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Disability and Carers Group

Department of Social Services

By email: disabilityadvocacy@dss.gov.au

REVIEW OF THE NATIONAL DISABILITY ADVOCACY PROGRAM

This submission has been prepared by a number of the peak organisations for Australia's community legal centres¹ in response to the Department of Social Services' Discussion Paper on the National Disability Advocacy Program, released in April 2016.

Community legal centres (CLCs) are community-based, independent not-for-profit organisations that provide a range of legal and related assistance services to disadvantaged and vulnerable members of the Australian community.

By way of background, there are a mix of generalist and specialist CLCs across Australia. In the 2014 NACLC Census, of the 143 CLCs around Australia who responded to the census and who offer specialist services, 36 offered services targeted at people with disability.²

In 2014-2015, CLCs assisted 216,876 clients across Australia and provided:

- 271,695 advices
- 252,894 referrals
- 189,119 informations.³

Specifically, in 2013-2014, of clients assisted by CLCs funded by the Community Legal Services Program, 16.4% reported having a disability.⁴

Community legal centres value the important role advocacy for and with people with disability plays in promoting and protecting the community engagement and human rights of people with disability. We strongly support the continuation of the National Disability Advocacy Program.

While this submission makes a number of broad points in relation to the NDAP program itself and funding under the program, its focus is on Section 5 of the Discussion Paper relating to 'Understanding and Improving Access to Justice'.

We are pleased to note that in addition to this submission, a number of individual CLCs have made, or intend to make, submissions to this Inquiry.

We would be pleased to participate in a consultation or provide any further information on the matters in this submission should the Department require. Please contact James Farrell, Director of Community Legal Centres Queensland, on (07) 3392 0092 or director@communitylegalqld.org.au

^{*} Names have been changed.

¹ These organisations include: the National Association of Community Legal Centres (NACLC) and a number of its members, the state and territory associations including CLC Queensland, CLC New South Wales and the Federation of Community Legal Centres (Victoria).

² NACLC, *National Census of Community Legal Centres* (2014), [3.1.6]

³ NACLC, *Submission to Australian Government: Federal Budget 2016-2017* (undated) 5.

⁴ NACLC, *The Work and Clients of CLSP CLCs in Numbers 2013-2014* (September 2014).

INTRODUCTION

The NDAP is a vital funding program that provides people with disability access to advocacy using a range of models. There are six broad models of advocacy, including citizen, family, individual, legal, self and systemic advocacy. We understand that all recipients of funding under the NDAP's 'legal advocacy' support model are community legal centres.

While we support review and reform of the NDAP program to ensure it remains efficient and encourages good practice models of advocacy, we are concerned about a number of possible developments and reforms.

We agree that people with disability should have access to a range of advocacy models that best meet their needs. Community legal centres have a number of approaches to the provision of such advocacy. For example, some CLCs are in a position to provide a number of models of advocacy and then determine which will best assist the person with disability. Others however, focus on one or a limited number of models and would be concerned about moves to force or require them to provide other models given potential conflict of interest and other issues. It is important that this diversity of approaches and expertise is appropriately considered in the course of the review.

We also note that some CLCs are also concerned about the interaction between NDAP and the National Disability Insurance Scheme (NDIS), in particular, the labelling of functions such as Information and Referral, Capacity Building and Decisions Support under the NDIS as 'advocacy like' activities.

Finally, we are also extremely concerned about the impact of any review on ongoing funding allocation processes and the quantum of funding provided under NDAP.

There are significant funding challenges facing CLCs that provide legal advocacy and support to people with disability in Australia. Against the backdrop of broader funding cuts to CLCs, and the specific and vital role of legal advocacy under the NDAP program, it is important that the outcome of any review include ongoing, adequate and sustainable funding for CLCs to continue to provide vital advocacy services to people with disability across Australia. This should include funding for specialist disability services.

This is important for a range of reasons, not least because legal advocacy should only be undertaken by solicitors in legal services (which is in fact required under most jurisdictions' regulation of the legal profession) and in light of the expertise of CLCs in advocating for vulnerable and voiceless Australians, including people with disability.

In addition, in providing funding under the NDAP program moving forward, we would strongly support an evidence-based approach to determining legal need, mapping services and allocating funding accordingly and oppose any move to competitive tendering. In our view, it would undermine the holistic and collaborative approaches to service delivery that are vital in this area, as highlighted in some of the examples outlined later in this submission.

LEGAL NEEDS OF PEOPLE WITH DISABILITY

It was only in the latter part of the twentieth century that a shift occurred in the way that people with disability were perceived in the community and this coincided with a growing recognition and advocacy for the equal rights of people with disability as productive members of society.⁵

People with disability have increased vulnerability to experiencing a wide range of legal problems, including civil, criminal and family law problems.⁶ People with disability are more vulnerable to experiencing spiraling problem sequences which are likely to have serious negative effects on their life circumstances. Research has found that people with disability take longer to contact a support person or seek legal assistance for their matter,⁷ and once a person with disability obtains legal

⁵ Cook, J, 2013, People with Intellectual Disability or Cognitive Impairment Residing long term in Health Care Facilities: Addressing the Barriers to Deinstitutionalisation, Office of the Public Advocate, 37
http://www.justice.qld.gov.au/data/assets/pdf_file/0003/215256/people-with-disability-in-long-stay-health-care-facilities.pdf
(accessed 2 June 2016).

⁶ Coumarelos, C & Wei, Z 2009, The legal needs of people with different types of chronic illness or disability, Justice issues paper 11, Law and Justice Foundation of NSW, Sydney, 1.

⁷ Ibid, 2.

assistance, they are less likely to resolve their matter.⁸ People with a disability also have limited incomes in many cases and often do not have the financial resources to use traditional legal advocacy services such as private lawyers.

Further research has discovered a two way relationship between disability and legal problems. For example, housing-related problems, homelessness, family problems and domestic violence can emerge for people with disability. On the other hand, it has been suggested that poor quality housing, relationship breakdown, domestic violence, and debt problems can result in psychological or physical ill-health.⁹

Given this interconnectivity, it is clear that there is a need for better coordination between legal services and a broad range of human services, including health, social, welfare, housing and financial. A complete solution to their problems may require not only legal advice or assistance, but also a broad range of non-legal support services.¹⁰

5.1 WHAT FORMS OF LEGAL REVIEW AND REPRESENTATION DO PEOPLE WITH DISABILITY NEED MOST?

People with disability require access to a number of forms of legal review and representation. As outlined below, people with disability are over-represented in the justice system and face a range of barriers and challenges in interacting with the justice system. In some cases a person's disability may make access to legal review and representation, for example providing instructions or initiating proceedings, more difficult. As a result, it is important to recognise the particular needs and experiences of people with disability when considering and designing review and representation approaches and mechanisms.

Access to legal assistance, advocacy and support, holistic and specialist services and ongoing assistance are key elements of providing people with disability access to legal review, representation and access to justice.

This submission provides a brief overview of a number of areas in which people with disability need legal review and representation with specific case studies, including people experiencing violence; people residing in mental health facilities; people with debt and consumer problems; and as victims of crime. These highlight some of the areas in which CLCs across Australia provide advocacy and support to people with disability

VIOLENCE AGAINST WOMEN WITH A DISABILITY

A number of recent inquiries and reviews that have considered and highlighted violence against people with disability.

Women with a disability make up over 20% of Australia's population. Violence against women with disabilities in Australia is more extensive than violence amongst the general population.¹¹ Violence perpetrated against women with a disability is more diverse and generally more severe in nature.¹² Women with a disability experience higher levels of all forms of violence and are subjected to such violence by a greater number of perpetrators.

Crimes of violence against women with disabilities often go unreported, and when they are, they are inadequately investigated and remain unsolved.

Existing approaches to preventing and addressing violence against women often exclude the experiences of women with disability, in part based on perpetrator identity.

⁸ Ibid, 3.

⁹ Coumarelos, C & Wei, Z 2009, The legal needs of people with different types of chronic illness or disability, Justice Issues Paper 11, Law and Justice Foundation of NSW, Sydney, 3.

¹⁰ Ibid, 4.

¹¹ Dowse, L., Soldatic, K., Didi, A., Frohmader, C. and van Toorn, G. (2013) *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia*; Australian Bureau of Statistics (ABS) (2012) *Australian Social Trends June 201: Children with a disability*, Australian Bureau of Statistics, Canberra, Cat. No. 4102.0.

¹² Dowse, L. et al (2013) op cit.

Children with a disability are even more vulnerable to violence. Disability advocate Speaking Up for You worked successfully with Basic Rights Queensland, a community legal centre to achieve a successful outcome in the following matter.

Jane is 10 years old and has Infantile Arthritis and was referred by her mother. Jane had recently been discharged from hospital and was returning back to her local state school. On arrival at school the principal of the school met Jane's mother and told her that Jane must use a wheel chair when she was at school. There was a teleconference with the hospital and the school and Jane's doctor explained that Jane did not need to use a wheel chair in the community. The principal insisted that Jane use a wheel chair at school regardless of the doctor's advice. The principal also told the family that Jane could only attend school between 8.15 and 11.15 and that she had to go to the special education unit not her normal class. When the family asked why she could not go to school for a full day in her regular class room the Principal said that she might "spook" the other children and that she might become fatigued if she attended a full day. Jane's doctor said she was okay to return to school for a full day. Jane was also told that she had to eat her lunch in the special education unit not with the other children as she might choke. Jane has no previous incidents of choking. Jane goes to the toilet independently at home, however at school she was told that 2 staff persons had to accompany her to the toilet and stand on either side of the stall while she went to the toilet.*

Jane's family were invited to a meeting with the principal of the school. Jane became upset at the meeting and her mother asked the principal if she could go to class rather than attend the meeting. The principal said that she could go to school if she used the wheel chair. Jane said that she was frightened of the wheel chair and that she did not want to get into it. The principal grabbed Jane by the wrist and attempted to pull her out of the chair she was sitting in and into the wheel chair. Speaking up for You, Disability Advocates contacted Basic Rights Queensland, a community legal centre and received legal advice about the alleged assault on Jane by the principal and also about the discrimination that we believed was occurring. The lawyer from Basic Rights made contact with the family and provided advice to the family so that they could address the problems they were facing with the school

PEOPLE WITH AN INTELLECTUAL IMPAIRMENT RESIDING IN A MENTAL HEALTH FACILITY

Across Australia in many instances people with intellectual disability or cognitive impairment reside in mental health facilities. Access to advocacy and support in Mental Health Tribunals is a vital component of the work NDAP funded centres undertake.

The situation in Queensland and the experience of Queensland Advocacy Inc is outlined below to illustrate the issues and challenges that arise in relation to this issue.

A 2013 Report by the Public Advocate noted that in Queensland there are 132 people with an intellectual disability or cognitive impairment residing in mental health facilities. The data made available by Queensland Health noted that there are a further 75 people with an intellectual disability but no diagnosed mental illness residing in a mental health service but not subject to a forensic order or an involuntary treatment order.¹³

The Queensland Law Society submitted to the Public Advocate's Inquiry that people with an intellectual disability or cognitive impairment were often incorrectly placed into mental health facilities by a variety of methods including by their statutory health attorney, an attorney appointed pursuant to an enduring power of attorney, a decision by the Public Guardian or a forensic order by the Mental Health Court. The Society went on to argue that due to the varying legislation and the degree of complexity involved in the process that there should be more access to justice and

¹³ Cook, J, 2013, People with Intellectual Disability or Cognitive Impairment Residing long term in Health Care Facilities: Addressing the Barriers to Deinstitutionalisation, Office of the Public Advocate, 39, http://www.justice.qld.gov.au/_data/assets/pdf_file/0003/215256/people-with-disability-in-long-stay-health-care-facilities.pdf (accessed 2 June 2016).

advocacy for these people as well as less red tape and overlap between government organisations.¹⁴

Queensland Advocacy Inc. (**QAI**) is one community legal centre that receives NDAP funding. It is an independent, community based systems advocacy organisation for People with Disability and member of Community Legal Centres Queensland. QAI is well known for its eminence in the area of disability law including but not limited to mental health, legal capacity, substituted decision making, guardianship, restrictive practices, institutional abuse and forensic issues. Given its specialist expertise, QAI is the community legal centre that other centres in Queensland turn to for advice and guidance about clients with a disability who have legal issues.

QAI's mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland. QAI does this by engaging in systems advocacy work, through campaigns directed to attitudinal, law and policy change, and by supporting the development of a range of advocacy initiatives.

QAI plays a vital role at Queensland's Mental Health Review Tribunal who saw over 13,000 matters in the last financial year. Their presence is essential given that 50% of patients do not appear and legal representatives or advocates account for only 2% of the Tribunal's matters. Interestingly the numbers of involuntary treatment orders revoked coincide with the percentage of patients represented ie 2% indicating that those who were represented achieved a successful outcome. QAI note that in no other jurisdiction are the rates of participation of parties so low and the access to legal representation and advice so poor. QAI argue that representation at the Mental Health Tribunal is no less important than representation for serious criminal matters given that the patient is facing a term of incarceration against their will, is suffering a capacity related disability and is not familiar or aware of the applicable law or legal process.

A number of fundamental human rights are at stake in these cases including:

- The right to freedom from torture or to cruel, inhuman or degrading treatment or punishment.
- The right to liberty and security of person.
- The right to liberty of movement and freedom to choose his/her residence.
- The right to freedom from arbitrary or unlawful interference with his/her privacy and family.¹⁵

DEBT AND CONSUMER PROBLEMS

Debt and consumer related problems are commonplace for people with disability. Sharp practices and scams often target people with a disability.¹⁶ Contracts are generally not fully explained and the person with the disability often does not have any support network to be able to verify or validate the goods or services they are contracting for. Agreements are often verbal, as are any contract amendments such as price reductions. Speaking Up for You, disability advocacy organisation of 3 ½ advocates servicing Brisbane and Moreton region note this as a particular problem.

David suffered a neurological disorder and was oxygen dependent. This saw him having to hire the equipment and buy the oxygen from a provider on a monthly basis. Three years ago David entered into an agreement with the oxygen company and was offered a reduced monthly rate of 2/3 of the contracted price. This was an oral arrangement with a company representative and the contract was never amended to reflect the reduced rate. The company changed owners and on review of all accounts, it was noted that David had not been paying the full monthly amount. The matter quickly was sent to debt collectors and he was being harassed daily with telephone calls from the debt collector demanding money. David's health deteriorated and he was further diagnosed with anxiety and a stress related illness. David had been linked to Speaking Up for You*

¹⁴ Queensland Law Society, Submission No15 to the Public Advocate, People with Disability in Long-Stay Health Care Facilities, 9 August 2013.

¹⁵ These are all rights under the International Covenant on Civil and Political Rights, but is not an exhaustive list. Note also, the Convention on the Rights of People with Disability arts 14-23.

¹⁶ <https://www.scamwatch.gov.au/news/consumers-with-a-disability-%E2%80%93-be-on-guard-against-scammers-trying-to-take-advantage-of-you> (accessed 6 June 2016).

and in the course of their engagement had revealed to his worker about his problem. Speaking Up for You made some attempts at settling the matter for David however their letters were ignored. Speaking Up for You arranged an appointment for David at a Community Legal Centre who were specialists in consumer and debt related matters. The centre's credit solicitor commenced negotiations on David's behalf. Within a month the matter had been settled, David was returned to paying his reduced rate and the "debt" had been waived. Without the involvement of Speaking Up for You and the community legal centre, David's problem would not have been solved.¹⁷

People with a disability are often targeted for micro finance such as payday lending, internet, pay TV and mobile phone contracts, subscriptions such as Christmas hampers and collectible objects and personal services such as money management and online dating services.

VICTIMS OF CRIME

Studies have found that people with disability are more likely to be victims of crime.¹⁸ However, while people with disability are the highest risk group for abuse and violence, there is a low awareness of this problem in society.¹⁹

As a result, there has been a failure to address the issue through education and training of police, the judiciary, court staff, duty lawyers, prosecutors and private solicitors involved in the criminal justice. CLCs report that there has been a failure amongst police to provide adequate levels of assistance and protection to clients with disability. Another common problem that the clients of CLCs face is a reluctance on the part of staff in residential settings and police officers to appropriately handle the experiences and testimonies of people with disability who are victims of crime.

In the following case study people seeking the protection of Apprehended Violence Orders or similar orders are provided with limited assistance in preparing their applications, including details about the evidentiary requirements of a successful application.

Kate and her friend Mark* have cerebral palsy. Throughout October 2012, Kate and Mark were verbally abused by "Jenny" three times. In the first instance Jenny called Kate a "spastic slut" and Mark a "spastic c*nt". In the second instance Jenny physically threatened Kate and Mark with a large stick. In the third instance Jenny followed Kate for about 20 minutes while Kate was walked home and then stood outside her house for one hour.*

After the third incident, Kate attended the local police station with her mother/carer. On the advice of a police officer, Kate's mother assisted her to apply for an Apprehended Violence Order (AVO). The Local Court granted Kate an interim AVO, however stated the grounds for the order were insufficient and better particulars were required. The initial hearing was adjourned as the defendant had not received the AVO application. Kate (and her mother) then sought assistance from a CLC, who advised on the process of the AVO application, how to complete the application with statutory declaration detailing better particulars and how to serve Jenny.

The CLC represented Kate at the Local Court and assisted in filing the completed statutory declaration. The matter was adjourned again, and at the next hearing the parties consented to referring the matter to the Community Justice Centre (CJC) for mediation. By mediation in the CJC, both parties entered into an agreement to "leave each other alone" and "to walk away" should they see each other on the street.²⁰

CLCs have also reported instances where police did not investigate criminal allegations made by a person with disability who lives in a residential setting. There is a tendency amongst service providers to see incidences of violence or abuse as policy issues rather than criminal offences.

¹⁷ Speaking Up for You Advocacy Brisbane

¹⁸ Chih Hoong Sin, Annie Hedges, Chloe Cook, Nina Mguni and Natasha Comber, *Disabled People's Experiences of Targeted Violence and Hostility*, Research Report No 21, EHRC (2009); Barbro Lewin, 'Who cares about disabled victims of crime? Barriers and facilitators for redress', (2007) 4(3) *Journal of Policy and Practice in Intellectual Disabilities* 170; Christopher Williams, *Invisible Victims: Crime and Abuse Against people with Learning Difficulties* (Jessica Kingsley, New York, 1995).

¹⁹ Richard Sobsey, *Violence and Abuse in the Lives of People with Disabilities: the End of Silent Acceptance?* (Paul H Brookes Publishers, Baltimore, 1994), 1.

²⁰ Case study from Northern Rivers Community Legal Centre, cited in NALC and QAILS, *Access to justice in the criminal justice system for people with disability: Submission to the Australian Human Rights Commission* (August 2013) 7-8.

Joe is 20 years of age and has severe autism and intellectual disability. He was the victim of a violent attack by another resident in a group home. Joe's parents contacted the police to request an intervention order to provide some protection for their son. The police referred the matter back to the state government authority that operated the group home. After refusing to offer a physical separation of the living areas in the group home and a long saga of mismanagement of the issue, pressure was placed on Joe to move to another group home.²¹*

Some CLCs and other support organisations assist victims to ensure perpetrators are brought to justice. For example, Villamanta Disability Rights Legal Service reports that several clients had been sexually abused by a worker while living in residential care. Villamanta supported the clients and ensured that their matters were pursued, the perpetrator brought to justice and crimes victims compensation sought.

The case studies in this section illustrate the systematic barriers that people with disability face when they are the victims of crime.

5.2 WHAT BARRIERS PREVENT PEOPLE WITH DISABILITY FROM ACCESSING JUSTICE?

People with disability may not take legal action as they are not aware that the issue they face is a legal issue or has a possible legal resolution. Difficulties in understanding legal information or advice and communicating with lawyers can add to the challenge of people pursuing a matter. The complexity, stressful and often drawn-out nature of legal processes can also make it difficult for cognitively impaired people to pursue their interest through to a satisfactory outcome. The problems of access to justice for people with a cognitive impairment may be further compounded by the limited capacity of some legal professionals to recognise that someone has a cognitive impairment and to appropriately communicate with and support that person. Older people with a disability, which is the largest cohort of people with a disability, were less likely to report legal problems²², take legal action to enforce rights²³, recognise their legal needs and they exhibited a lack of knowledge about the available pathways to legal resolution.²⁴ Where they did commence legal action, they had very low finalisation levels.²⁵

There are additional barriers for people with disability accessing the legal system including:

- A high dependence on others for assistance in taking action. Depending on their support networks, often these support people or carers are also unaware of legal rights and options.
- A fear of retribution if their legal issue relates to a carer or any other person they may be dependent upon. This is particularly relevant in cases of family law and domestic violence.
- A poor understanding of English. CALD people with disability face a further barrier in accessing justice as they cannot understand complex legal issues and language that sometimes surrounds their problem.

In scenarios where English is not their first language, disability advocates are essential in linking these people to legal services and supporting them through the process.

Disability advocate had been assisting a young woman called Fatemah who was from Iran and had suffered a serious brain injury. Fatemah was residing in a hospital and had been there since her injury. Fatemah's sister was her guardian and was having some difficulty with the hospital in that they refused to communicate with her and were imposing decisions on Fatemah without consulting her sister. The hospital was also attempting to have Fatemah moved to an aged care facility. The sister objected to this as Fatemah was only 30 years of age and her sister felt there were other options available to her. The guardianship appointment came up for review and the advocate assisted the sister prepare an application to the Queensland Public Interest Clearing*

²¹ Disability Rights Now, Civil Society Report to the United Nations Committee on the rights of people with disabilities, compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations, August 2012, p.108.

²² *Speaking Up for You*, Disability Advocacy Brisbane QLD.

²³ Christine Coumarelos et al, Legal Australia-Wide Survey: Legal Need in Australia, Access to Justice and Legal Needs, Vol 7, xxii.

²⁴ *Ibid*, 230.

²⁵ *Ibid*, xxiii.

House (QPILCH). A local barrister took the matter on after reviewing the application and appeared at multiple hearings at the Queensland Civil and Administrative Tribunal (QCAT). The advocate was instrumental in arranging for the sister to meet with the barrister by driving her to the appointments as well as the hearings. The advocate assisted the barrister by collating documentary evidence in support of the sister's guardianship application. Both Fatemah and her sister had been living in Australia for a period of time but were relatively new to English, in particular the technical English that a guardianship application required. The sister was successful in her application to remain Fatemah's guardian. This outcome would not have been achieved without the intervention of the disability advocate.²⁶

When a person with disability does proceed with legal action they may face or perceive negative views and misconceptions about their impairment from some members of the legal profession, courts and law enforcement professions. Ultimately, this misconception can often result in a failure to take appropriate action on the behalf of a person with disability. This lack of action can contribute to a low sense of entitlement amongst people with a cognitive impairment and a fear of not being believed. Under these circumstances, a person may not voluntarily admit to having disability and thus may fail to receive the specialised assistance that would enable effective participation in legal processes.

Effective participation in legal processes for people with disability can only be achieved in a multi-disciplinary partnership of legal service providers and advocacy groups who are able to provide a wide range of advocacy including individual, systemic, citizen, family, self and legal advocacy.

PRISONERS WITH DISABILITY

A further barrier for people with disability accessing justice is incarceration. There are few statistics available as to the amount of prisoners who have disability however various studies provide a glimpse into the situation.

Based on IQ testing, a 2002 Queensland study found that 9.8% of prisoners scored in the Intellectual Disability range and 28.6% scored in the 'borderline' intellectual disability range.²⁷ In order for a prisoner to be eligible for parole, they must engage in a number of programs and courses. These courses are generally not modified to suit people with disability. Therefore, people with disability, due to their inability to complete the required courses and programs are ineligible for parole.

By way of example, The Prisoners Legal Service referred a client to disability advocacy group Speaking Up For You.

Terrence was intellectually disabled and serving a prison sentence for assault. He had made several unsuccessful attempts at applying for parole and had been engaged with Prisoners' Legal Service. Prisoners' Legal Service referred Terrance to Speaking Up for You for some support and advocacy in relation to other issues. Speaking Up for You reviewed his matter and it became clear that due to Terrence's intellectual disability, he had been unable to participate in any rehabilitation programs which were a pre-requisite to a parole application. Speaking Up for You advocated on behalf of Terrance to the relevant authorities and were instrumental in creating and facilitating a modified program for him to participate in so that he could then apply for parole.*

It is crucial that prisoners with disability receive appropriate legal advocacy, assistance and support to ensure access to justice.

²⁶ *Speaking Up for You*, Disability Advocacy Brisbane QLD.

²⁷ Queensland Department of Corrective Services, Intellectual Disability Survey (2002).

5.3 WHAT MODELS OF LEGAL ADVOCACY ARE MOST EFFECTIVE?

As outlined above, it is important that legal advocacy only be undertaken by solicitors in legal services (which is in fact required under most jurisdictions' regulation of the legal profession).

We limit our comments in this section to emphasising the importance of collaboration and cooperation between CLCs and others providing legal advocacy and other advocates and support services.

Many people with disability are failing to access justice as they are unaware they have a legal problem. One possible solution to this problem is a more systematic use of non-legal professionals such as disability advocates as gateways to legal services. Non legal workers are often a trusted first port of call for people with disability and can play a key role in helping the person to identify that they have a legal problem and are essential to encouraging and supporting the person with a disability to take the initial steps towards a legal resolution.

In addition to specialised community legal centres, there are also specialised disability advocates. Through through collaboration and cooperation of these services, people with disability can receive comprehensive assistance and support. Disability advocates are “on the ground” and active in locating, working with and referring vulnerable clients with disability to the appropriate legal assistance and advice service. Community legal centres rely on advocates to refer these clients to their service for assistance and also to support the clients through the often lengthy and complex legal process. Research has already noted that people with disability and a legal problem are less likely to seek assistance and less likely to achieve a resolution. As the case studies show, some people with disability who have linked in to disability advocate are more supported through their legal process and more likely to achieve a resolution.

Community Legal Centres and disability advocates have a long history of collaboration and working together for successful outcomes across Australia. For example, in Queensland:

Over a period of seven (7) years the Townsville Community Legal Service (TCLS) worked closely with disability advocacy service called Independent Advocacy Townsville (IAT) in assisting ex residents of a residential facility for the intellectually and physically disabled. Many former residents had experienced significant institutional abuse over a long period of time at this particular facility. In partnership TCLS and IAT assisted the residents to access a range of services including psychiatric assistance and counselling in addition to legal assistance. TCLS worked with residents to draft and submit complaints to the Health Rights Commission and to the Queensland Police Service. TCLS assisted the clients to further explore alternative resolutions including accessing Victims Compensation Schemes. The families of some residents who perished in the facility due to the lack of care received were also supported by IAT and legal redress was obtained with TCLS representing the families at inquests. The residents were many of the most vulnerable in society with some being unable to speak at all and their only method of communication was by speaking board. Without the joint assistance of IAT and TCLS these residents would not have been able to access any mainstream services. The joint involvement resulted in a full review of the 1958 Coroners Act which then led to changes to the legislation in particular in relation to the reporting of “deaths in care”.²⁸

Clearly, collaborative approaches to the provision of advocacy and assistance to people with disability are vital in assisting them to overcoming barriers to accessing justice and should be considered as part of the broader context in which legal advocacy should operate.

²⁸ Case study provided by Townsville Community Legal Service.