

Productivity Commission
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Australian Government
Productivity Commission

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Access to Justice

OR

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Productivity Commission

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

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2 August 2013

Dr Warren Mundy
Productivity Commission
LB2 Collins Street East
Melbourne Vic 8003
By email: warren.mundy@pc.gov.au

Dear Dr Mundy,

Access to Justice for 'disadvantaged parties'

We are the five funded peak organisations for community legal centres (**CLCs**) in Australia. CLCs provide free information, advice and referral, casework and representation to the community, helping clients who face economic and social disadvantage and have nowhere else to go.

Each of our organisations intends to make detailed submissions to the Commission's inquiry into access to justice arrangements. This letter is intended to elaborate on paragraph 5(a) in the Commission's terms of reference, which requires the Commission to have regards to:

- (5) the impact of the costs of accessing justice services, and securing legal representation, on the effectiveness of these services, including analysis of:
 - (a) the ability of disadvantaged parties, including persons for whom English is a second language, to effectively self-represent ...

We welcome the Inquiry's focus on the needs of 'disadvantaged parties', acknowledging that many people facing disadvantage are unable to access justice services and/or secure legal representation.

While we note that 'persons for whom English is a second language' are expressly provided for in the terms of reference, there are a number of other indicators of disadvantage, or disadvantaged groups, that should be specifically considered in the Commission's investigations. Without limiting those groups, we wish to highlight the following groups that face particular challenges in accessing justice services:

- **Aboriginal and Torres Strait Islander peoples:** we refer to the National Aboriginal and Torres Strait Islander Legal Services submission, dated 24 July 2013, that highlights some of the difficulties faced by this group. We also value the important services provided by Aboriginal Family Violence Prevention Legal Services, and support continued services to meet the needs of victims and survivors of family violence. The NATSILS submission does not specifically refer to the rights and issues of Aboriginal and Torres Strait Islander women, whose interests are traditionally, socially and economically distinct in some respects from the interests of men.¹

¹ Note, for example, that indigenous women's interests have been represented through submissions to the UN through the National Aboriginal and Torres Strait Islander Women's Alliance (**NATSIWA**): see eg AWAVA and NATSIWA, *AUSTRALIA: Non-Government Organisations Follow-up Report to the United Nations Committee on the Elimination of Discrimination Against Women* (July 2012).

Further, the National Congress of Australia's First Peoples recognises separate and equal representation of men and women. Aboriginal and Torres Strait Islander women's interests and legal rights extend beyond the provision of specialist services for women experiencing family violence. The rights and legal interests of Aboriginal and Torres Strait Islander women must be adequately provided for through targeted, culturally appropriate and secure services, such as those provided by Aboriginal and Torres Strait Islander women's legal services, of which there are several throughout Australia. We anticipate that the Aboriginal and Torres Strait Islander Women's legal services will make specific submissions to the enquiry on their own behalf.

- **People with disability:** In the NSW Law and Justice Foundation's recent survey of over 20,000 Australians, people with disability stood out as the disadvantaged group that most reliably had high prevalence of legal problems according to a variety of measures. The same survey showed that people with disability had significantly higher odds of taking action and seeking advice, but significantly lower odds of finalising their legal problems.² These statistics demonstrate the high likelihood of people with disability having a legal problem and taking action to resolve it, but the low likelihood of reaching a resolution.
- **People with intellectual disabilities or cognitive impairments:** There are significant barriers to justice faced by people with intellectual disabilities that are similar to people with disability, but unique in other ways. Key themes identified in 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* included:³
 - people with an intellectual disability are likely to be overrepresented within the justice system.
 - people with an intellectual disability or cognitive impairment experience a number of common life experiences – increased dependence on others to complete daily activities, limited education and employment opportunities and limitations in conceptual, social and daily living skills;
 - even where mechanisms are available in the justice system to assist people with an intellectual disability or cognitive impairment, they may not be able to access them either because they do not know about available services, or because justice sector personnel do not identify that they have a disability; and
 - while the needs of people with an intellectual disability or cognitive impairment have been accommodated in the justice system through the provision of a range of measures, the use and adequacy of these alternative measures for assisting interaction with the justice system was consistently questioned.
- **People with mental illness:** There are significant barriers to justice faced by people with mental illness that are similar to people with disability, but unique in other ways. Research from the Law and Justice Foundation of NSW has identified a number of 'individual' barriers (including lack of awareness of legal rights; being disorganised; being overwhelmed; mistrust of service providers; difficult behaviour; communication problems; and, lack of mental health care)

² 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).

³ 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.

and 'systemic' barriers (including the availability of affordable legal services; time constraints; remote, rural and regional issues; identifying mental illness; credibility; and barriers in the physical environment),⁴ and community legal centres see this in our day-to-day work with vulnerable Australians.

- **Older Australians:** Studies show that older people often ignore their legal problems and are reluctant to complain about them. Older people have also been found to have poor understanding of their legal rights and avenues for legal redress.⁵ The Australian Human Rights Commission summarised the barriers to justice for older people, which include:
 - technological barriers, particularly for telephone and web based services;
 - a lack of awareness regarding where to obtain legal information and assistance;
 - a lack of appropriately-communicated legal information;
 - the high cost of legal services;
 - a lack of interest by some legal practitioners in older clients;
 - potential conflicts of interest when legal practitioners for older people are arranged by family members;
 - difficulties in accessing legal aid, including restrictive eligibility tests;
 - lack of availability of legal aid for civil disputes;
 - lack of specialised legal services for older people, particularly in rural, regional and remote areas; and
 - lack of resources in community legal centres to tailor their services to the needs of older people.⁶
- **Women:** The law not only reflects women's unequal status, in some cases it can exacerbate or perpetuate this inequality. The Australian Law Reform Commission (**ALRC**) found that gender bias can affect the treatment of women and their experiences in the court process.⁷ The ALRC highlighted the need for improved court support for women, including access to specialist women's legal services, and addressing the shortage of interpreters, lack of child care facilities, lack of separate waiting areas for victims of violence and the intimidating and often hostile nature of court processes.

We also note that the terms of reference focus on the ability or capacity of disadvantaged persons to effectively self-represent. We would encourage the Inquiry to focus on the other areas within the justice system where disadvantaged persons face barriers, rather than simply focussing on the capacity of disadvantaged persons to represent themselves in proceedings before courts and tribunals. These include the ability of disadvantaged people to access legal information and seek early advice.

⁴ Maria Karras, Emily McCarron, Abigail Gray & Sam Ardasinski, *On the edge of justice: the legal needs of people with a mental illness in NSW* (Law and Justice Foundation of NSW, Sydney, 2006).

⁵ S Ellison, L Schetzer, J Mullins, J Perry and K Wong, *The legal needs of older people in NSW* (2004, Law and Justice Foundation of NSW, Sydney) www.lawfoundation.net.au/report/older; C Tilse, D Setterlund, J Wilson and B Herd, 'Legal practitioners and older clients: challenges and opportunities for effective practice' (2002) 1 *Elder Law Review* 34.

⁶ Australian Human Rights Commission, *Inquiry into older people and the Law*, (2006). At http://www.humanrights.gov.au/legal/submissions/2006/ADA_200612/older_people_and_the_law_dec06.html#toc12

⁷ Australian Law Reform Commission, *Equality before the law: justice for women*, Report no. 69, Sydney, 1994. See also Louis Schetzer, Joanna Mullins and Roberto Buonamano, *Access to Justice & Legal Needs A project to identify legal needs, pathways and barriers for disadvantaged people in NSW Background Paper* (August 2002, Law and Justice Foundation of NSW, Sydney) 60-61.



We hope that this Inquiry will identify the barriers and costs for disadvantaged groups seeking to access the justice system and secure legal representation. However, this analysis must recognise the different forms of disadvantage experienced by many in the community, and take a holistic view of the legal services that may be able to assist them before and during the resolution of disputes.

If you have any queries, please contact Alastair McEwin from Community Legal Centres NSW on alastair_mcewin@clc.net.au.

Yours sincerely,

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