the other party's repair costs or any excess on his insurance.

Without the assistance of the CCCLC it would have been extremely difficult for Mr F to make argument in the court system about the lack of evidence against him. Due to his difficulty in comprehending the English language, his failing eyesight and advanced age he needed both advice and representation. Even something as simple as contacting the NRMA by telephone and getting through their automated menu options was difficult for him, let alone representing himself in court. As a person in receipt of an old age pension it is likely that obtaining the services of a private solicitor would have been beyond his financial means.

Conclusion

We respectfully submit to the inquiry that free legal services must be expanded to accommodate litigants accessing the civil justice system. It is our observation that whilst self-represented litigants may be able to access the legal system, more often than not they are not able to navigate the system to their advantage.

We thank you for the opportunity to make a submission on a topic that is highly relevant to our work at Central Coast Community Legal Centre. We hope that our submissions will be useful to the Commission in its inquiry.

Yours Faithfully,
CENTRAL COAST COMMUNITY LEGAL CENTRE

Alice Osborne
Solicitor