

JC: MLM

Access to Justice Arrangements

Productivity Commission

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Dear Sirs

Intellectual Disability Rights Service: Access to Justice Comments on Draft Inquiry Report

Intellectual Disability Rights Service (IDRS) refers to its earlier submission to the Productivity Commission's inquiry into access to justice arrangements (sub. 75) and is pleased to make comments in response to several of the information requests in the Commission's draft inquiry report (with reference to the request numbering used in the draft report).

5.1 Legal Health Checks

IDRS supports extending the use of legal health checks to people with intellectual disability people with intellectual disability. Many people with intellectual disability are unlikely to recognise a legal dimension to a problem, let alone seek help from a solicitor. Greater use of legal health checks would therefore be effective for this client group.

Some people with intellectual disability will need assistance to complete a check. Others will need someone to complete it on their behalf, such as a relative, friend, guardian, disability support worker or disability advocate.

The checks should be administered by disability support agencies and disability advocacy services. Administration of a check similar to the 1-page 'Law Check-up' used by Legal Aid NSW should not take much time. Disability service providers should therefore not need to be funded separately to undertake the checks. However, such service providers will require additional funding to assist many clients to access legal help once the need for it is identified. Even if service providers have the information needed to provide appropriate legal referrals, a people with intellectual disability may not understand how to go about getting legal help for themselves, or may lack the communication, planning and organisation skills required. Such a person will need support to access legal services. Some clients will need help with making telephone calls, transport to and from appointments, communicating with legal advisors, and implementing the recommendations of those advisors. A considerable amount of a disability worker's time may be involved in providing such support.

Currently in NSW, the major service provider to people with intellectual disability is Ageing, Disability and Home Care (ADHC), an agency of the Department of Family and Community Services. ADHC also provides information about and referral to non-government services. Over the next few years, there will be a transition to a national system of disability support under the National Disability Insurance Scheme (NDIS). Under the NDIS, people with disability will make the decisions about their supports, including who will provide them. Funding for disability supports is allocated to each eligible individual, not to a service provider. This will mean that service providers will be focused on providing those services for which individuals are paying them. If there is to be any coordination of services provided by different organisations to people with disability, including promotion of the use of legal health checks, then it will need to be provided by a central body such as the National Disability Insurance Agency (NDIA).

Disability service workers, staff in transition to work programs and employment services providers will need education about recognition of common legal issues.

Legal service providers will need to put more effort into making their services easy for people with intellectual disability to access.

5.2 Legal Problem Identification Training Module

IDRS is not aware of the content of the legal problem identification training module being developed by the Commonwealth Attorney-General's Department

and Department of Human Services. However, IDRS supports in principle the development of such a module and the provision of training for agency staff who are in a position to identify legal problems faced by clients and to make meaningful referrals to legal assistance services. IDRS suggests that staff from Centrelink should be amongst those to receive this training. It should also be extended to disability advocacy services. IDRS believes that it is essential that people with disability continue to have access to funded independent advocacy to assist them to access legal assistance for unpredictable legal issues that may arise in their lives. In the experience of IDRS, advocates are also necessary to assist people with intellectual disability to follow through with the legal advice they are given, as they are generally unable to do this themselves.

Consideration of the particular legal issues facing people with intellectual disability and the additional support needs they may have should be included in any training module that is developed.

5.3 Referrals and Information Sharing

IDRS submits that as the NDIS is rolled out nationally it will be essential that there is an agency – presumably the NDIA – that takes responsibility for maintaining and promoting referral networks between legal, social, health and other services for people with disability.

At a local level, IDRS endorses the concept of co-location of legal, social and health services to facilitate easy transfer of clients between services and integrated service delivery.

7.4 Use of money from ‘public purposes’ funds

As the quantity of money in ‘public purposes’ funds varies from year to year, it should not be used to provide core funding for legal assistance services. Separate blocks of funding should be set aside for such services.

IDRS supports public purposes funds being used for discretionary payments for purposes such as:

- The advancement, improvement and extension of the legal education of members of the community;

- The encouragement, sponsorship or support of projects aimed at facilitating access to legal information and legal services;
- The improvement of the access of economically and socially disadvantaged people to the legal system, legal information or legal services.¹

IDRS believes that improved community legal education and improved access to legal services will lead to quicker resolution of legal problems and so reduce the costs associated with legal service provision.

7.5 Provision of Services by Non-Lawyers

It is imperative that clients with intellectual disability, who are amongst the most vulnerable clients, receive high quality legal services. Such clients are often unable to engage effectively with the legal system on their own or to represent themselves within it. Paralegals working in community legal centres play a valuable role in assisting to deliver legal services to disadvantaged clients. However, these paralegals are supervised by qualified solicitors.

IDRS notes the Law Council of Australia's grounds for supporting the retention of current arrangements for the reservation of legal practice (sub. 96, p.105). These quality assurance factors take on particular significance in the case of clients with intellectual disability, who may have difficulty distinguishing for themselves whether a legal matter is routine or more complex, or whether their legal service provider is dealing effectively with relevant issues. If legal services are to be provided by non-lawyers to such clients, the same standards of care must be applicable. Clients with intellectual disability, even with support, may be unable to carry out risk assessments or cost/benefit analyses in order to make an informed choice of legal service provider.

IDRS acknowledges the valuable work performed by lay advocates in tribunals. Tenants' advocates trained by the Tenants' Union of NSW (the TU NSW) in tenancy and consumer law, advocacy, negotiation skills, community education and the Aboriginal and social housing systems regularly appear in the Consumer and Commercial Division of the NSW Civil and Administrative Tribunal (NCAT) to assist disadvantaged tenants. These tenant advocates benefit from support, legal advice, research and resources provided by the TU NSW, a community

¹ These being some of the purposes for which the New South Wales Public Purpose Fund is understood to be used

legal centre. This type of model, where non-lawyers with specific training and access to legal advice from qualified lawyers provide advice and advocacy services in a specific jurisdiction, might be considered in other areas such as the Guardianship Division of NCAT.

13.1 Costs Awarded to Pro Bono Parties

Costs awarded to pro bono parties should be awarded to the body providing the pro bono service, whether that body is a private law firm or a not-for-profit body. This should encourage a higher level of pro bono service provision. Some recompense should be available to private law firms – particularly small firms – that expend resources on pro bono work. Not-for-profit bodies that represent parties pro bono should be able to use funds acquired through costs orders to increase service provision to disadvantaged clients.

Any court or other scale fixing the amount to be recovered for such costs should include provision for additional costs to be awarded where the pro bono party has intellectual disability. This is essential because a legal professional will inevitably need to spend more time taking instructions from, and providing advice to, such a client.

Yours faithfully

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