



people with disability

ABN 98 879 981 198



7 January 2004

The Secretariat
Senate Legal and Constitutional Committee
Room S1.61, Parliament House
CANBERRA ACT 2600

Dear Committee Members:

INQUIRY INTO LEGAL AID AND ACCESS TO JUSTICE

I am writing to provide the Senate Legal and Constitutional Committee ('the Committee') with our key issues relating to people with disability, legal aid and access to justice.

We understand that the date for submissions and public hearings for the Inquiry into Legal Aid and Access to Justice has passed. However we are also aware that issues for people with disability may not have been raised during the inquiry process to date. With this in mind, we would like to request that our issues be considered and given weight by the Committee in the final stages of the Inquiry.

People with Disability Australia Incorporated (PWD) is a disability rights and advocacy organisation, which works at both the New South Wales and national levels. Its primary membership is people with disability and organisations primarily made up of people with disability. PWD also has a large associate membership of other individuals and organisations committed to the disability rights movement. PWD was founded in 1981, the International Year of Disabled People, to provide people with disability with a voice of our own. We have a cross-disability focus; we represent the interests of people with all kinds of disability. PWD is a non-profit, non-government organisation.

Our vision is of a socially just, accessible and inclusive community, in which the human rights, citizenship, contribution and potential of people with disability are respected and celebrated. This vision underpins everything that we do.

Our expertise and interest in the area of legal aid and access to justice is based on our extensive experience in individual and systemic advocacy. Individual Advocates in PWD's Individual and Group Advocacy service assist people with disability, their families and carers on a daily basis by providing information, advice, referral and short-term, issue based individual advocacy on a broad range of subject matters. This includes matters relating to the provision of legal services and access to the legal system generally. Our systemic advocacy role covers local, national and international

issues. It also encompasses representation on many government and non-government committees, such as the NSW Attorney General's Department Disability Advisory Council, and providing submissions to reviews and inquiries relating to legal, justice and disability issues.

In addressing the terms of reference, PWD would like to make the following comments:

Significant Unmet Need for and Barriers to Legal Assistance

Evidence suggests that people with disability find it extremely difficult to obtain affordable, appropriate and knowledgeable legal assistance. Both a 1997 NSW Legal Aid Report, *Forum on Access to Legal Services for the Disability Sector* and a 2003 Disability Council of NSW Report, *A Question of Justice – Access and Participation for People with Disabilities in Contact with the Justice System* identify a range of barriers within the justice system that are faced by people with disability in contrast to people without disability. These barriers include:

- Failure of the justice system to understand the role of advocates, advocacy organisations and support people for people with disability;
- Inaccessible buildings and services throughout the justice system, inaccessible information and negative perceptions and attitudes towards people with disability;
- Costs of legal action that force more people with disability to rely on the diminishing resources of community legal services, pro bono schemes and Legal Aid;
- The tendency of the justice system to use people's disability to discredit and undermine them;
- The service system that may surround a person with disability, such as a group home environment may make it difficult for a person to seek legal assistance, particularly if the service is involved in the issue;
- People with disability, particularly those with intellectual disability and mental illness are over-represented in the criminal justice system, yet there is insufficient training, disability awareness or specific prevention or diversion measures to address the needs of these people with disability.

Limited jurisdiction of disability specific legal services

There are some disability specific legal services that operate throughout Australia. These include the Disability Discrimination Act Legal Services that exist in each State and Territory and that were set up in the mid-90s to assist people with disability to use disability anti-discrimination law. However, as these services are limited to disability anti-discrimination law, they are unable to provide assistance for people with disability to access and participate in the legal system in general.

There are also legal services that assist people with specific disabilities. For example, in NSW there are the Intellectual Disability Rights Service, the HIV/AIDS Legal Centre and the Mental Health Advocacy Service. However, as these services are confined to specific disability types, and limited by resource restrictions to particular issues, they are unable to provide general legal assistance for all people with disability.

A national network of specialist disability legal services

In recognition of the barriers faced by people with disability, the lack of appropriate and affordable services and the lack of generalist legal assistance for people with disability,

PWD argues for the establishment of a national network of specialist disability legal services.

The aim of such a network would be to offer increased access to the legal system for people with disability that would be appropriate to their legal requirements and account for the implications of their disability. Specifically, this network would:

- Increase the effectiveness of the mainstream justice system, legal advice and legal services for people with disability;
- Increase access to legal advice, information and representation for people with disability;
- Develop and provide disability specific resources and continuing legal education for private legal practitioners, community legal centres and legal aid services; and
- Promote the structured provision of pro bono representation for people with disability.

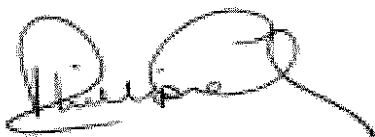
The functions of the network would be to:

- Educate people with disability about their rights as citizens in the community;
- Advise people with disability about using existing legal services;
- Provide disability related legal policy advice to government agencies on law reform;
- Provide continuing Legal Education (CLE) on people with disability and the legal system;
- Provide disability specific advisory/casework services to legal practitioners, legal centres and legal aid;
- Conduct limited direct client advocacy including test case litigation (some representation of systemic cases) and early intervention;
- Support existing disability legal centres; and
- Network with related stakeholders.

PWD argues that a national network of specialist disability legal services is crucial to ensuring equal access and participation to legal assistance by people with disability. We urge the Committee to recommend such a network in the final Report for the Inquiry into Legal Aid and Access to Justice.

Thank you for the opportunity to provide these comments. If you would like to discuss them further please contact Therese Sands, Senior Policy Officer.

Yours sincerely,



PHILLIP FRENCH
Executive Director