

Barriers to Justice is a collaborative project by Dignity for Disability, the Disability Advocacy and Complaints Service of South Australia (DACSSA), and Victim Support Service (VSS) to advocate for systemic reform to improve the accessibility of the South Australian justice system for people with a variety of disabilities.

While these efforts have often been focussed upon the criminal justice system, where the failure to adequately protect the rights of people with disabilities has been the most apparent and disastrous, Barriers to Justice regards the challenges of access to justice for people with disabilities in the civil jurisdiction to be as great, if not greater.

In the civil arena the ability to enforce one's rights in common law and equity is to a significant degree dependent upon one's access to resources. This presents a substantial initial barrier to the large number of people with disabilities whose only source of income is the Disability Support Pension or other government payments. While legal assistance services can be of assistance, their ability to provide assistance in matters directly relevant to a person's disability is hampered by a tendency towards broad schemes with insufficient levels of funding.

Having regard to the recommendations and information requests contained in the Productivity Commission's draft report, Barriers to Justice makes the following submissions. Barriers to Justice feels it is important to point out that these submissions deal only with the matters directly raised by the draft report. We believe substantial work needs to be done to make Australia's justice system accessible to people with disabilities, including but not limited to improvements to buildings, modification to court processes, amendment to legislation, greater education and awareness regarding disability issues, and provision of resources in a range of accessible formats.

Draft Recommendations 10.1 – 2

Given the high level of contact between people with disabilities and specialist tribunals, Barriers to Justice regards these recommendations as being of particular importance. People with disabilities often find themselves facing well-funded opponents in tribunals, and dealing with tactics that more closely resemble litigation than the speedy and accessible form of dispute resolution tribunals are intended to provide.

Draft Recommendations 16.1 & 4

As a group facing considerable disadvantage as a result of high levels of unemployment, low levels of work force participation, and frequent dependence upon Commonwealth pensions, court and tribunal fees form a major barrier for people with disabilities accessing the justice system. Any measure by which individuals can receive a discount to or exemption from these costs will stand to significantly improve access to justice for people with disabilities.

Information Request 16.2

While the use of possession of a Commonwealth concession or health care card or receipt of a government pension or allowance at the full rate as a form of means testing is likely to capture a significant part of the population requiring an exemption from or reduction in court and tribunal fees, forecast changes to eligibility for payments and concessions in the recent Budget could affect the reliability of these as eligibility criteria. Barriers to Justice would therefore recommend the use of more sophisticated tools for means testing.

Draft Recommendations 17.1 – 2

When extending courts' use of existing and emerging technologies to streamline processes and reduce costs Barriers to Justice believe it is vital that the accessibility of those technologies be kept in mind, so that the justice system avoids replicating existing accessibility issues in any future processes or procedures. We would also stress the numerous opportunities new technologies and simplified procedures present to improve disability access if properly deployed. Recent advances in technologies such as live captioning could significantly improve accessibility for some people with disabilities who would otherwise struggle to access the justice system.

Draft Recommendation 17.3

Given the likelihood of common issues arising in matters involving people with disabilities, Barriers to Justice would strongly encourage that the needs of people with disabilities be a matter of consideration in the development of specialist lists and panel arrangements in bodies such as the Equal Opportunity Tribunal and other specialist courts and tribunals. This kind of arrangement could reduce the courts' dependence upon expert witnesses to establish very minor points in a number of cases and could guarantee people with disabilities' accessibility needs are better understood when adjustments to procedure require consideration.

Information Request 21.1

Barriers to Justice believes that while a demarcation setting legal assistance funds aside for civil matters would improve the direction of resources towards the civil jurisdiction, this cannot be at the expense of funding for vital services in criminal and family law. Any demarcation would need to be coupled with an increase in funding for legal assistance generally. A proscribed portion of the current inadequate level of funding alone will not bring a substantial benefit to would be civil litigants.

Information Request 21.4

Complaints made under the Disability Discrimination Act and the various state and territory Equal Opportunity legislation that are unable to be resolved through conciliation are referred to a range of bodies within the civil justice system. As such the civil justice system represents the only formal avenue through which people with disabilities are able to pursue a remedy for unlawful discrimination in Australia. This is also the case for a range of other groups that experience significant levels of disadvantage and discrimination.

Barriers to Justice therefore regards the benefits resulting from meeting the civil justice needs of disadvantaged Australians to be substantial. Those living with disadvantage are in many respects those most likely to need to access the civil justice system to defend their rights. They are those in our society that are the victims of discrimination. They reside in areas that make it more likely that they will need to make environmental complaints. They are less likely to be able to afford to own home and are therefore more likely to face tenancy issues.

Just as those facing disadvantage are more likely, by virtue of unfavourable circumstances to come into contact with the criminal justice system, they are more likely to experience personal injustices that can only be remedied in the civil jurisdiction.

Barriers to Justice thanks the Commission for the opportunity to make these submissions.