Submission:

Productivity Commission

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Access to Justice

Villamanta Disability Rights Legal Service Inc.

Disability Discrimination Legal Service Inc

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A. Introduction

The Disability Discrimination Legal Service Inc. ("DDLS") is a community legal centre that works on disability discrimination legal matters. It provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy & law reform. The long term goals of the DDLS are the elimination of discrimination on the basis of disability, securing equal treatment before the law for people with a disability and generally promoting equality for those with a disability.

Villamanta Disability Rights Legal Service Inc. ("Villamanta") is a community legal centre that works only on disability related legal and justice matters for people who have a disability. Its priority constituency are people who have an intellectual disability and most of its legal casework is done for them. Villamanta provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, and policy & law reform. The long term goals of Villamanta are to ensure that people who have a disability have the same rights and opportunities as other people and are equally included in the community; in particular, that they know about the law and are able to use the law to secure their rights.

In 2013 our organisations drew up a Memorandum of Understanding in order to improve collaboration and streamline service provision for people with disabilities.

We submit the following for consideration by the Productivity Commission in relation to the Draft Report *Access to Justice Arrangements* [the "Report"].

B. Capacity

DDLS has a core staff of 2.6 EFT, however that number increases as a result of project work and currently our EFT is approximately 7. Villamanta has a core staff of 5.3 EFT-these numbers also fluctuate in response to project funding.

Our general capacities are enhanced through volunteer students and volunteer lawyers.

DDLS has approximately 10 volunteer lawyers and 20 volunteer law students working with us regularly. We have ongoing relationships with the Australian Government Solicitor's Office and Australian National University.

Villamanta currently has 7 volunteers, mainly law students. Villamanta sources its volunteer university students from all Victorian universities. It has a relationship with Deakin, Melbourne and Monash Law Schools and with Monash University Law Students Association. It obtains other volunteers through Volunteering Geelong (a nongovernment organisation that matches volunteers with community organisations)

We use volunteers to undertake a variety of tasks from administration work to working in legal clinics giving supervised advice. We are particularly interested in placing volunteers with disabilities.

Volunteers stay between six months and three years due to the interest in our work and the community we work with. In this way, our capacity is much greater than our funding provides.

C. Appropriate legal services for people with disabilities

We note that quite properly, legal assistance for Aboriginal and Torres Strait Islander people has received special attention from the Commission as an area which requires specialised expertise in order to properly engage with the community.

We put to the Commission that services for people with disabilities should be regarded in a similar fashion. As an example, the Deaf Community, who often regard themselves as a linguistic minority, claim a culture that requires specialised understanding and expertise. It is not only the issue of the use of a different language that makes a difference, but the research suggests that the Deaf Community have their own unique culture, different to that of “hearing” people.

While people with other disabilities may not claim their own culture or language, the nature of each disability and its uniqueness is complex. An example is Autism Spectrum Disorder - a communication and social disability that as its name suggests ranges from severe disability, to a disorder that carries with it a superior IQ and extraordinary skills.

The breadth of different disabilities and their unique nature is only fully understood by those who specialise in working in this area.

While there is nothing preventing professional people who are approached by a person with a disability from researching and inquiring of the person themself the relevant information, this takes time. Lawyers are in general no different from the rest of the community in that they have their own preconceptions and sometimes misunderstandings about people with disabilities, and the impact of that disability.

We continue to be advised of lawyers refusing to provide Auslan interpreters, not accepting capacity, or having discriminatory attitudes towards people with disabilities due to ignorance.

Our organisations pride ourselves on the stability of our staffing, resulting in a core group of staff who have developed significant expertise in the disability area, and who are held in high regard by the disability community. We believe strongly, and are told directly, that it is of great importance to people with disabilities to be able to receive services from staff that already have a base knowledge of the issues facing people with disabilities.

In our submission, it is important to recognise that legal services that specialise in providing services to people with disabilities are providing services to a unique part of the population that benefit from the specific expertise we can offer them. In this

regard, we suggest to the Commission that specialist disability community legal centres should be treated in a similar fashion to those community legal centres that provide assistance to Aboriginal and Torres Strait Islander people.

For this reason, we believe it is vital for the Commission to seek views directly from people with disabilities as to their requirements for competent and accessible services.

D. Links with the Community/Legal needs analysis

Due to the nature of our work and our target community, the traditional legal needs analysis is not always the most effective way in which to inform ourselves of pressing legal issues and priorities for people with disabilities.

Community Legal Centres traditionally have strong links with the community, and due to our specialist work, our ongoing involvement in the disability sector is an important source of information for the direction of our work. These links include:

- Representation of people with disabilities on our boards;
- Staff member involvement on the boards and committees of disability agencies;
- Formal involvement in disability coalitions brought together to address community issues such as the National Disability Insurance Scheme;
- Participation and representation in disability conferences;
- Input directly into important reports and research on issues linked to people with disabilities, thereby having systemic effect.

The involvement above allows us to:

- communicate regularly with a substantial number of people with disabilities;
- hear directly from people about systemic and individual issues;
- continuously expand our understanding about the impacts of harmful systemic practices and regulations on people with disabilities;
- assist in shaping systemic statutory authority responses.

All of the above assists us in systemic and preventative work that aims to reduce the need for people with disabilities to litigate and target our work areas.

Our organisations' input into the review of legislation such as guardianship laws, discrimination legislation, vilification and so on are enhanced by our direct and ongoing contact with our target group - people with disabilities.

We are directly and actively involved in numerous community organisations, some of which include:

- DAV Inc. - Villamanta's Principal Solicitor & Executive Officer and the DDLS manager are DAV Board members
- Federation of Community Legal Centres (Vic.) – Member; member of Disability Rights working group; member of CLE/CD working group; Child Protection working group; Making Rights a

Reality for Victims of Sexual Assault with Cognitive Impairment project working group, Human Rights Working Group

- Vision Australia – Villamanta's Executive Officer volunteers on radio program (Vision Australia Radio)
- Law Institute of Victoria – All Villamanta and DDLS lawyers are members; Villamanta's Executive Officer is member of the LIV's Disability Law Committee
- Discrimination Law Committee - member
- Discrimination Legal Service Providers Network - member
- National Disability Rights Network - member
- Victorian Legal Assistance Forum - members
- Victoria Law Foundation
- Shut In Campaign (co-ordinated by People With Disability Australia (PWDA)) - member
- Inclusive Education Alliance – members
- Volunteering Geelong – member
- Ross House Association – members
- Victorian Decarceration Network/Centre for the Human Rights of Imprisoned People – member
- Children with Disability Australia - Member
- Victorian Council Social Services - Members
- Communication Rights Australia - Director (DDLS)

E. Targeted Resources/Location

Our organisations are statewide services, and as such we need to be situated where the greatest accessibility is. For example we need to be near accessible public transport. We need to be in an area which is not hilly. We need to be in a building where there is an accessible toilet, and access to the building. These are the things that we need to consider as priorities. The DDLS for example is in a building heavily populated by disability organisations.

Due to the high number of telephone advices we provide, after the accessibility of our offices is taken into account, our physical location is secondary as we travel throughout Victoria. For example during Law Week this year, DDLS staff travelled to Wodonga. Villamanta is located in Geelong, Melbourne's second-largest city because it was founded as a sub-project of the Geelong Community Legal Service (now Barwon Community Legal Service). Geelong is an excellent location for the service given that a large part of the state's population is located there, it is readily accessible to the western part of the state, office rental is far cheaper than in Melbourne, and nearly all the other state-wide organisations are based in Melbourne

In relation to eligibility and priority, each organisation has procedures. I attach, by way of example, those of DDLS. Villamanta has similar procedures which can also be provided upon your request.

F. Standardised Eligibility [recommendation 21.3]

We are against the standardisation of eligibility criteria between community legal centres and legal aid.

Firstly, we believe that legal aid criteria is so inflexible that only a small number in the community are able to qualify and therefore access services.
Secondly, we do not believe that those who are the poorest are necessarily those who have the most need. There is a significant part of the community that while not meeting the current legal aid eligibility criteria, cannot afford private legal fees. Due to the substantially high cost that private lawyers charge, many individuals who have a modest income cannot afford that assistance.

While there is no doubt that for simple issues that require a lawyer's letter, for example, to be sent out, this may be affordable, this is not the typical request or need faced by our clients.

Any litigation that requires counsel is a significant cost. An employment discrimination case which may cover a period of two years can easily result in a two-week trial. The tens of thousands of dollars required to pay private law firms and barristers is simply not available to many low income Australians, who do not qualify for legal aid.

In these cases, the impact of the legal issue may be just as severe on an individual [if not more so] who is on the pension and qualifies for legal aid, as it is for someone on a low income with no assets, or someone on a low income with a mortgage. Therefore it is a mistake to make assumptions that would categorise low income people with disabilities as having legal issues that if not resolved would cause a severe injustice.

People with disabilities are already marginalised and disadvantaged. While we believe that there is little need for community legal centres to give legal assistance to high income earners, we also believe that people disabilities should not be discriminated against twice due to having some form of employment which affects legal aid eligibility but does not enable them to access alternative forms of legal assistance.

G. Tribunals (Chapter 10)

We currently hold significant concerns about self represented litigants at the Victorian Civil and Administrative Tribunal ["VCAT"]. These individuals are increasingly finding themselves running cases against law firms and barristers in a process which, as found by the Productivity Commission, is becoming increasingly legalised and often not much differently run from jurisdictions such as the Federal Court.

While tribunals may have been viewed in the past as accessible to "the people", it is our experience that they increasingly rely on the same level of legal pleadings, legal argument and legal submissions as more formal jurisdictions do. In our view it is therefore inappropriate that individuals with disabilities or their non- legal

representatives, find themselves in this position where the resource and knowledge balance is significantly uneven. Again, this highlights the importance of accessible legal services to all.

Rules currently give government the right of legal representation in VCAT. Unfortunately, given they are a common respondent in discrimination proceedings, this leads to the imbalance mentioned above. Even within this framework, there are represented litigants or their non-legal advocates. This then defeats the purpose of the tribunal which is to provide a low-cost accessible justice system. We are also concerned about the increasing use by respondents of the threat of costs orders against complainants given the tribunal is meant to be a no cost jurisdiction.

In our view, tribunals must hold their intended distinction from courts, to remain relevant and useful. This means that they either place greater restrictions on the legal representation allowed by respondents, or government ensures that complainants have access to the same level of legal representation.

H. Model Litigant Requirements (Chapter 12)

In light of the above, while we support model litigant obligations imposed on parties where there is a disparity in resources, until there is a clear complaints process there would seem little value in such a move.

We support the idea of an Ombudsman to hear complaints in relation to breaches of model litigant guidelines.

In relation to strengthening the guidelines in regard to government engaging in alternative dispute resolution, our experiences are that government bodies are usually willing to engage in alternative dispute resolution, however resolutions are rare. Therefore we would support the strengthening of the guidelines in relation to litigation in order to encourage successful alternative dispute resolution processes.

I. Self Represented Litigants (Chapter 14)

See our comments in relation to Chapter 10. While we believe that greater assistance to self represented litigants is helpful, such assistance does not address the imbalance. For example, a respondent being represented by a large law firm will have the resources and wider knowledge to submit to Courts and tribunals substantial submissions based on law, case precedents and so on. No matter how helpful a court or tribunal is to self represented litigants, this assistance is not a satisfactory substitution.

J. Competitive Tendering [information request 21.3]

Our organisations are against competitive tendering. Such processes are not conducive to the collaborative relationships we already have with other community legal centres and legal aid. Competitive tendering tends to often be produced to what governments believe is “value for money”, which is often not focused on the true sense of value, but often more focused on which service might be the cheapest. As a

result, larger organisations often benefit, whether or not they are appropriately placed to provide a quality service.

Executive Summary

Villamanta and DDLS support any progress towards improving access to justice for people with disabilities. We believe such goals are best achieved working collaboratively with our community.