

DISABILITY JUSTICE STRATEGY

Public DISCUSSION PAPER – justice and Services sectors

COMMUNITY SERVICES AND JUSTICE AND COMMUNITY SAFETY DIRECTORATES

AUGUST 2018

DISABILITY JUSTICE STRATEGY

DISCUSSION PAPER – Justice and

Services sector- identifying priorities

The ACT Government is committed to ensuring that people with disability are treated equally before the law and have equal access to justice and their rights upheld.

The protection of rights and access to justice is consistent with the United Nations Convention on the Rights of People with Disability and with the priorities of the National Disability Strategy. Most importantly a Disability Justice Strategy is critical to ensuring people with disability living in Canberra can access the systems and supports that enable equality before the law.

The ACT Government is committed to developing a Disability Justice Strategy as part of its continuing commitment to people with disability. We are seeking the views of the community on the issues, concerns and responses that could be included in the strategy around three central themes:

* knowing your rights;
* exercising your rights; and
* your experience of the justice system.

In addition, we are seeking the views of the disability and justice sectors on their perspectives on priority issues and responses for the strategy.

It is well established that people with disability do not have access to the legal supports and services they need and that the legal system is difficult to navigate. We particularly want the views of people with disability and their supporters, as to their experience tackling legal issues and how improvements could be made to ensure people with disability can confidently engage with the justice system.

## The international context

In 2008, Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (the Convention), which clearly states that people with disabilities must be provided with necessary modifications and adjustments in order to obtain effective access to justice. Reasonable accommodation is the provision of adjustments that aim to level the playing field and remove barriers to full participation. Article 12 describes areas of recognition and appropriate measures for ensuring equal recognition before the law and Article 13 outlines the areas for effective accommodations and to for state parties to undertake appropriate training.

<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

## the national context

The development of the *National Disability Strategy 2010- 2020* (NDS) committed governments to a unified, national strategy to improve the lives of people with disability, their families and carers, and to provide leadership for a community-wide shift in attitudes[[1]](#footnote-1). The NDS covers six priority policy areas with priority two focussing on people with disability having their rights promoted, upheld and protected. This includes prioritising actions that provide greater safety from violence, exploitation and neglect as well as more effective responses from the criminal justice system to people with disability who have complex needs.

The Australian Human Rights Commission launched a national consultation process which culminated in the development of a report 'Equal before the law: towards disability justice strategies' which was released in 2014[[2]](#footnote-2). The report found that access to justice is problematic in every jurisdiction in the country and that the barriers are compounded for those people with disability who need communication supports or who have complex and multiple support needs. The report recommended that all jurisdictions develop an over-arching Disability Justice Strategy as a vehicle to drive the reforms and cultural change necessary to address barriers identified in the report.

A number of other states and territories have made progress towards this aim. The development of the strategy will be informed by the experience and responses of states and territories including:

* The South Australian Disability Justice plan - <https://www.agd.sa.gov.au/projects-and-consultations/disability-justice-plan>
* The Tasmanian Disability Justice Plan - <https://www.justice.tas.gov.au/news_and_events/disability-justice-plan>
* Consideration by Queensland on disability justice strategies - <http://www.justice.qld.gov.au/__data/assets/pdf_file/0006/271095/Submission-FINAL-ADCQ-PA.pdf>
* Reports of the Australian Human Rights Commission - <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> and Australian Law Reform Commission - <https://www.alrc.gov.au/publications/equality-capacity-disability-report-124>

Equal Before the Law identified five barriers for people with disabilities in accessing justice:

**Barrier 1-** Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disabilities.

**Barrier 2-** People with disabilities do not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.

**Barrier 3-** Negative attitudes and assumptions about people with disabilities often result in people with disabilities being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.

**Barrier 4-** Specialist support, accommodation and programs may not be provided to people with disabilities when they are considered unable to understand or respond to criminal charges made against them (‘unfit to plead’).

**Barrier 5-** Support, adjustments and aids may not be provided to prisoners with disabilities so that they can meet basic human needs and participate in prison life.

Equal before the law recommended that disability justice strategies needed to encompass:

1. Safety of people with disabilities and freedom from violence.
2. Effective access to justice for people with disabilities.
3. Non-discrimination.
4. Respect for inherent dignity and individual autonomy including the freedom to make one’s own decisions.
5. Full and effective participation and inclusion in the community, and

In implementing such strategies five principles should be adopted:

1. be prepared in partnership with people with disabilities;
2. be coordinated across the agencies that deliver outcomes in the criminal justice system;
3. ensure accountability through our system of parliamentary democracy and public administration;
4. involve actions that are embedded in operational plans; and
5. be monitored for effectiveness and adjusted in light of experience.

## What we know about the experience of people with disability and access to justice

Disability Justice Strategies seek to ensure that people with disability have equal access to legal services and to assist systems to better respond to the needs of individuals.

There is considerable evidence that when people are unable to access effective justice it further adds to the societal disadvantages experienced by people with disability.[[3]](#footnote-3) We know that people with disability experience high rates of violence and isolation and are more likely to be incarcerated and less likely to feel confident navigating the justice system.

We know that:

* it is often difficult for justice systems to identify if people experience a disability and what adjustments may be needed to facilitate full engagement;
* too frequently people with disabilities are not being heard because of perceptions they are unreliable, not credible or incapable of being witnesses;
* many offenders with disability have themselves been victims of violence and that this has not been responded to appropriately, contributing to a cycle of offending;
* the styles of communication and questioning techniques used by justice agencies including police, lawyers, courts and custodial officers can confuse a person with disability; and
* navigating the justice system is very difficult and only made more complex when individual needs are not identified or understood.

## Actions that can improve legal and justice outcomes for people with disability

Research and the experience of other jurisdictions indicates that there are many ways to improve the responsiveness of the justice system to the needs of people with disability.

These include:

* The provision of training and education across the justice sector on the impact of disability on people's lives and how that impacts access to justice.
* Ensuring that information and advice is provided in accessible formats and in ways that are useful to people with disability.
* Providing navigation assistance to people with disability accessing the legal system, courts and Tribunals will assist in better engagement and outcomes.
* Provision of disability-ready legal assistance to people both in civil and criminal justice spaces, in areas such as accident/injury, consumer, credit/debt, education, employment, family, government and housing problems.
* Utilising tools to screen for the need to make adjustments and to keep data on the numbers of people with disability accessing the system can provide excellent insights into areas of need.
* Identifying when a failure to provide accessible accommodation options is leading to people staying in or re-entering the corrections system.
* Identifying areas of the law which may require amendment to facilitate better access and support through communication assistance or intermediaries.

## ACT context

A jurisdictional comparison indicates that the ACT is well placed in relation to some matters relative to other jurisdictions but less so in others. One clear area where improvement could be made is that there is little ACT specific data on the interaction of people with disability with the justice system and the nature of their disability.

Analysis and feedback to date has identified five key recurring themes or priorities which an ACT Disability Justice Strategy might address. These are:y themes identified from the work to date which the strategy could seek to address are:

1. **Information and communication** – improving the information to support people with disabilities to understand better how to navigate justice issues, ensure the system is accessible and their communication needs are met.
2. **Training and guidance** – improving the general awareness of the justice needs of people with disabilities and how the justice system could respond particularly through specific guidance and training.
3. **Data, Research and review** – improving the knowledge and data on disability and justice across the ACT Government services sector to shape future action and improve access to appropriate supports for people with disabilities.
4. **Identification and screening** – ensuring that disability can be identified (and appropriate responses made) at appropriate points and have this information travel with people across agencies and service providers to improve early intervention (where appropriate, and with appropriate safeguards in place) and obviate the need for people to constantly retell their story.
5. **Service gaps and linkages** – early upstream and timely interventions to improve the lives of people with disabilities, to identify and support their needs and to provide appropriate options, can help to provide necessary protections and to avoid (for some) contact with the criminal justice system. Feedback has consistently suggested that diversionary options for people with disabilities could be improved.

Under each of these themes there are a range of specific issues and suggested actions. Where action can be taken now we are seeking to address this as we work on the broader strategy. For example, recent legislative changes have been made to ensure that a person who requires AUSLAN interpreting in order to undertake jury duty is provided with this assistance and can therefore participate equally in this civic duty.

It is also clear from discussions to date that the justice needs of people with disability reach across the entire spectrum of the justice and social service system, with the greatest need for the majority of people with disabilities falling in the civil justice sector (housing; decision-making; employment; administrative rights) through to the smaller, but most complex of, needs of those in contact with the criminal justice system as victims, witnesses, defendants or prisoners. It is also noteworthy that the literature indicates a strong linkage between initial civil legal issues – particularly housing, homeless, mental health issues – leading to involvement with offending and the criminal justice system.

Awareness and cultural change will be critical to successful reform. A key tool promoted by the Australian Human Rights Commission and utilised in a number of other jurisdictions, is the completion by agencies, organisations and other entities of Disability Action and Inclusion Plans to examine their operations, accessibility and awareness of disability in the context of their work.

We encourage all organisations to consider implementing a Disability Action and Inclusion Plans and would welcome organisational commitments to do so.

We are also interested in the services and activities that non-government organisations and community groups are undertaking so that we can build a comprehensive picture of this important contribution toward disability justice.

## Actions to date

The Office for Disability and the Justice and Community Safety Directorate are working in partnership to develop the strategy. The Government has allocated additional funding in 2018-19 to assist the Office for Disability and the Justice and Community Safety Directorate to develop the strategy for release in 2019. The Government also allocated 4 years of funding to continue the Socio-Legal Practice Clinic of Canberra Community Law in support of people with disabilities’ legal and social needs.

As at July 2018 the following has been undertaken:

* Review of literature - relevant research, guidance material, reports, disability justice plans and related material;
* A review on the ACT context;
* Presentation to ACT Disability Reference Group;
* Launch of public consultation on disability justice issues;
* A public seminar on disability and criminal justice in Law Week featuring Professor Eileen Baldry, Victims of Crime Commissioner Heidi Yates and Autism Advocate Jeanette Purkis;
* Commencement of the Disability Justice Reference Group;
* Review of NSW Disability Justice Project training material;
* Commencement of targeted consultation with key stakeholders to explore issues raised in the review and literature review; and
* Two public consultations.

The Disability Justice Strategy development is advised by both a Disability Justice Reference Group and the Disability Reference Group. Representation includes people with disability and justice stakeholders.

In addition, there are a number of reforms and initiatives currently underway in the justice arena. These include the refresh of the Aboriginal and Torres Strait Islander Partnership and the Youth Justice Blue Print, development of a Victims charter, responding to the Royal Commission into Institutional Responses to the Sexual Abuse of Children and Restorative Justice initiatives.

The development of the Disability Justice Strategy will engage with each reform to ensure people with disability are recognised and that their needs are considered.  For example consultation is open in relation to a Victim’s charter - <https://yoursay.act.gov.au/charter-rights-victims-crime>  and  examination of a possible communication assistance/intermediaries scheme for people with communication assistance needs is being considered in the response to the Royal Commission into Institutional Responses to Child Sexual Abuse - <https://yoursay.act.gov.au/childabuseroyalcommission> .The perspective of people with disabilities is a vital component of each of these initiatives.

## Consultation

We will be consulting in a range of ways to develop the strategy. In addition to public consultations, there will be targeted consultation with key people and organisations from the justice and disability sectors.

There are three ways to have your say:

* complete the questionnaire or lodge a submission;
* join one of the community conversations:
* 29 August 12-2pm Tuggeranong Community Centre
* 10 September 5.30-7.30pm Woden Community Centre
* request a face to face consultation by contacting the Disability Justice Strategy team

ACTdisabilityjustice@act.gov.au

## questions to guide input

Views are sought on:

1. What do you think are the priority actions required in the justice system to create equality before the law for people with disabilities within the ACT?
2. What further research would help to understand the ACT specific situation of people with disabilities in the justice system?
3. What are examples where a person’s disability impeded their access to justice in the ACT?
4. What issues in relation to the civil justice system are most pressing for people with disabilities?
5. What issues in relation to the criminal justice system are most pressing for people with disabilities?
6. What actions do you believe would most assist people with disabilities to have equal access to legal redress and understand their rights?
7. Is there sufficient, accessible material available for people with disabilities to understand their rights? What material should be more accessible?
8. What supports would assist people with disabilities to have their rights upheld?
9. What supports would help raise the awareness and understanding in the justice system of the issues faced by people with disabilities?
10. What activity would help to identify people with disabilities (such as intellectual and cognitive disabilities) early in the criminal justice process?
11. Is your organisation involved in providing support to individuals or the justice system (such as training)? Please outline these services and supports.
12. Would your organisation be willing to develop a Disability Action and Inclusion Plan to demonstrate commitment to better outcomes for people with disability?



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August 2018

1. <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-disability-strategy-2010-2020> [↑](#footnote-ref-1)
2. *Equal Before the Law: Towards Disability Justice Strategies*, Australian Human Rights Commission, February 2014, <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> [↑](#footnote-ref-2)
3. *Equal Before the Law: Towards Disability Justice Strategies*, Australian Human Rights Commission, February 2014, <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law> [↑](#footnote-ref-3)