



Physical Disability Council of NSW
Ordinary People Ordinary Lives

Submission for Australian Human Rights Commission
Access to justice in the criminal justice system
for people with disability

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Who is the Physical Disability Council of NSW?

The Physical Disability Council of NSW (PDCN) is the peak body representing people with physical disabilities across New South Wales. This includes people with a range of physical disability issues, from young children and their representatives to aged people, who are from a wide range of socio-economic circumstances and live in metropolitan, rural and regional areas of NSW

The objectives of PDCN are:

- “ To educate, inform and assist people with physical disabilities in NSW about the range of services, structure and programs available that enable their full participation, equality of opportunity and equality of citizenship
- “ To develop the capacity of people with physical disability in NSW to identify their own goals, and the confidence to develop a pathway to achieving their goals (ie self advocate).
- “ To educate and inform stakeholders (ie about the needs of people with a physical disability) so they are able to achieve and maintain full participation, equality of opportunity and equality of citizenship.

The Physical Disability Council appreciates the opportunity to consider, and make comment to the Australian Human Rights Commission on the ~~A~~ Access to Justice in the Criminal Justice System for People with Disability Issues Paper.

Comment

PDCN acknowledges the consistent use of appropriate language within the issue paper, maintaining a theme of being person centred throughout.

The five barriers as highlighted in the issue paper¹ are indicative of the injustices people with disability often experience in the criminal justice system. PDCN note reference to the *United Nations Convention on the Rights of Persons with Disabilities* has only been made in the first paragraph of *What are the rights of people with disability in the criminal justice system*². PDCN recommends when discussing these barriers, reference to the relating Articles of the Convention should be made³:

Article 5 - Equality and non-discrimination

Article 12 - Equal recognition before the law

Article 13 - Access to justice

Article 14 - Liberty and security of the person

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

¹ Australian Human Rights Commission (2013). Access to Justice in the Criminal Justice System for People with Disability

² United Nations Treaty Collection (2013). Convention on the Rights of Persons with Disabilities

Article 17 - Protecting the integrity of the person

Article 20 . Personal Mobility

Article 21 - Freedom of expression and opinion, and access to information

Article 25 - Health

In doing this, points raised will be strengthened, providing more substance to the barriers highlighted.

In the Issues Paper barriers identified appear to focus primarily on issues encountered by people with intellectual disability. PDCN believe the information provided in this submission will assist in the Issue Paper being written to also consider the needs and injustices experienced by people with physical disability. *“Access to justice in the criminal justice system for people with disability”* encapsulates the experience of individuals as being the victim, perpetrator and also inmate, for this reason comments are made to reflect and consider each role.

What are the biggest barriers for you or other people with disability in the criminal justice system?

Barrier 3 of the Issues Paper makes reference to *negative attitudes and assumptions about people with disability*⁴. The impact of the media and ~~sensationalising~~ matters should not be discounted. Media Liaison Officers should work to control the amount of detail and information that is released, that could be capable of reinforcing negative stereotypes for people with disability⁵.

Barrier 2.11 highlights the issue of how styles of communication and questioning techniques by police and cross-examination in court can lead to inconsistent statements and confusion for individuals with intellectual disability⁶. The level and way language is used during police interviews/statements/cross examination is also extremely important. Issues include individuals with physical and intellectual disability being spoken to in a patronising way (treated like a child), subject to language that is discriminatory and individuals who have communication issues being rushed. All can lead to feelings of fear or anxiety which can incorrectly be interpreted as guilt⁷.

⁴ Australian Human Rights Commission (2013). Access to Justice in the Criminal Justice System for People with Disability

⁵ Judicial Commission of New South Wales (2013) Equality Before the Law Bench Book: Section 5 People with Disabilities

⁶ Australian Human Rights Commission (2013). Access to Justice in the Criminal Justice System for People with Disability

⁷ Australian Institute of Criminology (2011) Police interviews with vulnerable adult suspects

NSW Chamber Magistrates has reported 30-40% of Courthouses in NSW, particularly in rural areas present difficulties for people with physical disability⁸. People with disability may require some form of equipment, procedural or communication adjustment in order that they are able to interact effectively in court proceedings. Adjustments to court proceedings require discussion and time to plan. Issues have been reported where Courts have not been made aware of these needs or adjustments.⁹ These accessibility barriers also exclude people with disability from holding positions within the justice system (Judge, Juror, Registrar, Court Clerk etc).¹⁰

People with disability may also experience additional barriers due to their also happening to be part of other minority groups e.g. female, Indigenous, from an ethnic or migrant background, lesbian, gay or bisexual or a young person.¹¹

The Australian Council for Social Service reports that 620,000 Australians with disability are living in poverty¹². Levels of bail conditions and fines can considerably affect individuals with disability.¹³ Lower levels of income also affect an individual's ability to access appropriate legal advice.¹⁴

Physical access within prisons should also be considered. Inmates with mobility issues often experience lack of access to prison facilities (baths, showers, upper bunk beds, visitor halls, rooms for activities and exercise). The consequence of accessibility issues lead to prisoners with disability having less time out of their cells. Due to this, prisoners with disability were less likely to be included in; or felt unfairly treated in Incentive and earned privilege schemes¹⁵.

Inmates with disability who have issues with substance abuse addiction also report barriers to accessing appropriate medical and rehabilitation support. Barriers are due to physical accessibility difficulties and restricted time of administration of medication and support¹⁶.

⁸ Law and Justice Foundation (2003) Access to justice and legal needs. Stage 1: public consultations

⁹ Australian Institute of Criminology (2011) Police interviews with vulnerable adult suspects

¹⁰ Law and Justice Foundation (2003) Access to justice and legal needs. Stage 1: public consultations

¹¹ Judicial Commission of New South Wales (2013) Equality Before the Law Bench Book: Section 5 People with Disabilities

¹² Australian Council of Social Service (2012) Poverty in Australia

¹³ Judicial Commission of New South Wales (2013) Equality Before the Law Bench Book: Section 5 People with Disabilities

¹⁴ Law and Justice Foundation (2003) Access to justice and legal needs. Stage 1: public consultations

¹⁵ Australian Institute of Criminology (2011) Trends and Issues: Older Prisoners, A Challenge for Australian Corrections

¹⁶ Australian Medical Association (2012) The justice system and public health

Disability Liaison Officers within prisons in the United Kingdom have reported not having appropriate training and knowledge to meet the needs of people with disability and often do not have the time or resources available to be able to fully assist prisoners with disability.¹⁷

What could be done to remove these barriers and help people with disability in the criminal justice system?

One of the outcomes of *National Disability Strategy: Implementation Plan 2012-2014* is to have the rights of people with disability upheld and protected. NSW Government has implemented some major initiatives to reform legislation to improve access to justice. Points of interest in the document that have been recommended for actioning by the NSW Attorney General are:

2a (ii) Investigating the feasibility of expanding the collection and sharing of reasonable adjustment information data electronically across justice agencies to better support people with disability;

2a (iii) Improve coordination between Courts and referring agencies;

2 (h) Expand disability awareness Training and Flexible Service Delivery programs for all staff working across the Justice sector including Courts, legal Aid, relevant Policy Officers, Prosecutors, Juvenile Justice, Justice Health and Corrective Services Staff;

2 (j) Further develop support programs and initiatives run by Corrective Services NSW for people with disability including programs in additional support units and custody and community based programs.

Successful implementation of these initiatives will work toward reducing issues where Courts are not informed of adjustments; reports of people with disability experiencing accessibility issues, prejudicial attitudes and lack of knowledge of staff working within the justice system and lack of program supports¹⁸.

Court proceedings need to be as flexible as possible to meet the individual needs of a person with a disability. Consideration should be made of the timing of the listing, amount of breaks an individual requires, if there is accessible parking to venue, accessibility to the court room and witness stand. If adjustments still do not meet individual needs, proceedings should occur in a different accessible location¹⁹.

¹⁷ HM Inspectorate of Prisons (2009) *Disabled Prisoners: A Short Thematic Report on the Care and Support of Prisoners with a Disability* (United Kingdom)

¹⁸ NSW Government (2012) *National Disability Strategy: NSW Implementation Plan 2012-2014*

¹⁹ Judicial Commission of New South Wales (2013) *Equality Before the Law Bench Book: Section 5 People with Disabilities*

Where communication devices are required, Police and Courts should work to use an individual's own communication device. This minimises issues with an individual not knowing how to use the device, as well as maintaining the device is suitable e.g. voice of device is gender appropriate²⁰.

Please tell us about any time that you or another person with disability experienced barriers to justice

PDCN conducted a survey with its members to gain information in relation to their experience of access to the justice system. We were informed of an experience where an inmate with mobility issues had their walking device taken away from them.²¹ A violation of their rights under Article 20 (Personal Mobility) of the *United Nations Convention on the Rights of Persons with Disabilities*²².

Do you have any other thoughts, ideas or comments you would like to make about people with disability and the criminal justice system?

Each type of disability affects individuals in different ways. Support or adjustments should not be made on assumptions based on a broad description and knowledge of a disability. Individuals can have the same disability yet have significant differences in the level of support required. When an individual is accessing the criminal justice system, appropriate steps and considerations should be made to ensure individualised support, which reduces feelings of being uncomfortable, overwhelmed and fearful; feelings of injustice and not being able to get their viewpoint across.

When considering the costs of adjustments, these should be balanced against the right of an individual to be able to present their evidence effectively or to live in an environment free of abuse or neglect²³.

²⁰ Judicial Commission of New South Wales (2013) Equality Before the Law Bench Book: Section 5 People with Disabilities

²¹ Survey Monkey (2013) PDCN: Access to justice in the Criminal Justice System for people with disability

²² Australian Human Rights Commission (2013). Access to Justice in the Criminal Justice System for People with Disability

²³ Judicial Commission of New South Wales (2013) Equality Before the Law Bench Book: Section 5 People with Disabilities