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Department of Social Services

**BY EMAIL:** [disabilityadvocacy@dss.gov.au](mailto:disabilityadvocacy@dss.gov.au)

## **Submission to the Review of the National Disability Advocacy Framework**

The Public Interest Advocacy Centre (**PIAC**) has a long history of working with people with disability to advocate for protection and promotion of their human rights, to support their right to live independently and be treated equally in Australian society. Community legal centres, of which PIAC is one, play a vital role in providing legal assistance and advocacy for people with disability.

PIAC welcomes this opportunity to comment on the Review of the National Disability Advocacy Framework (**the Framework**). In this short submission, PIAC comments only on those areas where it can base its recommendations on its casework experience.

### **Public Interest Advocacy Centre**

PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia.

PIAC's expertise relevant to this review stems from its litigation and advocacy work on behalf of clients with disability, primarily in relation to disability discrimination. PIAC has run a number of test cases that have aimed to increase the accessibility of public and private services to promote the rights of people living with disability. These cases are outlined in further detail below.

### **Framework principles: the importance of systemic advocacy**

PIAC believes that the current Framework principle recognising the importance of systemic advocacy for people with disability must be maintained in the new Framework. PIAC supports the current wording in the Framework document, which states:

Disability advocacy seeks to influence positive systemic changes in legislation, policy and service practice and works towards promoting inclusive communities and awareness of disability issues.<sup>1</sup>

In PIAC's experience, the ability of individuals with disability to engage in systemic litigation and advocacy in relation to their rights has been

<sup>1</sup> Department of Social Services, *Discussion paper: Review of the National Disability Advocacy Framework* (June 2015), at page 4.

transformative, not only for the individual but also for the thousands who are similarly affected by the practice or legislative provision being challenged. Recent cases undertaken by PIAC have ensured, for example, that:

- taxis designated wheelchair accessible in NSW truly comply with the Disability Standards for Public Transport 2002;<sup>2</sup>
- action is being taken on the NSW train network to make sure on-train announcements consistent, clear and audible;<sup>3</sup>
- many people with disability travelling on Virgin Blue planes do not have to travel with a paying companion;<sup>4</sup>
- people with a disability who need to travel with a carer are able to take advantage of discount fares on Virgin Australia because they do not need to provide the name of the carer until close to the travel date;<sup>5</sup>
- private coach company Murrays Australia Ltd, which runs an extensive bus travel network throughout the country, is under an obligation to provide wheelchair accessible buses in accordance with national Disability Standards for Accessible Public Transport;<sup>6</sup> and
- improvements will be made by supermarket chain Coles to its shopping website to ensure that people with impaired vision can independently shop online.<sup>7</sup>

In addition, PIAC is currently representing Suzanne Hudson, who recently launched a case against the Australian Broadcasting Corporation (ABC) alleging unlawful discrimination due to the ABC's failure to provide audio description as part of its regular programming. If successful, this case will mean ABC television will become accessible to the over 350,000 Australians who are blind or have low vision.<sup>8</sup>

PIAC's experience of the importance of systemic advocacy for people with disability is supported by the findings of the Productivity Commission's 2011 inquiry into Disability Care and Support. In this report, the Commission emphasised the importance of systemic advocacy for people with disability, including the advocacy undertaken by not-for-profit organisations, and concluded it is vital that systemic advocacy is integrally linked with individual advocacy.<sup>9</sup>

The type of systemic advocacy that PIAC undertakes supports many of the other principles in the current Framework that relate to inclusion and independence. It also fulfils many of the rights set out in the *United Nations Convention on the Rights of Persons with Disabilities (UN Disabilities Convention)*, including the right to equality and prohibition of discrimination on the basis of disability (Article 5); the requirement for States to take appropriate measures 'to enable persons with disabilities to live independently and participate fully in all aspects of life' by eliminating obstacles and barriers to accessibility (Article 9); the obligation on States to 'take effective and appropriate measures' to live independently and be included in the community which they live (Article 19); and the obligation on States to ensure effective measures are taken to 'ensure personal mobility with the greatest possible independence for persons with disabilities' (Article 20).

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<sup>2</sup> *Killeen v Combined Communications Network Pty Ltd* [2011] FCA 27.

<sup>3</sup> *Innes v Rail Corporation of NSW (No 2)* [2013] FMCA 36.

<sup>4</sup> *Corcoran & Anor v Virgin Blue* [2008] FCA 864.

<sup>5</sup> See 'Virgin Australia makes flying more accessible for people with disabilities', <http://www.piac.asn.au/news/2015/01/virgin-australia-makes-flying-more-accessible-people-disabilities>

<sup>6</sup> *Murrays Australia Ltd (No 2)* [2014] FCA 217.

<sup>7</sup> See 'Coles agrees to make online shopping site more accessible', PIAC Media Release, 18 February 2015, available at <http://www.piac.asn.au/news/2015/02/coles-agrees-make-online-shopping-site-more-accessible>.

<sup>8</sup> See 'The case for audio description: ABC sued for unlawful discrimination', PIAC Media Release, 8 July 2015, available at <http://www.piac.asn.au/news/2015/07/case-audio-description-abc-sued-unlawful-discrimination>.

<sup>9</sup> Productivity Commission Inquiry Report, *Disability Care and Support*, No. 54, 31 July 2011, at pages 523-525, available at <http://www.pc.gov.au/inquiries/completed/disability-support/report/disability-support-volume1.pdf>.

In addition to the importance of systemic advocacy, PIAC also believes there should be a stand-alone principle that 'disability advocacy seeks to inform people with disability about their rights and the means by which they can assert those rights'.

A problem with human rights protection in general is the lack of awareness of how human rights can assist individuals in their everyday lives. Accordingly, education about the practical implementation of human rights is vital to their effective implementation. In the case of the UN Disabilities Convention, PIAC believes it is important that not only people with disability are kept educated and informed of what it means to have these rights and how they can be exercised, but also the wider community. Awareness at a societal level will promote the important principle of inclusion that is a core element of current disability reform in both Federal and State jurisdictions. The requirement to educate is also found in Article 8 of the UN Disabilities Convention.

Incorporating a principle related to education would support the current Framework Outcomes that promote the ability of people with disability to take control, with support where necessary, over their own lives. PIAC recommends these important Outcomes be maintained as a safeguard to ensure that the people with disability who are affected influence legislation, policy and practices. These Outcomes in the current Framework reflect the core principle in the Preamble to the UN Disabilities Convention, which states that

persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them.

#### **Framework outcomes: access to justice**

PIAC recommends that a specific outcome be incorporated into the revised Framework that states that 'access to justice is assured for people with disability with the provision of specialised legal and advocacy services which are accessible, independent and available'.

The 2014 Productivity Commission report on Access to Justice identified that people with disability are more likely to have unmet legal need, more likely than others in the community to have multiple legal problems and will face significant obstacles in accessing services.<sup>10</sup> In its submission to the Productivity Commission, the Australian Federation of Disability Organisations concluded:

Disability advocacy services in Australia are under-resourced and struggle to meet the demands placed upon them. Supporting a person with disability to access the legal system can be complex and is often beyond the capacity of the advocacy organisation both in terms of resources and expertise.<sup>11</sup>

The Federation also noted that it 'is rare for legal aid to fund disability discrimination cases'.<sup>12</sup>

The UN Disabilities Convention requires States to 'ensure effective access to justice for persons with disabilities on an equal basis with others' (Article 13). In PIAC's experience, and as is evident from the Productivity Commission, it is clear that there are significant, and often insurmountable, barriers to access justice for people with disabilities. Given denial of access to

<sup>10</sup> Productivity Commission Inquiry Report, *Access to Justice Arrangements*, No. 72, 5 September 2014, available at <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>, at pages 87-90, 97, 107 (citing the *LAW Survey*, undertaken by the Law and Justice Foundation) and page 133.

<sup>11</sup> Australian Federation of Disability Organisations, *Submission to the Productivity Commission regarding Access to Justice Arrangements*, 4 November 2013, available at <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub024-access-justice.pdf>.

<sup>12</sup> *Ibid.*

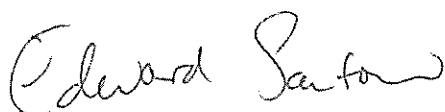
justice can lead to a range of problems for people with disability, from experiencing discrimination, social isolation and exclusion to difficulty receiving the right sort of care, it is important that access to justice be recognised as a key outcome in the revised Framework.

**Framework outputs: ensuring adequate funding**

If it is recognised that securing access to justice is a key outcome of the Framework, a corollary is that there must be adequate funding for relevant legal and advocacy services. PIAC recommends therefore that an output be included in the Framework that states that 'disability advocacy is adequately funded to ensure people with disability are able to access justice'.

Should you require any further information from PIAC regarding this submission, please contact us on 02 8898 6515 or at [sfarthing@piac.asn.au](mailto:sfarthing@piac.asn.au).

Yours sincerely



**Edward Santow**  
Chief Executive Officer  
Public Interest Advocacy Centre

Direct phone: +61 2 8898 6508  
Email: [estanow@piac.asn.au](mailto:estanow@piac.asn.au)



**Sophie Farthing**  
Senior Policy Officer  
Public Interest Advocacy Centre

Direct phone: +61 2 8898 6515  
Email: [sfarthing@piac.asn.au](mailto:sfarthing@piac.asn.au)