



SUBMISSION | NEW SOUTH WALES
BAR ASSOCIATION

Royal Commission into Violence, Abuse, Neglect and
Exploitation of People with Disability

18 December 2020

Promoting the administration of justice

The NSW justice system is built on the principle that justice is best served when a fiercely independent Bar is available and accessible to everyone: to ensure all people can access independent advice and representation, and fearless specialist advocacy, regardless of popularity, belief, fear or favour.

NSW barristers owe their paramount duty to the administration of justice. Our members also owe duties to the Courts, clients, and colleagues.

The Association serves our members and the public by advocating to government, the Courts, the media and community to develop laws and policies that promote the Rule of Law, the public good, the administration of and access to justice.

The New South Wales Bar Association

The Association is a voluntary professional association comprised of more than 2,400 barristers who principally practice in NSW. We also include amongst our members Judges, academics, and retired practitioners and Judges. Under our Constitution, the Association is committed to the administration of justice, making recommendations on legislation, law reform and the business and procedure of Courts, and ensuring the benefits of the administration of justice are reasonably and equally available to all members of the community.

This Submission is informed by the insight and expertise of the Association's Accessibility Panel and our members' experiences practising in NSW registries of State and Commonwealth Courts.

If you would like any further information regarding this submission, our contact is the Association's Director of Policy and Public Affairs, Elizabeth Pearson, via epearson@nswbar.asn.au at first instance.

Contents

- A. Executive Summary
- B. Recommendations
- C. How do communities, the justice system and disability interact?
- D. What role does the justice process play?
- E. What physical barriers are there for clients and lawyers in accessing the justice system?
- F. What role does early integration play?
- G. Conclusion

A. Executive Summary

1. The New South Wales Bar Association (**the Association**) thanks the Royal Commission for the opportunity to make further submissions to the inquiry into Violence, Abuse, Neglect and Exploitation of People with Disability (**the Inquiry**).
2. The Association acknowledges the systemic violence, abuse and neglect that people with disability experience, and the various and significant consequences that these instances have for both individuals and the whole community.
3. The Association previously made a submission in direct response to the Royal Commission's *Issues Paper on the Criminal Justice system*. However, the Association appreciates the significant scope of the Terms of Reference of the Inquiry. To assist the Royal Commission, this complementary submission addresses several themes that the Association has identified as being most relevant to people with disability in accessing the justice system, and the role that the legal profession and the Courts can play in remedying these issues.
4. Justice is linked to the communities it operates within. When the justice system operates as it should, with properly resourced, efficient and accessible Courts that enable equal and equitable participation by all, the community benefits. Conversely, when the system falls short, justice is not able to be fully carried out and communities suffer, evidenced by the ways in which people with disabilities are discriminated against and encounter significant barriers when accessing justice.
5. This inextricable link between communities and justice is closely tied to the idea that the Court is an integral part of a bigger ecosystem. In order to facilitate long-lasting reform to significantly reduce violence against people with disabilities, an integrated approach that places accessibility and equality at the very early stages of the justice process must be adopted. A grassroots approach to accessibility would assist in minimising violence against individuals with disability early on by operating as a strong deterrent to unlawful behaviour.
6. The Rule of Law dictates that every person is equal before the law and afforded the same protections of the law. Regrettably, people with disability face significant barriers to accessing the justice system, whether as victims or alleged perpetrators of a crime, witnesses or legal practitioners. These barriers are even more acutely felt by First Nations Peoples with disability.
7. The justice system, as it operates now in relation to individuals with disability, can inadvertently reinforce and perpetuate disadvantage for people with disability by acting as a barrier to the pursuit of the realisation of legitimate legal rights. In order to understand and suggest strategies to overcome the violence, abuse, neglect and exploitation suffered by people with disability in Australia, it is crucial to understand the ways in which these individuals are represented in society as well as the way in which the justice system can perpetuate discrimination, even if unconsciously so.

8. Over 4.4 million Australians have some form of disability, equating to roughly one in five people.¹ Disability can be mental or physical or both, ranging from blindness to paralysis to depression and anxiety, with 76.8% of disabled Australians being physically handicapped.²
9. Resources for people with disability are extensive and include the National Disability Insurance Scheme (NDIS), the National Disability Advocacy Program (NDAP) and the Intellectual Disability Rights Service (IDRS). These organisations provide funding and advocacy. Specifically, in relation to the justice system and the rights and needs of people with disability as they interact with the justice system, there are many ways in which these services can be improved to close access gaps. These improvements largely involve greater awareness and funding from the government so that the services provided, particularly by the IDRS, can reach the largest amount of people.

Disability Models

10. Understanding disability involves understanding and interrogating the language that is used to describe and discuss disability. Disability can be defined using one of two models: the medical model and the sociological model.³
11. The medical model of understanding disability ignores the abilities of the individual and focuses largely on the ways in which a person is disadvantaged based on their disability.⁴ This understanding is extremely limited and does not take into account the social factors that are involved.
12. The sociological model defines disability in relation to the types of support that a person with disability needs. This way of understanding disability:⁵

sees the effect of the disability as something that will vary and can be increased or decreased by external factors. It does not view intellectual disability as an unchangeable characteristic of the individual. This definition does not rely on the capacity of the person being set in stone, but also on the environment and the support that they receive. Using this approach, adjusting the environment and the support to meet the person's needs can increase the person's capacity and reduce the effect of the disability. The social model sees the 'cure' to the problem of disability in the restructuring of society.
13. Crucially, it is society's response to an individual's disability that encapsulates the disadvantage. It is the limitations of society that are the restrictive factors of disability, not the disability itself. This shifts the onus and responsibility from being on the individual with the disability to the society, reinforcing the need for society to change in order for people with disability to succeed. A person is not limited by their disability but by society's view of their disability.

¹ 'Disability Statistics', *Australian Network on Disability* (Web Page) <<https://www.and.org.au/pages/disability-statistics.html>>.

² Ibid.

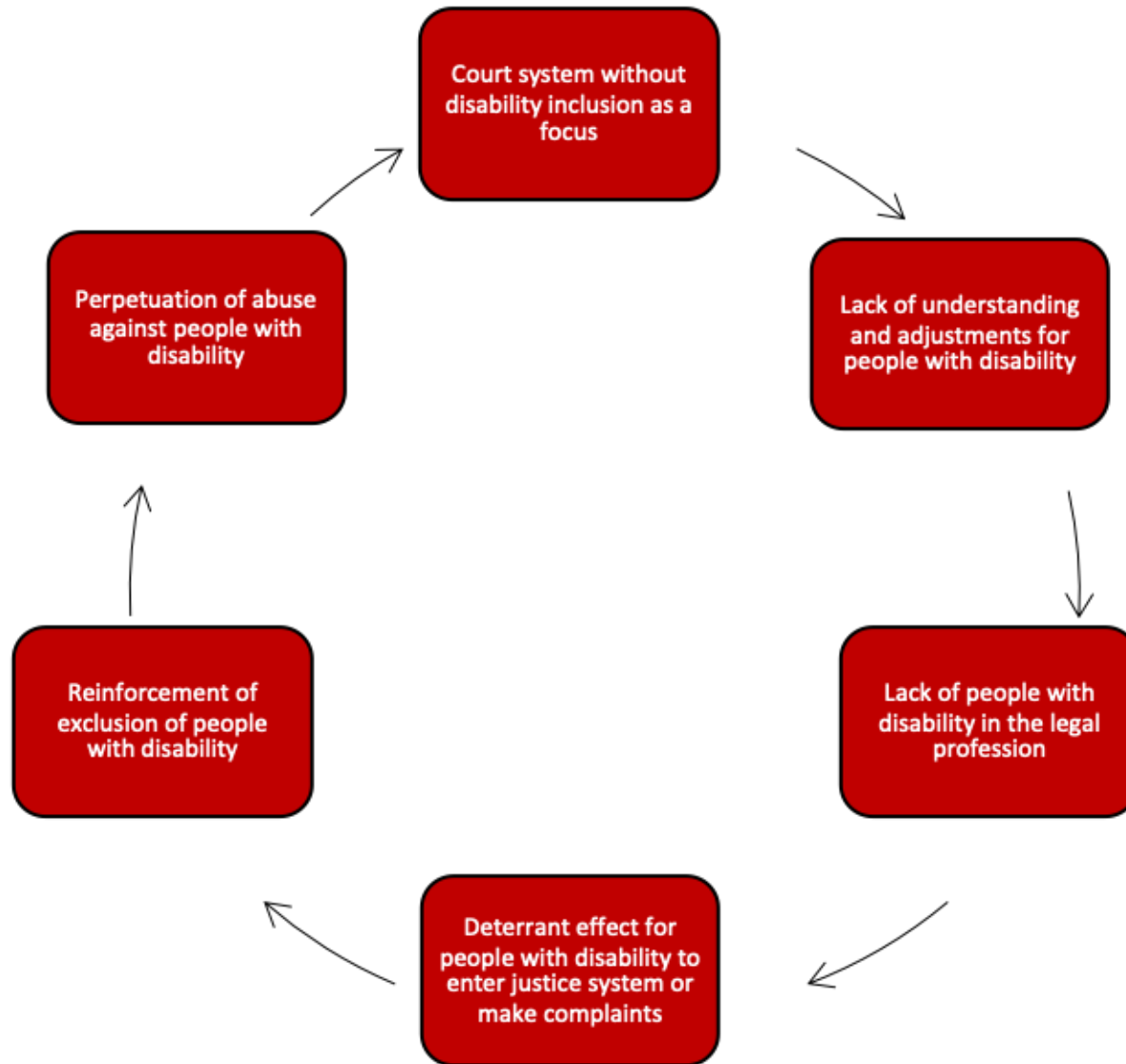
³ Villamanta Disability Rights Legal Service Inc., *People Who Have an Intellectual Disability and The Criminal Justice System* (Guide, April 2012) 13.

⁴ Ibid.

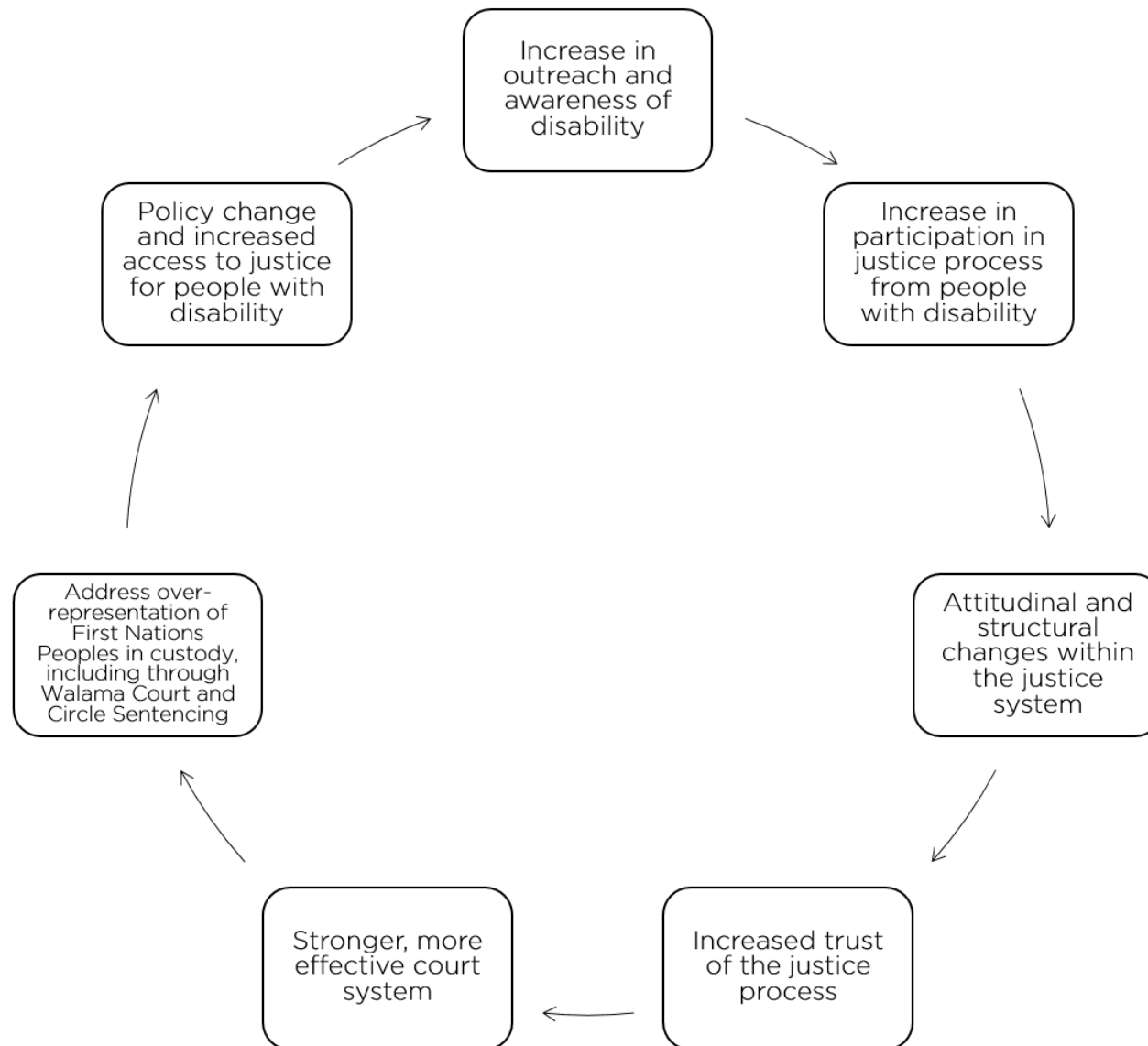
⁵ Ibid.

14. By understanding disability through the sociological model, disability can be reconceptualised and viewed in light of the shortcomings of society to adjust or change. Adopting a sociological model to understanding disability is critical to address and combat the disadvantage that may occur in the justice system against people with disability. By improving access to justice for individuals with disability, the law will be better equipped to carry out its intended function and serve community.
15. Adopting a sociological approach, this submission considers the Inquiry's Terms of Reference a, b, c and d through the lens of the following questions:
 1. How do communities, the justice system and disability interact?
 2. What role does the justice process play?
 3. What physical barriers are there for clients and lawyers in accessing the justice system?
 4. What role does early integration play?
5. In considering these issues, the Association identifies three thematic pillars that direct a solutions-based approach to improving the accessibility of, and combatting abuse and violence against, people with disability within the justice system:
 - a. Addressing disability discrimination requires a holistic approach;
 - b. Disability discrimination comes in many forms;
 - c. Remedying these injustices is the responsibility of all.

Graphic 1: Illustration of the current court system without a disability inclusion focus



Graphic 2: Illustration of the court system with a disability inclusion focus



B. Recommendations

6. The Association reiterates the recommendations made in its previous submission to the Royal Commission and makes the following additional recommendations:
 - a. that the Department of Communities and Justice update and implement their Disability Inclusion Action Plan to comply with the *Disability Inclusion Act 2014* (NSW);
 - b. increasing the funding and resources of the Intellectual Disability Rights Service (IDRS) so it is better able to meet the demand for assistance and advice from police and other agencies early in the justice process;
 - c. increasing the funding of and support of the Justice Advocacy Service (JAS) so it is able to better support and advocate for people with disability;
 - d. implementing the recommendations of the Australian Law Reform Commission's (ALRC's) 2018 *Pathways to Justice* Report, including establishing the Walama Court in the NSW District Court, and support the further development of Circle Sentencing to contribute to addressing the overrepresentation of First Nations Peoples with disability in the prison system;
 - e. greater support of and facilitation of individuals with disability to enter the legal profession including:
 - i. the development of mentoring programs between students with disability and legal professionals;
 - ii. outreach to schools and universities to encourage participation and increase knowledge of the legal profession by students with disability and teachers;
 - iii. greater accessibility and openness about the legal profession;
 - iv. training within the profession to encourage acceptance and awareness about disability from all members of the justice process including judges, barristers, solicitors, magistrates and sheriffs;
 - f. a widespread institutional, attitudinal change by all sectors of the justice system that acknowledges:
 - i. the impact of downstream justice on access to justice for people with disability;
 - ii. the importance of justice impact statements in legislation;
 - iii. the importance of understanding the thought process of policy makers when creating legislation;
 - g. an audit and examination of the resources of the NSW court system to investigate and identify potential access gaps, including backlogs of criminal cases, in order to understand where additional funding should be directed in order to address the violence against the disabled community.

C. How do communities, the justice system and disability interact?

7. People with disability encounter barriers to their participation in a variety of areas of life, and the justice system is no exception. Barriers to the participation of people with disability are not surface-level; they include systemic issues that are ingrained into society and into many of society's processes.
8. The systemic biases and prohibitions that make it harder for people with disability to access the justice system reinforce and perpetuate the abuse, violence, discrimination and disenfranchisement of people with disability. As the ALRC reported in 2014, these barriers include:⁶
 - a. communication barriers;
 - b. difficulties accessing the necessary support, adjustments or aids to participate in the justice system, including as outlined in section E of this submission;
 - c. issues associated with giving instructions to legal representatives and capacity to participate in litigation;
 - d. the costs associated with legal representation; and
 - e. misconceptions and stereotypes about the reliability and credibility of people with disability as witnesses.
9. Access to justice issues directly impact individuals with disability. These barriers to accessing justice range from a lack of wheelchair ramps in courts to internal prejudices about the reliability of people with disability. Laws and the Courts have real life impacts on individuals and the justice process can be an intimidating and daunting experience. For members of the community who have disability, this stress and fear is more acutely felt due to ongoing discrimination that they are likely to face in various aspects of their lives.

Strengthening the court system

10. It is crucial to understand that the justice system and the Courts are institutions, part of the community to regulate and enforce laws and correct injustices. These systems interact with a variety of individuals and engage with people from all walks of life. Therefore, when the justice system is not functioning as it should, and access to justice issues for people with disability arise, the community directly suffers as a result.
11. Not taking seriously the claims of an individual with disability, preventing a claim from being heard by engendering fear and mistrust of the justice system within that individual or disproportionately sentencing people with disability all negatively impact society. The corollary is that perpetrators of violence go unpunished, legal rights of people with disability are not enforced or protected and people in need of medical help are far from the reach of that help due to their imprisonment. This failing justice cycle ultimately undermines the Rule of Law and public confidence in the justice system and legal institutions.

⁶ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, 18 September 2014) 7.6.

12. Conversely, a strong court system plays a significant role in remedying, preventing, and deterring violence, discrimination and abuse against people with disability. This is true for many reasons. A strong court system is fair and impartial, with reasons given for decisions made by the judge. It operates with procedural fairness and in line with its powers granted by the Constitution. A strong court does not go beyond its given powers and effectively enforces the law by hearing evidence and applying the law to the facts. More practically speaking, a strong court is one that prioritises accessibility for all people, including wheelchair ramps for entry to the court and hearing loops within the courtroom. It does not prejudge a person because they have physical or mental disability, nor does it discredit their testimony on these grounds. A strong court system ensures that barriers to the participation of people with disability are eradicated and that the voices of all people are heard, ranging from court staff and jurors to lawyers, barristers and judges. Crucially, a strong court system is one where an individual's disability does not hinder the type or quality of justice they receive.
13. When the court systems operate as they should, with timely resolution of complaints and perpetrators being brought to justice, they also operate as a deterrent. For individuals with disability who are victims of a crime, a court system that deals with perpetrators swiftly and justly provides both a level of deterrence to others who see that these acts will not be tolerated and an accessible means of enforcing victims' legal rights and protections in the event that such acts do occur. As such, violence, abuse and discrimination against individuals with disability would likely decrease if it is widely known that there are real consequences for this unlawful behaviour. This is the community and the justice system acting together to positively reinforce each other.
14. The Association notes that best practice reporting and investigation as a means of addressing violence and abuse against people with disability flows through a strong NCAT and court system, which would in turn benefit the greater community for a variety of reasons. When individuals feel supported to make a complaint and that their complaint will be heard and dealt with swiftly, they are more likely to address the complaint and have trust in the system. Similarly, when an individual feels that they will be swiftly punished for discriminatory or violent behaviour they may be less likely to commit a discriminatory or violent act. As such, the Association suggests an investigation into the resources of the NSW court system to investigate and identify potential access gaps, including backlogs of cases and the implications of these, to understand where additional funding should be directed in order to address the violence against community members with disability.
15. These issues are further exacerbated in regional, rural and remote areas.

First Nations Peoples and rural, regional and remote communities

16. Any discussion of violence, abuse and discrimination against people with disability would be remiss if the experiences and lives of First Nations Peoples with disability and people in regional, rural and remote areas were left out.
17. In 2015, 24% of First Nations Peoples living in private households (ie not in cared accommodation, such as residential aged care) reported living with disability and 7.3% had severe or profound disability.⁷
18. Indigenous Australians are 1.8 times as likely to have disability than non-Indigenous Australians.⁸ 15% of First Nations Australians reported experiencing discrimination due to their disability and 38% reported avoiding situations due to their disability.⁹
19. 14.8% of Aboriginal Australians compared to 11.4% of non-Aboriginal Australians have physical disability, 6.6% of Aboriginal Australians have psycho-social disability compared to 3.8% of non-Aboriginal Australians, 5.9% of Aboriginal Australians have intellectual disability compared to 2.5% of non-Aboriginal Australians, and 2.1% of Aboriginal Australians have head injury, stroke or acquired brain injury compared to 1.1% of non-Aboriginal Australians.¹⁰
20. First Nations Peoples with disability face discrimination based on their race as well as their disability, making them extremely vulnerable and disadvantaged on two fronts. First Nations Peoples make up 3% of the Australian population but 29% of the prison population. The life expectancy of First Nations Peoples remains significantly less than non-Indigenous Australians, and decreases even further for First Nations Peoples living in remote areas. According to the 2020 *Closing the Gap* Report:¹¹

In 2015–2017, life expectancy at birth was 71.6 years for Indigenous males (8.6 years less than non-Indigenous males) and 75.6 years for Indigenous females (7.8 years less than non-Indigenous females) ...

In 2015–2017, life expectancy for Indigenous males living in Remote and Very Remote areas combined was estimated to be 6.2 years lower than that of Indigenous males living in Major Cities (65.9 years compared with 72.1 years). The equivalent comparison for Indigenous females was 6.9 years lower (69.6 years compared with 76.5 years).
21. The unemployment rate for First Nations Peoples is also higher than for non-Indigenous Australians, and increases further in remote and very remote areas. The *Closing the Gap* Report indicated that:¹²

In 2018–19, the Indigenous employment rate was highest in Major Cities (around 59%) and lowest in Very Remote areas (around 35%).

⁷ 'Disability support for Indigenous Australians', *Australian Institute of Health and Welfare* (Web Page 11 September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/disability-support-for-indigenous-australians>>.

⁸ Ibid.

⁹ Ibid.

¹⁰ 'Aboriginal people with disability', *Creative Spirits* (Web Page) <<https://www.creativespirits.info/aboriginalculture/health/aboriginal-people-with-disability>>.

¹¹ Australian Government, *Closing the Gap* (2020) 77, 81.

¹² Australian Government, *Closing the Gap* (2020) 71.

22. In very remote areas, the Indigenous employment rate was around 49 percentage points less than the non-Indigenous employment rate, compared with a difference of 15 percentage points between the Indigenous employment rate and non-Indigenous employment rate in major cities.¹³
23. These discrepancies are even more severe for First Nations Peoples with disability. First Nations People with disability have poor healthcare services, are more likely to experience homelessness and be represented in the criminal justice system and are, therefore, less likely to receive assistance or diagnoses early on. As such, their needs may remain untreated or unaddressed, leaving them even more vulnerable to abuse, neglect, violence and discrimination including when they interact with the justice system.
24. The interaction between communities and justice is apparent here, as the disproportionate incarceration of, and disadvantage to, First Nations Peoples with disability stems from a lack of sufficient community supports, including education and healthcare.
25. As such, the Association recommends the implementation of the Walama Court in the District Court of NSW and the use of Circle Sentencing to assist in reducing discrimination against First Nations Peoples with disability within the justice system.
26. The Walama Court proposes an effective way to sentence First Nations offenders, which would reduce the disproportionate rate of incarceration and contribute to addressing the underlying issues that give rise to repeat offending. The Walama Court will involve Elders and other respected community members in the sentence proceedings, who can also serve as mentors throughout the process.
27. The Walama Court's proceedings will involve a multi-agency approach to sentencing, which will provide wraparound services such as medical and mental health services, substance abuse treatment, employment programs and housing. This will provide meaningful support to the offender which will thereby reduce the likelihood of reoffending. Proceedings before the Walama Court will also involve more intensive supervision on the part of service providers and more intensive monitoring by the Court. Under the present system the Court has no power to monitor the offender post-sentence. Under the proposed model, the Walama Court will have power to continue monitoring the offender and holding him/her to account even after sentence has been imposed.
28. The establishment of the Walama Court was supported by the 2018 ALRC *Pathways to Justice* Report,¹⁴ the Police Association of NSW, the Law Council of Australia, the Walama Court Working Group of the District Court and was recommended in 2020 by the Special Commission of Inquiry into the Drug 'Ice'.¹⁵
29. In addition, Circle Sentencing would enable an individual to receive help from their community, creating a positive impact on reducing the rate of incarceration for First Nations

¹³ Australian Government, *Closing the Gap* (2020) 71.

¹⁴ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, March 2018), recommendation 6-1 and [10.48].

¹⁵ Prof Dan Howard SC, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (2020) lxvii, recommendation 61 <<https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/02-Report-Volume-1a.pdf>>.

Peoples, reducing recidivism and positively improving the interactions between First Nations Peoples and the justice system, particularly for those community members with disability.

Changes to the legal profession

30. Community trust in the justice system is predicated on the understanding that the system reflects the communities and people they serve. This means that people of all abilities should be represented within the legal system. As it stands now, key roles in the justice system—judges, barristers and solicitors—do not adequately represent the makeup of society. While there is no official data on the number of judges, barristers or lawyers with disability practicing within the justice system, it is certain that there is not proportional representation of lawyers with disability compared to the number of people with disability in Australia.
31. This is a complex issue, for increasing the representation of judges, barristers and lawyers with disability in the profession requires deep cultural, societal and professional shifts in the way people with disability are perceived, and changing the model of understanding disability from being informed by a medical understanding to a sociological one.
32. Practically speaking, increasing representation of people with disability in the justice system involves early outreach and diligent, proactive initiatives targeted to people with disability in the school system from members of the justice system.
33. The Association recommends and supports the development of court-directed and court-funded programs targeted at young people with disability to promote the law as a career path and to encourage their greater participation. By increasing the representation of people with disability within the justice system, there will be positive flow-down consequences, including greater access to justice for people with disability. It would also facilitate inclusion, encouraging those who have experienced discrimination or abuse to come forward and trust that the justice system will carry out justice fairly and swiftly.

D. What role does the justice process play?

34. According to the Australian Institute of Health and Welfare, 32% of adults with disability experience high to very high psychological distress compared to 8% of adults without disability.¹⁶ 47% of adults with a disability have experienced violence after the age of 15 compared to 36% of adults without disability.¹⁷ 23% of people aged 15 and over living with disability have experienced some form of discrimination compared to 17% of the population without disability.¹⁸ 42% of complaints to the Australian Human Rights Commission (AHRC) are about disability discrimination.
35. As the data shows, people with disability experience high psychological distress, violence, discrimination and abuse at higher rates than people without disability. These issues are not removed from the justice system. They are strongly tied to the experiences of people with disability and their interactions with the Court, whether as victims, witnesses, or those accused.
36. The 2012 Law and Justice Foundation of NSW Legal Australia-Wide Survey stated that:¹⁹
- ...Disadvantaged groups are typically the sections of the community that are most vulnerable to legal problems and often struggle with the weight of the multiple legal problems they experience. A small minority of people account for the majority of the legal problems experienced by the population, and disadvantaged people are particularly likely to fall into this minority group. Disadvantaged people are not only more likely to experience large numbers of legal problems, but they are also more likely to experience a wide range of often substantial legal problems. The present findings according to a variety of measures indicate that people with a disability constitute the disadvantaged group that is most vulnerable to legal problems. However, other disadvantaged groups, including single parents, unemployed people, people living in disadvantaged housing and Indigenous people, also have increased vulnerability to legal problems. In addition, by virtue of their socioeconomic status, disadvantaged groups often have a variety of non-legal needs. Thus, the present findings underscore the value of tailoring access to justice in Australia to meet the needs of disadvantaged groups and indicate that access to justice is an important route to tackling social exclusion (e.g. Pleasence 2006). Arguably, meeting the legal needs of disadvantaged groups should be a major priority of justice policy, given that a substantial proportion of the legal problems within the population are concentrated within these groups.
37. Although individuals with disability have a proportionally higher number of legal issues, the legal system is not set up to adequately address these issues or facilitate the successful resolution of these issues or participation from these individuals.
38. The court process is an intimidating and formal one. A sense of alienation can be experienced regardless of the role of the individual in the justice process, that is regardless of whether they are a witness, victim of, or perpetrator of a crime, and is felt even more acutely by individuals with disability.

¹⁶ Australian Institute of Health and Welfare, *People with disability in Australia: In brief* (Report, 2019), 2.

¹⁷ Ibid 2.

¹⁸ Ibid 11.

¹⁹ Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Australia* (Report, 2012) chapter 10.

39. For people with intellectual disabilities, the most common barrier to their participation in the legal system is:²⁰

the intimidating and alienating atmosphere of the courtroom. The sense of alienation experienced was identified as impacting on their ability to give evidence in court. According to some roundtable participants, this can result in them being perceived as being unreliable witnesses.
40. The questioning of the reliability of a witness's testimony due to their disability—be it physical or mental—is a key example of ways in which the law may be unable to function properly as an equaliser. This discrimination can undermine the integrity of the justice system, as it judges a witness and their reliability not on the quality of the testimony but on the traits that person possesses. Simply because an individual is differently abled and requires certain adjustments does not mean that they are less reliable or trustworthy.
41. The assessment by judges and barristers that an individual with disability is less reliable by the sheer fact and or appearance of their disability is prone to perpetuate discrimination within the justice system, even if unconsciously so. The Association recommends that judges, barristers, lawyers, clerks and other members of the justice system receive sensitivity training to raise awareness about unconscious personal biases to ensure that people with disability are treated equally and fairly before the law.

The justice process

42. Victims of crime will generally interact with the criminal justice system by engaging first with police, and then with solicitors employed by the state and Commonwealth DPP and Crown prosecutors. If victims of a crime who have disability are required to testify in court, this sense of isolation and alienation can in many ways act as a second wave of trauma, especially if the reliability of their testimony is questioned.
43. The physical needs of people with disability are important when interacting with the Courts, including access to parking or transport close to the Courts, as well as accessible toilet facilities and hearing loop technologies.
44. The Association notes that there are a variety of supports available during the justice process and encourages their use and promotion in order to remedy and prevent violence, abuse and discrimination against people with disability. The JAS is of particular note.
45. Since 1 July 2019, JAS has provided support to people with cognitive impairments who are interacting with the criminal justice system. As a branch of the IDRS, JAS is funded by the NSW Government and uses “an individual advocacy approach by arranging a support person to be with victims, witnesses and suspects/defendants when they are in contact with police, courts and legal representatives.”²¹
46. A Support Person is assigned to an individual with a cognitive impairment to help them with going to court, understanding the court process and potential outcomes, completing paperwork, and obtaining legal advice.²² JAS also provides free legal advice to a person with a

²⁰ Ibid chapter 3.

²¹ ‘Justice Advocacy Service (JAS)’, *Intellectual Disability Rights Service* (Web Page) <<https://idrs.org.au/jas/>>.

²² ‘Justice Support’, *Intellectual Disability Rights Service* (Web Pages) <<https://idrs.org.au/what-we-do/justice-support/>>.

cognitive impairment when they are at the police station. This service is free and importantly, does not require proof that an individual has a cognitive impairment.

47. For an individual to obtain JAS support, there is no formal application process; instead, an individual is referred to the service by police, court or legal representatives.
48. The service is available across NSW in remote, regional and rural areas.
49. This is an important service as it attempts to ensure that access to justice is available to vulnerable members of the community who are at risk of falling through the gaps in the legal system. This service is particularly important because it relates to the criminal justice process in the court system, as it attempts to ensure a greater understanding for people with cognitive impairments of what is happening as it relates to them, and therefore, facilitates a greater outcome of justice.
50. Convicted persons with psychosocial disabilities are over-represented in prisons yet many do not receive any appropriate psychological or psychiatric care in custody. It is estimated that people with an intellectual disability are overrepresented by a rate of 3 to 4 times and it is also estimated that nearly 13% of the prison population in NSW has an intellectual disability.²³ This is a concerning and disproportionate overrepresentation.
51. Correctional facilities need to be able to accommodate all inmates with disability to ensure they are not further disadvantaged or exploited, abused, neglected or become victims of violence in prison. The protection of inmates with disability could be achieved by, amongst other measures, the employment of dedicated staff (including nurses, occupational therapists and other specialists) who promptly and regularly consult with the inmate and independently review the services, programs and facilities made available to that inmate.
52. Frequent specialist liaison services should also be available to ensure that replacement aids or devices are made available when needed, and that the participant's external support person is updated as to any ongoing or new needs of the inmate.

The Court as a bigger ecosystem

53. The Court is part of a bigger ecosystem. It operates in tandem with parliament and legislative frameworks, government departments, prisons, other service providers and the community. While a successful court system positively impacts communities, reform of the court system also necessitates reform at other levels, including within the mindsets of legislators and policy makers, as well as those involved in administering the justice process. No matter how well equipped a court is to facilitate justice, if those who are operating the court and participate in the processes are not aware of or focused on viewing disability as an error of the system - not of an individual - meaningful reform will be difficult to achieve.
54. A holistic approach to justice must be undertaken in order to remedy longstanding issues that operate against people with disability. Because access to justice issues are widespread for people with disability, the legal system must work to better enable participation from individuals with disability. The experiences of people with disability are varied and any

²³ Villamanta Disability Rights Legal Service Inc., *People Who Have an Intellectual Disability and The Criminal Justice System* (Guide, April 2012) 8.

solution or reform must be informed by the variety of voices and needs of these individuals. A static strategy that combats injustice with a single solution will likely be unsuccessful.²⁴ Instead, a variety of methods should be encouraged to combat the ongoing injustice against people with disability and any solution:²⁵

must be multifaceted in that it comprises multiple strategies to cater for the diverse needs of the whole community. It must also be integrated in that it provides more tailored, intensive assistance across both legal and other human services for disadvantaged people who have intertwined legal and non-legal needs.

55. A holistic approach takes into account not only the changes necessary in the Court but outside the Court. These include:

- a. Greater awareness about disability, both physical and mental, for key members of the justice system, including judges, solicitors and barristers. This includes greater awareness of the needs of both clients and colleagues with disability;
- b. Clear and easily accessible legal information for people with disability made available by the Courts and the profession. While the Association acknowledges the resources provided by the Department of Communities and Justice,²⁶ there are gaps in the resources provided, including awareness of the ways in which people with disability may be unable to comply with court rules or even physically access Court buildings;
- c. Greater awareness of and information about support resources for people with disability, in particular, the JAS run by the IDRS;
- d. As outlined in section E of this submission, making wheelchair accessibility, roaming microphones, disabled parking, hearing loops, accessible toilet and hygiene facilities, and braille and/or audio format transcripts mandatory across all NSW state courts;
- e. Increasing the number of judges and lawyers with disability in the NSW justice system.

56. As such:²⁷

Limited funding is a key challenge to developing a more holistic approach to justice that includes multiple strategies to address the diverse legal needs experienced by the general public. Setting legal service priorities to optimise the mix of strategies necessary to facilitate legal resolution throughout the community is therefore crucial.

²⁴ *Legal Australia-Wide Survey: Legal Need in Australia* (n 15) chapter 10.

²⁵ *Ibid.*

²⁶ 'People with Disabilities: Going to Court', *Communities and Justice* (Web Page) <https://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_people_disab/ds_going_to_court.aspx>.

²⁷ *Legal Australia-Wide Survey: Legal Need in Australia* (n 15) conclusion.

E. What physical barriers are there for clients and lawyers in accessing the justice system?

57. This section of the submission focuses specifically on the physical barriers that presently exist for clients, solicitors and barristers in accessing the justice system via court infrastructure. It is intended to raise comprehensively, but non-exhaustively, the range of issues that clients and practitioners with disability experience, whether in attending chambers, courts or tribunals.
58. As such, this section relates specifically to the ‘neglect’ aspect of the Royal Commission’s Terms of Reference in its broadest meaning of ‘giving little attention or respect to’.
59. The NSW Department of Justice developed a Disability Inclusion Action Plan (DIAP) in accordance with section 12 of the *Disability Inclusion Act 2014* (NSW), which outlined important actions to be taken in pursuing greater accessibility. However, the report concerned the period 2015-2018, and in order to develop a new DIAP public consultation was sought by the Department until 21 September 2018, however it has not released any recommendations on the implementation of a DIAP.²⁸
60. Highlights from the DIAP in the 2019 Annual Report indicate that aside from “publishing an extensive range of disability-specific resources on its intranet page”, most concrete developments related to recruitment.²⁹ Although well intentioned, this reflects how pressing accessibility issues can be neglected and de-prioritised. This may be because such issues do not affect the majority of people, there may be stalling, such initiatives are required to compete with other priorities for funding, or because the disability is multifaceted and affects different people in different ways. The multifaceted nature of disability means that each different disability will require specific accessibility facilities or assistance.

Access to Court and Tribunal buildings in NSW

Parking

61. Although disabled parking is available near some court precincts in NSW, such as the Supreme and Federal Courts in the Central Business District of Sydney,³⁰ these spaces are often inadequate for facilitating transport to and from court for mobility impaired clients and legal practitioners. This is because two contiguous vacant parking spaces may be required in some cases to provide sufficient space for a vehicle to park and another space behind to extend a mechanical ramp for the ingress and egress of wheelchairs. It is important and should be standard for all court websites to provide comprehensive information about the location of nearby designated disabled parking spaces,³¹ and that these spaces be sufficient to adequately cater to the needs of mobility impaired clients and legal practitioners.

²⁸ https://www.justice.nsw.gov.au/justicepolicy/Pages/lpcldr/lpcldr_consultation/disability-inclusion-action-plan-consultation.aspx.

²⁹ <https://www.justice.nsw.gov.au/Documents/Annual%20Reports/departement-of-justice-annual-report-2018-19.pdf>.

³⁰ There is one space near the Supreme and Federal Courts in Phillip Street, Sydney and two spaces in Macquarie Street, Sydney.

³¹ <https://www.fedcourt.gov.au/contact/nsw>.

62. The Association considers that in addition to disabled parking, a different approach could be taken so that all legal practitioners, clients and witnesses with disability and their carers can be provided with access to loading bays usually located underneath court buildings. The Association considers that arrangements could easily be made to ensure that, at very least, legal practitioners could access this parking without compromising the security of the court. Legal practitioners are required to demonstrate annually that they are fit and proper persons in order to retain a practicing certificate. Further, solicitors and barristers frequently attend and are admitted to other secure locations, including correctional facilities, to meet with clients. Both the NSW Law Society and the Association issue photo ID cards to members to confirm their identity. The Association considers that any security concerns could be alleviated by prior security checks and liaising with court staff shortly before arrival.
63. Even if under-court parking or loading bays could only be made available to legal practitioners with a disability, this would free up other parking spaces for members of the public attending court and make a significant difference to the accessibility of the premises.
64. Reaching an arrangement that preserves the dignity and vastly improves the convenience of practitioners with disability should be given consideration when weighing up the comparative concerns of security and accessibility.
65. Where security in and around court buildings is carried out by private contractors, there should be greater communication between the contractors and court staff to ensure that requests for disability assistance are responded to holistically, rather than in a piecemeal way.

Accessibility of physical court and tribunal environments

66. A number of accessibility issues arise in relation to the physical built environments of most courts. Some of these accessibility challenges have been exacerbated by protocols put in place in response to COVID-19 during 2020.
67. Accessibility concerns that have been raised with the Association include the following:
 - a. Some heritage listed Courts in NSW feature stairs that are dull in colour and without anti-slip shields to protect the rounded edges on steps (nosings) or hand rails. These create safety issues for the general public as well as accessibility issues particularly for vision impaired court users;
 - b. Lack of appropriate signage at entry points that would assist court users with disability or a dedicated support person to assist court users with accessibility matters. This exacerbates other challenges experienced by court users requiring special assistance. The lack of appropriate signage is particularly acute at the Queens Square Courts, John Maddison Tower and the Downing Centre;
 - c. Roped pathways at the entrance to some Court complexes make it very difficult for the vision impaired to know which direction they are expected to walk in. For example, in response to the COVID-19 pandemic, the Downing Centre installed a maze of roped pathways in order to socially distance those entering. This change, coupled with a lack of signage for those needing assistance at the entrance, has made

it particularly difficult for those with mobility issues or visual impairment to understand where to go;

- d. An unrealistic expectation that vision impaired court users will be able to properly answer questions by sheriffs about whether or not they have attended a “COVID Hotspot” by reading a hand-written or small font list of locations from a distance of up to two metres away. For people with a visual impairment, having large font or being close to the text that they are being asked to read can be extremely important. When these considerations are not made, the process can be time consuming, inefficient, stressful and isolating;
 - e. The requirement for nearly everyone entering a court or tribunal in NSW to place all of their belongings onto a baggage conveyor belt to be scanned. The scanners are often a metre or more above the floor. Legal practitioners and community members with accessibility or mobility issues may often be unable to lift heavy folders or suitcases onto conveyor belts for them to be scanned. A possible solution to this issue could be installing security conveyor belts that extend all the way to the ground at each end or a crane system so that individuals can either push or pull bags at either end. A good example is the Downing Centre, which has installed a ramp for heavy bags to be passed up onto the conveyor belt and then to be x-rayed;
 - f. Court users are obliged to walk through metal detectors and, if required, to be scanned with a hand-held scanner. This presents significant issues for individuals with mobility issues or implanted hearing aids. In order to alleviate the difficulty presented by metal detectors and hand-held scanners, courts could allow a security pass to be issued to individuals whose disability may make it more difficult to proceed through the security checkpoint in advance of court or tribunal appearances. This could be subject to courts and tribunals (or their security contractor) running any requisite background security checks. As noted above, solicitors and barristers can already obtain photo identification from the NSW Law Society or the Association to verify their status as a legal practitioner.
68. Overall, the Association recommends that if any changes to court premises are made that affect court users with disability, concomitant changes should be made on the relevant court or tribunal website to advise those accessing the court. This could include featuring a map of where security has moved to and from, and an estimate of the time it will take to move through the area from the entry, through security, to the lifts and to each court room.

Amenities within Courts and Chambers

69. Even where Courts do have amenities or procedures to support those with disability, the burden for utilising and accessing the services will often rest with those with disability. Informative and updated websites can assist with providing information about amenities. Constantly having to seek out assistance in person can deny people of their independence and can draw attention to the need for ‘special’ arrangements as opposed to being able to participate equally and inconspicuously. This approach is contrary to the objects of the *Disability Inclusion Act 2014* (NSW) as set out in section 3, which include promoting the

independence and social inclusion of persons with disability. For instance, the Federal Court has a page titled 'Help for People with Disabilities', which states that anyone with 'practical needs' such as requiring a hearing loop, or regular breaks, should contact the Registry where the hearing is listed at least one week before the hearing.³²

70. Some courts and tribunals such as the Supreme Court of NSW and the Civil and Administrative Tribunal of NSW have installed hearing loop systems which rely on infra-red or FM technology that is suitable for the hearing impaired. Unfortunately, the experience of barristers and other individuals who are not members of the legal profession with hearing deficits is that hearing loops do not always work because the technology fails or batteries are flat.
71. There are several ways that this process could be improved, including:
 - a. a users' group within each court or tribunal which would include members of the profession;
 - b. the provision of a comprehensive list to courts and tribunals of the needs of lawyers and clients with disability (that would be regularly updated);
 - c. direct communication with individuals or contractors who are responsible for court and tribunal security; and
 - d. increasing the visibility of accessibility issues on webpages in courts and tribunals.
72. The Association is endeavouring, through its Accessibility Panel, to:
 - a. provide feedback to courts and tribunals about the types of accommodations being made by them;³³
 - b. indicate how successful accommodations are being received by members with disability;
 - c. create a more streamlined process for lodging accessibility issue requests (for example, an online form or electronic process in which information can be 'auto filled' and copy/pasted from previous requests is suggested);
 - d. request, where practicable, more agile and rapid court and tribunal responses regarding accommodations rather than needing a week's notice; and
 - e. suggest that as all courts and tribunals are updated, that hearing loops and other accessibility measures requiring technology should be included in all hearing rooms, with appropriate training for court staff in their use.
73. The Family Court and the Federal Circuit Court have implemented several initiatives to assist those with disability which may provide a model for other courts. These initiatives include a complaints handling process that helps users with hearing impairments to provide

³² <https://www.fedcourt.gov.au/services/help-for-people-with-disabilities>.

³³ Some courts do have a slightly more comprehensive list, for instance the Supreme Court's website lists additional examples of reasonable adjustments they can make such as enlarging a document, providing documents in alternative formats, transferring court proceedings to an accessible court room: see http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_facilitiesupport/sco2_accessforpeoplewithadisability.aspx.

feedback using the National Relay Service, having specific pages on their respective websites with information regarding services available to support those with disability when attending these Courts and links to other assistive agencies. Moreover, these Courts provide staff with an eLearning package titled, 'Let's Talk Access to Justice for People with Disability' which aims to develop staff awareness, knowledge and skills with regard to assisting those with disability.

74. As to witnesses and clients, research concerning disability regularly recognises that having accessibility options but requiring individuals to request them is often insufficient, due to fear of stigmatisation and drawing attention to disability (which is the last thing people with disability want).³⁴ For instance, a study from Cardiff University found that exclusion of people with disability is often unintentional, but rather routinely accepted by employers and employees, embedded via behavioural codes and lack of overt accommodation, placing unspoken boundaries on workers with disability.³⁵ For many individuals the court process is a daunting experience, so it may be particularly difficult for those with disability to advise their solicitor or barrister of their disability. As such, not only should court and tribunal buildings strive to proactively accommodate those with disability, they should also ensure that detailed information is provided with regards to accessibility. For instance, outlining the locations of stairs and lifts, stair counts, disabled toilets, nearby disabled parking and wheelchair accessible entrances will go a long way to making courts and tribunals more accessible and reduce anxiety in those with disability entering a potentially unfamiliar building for the first time. Some courts and tribunals do this better than others; for instance, the Family Court website outlines 'general information' about amenities within the building, but this could be complimented by a map, more specific details of the facilities and the time it takes to access the hearing rooms.³⁶
75. Courts and tribunals should aspire to a high level of detail in describing stairs, lifts, security procedures, parking etc. It should be standard for every court website to include details of what amenities are available, entry procedures and clearly invite those with accessibility issues to make requests or provide feedback in an open way. Details about how to request adjustments should include a named and trained organisational contact person, contact number and a clear and accessible guide for requesting and securing reasonable adjustments.³⁷ This guide should also include detailed procedures, as the Family Court website does, for raising complaints internally and within the wider profession (for instance with regulators, bureaucrats or government organisations).³⁸

³⁴ Paul Harpur (2014), 'Naming, blaming and claiming ableism: the lived experiences of lawyers and advocates with disabilities, *Disability & Society*, 29:8, 1234-1247/1235

³⁵ D Foster and N Hirst, 'Legally Disabled? The career experiences of disabled people working in the legal profession. Full report' (2020) Cardiff University.

³⁶ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/locations/nsw/sydney>.

³⁷ Deborah Foster and Natasha Hirst, (2020) 'Legally disabled? The career experienced of disabled people working in the legal profession. Executive summary' DRILL, 7.

³⁸ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/getting-help/disabilities/people-with-disabilities>.

76. At the date of this submission, both the Local³⁹ and District⁴⁰ Court websites direct the reader to very general webpages which state that “the department is working towards providing better access to court buildings and facilities for people with disabilities’ and directs individuals to “contact the court or tribunal you need to attend to find out about access options available”. A pop-up link is provided to a ‘Request for court assistance form’⁴¹ which, again, requires the person to describe the accommodations they need, despite the fact that they may not yet be aware of the full extent of difficulties they will encounter in an unknown environment and what adjustment(s) they will require in that environment.
77. The Association is also concerned with members of the public, particularly parties and witnesses who interact with the legal system who have limited proficiency in English, including English as a second language (ESL) or incidences of illiteracy, sometimes caused by disability. Court and tribunal websites should encourage people from those backgrounds to contact particular liaison officers in the courts and tribunals before they attend court (the ‘Request for assistance form’ does not currently provide a point of contact beyond a general helpline and the details of telephone interpreting service and the National Relay Service). A greater awareness of a point of contact could assist parties and witnesses of any facilities available. In order to make this contact information more readily accessible to individuals with disability websites should also include options for interpreting the page into different languages, ideally with non-verbal cues or pictograms to indicate language options. In addition, as part of cultural competency training, court staff and security contractors should be specifically trained on how to interact with and assist ESL or illiterate individuals in the court environment.
78. One final major obstacle to courts and tribunals being able to make suitable accessibility accommodations is that many buildings are heritage listed. For instance, the Supreme Court website acknowledges that the ‘Darlinghurst Court Complex (built in the 1880’s) has no special access available for the general public, practitioners or jurors with impaired mobility.’⁴² Yet other heritage buildings have been modified by building ramps and widening doors for wheelchairs.

Amenities

79. There are a variety of amenities and accommodations which should be standard within all courts, tribunals and chambers. These include disabled toilets and ergonomic chairs at bar tables. Ergonomic chairs are particularly important in light of the fact that these chairs are often used for long periods of time and that musculoskeletal disorder is the most common physical disorder of Australians with disability, of which back problems constitute just under half.⁴³ Moreover, the ability to adjust the height of bar tables to accommodate wheelchairs to be placed underneath or to adjust the height to accommodate lower wheelchairs is extremely important in accessing briefs while appearing in courts and tribunals.

³⁹ <https://www.localcourt.nsw.gov.au/local-court/help-and-support/for-people-with-a-disability.html>.

⁴⁰ <https://www.districtcourt.nsw.gov.au/district-court/help-and-support/access-for-people-with-disabilities.html>.

⁴¹ <https://www.justice.nsw.gov.au/diversityservices/Documents/Request4CourtTransFinalAccess.pdf>.

⁴² http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_facilitiesupport/sco2_accessforpeoplewithadisability.aspx.

⁴³ Australian Bureau of Statistics, ‘4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings’ (2018) available online at: <https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main%20Features52018>.

80. Further, an important consideration are microphones that are either moveable or sensitive enough to pick up sound from both the bench and bar in circumstances where an individual has to remain seated for mobility issues or are required to enhance hearing. Currently, most microphones on bar tables and benches are for recording transcript not for enhancing communication. Doors that can be opened easily by individuals with mobility impairment or dexterity limitation are extremely important, especially as these individuals may also be simultaneously carrying folders or bags. It is equally important that court and tribunal staff and judicial officers be educated about responding positively to barristers requiring necessary adjustments such as sitting during appearance work and that regular breaks are taken for those with disability. A request by practitioners for a level of comfort while addressing should not be construed as a lack of respect for the court or tribunal, or as an unnecessary delay in the proceedings.

Hearing loop issue

81. In order to ensure that court and tribunal users with hearing impairments are able to fully participate in proceedings, most registry buildings have at least one courtroom with a hearing loop. Nevertheless, as stated above, many court and tribunal hearing loops do not always work. Court and tribunal rooms can often be capacious with variable acoustics. Further, microphones need to be pointed slightly downwards and directly towards the judge or tribunal member or else the sound will not be heard. Court personnel will not always know about the positioning of the microphone and more training is required to operate assistive devices properly. Those requiring training would include relevant court staff, Judges' tipstaves and associates. Approximately one in seven Australians are affected by hearing loss, amounting to around 14.5% of the population or 3.6 million people.⁴⁴ Hearing assistance in courts and tribunals should be a priority for accessibility going forward.
82. Correspondence with court and tribunal registrars has suggested that there is the possibility of greater accessibility being facilitated through digital platforms such as Microsoft Teams, which includes features such as live closed captions. However, the uptake of these platforms has largely been driven by the COVID-19 pandemic. It is expected that most court and tribunal appearances will return to in situ court room attendance once it is safe to do so and the assistance that digital platforms provide those with disability will not be retained or further utilised. Importantly, there are also separate accessibility issues in using Zoom or Teams which must also be taken into account, including the extent to which clients and self-represented litigants are able to access technology to effectively participate through virtual means.

⁴⁴ Hearing Care Industry Association (HCIA), "The Social and Economic Cost of Hearing Loss in Australia", DeLoitte Access Economics Australia, June 2017, (online) accessed 13 August 2020.

Vision impairment issues

83. A majority of Australians (55%) have at least one long-term vision disorder, and a not insignificant percentage of those (3.4%) have either a cataract, macular degeneration or complete or partial blindness which require facilities to assist equal engagement within courts and tribunals.⁴⁵ Unfortunately, not all courts and tribunals have Braille instructions or facilities. For example, there is no Braille signage in the Federal Court lifts, nor does the lift have a voice announcement as each floor is arrived at, or as the doors open and close. These changes should be contemplated in order to accommodate those with specific vision impairment.

⁴⁵ Australian Institute of Health and Welfare, “Australia’s health 2016” (2016) at 3.15. Cat. no. AUS 199. Canberra: AIHW (online) accessed 13 August 2020, <<https://www.aihw.gov.au/reports/australias-health/australias-health-2016>>.

F. What role does early integration play?

84. There are a variety of steps that can be taken to not only ameliorate the abuse and violence committed against people with disability but to actually eliminate it. Integrating early on the needs of people with disability and factoring in accessibility would facilitate their participation and foster a greater sense of inclusion. This would also strengthen the justice system, as people with disability would feel that their voices were heard and may be more likely to report incidents or seek remedies that they did not feel comfortable doing before.

The role of technology

85. Historically, Australia's justice system has relied significantly on person to person interactions, including the physical appearance of counsel in Court, the physical attendance of witnesses for cross-examination, the physical presence of a jury during a trial, the presence of parties to the court proceedings and, in accordance with the principle of open justice and open courtrooms, the ability of members of the public and the media to attend hearings and observe in person justice being carried out.
86. For people with disability, not only is this sometimes logistically difficult for the reasons outlined above, it can also be extremely traumatic due to the many ways in which witnesses, perpetrators or victims of a crime with disability have been treated by the justice system.
87. The COVID-19 pandemic has, however, necessitated the adoption of new technologies and the evolution of new usages for old technologies to conduct proceedings without the need for physical attendance.
88. As the COVID-19 pandemic has demonstrated, technology can be used to facilitate greater access to justice, particularly for people with disability. Audio Visual Links (AVL) have been instrumental in the continuation of court hearings when in person hearings were not possible and have ensured that justice is carried out even when parties cannot be physically present in the court room. The Association notes that the deferred 2020-21 NSW Budget made provision in November for additional funding to be invested in courts and justice infrastructure, including AVL facilities. While any funding is very welcome, there must be a sustained and ongoing funding commitment over the forward estimates to ensure appropriate upgrades occur and are actively maintained on a continuing basis. The Association suggests during the course of this expenditure, this would be a prime opportunity to undertake a contemporary audit of facilities, as suggested at [6(g)] of this submission, to evaluate where further infrastructure or upgrades are required to improve accessibility at courts across NSW.
89. The rapid adoption of and adaptation to new technologies during 2020 has shown that society and the justice system are capable of successfully changing. It also highlights the possibilities that exist for these technologies to close access gaps for people with disability and further work to ameliorate and address abuse and violence against people with disability in the justice system.
90. Technology plays a significant role here which should be further explored, noting however that it is important to keep the focus on inclusion and be mindful of the ways in which technology itself can pose access to justice concerns. For example, not everyone is able to afford, access or use the technology required to participate effectively and fairly in justice

processes remotely, or to find resources on how to do so. These individuals should not be disadvantaged as a result.

Grassroots approach

91. An integrated, early grassroots approach to accessibility would ensure that the violence against people with disabilities is minimised and reduce the prevalence of people with disability in the prison system. Reducing violence and abuse of individuals with disability in the court system requires early and integrated strategies *prior* to that individual engaging with the justice system including early recognition and support by maternal and infant health services, early childhood, school and community health services,⁴⁶ as well as tools and processes for when they do engage with the justice system, including mental health support workers, accessible facilities and informed and inclusive members of the courts. Any program must be focused on the needs of the community and informed by culture and context.
92. The Association recommends an increase in funding and availability of court-based forensic mental health nurses, as well as training programs for judges and other members of the court about the importance of inclusivity and facilitating the participation of people with disability in the court process by adapting court procedures.
93. By adapting the legal system early on to be alert to and accommodating of the needs of people with disability, the process becomes more equitable and just, ensuring that all members of society are able to participate more fully and fairly in the justice process.
94. The Association acknowledges the outreach efforts that must also be made by the profession to actively support people with disability to enter the profession, as it is crucial that people with disability are able to enter the justice process as advocates, and that barristers better support both clients and colleagues with disability. A diverse Bar is one that is able to not only address the needs of participants in the justice system fully, but also one that best reflects the community.

⁴⁶ Eileen Baldry, 'How the justice system fails people with disability—and how to fix it', *ABC Radio National* (online, 18 April 2016) <<https://www.abc.net.au/radionational/programs/ockhamsrazor/australian-justice-system-disability-indigenous/7326240>>.

G. Conclusion

95. The justice system has a significant role to play in addressing, remedying and preventing injustices against people with disability. Disability can be physical or mental and presents in a variety of ways, as can discrimination. Understanding how disability impacts not only the lives of people with disability but also on the way in which others view them is crucial to addressing biases and responses within the justice system, and throughout the justice process, and ensuring that persons with disability including those who may have been victims of violence are not repelled by the very system that exists for their protection.
96. From lack of disability parking and wheelchair access to ingrained or unconscious attitudes that view disability as a diminishment of credibility, the justice system unfortunately and inadvertently fails to recognise and remediate longstanding issues affecting the interactions that perpetuate and reinforce disadvantage for people with disability.
97. For people with disability engaging in the justice process, there are access to justice issues that discourage participation and undermine the efficacy and impartiality of the Courts, both in appearance as well as reality. For First Nations Peoples with disability, there are even greater access to justice issues that occur, including in relation to the over-representation of First Nations Peoples in custody in Australia.
98. Combatting these issues requires a strengthening of the Courts to better enable them to encourage and facilitate participation from people with disability, ensuring not only that functional changes are made (such as increasing accessibility) but also attitudinal and cultural changes, including raising awareness about and acceptance and understanding of disability.
99. This change is not just required of the Courts. It also involves a shift within the legal profession that better encourages people with disability to become members of the profession and better supports members in their practice and in engagement with clients with disability.
100. The Courts are part of a larger ecosystem and do not operate in isolation. Any reform must be implemented with a holistic approach centred on early intervention. Combatting violence, neglect and abuse against people with disability in the justice system is a necessary task that must be addressed by all the profession. It is the responsibility of all involved in the justice system, including judges, barristers, solicitors, chambers, sheriffs and officers to take active steps to ensure that justice is in reality accessible for all.