

6 October 2017

The Law Council of Australia
The Justice Project
GPO Box 1989
Canberra ACT 2601

Dear Madam/Sir,

Kingsford Legal Centre (KLC) welcomes the opportunity to make a submission to the Justice Project regarding people with disability.

KLC is a community legal centre that has been providing legal advice and advocacy to people in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues. KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

In 2016, over 71% of clients at KLC had little to no income. 28% of advices and 42% of cases were for clients who identified as having a disability. Discrimination

was our second largest area of advice, with KLC providing 247 advices on discrimination (11% of all advice provided) and running 42 cases on discrimination (10% of all casework). 40% of advices in our specialist discrimination clinic were for disability discrimination. 6% of advices and 11% of cases were for clients who identified as Aboriginal and Torres Strait Islander. 21% of our advice clients and 29% of our casework clients lived in social housing.

KLC supports a human rights approach to working with clients with disability to increase access to justice, in line with the CRPD.¹ We adopt the social model of disability, which distinguishes between a person's impairment and the social barriers which restrict their everyday lives. KLC recognises that it is our obligation to address physical, communication, and accessibility barriers to provide clients with a disability equal access to our service.

KLC approaches clients with a presumption of legal capacity. Article 12(2) of the CRPD recognises that all persons with disabilities possess and enjoy legal capacity on an equal basis with others, in all aspects of life. This presumption applies to all persons with disabilities, including those who require more intensive support.²

Article 12(3) obliges States to take all appropriate measures to provide persons with disability the support required to access legal capacity. The UN Committee on the Rights of Persons with Disabilities has recognised that support is a broad term capable of encompassing both informal and formal support arrangements of varying type and intensity.³ Support can take many forms, including peer support, advocacy, and accessibility measures.⁴

¹ , opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) (CRPD).

² Amita Dhanda, 'Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future' (2006) 34 429, 442.

³ Committee on the Rights of Persons with Disabilities, , 11th Sess, UN DOC CRPD/C/GC/1, 19 May 2014.

⁴ Ibid.


Art 12(4) requires that safeguards be designed to respect the rights, will and preferences of the individual. The CRPD also requires supported decision-making rather than substitute decision-

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week at the centre working in our legal practice, taking instructions from clients, preparing documents, and undertaking legal research. Students also participate in our community legal education and law reform work. Students take part in weekly seminars, tutorials and constant consultation with the clinical supervisors who are practising lawyers, providing an opportunity for students to analyse both their role as lawyers and the role of law in society. One of the seminars focuses on working with clients with disability. Through the course, law students work on advice and cases for clients with disability, and gain an understanding of the legal issues they face and how lawyers can work with clients with disability to assist them to exercise their rights. We aim to ensure the next generation of lawyers is well-trained in working with and empowering clients with disability.

We surveyed KLC clinical students on their experience and knowledge of working with clients at KLC. We received the following responses:



KLC submits that all staff at complaint-handling organisations, Tribunals and Courts should be trained in working with clients with disabilities. We note that Article 13 of the CRPD requires that: "In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate

In Victoria, Western Australia and the Northern Territory, Courts can order a defendant to be detained indefinitely on the ground that they are unfit to stand trial.⁹ In other jurisdictions, detention is limited to the maximum duration for which the person could be jailed for the offence they were charged with.¹⁰ In all jurisdictions, review mechanisms require an independent Court or Tribunal to consider whether the person is fit to be released.¹¹ Indefinite detention is inconsistent with other Australian jurisdictions and violates human rights, even if it is subject to periodic review.¹²

Moreover, review is not always required on a periodic basis.¹³ This makes review optional rather than mandatory. In Victoria, the Judge who orders detention can decide how regularly review should occur.¹⁴ Mandatory periodic review is an essential condition of humane detention where the person is detained on the basis of unfitness to stand trial.

KLC recommends that Courts should be required to fix the maximum detention period and a mandatory periodic review date which is proportionate to the detention period at the time a person is remanded into custody on the basis of unfitness to stand trial.

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(Vic) s 27;
(NT) sch 1, s 43ZC.

(WA) s 19;
¹⁰ See, eg, (Cth) s 20BC(2).

¹¹ Australian Law Reform Commission, Equality, Capacity and Disability in Commonwealth Laws, ALRC report 124 (August 2014) , 209 [7.84].

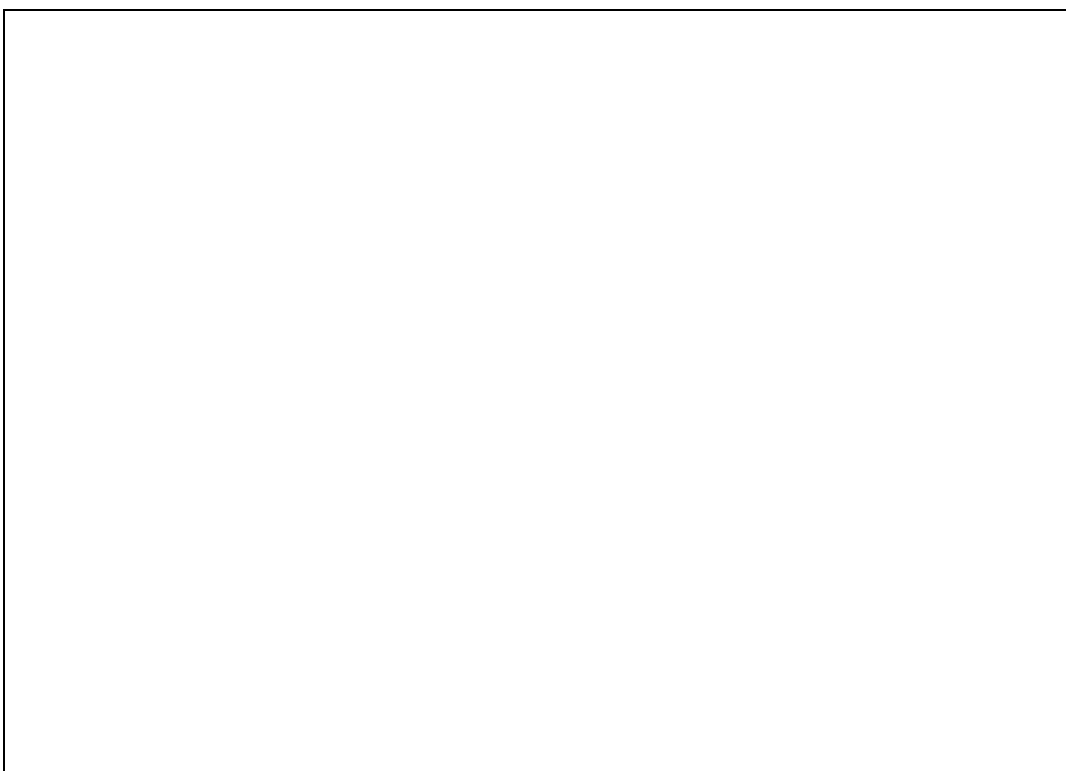
¹² ICCPR, art. 9.

¹³ Australian Law Reform Commission, above n. 11, [7.85-7.86].

¹⁴

(Vic) s 27.

KLC aims to provide an accessible and appropriate service to clients with disabilities, tailored to their needs. Providing a holistic service can be very resource-intensive, as it often involves multiple meetings between the KLC solicitor and client to ensure they understand their legal options and can provide instructions. Further, a holistic service may require allowing time for clients to have breaks, for referrals to non-legal services to be made, home visits, telephone calls, and follow up advice.



KLC recommends that the Australian government increase funding for legal assistance services to provide holistic services to clients with disabilities.

KLC understands the importance of community legal education in all areas of the law. We run community legal education seminars for community workers and

members of the public which specifically address disability and discrimination.

We rely on funding from the government and the private sector to run our

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