



ATTORNEY-GENERAL
MINISTER FOR JUSTICE

Parliament House
State Square
Darwin NT 0800
minister.elferink@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: 08 8928 6615
Facsimile: 08 8928 6590

Mr Graeme Innes AM
Disability Discrimination Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Mr Innes

I refer to your previous correspondence and our meeting of 1 August 2013, concerning access to justice in the criminal justice system for people with a disability.

The issue of access to justice in the criminal justice system for people with a disability is a matter of concern for the Northern Territory Government. While it is not possible for the Northern Territory Government to answer the questions posed in your issues paper, as they are questions directed at individuals who may have suffered under the current arrangements, the following information is provided:

Case examples

The Witness Assistance Service of the Office of the Director of Public Prosecutions has provided the following case examples where charges could not proceed due to complainants/witnesses being unable to give evidence due to a disability:

1. in the first case, the young lady in question is deaf and mute and was subject to assaults and sexual assaults by her boyfriend, and then by his brother when her boyfriend went into custody. She was in supported accommodation and her boyfriend, his brother and mother were also all living there. She received significant pressure from his mother not to proceed with either case. One of the main concerns was that when the Witness Assistance Service attended a meeting to discuss with her how to proceed with the matter, the person who attended from the government support agency was both her and the accused's caseworker. The obvious conflict did not seem to concern the case worker. In any event the client was not comfortable with all the attention she was receiving.

The victim indicated that she would not want to give evidence and ultimately a plea was received to one of the matters but had to withdraw the other. This victim was fluent with Auslan and was also quite able to attend the police station to report the offences;

2. in the second matter, the victim reported that she had been gang raped and one person was ultimately identified and charged. The difficulty with this matter was that she was also deaf and mute and did not speak Auslan at all but a community sign language known by only one or two other people. The conflict this caused the case was that the first complaint witness was also the only person who could interpret for the victim in a court proceeding. Ultimately this resulted in the case being discontinued;
3. in the third matter, another deaf mute victim was raped. She ultimately requested that the trial not proceed as she did not feel she could go through with the matter. She had been victimised on a number of occasions in different places and had recently given evidence in a trial in Queensland. The process had been so traumatising she was not willing to subject herself to it again.

- **Training provided to Police Officers to deal with people with a disability**

The NT Police, Fire and Emergency Services College provides specific training and guidance in several areas touching on people with disabilities. The policies and procedures of the NT Police, Fire and Emergency Services cover the following areas:

- Customer Service and Service Delivery Standards;
- Equal Opportunity;
- Code of Conduct and Ethics;
- Mentally III Persons; and
- Operational Excellence.

Specific training modules are delivered in recruit training as follows:

- Verbal and Non-verbal Communications - this module focuses on mood, body-language and gestures in communicating with disabled people or those from non-English-speaking backgrounds;
- Community Partnership and Engagement - this module includes instruction on the use of the Aboriginal Interpreter Service and the National Telephone Interpreter Service, as well as ethnic and disability community and social groups in the NT;
- Mental Health and Suicide Prevention - this module has input from various mental health specialists from Government and non-Government services in the NT;
- Aboriginal Culture;
- Respect, Equity and Diversity; and
- Investigative Interviewing Level 2 — this module examines interviewing vulnerable people, including people with communication difficulties.

- **Measures available for people with disabilities in court**

All NT courts, jury rooms and witness boxes in our four main court buildings at Darwin, Alice Springs & Katherine have wheelchair access. Prisoners with disabilities encounter a problem at courts where the cell access is on a different floor to the courts. In this instance prisoners are taken through to the courts using the public access.

- **Specific measures to assist people attending court with hearing impediments and those people limited to sign language**

The Acting Chief Magistrate has indicated a willingness to support the training of magistrates and there is also support for staff development to better understand the needs of people who are deaf or hearing impaired.

From the courts' perspective, identification of hearing impaired persons usually comes from their legal representative. After an indication is made to the court, arrangements are made for either a digital hearing device or AUSLAN interpreter depending on the needs of the person. The court can make a booking through the National Auslan Interpreter booking and payment service, which is a free service to NTG (transport needs to be funded). At this stage, unless an interpreter is ordered by the court, it is up to prosecutions or legal representatives to organise.

In the main, courts of the NT in Darwin, Alice Springs and Katherine have assistive hearing devices and court amplification devices which assist people with hearing impairment. There is also an infrared modulator installed in Court Room 1 of the Darwin Magistrates Court.

Given the high level of hearing impaired persons, consideration may be given to duty interpreters available on court days irrespective of whether one has been ordered.

- **People with hearing disabilities in prison**

The current reception (including health screening processes) provides for new prisoners to have a full health assessment upon arrival at an **NT** correctional centre. This medical screening does not screen for hearing loss, neither does it include a specific assessment tool for cognitive disability.

Introduction of screening for hearing impairment for youth detainees is being considered. The Department of Correctional Services is currently working with the Department of Health to establish a budget and determine operational aspects of this program prior to any decision on its introduction.

The Darwin Correctional Centre has limited capability to offer specialised services to people in custody identified as having a hearing impairment due to the ageing infrastructure at the facility. However, the facility has created a sound loop in one of the training rooms that enhances learning for prisoners with a hearing impairment.

The new Darwin Correctional Precinct, due to commence operation in July 2014, will also have a range of modern health facilities. There have been early discussions about the development of a corrective industry at the Precinct that will build hearing aid devices for prisoners that can be purchased at minimal cost. It is proposed that the Darwin Correctional Precinct will include environmental aids to support those with hearing loss in the education and training units.

- **'Sentenced to a Job' policy**

The 'Sentenced to a Job' program includes anyone with a suitable security classification. A disability of any kind does not preclude any prisoner from participation in this program, however, it may limit employment options.

A prisoner with a visual impairment that is not corrected by glasses may be excluded from jobs such as driving a truck but may be able to participate in other jobs, for example landscaping.

- **Support for people with disabilities in prisons including Part IIA of the Criminal Code clients under supervision orders**

The Department of Correctional Services works collaboratively with the Department of Health (Aged and Disability and Forensic Mental Health teams) within correctional facilities to ensure that best practice is followed. The Department of Correctional Services also engages with the Anti-Discrimination Commissioner to ensure that the rights of prisoners with disabilities are upheld.

There are a range of support structures in place for people with disabilities that are housed in correctional centres that facilitate information pathways for them to discuss their rights, including the Official Visitors Program and access to the Ombudsman.

For those sentenced on community based orders, Community Corrections works with existing disability support providers to ensure those with disabilities are receiving support programs. Individual Management Plans are also developed in collaboration with the Department of Health for people with disability in correctional centres.

Disability Secure Care

The Secure Care Disability Group Home is a service providing transitional medium term care, in an eight bed, secure group home environment, for adults displaying high risk behaviours. Admission into the service is subject to the person meeting the eligibility requirements which include: the person having a complex cognitive impairment; the person having a capacity to benefit from the service; it being the least restrictive option; and the person posing a substantial risk to themselves or the community.

Although secure services for complex adult clients were initially designed for both Darwin and Alice Springs, the secure care facilities were re-aligned in May 2013 with the Office of Children and Families assuming use and management of the Darwin facility. Subsequently, staff and program development for the adult service has been redirected to focus solely on the Alice Springs group home.

The group home facility is located at Old Man Plains in Alice Springs and provides a safe and secure environment with 24 hours a day, seven days a week supervision and support. The facility is both a proactive service providing therapeutic interventions to people who are at risk of offending, and a service option for clients deemed Unfit to Plead under the *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010 (NT)*. For clients subject to a Supervision Order who meet the criteria for involuntary treatment and care under the *Disability Services Act (NT)*, the Chief Executive of the Department of Health may issue a 'Certificate of Service' allowing the person to receive services at the Secure Care adult service.

The *Disability Services Act (NT)* provides the legislative framework for treatment and care in the secure care service and mandates the development of a Positive Behaviour Support Plan for each resident. A resident's individual Plan will underpin therapeutic supports and interventions for reducing behaviours of concern, which may include restrictive interventions. A Positive Behaviour Support Plan will also include an anticipated transition plan for the client when the program is complete, including living circumstances and accommodation options.

As the purpose of secure care is to transition clients to a less restrictive setting, transition planning commences from the outset of an admission and will be supported by community access in accordance with the step-down approach outlined in the resident's Plan.

Each resident's Positive Behaviour Support Plan will be informed by clinical assessment and developed by a practitioner in collaboration with the person and staff/carers to maximise the likelihood that the interventions will be implemented consistently across all environments.

Comprehensive clinical assessment, with case management and intervention are designed to decrease behaviours of concern over time and allow clients to transition to a less restrictive environment in the community. The service employs a range of specialist staff to support clients with complex needs by implementing the strategies outlined in the client's Positive Behaviour Support Plans. Staffing includes: group home managers; clinicians; occupational therapists; and specialist direct care support workers.

Specialist forensic services are provided by Forensic Mental Health Services and the Specialist Support and Forensic Disability Unit of the Department of Health as follows:

Forensic Mental Health Services

There are approximately 80 to 100 Northern Territory inmates at any given time with a diagnosed mental illness who require specialist mental health services involvement. There are also a number of other inmates with an Acquired Brain Injury or other cognitive disability.

The Mental Health Services area of the Department of Health currently provides Forensic Mental Health services within both the Darwin and Alice Springs prisons. This includes capacity to provide an acute inpatient care option for inmates with mental illness at the Joan Ridley Unit in Royal Darwin Hospital.

In addition to the provision of acute inpatient care, the new Darwin Correctional Precinct will include a Mental Health and Behavioural Management Facility to be located adjacent to the proposed Correctional Precinct. This Facility will be managed and operated by the Department of Health. The Alice Springs Correctional Centre also has a specialised unit, the Johns Bens Unit, to provide this service.

The Mental Health and Behavioural Management Facility will provide dedicated secure forensic inpatient facilities (both acute and medium to long term stay rehabilitative environments) and community transition options. The Facility will provide subacute stay for treatment and care to inmates suffering from a mental illness as well as facilitate in-reach treatment and care for inmates in the Darwin Correctional Precinct.

In particular, the Facility will provide medium to long term stay for persons who are unfit to be tried or not guilty by reason of mental illness who are subject to a Custodial Supervision Order under Part IIA of the Criminal Code. These Part IIA persons may be suffering from cognitive impairment, mental illness or any combination of these presentations.

The proposed Facility will:

- facilitate differing levels of security and segregated care where required;
- provide services to a diagnostically diverse population group (ie mental illness, Acquired Brain Injury and various cognitive disabilities);
- support a progressive 'step down' approach to facilitate community reintegration from secure facilities through transitional accommodation where indicated;
- provide 24 hours a day, 7 days a week on-site clinical services to meet defined clinical needs; and
- provide a full range of additional clinical and rehabilitation services via an in-reach multi-disciplinary mental health and disability team.

Forensic Mental Health Services in the community

The Forensic Mental Health Services area of the Department of Health provides forensic services, treatment and care to persons who are before the Court of Summary Jurisdiction and were suffering at the time of the offending behaviour or are presently suffering from a mental illness or disturbance.

Forensic Mental Health Services also provides treatment and care of Part IIA Criminal Code individuals who are mentally ill or mentally ill and cognitively impaired and have been placed on a Non-Custodial Supervision Order in the community. Treatment and care is implemented through a treatment management plan which addresses the various needs of the person. These identified needs, in addition to treatment and care include: supported accommodation; living skills; psycho-social education; and other specific support. In this regard, non-government mental health services also provide additional support for persons on Non-Custodial Supervision Orders.

Specialist Support and Forensic Disability Unit

The Specialist Support and Forensic Disability Unit of the Department of Health provides management and support to clients deemed Unfit to Plead under Part IIA of the Criminal Code, and are currently on Non-Custodial Supervision Orders or Custodial Supervision Orders.

The program is a specialised service that provides intensive support to stabilise extreme risk behaviours across multiple environments, with a long term focus of developing a management plan that enables the least restrictive environment for the client. This is a direct service model with disability support workers directly recruited and trained. The program also has Forensic Disability Officers who provide intensive and ongoing management. The responses developed for clients are generally highly individualised.

The care and court ordered supervision provided to a client depends upon his/her assessed need and is led by either the Mental Health Program or Disability Services as appropriate.

The Specialist Support and Forensic Disability Unit performs duties which include:

- advise, consult with and assist prison systems to improve supports for eligible prisoners including the development and implementation of positive behaviour support plans, risk and case management plans;
- implement positive behaviour support training to Corrections Officers in relation to specific client needs;

- assist prison staff to understand individual clients' needs, especially in relation to triggers for behaviours of concern, de-escalation strategies and controlling interactions with other prisoners;
- review, research and write Court Reports as required; and
- assist prisoners who are eligible for Disability Services in their transitions from prison by ensuring they have an identified disability coordinator and an up to date support plan.

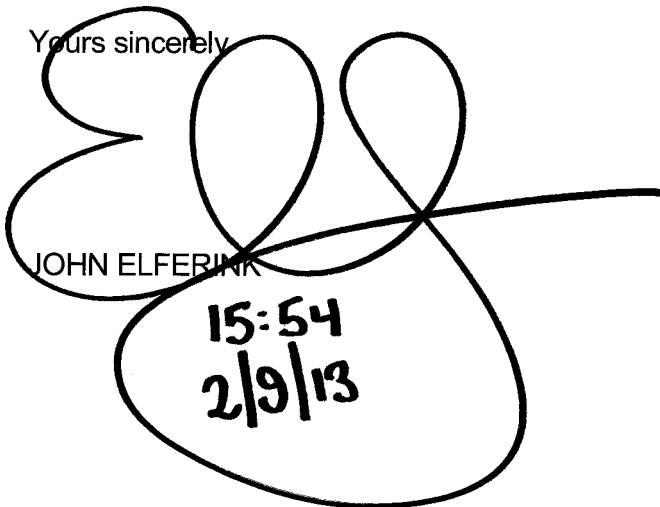
The Chief Executive of the Department of Health may issue a 'Certificate of Service' allowing services to be provided for clients on Non-Custodial Supervision Orders at a specified place (eg an address in the community). This may include 24 hours a day, seven days a week support in a group home or in a single setting with high level supervision.

I further advise that the Northern Territory has recently introduced the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) (National Uniform Legislation) Bill 2013 to enable the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to be given effect within the Territory.

Finally, I am interested in the results of the research that you are conducting on these issues and undertake to provide information on specific cases if you refer them to me or to the Northern Territory Department of the Attorney-General and Justice.

Thank you for the opportunity to provide comment on access to justice in the criminal justice system for people with a disability.

Yours sincerely



JOHN ELFERINK

15:54
2/9/13