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Blind Citizens Australia

# Submission prepared by Blind Citizens Australia to inform the Justice Project: The Law Council of Australia’s inquiry into the state of access to justice in Australia

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To:

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## About Blind Citizens Australia

Blind Citizens Australia is the peak national representative organisation of and for people who are blind or vision impaired. Founded in 1975, our mission is to achieve equity and equality by our empowerment, by promoting positive community attitudes and by striving for high quality and accessible services which meet our needs.

We provide peer support, information dissemination, advocacy support and advice to community and government on issues of importance to people who are blind or vision impaired.

Our work is directly informed by lived experience of blindness and vision impairment. Our members, our Directors and the majority of our staff are blind or vision impaired.

## Introductory Comments

Thank you for providing Blind Citizens Australia with an opportunity to provide feedback to inform the law Council’s inquiry into the state of access to justice in Australia.

Access to justice is a fundamental human right and is recognised as such under a number of legal and regulatory frameworks. Unfortunately, not all groups of people in society enjoy this right equally. To this end, our submission will focus on the barriers to justice that are uniquely experienced by people with disability, with a particular focus on the experience of people who are blind or vision impaired.

there are currently more than 350 000 people in Australia who are blind or vision impaired and according to Vision 2020 Australia, around 80% of vision loss in Australia is caused by conditions that become more common as people age. This raises a number of implications for Australia’s aging population, with one in every four Australians projected to be 65 years of age or older by the year 2056. People who are blind or vision impaired continue to experience widespread exclusion and discrimination in many areas of public life and face a range of barriers to equality before the law. Many of these barriers will be highlighted further throughout this submission.

The right of people with disability to access justice on an equal basis with others is clearly articulated under Article 13 of the United Nations Conventions on the Rights of Persons with Disabilities; which was ratified by the Australian Government in 2008. The Council of Australian Governments has subsequently outlined the steps to be taken to ensure access to justice for people with disability under outcome area 2 of the National Disability Strategy 2010-2020; which relates to rights protection, justice and legislation. The National Disability Strategy includes the following policy directives to Governments:

* Increase awareness and acceptance of the rights of people with disability
* Remove societal barriers preventing people with disability from participating as equal citizens.
* People with disability have access to justice.
* People with disability to be safe from violence, exploitation and neglect.
* More effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities

With only a few years left until the National Disability Strategy is due to meet the end of its lifespan, we submit that federal and state governments continue to fall short of the obligations that have been established under this framework. We hope the Law Council’s work will help to shine a light on some of the barriers that continue to hinder access to justice for people who are blind or vision impaired and we greatly value the opportunity to contribute to this important discussion.

## Barriers to Accessing Justice Under the Disability Discrimination Act 1992

People who are blind or vision impaired commonly experience unique forms of exclusion and discrimination that are not typically experienced by the general population.

The Federal Disability Discrimination Act 1992 (DDA) is Australia’s primary Act seeking to protect the rights of people who are treated less favourably on the grounds of disability. It covers people against discrimination in many aspects of life; including, but not limited to: accommodation, education, employment, goods and services, and access to premises.

Complaints pursued under the DDA must be lodged with the Australian Human Rights Commission (the commission). Once a complaint has been received, it is then allocated to an Investigation/Conciliation Officer who plays an impartial role, and will investigate and seek to resolve the matter through a conciliatory process. This process generally involves bringing together the complainant and the respondent to talk through the issues that gave rise to the complaint, and trying to negotiate an outcome to the satisfaction of both parties.

Despite the fact that the DDA has been effective in bringing about systemic change for people with disability in an arrange of areas of public life, there are a number of barriers that make it difficult for people who are blind or vision impaired to access justice under the Act. Many of our members who continue to use the Commission’s complaints service openly talk about the emotional price of pursuing a complaint, and the daunting and anxiety-provoking nature of the conciliation process. Others simply choose not to pursue matters under the DDA at all, despite the fact that they will often still experience some form of discrimination.

Through our individual advocacy work and feedback we received to inform this submission, we have identified a range of barriers preventing our constituents and people with disability more broadly, from accessing justice under the DDA. These have been outlined in brief below:

1. Many people who are blind or vision impaired are still unaware of their rights or the complaint mechanism that is available under the DDA to ensure their rights are upheld. Further, through our individual advocacy work, we have found that many people incorrectly believe that this process comes at a cost to the individual. We therefore submit that greater effort must be taken to properly educate people with disability about their rights and the legal remedies that are available to them.
2. Many people who are blind or vision impaired choose not to pursue matters under the DDA because they do not believe the process will be successful in bringing about tangible change. This is because the Commission does not have the power to compel unwilling respondents to participate in the conciliation process, or make a binding determination about whether or not discrimination has occurred.
3. Some people have reported finding the nature of the Commission’s complaint process extremely difficult to understand. The correspondence that is provided to the complainant, including background information that explains the conciliation process, and formal documents such as draft conciliation agreements, is often very legalistic and uses extremely complex language. Many of our members feel that this places them at a significant disadvantage. We submit that greater effort must be taken to make this information available in plain and easy English so that it is accessible to a broader cross-section of the Australian population.
4. The Commission’s complaint-handling budget has been progressively trending down over the past 20 years. These budgetary constraints weigh heavily upon the Commission’s ability to adequately resource its investigation and conciliation service. In recent times, some of our members have reported waiting between 3 and 6 months for their complaint to be allocated to an Investigation/Conciliation Officer. Complaints lodged under the DDA also often take longer to resolve than complaints lodged under other federal anti-discrimination legislation. This is because some people might need reasonable adjustments to be put in place, or may need to seek assistance from an already under-resourced disability advocacy organisation or community legal Centre.
5. A number of our members who have participated in a conciliation conference within the past two years have reported feeling as though the Commission has not played an impartial role in this process and has sided with the respondent. Some people have been discouraged from having a support person or advocate attend their conciliation conference at all, while others have been told that they can only have one support person with them. This is despite the fact that this limitation is not reflected in the Australian Human Rights Commission Act 1986 (Cth) or the Commission’s policies or procedures.

Frustratingly, the same restrictions are not placed on the number of people who are able to attend a conference on behalf of the respondent. Indeed, it is not uncommon for a person with disability to participate in a conciliation conference where they are sitting opposite four or more lawyers who are there to represent the respondent. This places the complainant at a significant disadvantage and goes against the conciliatory nature of the Commission’s alternate dispute resolution service, which is designed to be non-adversarial.

The Commission continuously fails to properly consider and address the power imbalance that exists between the complainant and the respondent. Until such time that this matter is resolved, people with disability will continue to face unnecessary barriers to resolving matters through the conciliation process.

We have a number of members who have a high profile within the disability sector and are well known to the Commission. These people speak openly about the fact that they would never participate in a conciliation conference in the absence of a support person or advocate; as this can be an extremely daunting process. If such a position is taken by those people who understand and are familiar with the conciliation process, the Commission must acknowledge the extreme power imbalance that exists for people with disability who are less familiar with the Commission’s processes. The Commission’s Investigation/Conciliation Officers must therefore take a more proactive stance in encouraging complainants to have a support person or advocate attend their conciliation conference with them, and must provide complainants with appropriate information and referral as needed.

1. One of the greatest barriers preventing people from lodging a complaint under the DDA, or seeking justice in instances where their complaint has been terminated by the Commission, is perceived cost. If a complaint cannot be successfully resolved through conciliation, the Commission will terminate the complaint. From the date of termination, the individual has 60 days to file the matter with the Federal Circuit Court if they wish to pursue it further. This process can be extremely daunting and cost-prohibitive for the individual.

We refer to the case of Innes V RailCorp 2012. Innes alleged that RailCorp had failed to make audible announcements on 36 train journeys between 28 March 2011 and 9 September 2011, amounting to unlawful discrimination. In February 2013, the Federal Circuit Court found that RailCorp had breached the Disability Discrimination Act 1992 and the Disability Standards for Accessible Public Transport 2002. The case resulted in a new commitment to the provision, consistency and clarity of audible announcements on board CityRail services.

While Mr Innes case was successful in bringing about real and lasting change for people who are blind or vision impaired, there are several things that were unique about this case:

* Mr Innes was a very capable client who had a thorough understanding of the legal system. Many people with disability are less familiar with the legal system and would experience significant difficulty negotiating the court environment.
* Mr Innes had been provided with a cost indemnity, which is something that would be difficult for the majority of applicants to obtain. The fear of costs being awarded against them is often a deciding factor in determining whether or not an individual will pursue a matter once a complaint has been terminated by the Commission and this risk continues to deter individuals from seeking justice through the court process.
* Mr Innes received legal assistance from the Public Interest Advocacy Centre leading up to and throughout his hearing. Such assistance is not readily available to the majority of people with disability. There are very few Community legal centres with specialist knowledge of disability discrimination law and the community legal sector has been subjected to significant funding cuts over the past few years. Entities such as the Australian Centre for Disability Law, through no fault of their own, need to be extremely selective about which matters they will take on due to their very limited resources.

In light of the above barriers, BCA submits that This jurisdiction of the federal court must be changed so that it is a no costs jurisdiction. This would discourage respondents from unnecessarily increasing costs and placing added pressure on applicants to withdraw from the court process due to the fear of costs being awarded against them. We have seen how this pressure can impact upon people with disability first-hand through our recent work advocating for audio description on Australian television.

in 2013, Blind Citizens Australia lodged 28 complaints with the Australian Human Rights Commission on behalf of people who are blind or vision impaired. These complaints were lodged against the Australian Broadcasting Corporation (ABC) for their failure to make television content accessible to people who are blind or vision impaired by providing a permanent audio description service. Blind Citizens Australia attempted to negotiate an outcome to resolve the complaints collectively through the Conciliation process. A satisfactory outcome could not be reached and as such, all of the complaints were terminated.

One of the original complainants decided to pursue the matter in court with assistance from the Public Interest Advocacy Centre. While the case was scheduled to be heard in court in December 2016, The applicant felt pressured to withdraw from the process less than two weeks out from the hearing. The ABC is a very large organisation with significant resources at its disposal. The applicant was therefore faced with the reality that they would use these resources to the best of their advantage to stand up to her in court and pursue her for costs. These cases place a huge strain on individuals and the daunting nature of the legal process should not be under-estimated.

The previous example highlights just how difficult it is for individuals to access justice under the current system. The individual in question had spent three years pursuing her complaint but was still unable to have the matter heard in court due to the in balance of power between her and the defendant. As such, the matter that gave rise to her original complaint still remains unaddressed.

Importantly, the barriers outlined at points 1-6 must be viewed in the context of the recent amendments that were made to the Australian Human Rights Commission Act in April this year. These amendments:

* raise the threshold for the Commission to accept complaints
* provide additional powers for the Commission to terminate unmeritorious complaints
* limit access to the courts for unsuccessful complaints

We fear that these amendments may mean people with disability will have even fewer options available to ensure their rights are protected and upheld; as there is a possibility that many legitimate complaints may now not be accepted by the Commission at all, or may be terminated by the Commission without being properly investigated. By limiting access to the courts for unsuccessful complaints, these amendments have also had the effect of watering down the only mechanism available for individuals to seek redress beyond the Commission’s conciliation process.

## Barriers to Accessing Justice in Relation to Employment Discrimination

While this matter falls within the scope of the Disability Discrimination Act which has already been examined at length in the previous section of this submission, we felt that it warranted separate exploration due to the unique nature of the discrimination that can occur in employment settings.

Several of our members have indicated that they have chosen not to pursue complaints in relation to discrimination they have experienced, or are experiencing in employment for fear of retribution. According to research undertaken by Vision Australia in 2012, the rate of unemployment of people who are blind or vision impaired is four times the national average. Given it is so difficult for people who are blind or vision impaired to obtain employment in the first instance, it is understandable that those people who have successfully overcome this barrier are unwilling to take any action that may jeopardise their employment status.

Through our individual advocacy work, we have found that the most common form of discrimination experienced by people who are blind or vision impaired in the workplace results from the use of information and communications technology (ICT) that is not accessible to people with print disability. Inaccessible ICT often comes in the form of software packages and database systems that are incompatible with the screen reading software that is used by people who are blind or vision impaired. The use of such technology can have the unintended consequence of impacting upon an employee’s ability to perform all necessary functions of their work role.

In light of the unique barriers people who are blind or vision impaired face in upholding their rights in this area, we submit that Australia’s disability discrimination framework must take a more compliance-based approach to accessibility rather than relying on people with disability to pursue matters by way of individual complaints. The complexity of these issues should be carefully considered as part of a comprehensive review of the Disability Discrimination Act and its enforceability. Further recommendations relating to the nature and scope of such a review will be outlined further in the following section of this submission.

In the meantime, Government departments and agencies at all levels could set a best practice example in this area by updating their Procurement practices to ensure accessibility guidelines are mandated as a core requirement for all government requests for tender for ICT-based products and services. late last year, the Department of Finance announced that Standards Australia had agreed to create an Australian Standard on ICT accessibility through the direct adoption of European Standard EN 301 549. This initiative is intended to provide domestic ICT procurers with set accessibility guidelines, and is an initiative that has been driven by the federal government to ensure that in future, government departments can procure ICT that is accessible to people with disability. The standard has not yet been made mandatory for government procurement.

## Barriers to Accessing Justice Under the Disability Standards

There are currently three sets of standards that are prescribed under the Disability Discrimination Act 1992 (Cth). These are:

* The Disability Standards for Accessible Public Transport 2002
* The Disability Standards for Education 2005, and
* The Disability Standards on Access to Premises 2010

As with the Disability Discrimination Act itself, these are complaints-led frameworks which are unable to be enforced until such time that an individual decides to pursue a complaint. They are therefore subject to all of the shortfalls that have already been identified under section 3 of this submission.

We refer again to the case of Innes V RailCorp. Despite the fact that Mr Innes complaint related to matters referenced under the Disability Standards for Accessible Public Transport 2002, the matter was required to be advanced to the Federal Circuit Court in order for any change to occur. Frustratingly, the case was advanced to the Federal Circuit Court after two years of Mr. Innes having already made complaints to the relevant Minister and Department; receiving no assurance that the barriers he faced would be addressed.

It is unacceptable that a person with disability should have to take legal action in order for their rights to be upheld; particularly when many people with disability do not have the capacity or resources to allow them to resolve such matters through litigation. Furthermore, although Mr Innes efforts did lead to a systemic improvement in the quality and frequency of announcements on-board Sydney trains, the fragmented nature of Australia’s federated system means that these changes did not automatically have a flow-on effect for transport services in other states and territories. To maximise the effectiveness of the transport standards for people with disability, the government must therefore adopt a more proactive, compliance-based approach to the standards that are prescribed under the DDA.

In its concluding observations on the initial report of Australia (handed down in 2013), the Committee on the Rights of Persons with Disabilities stated:

“The Committee notes that the Disability Standards for Accessible Public Transport 2002 and the Disability (Access to Premises – Buildings) Standards 2010 introduce regulations to address accessibility barriers for persons with disabilities. However, it remains concerned at the level of compliance with accessibility standards and regulations. The Committee recommends that sufficient resources be allocated to ensure monitoring and implementation of the Disability Standards and requirements”

The issue of compliance reporting was also raised by a number of stakeholders through the consultation process for the 2012 review of the transport standards. The 2012 review report subsequently recommended that:

“…the Australian Government, jointly with state and territory governments, establish a national framework for reporting on progress against the Transport Standards by 31 December 2016."

This recommendation has still not been implemented to-date. We assert that the standards will not be effectively and consistently implemented until such time that a more proactive, compliance-based framework is introduced.

In light of the matters raised throughout our submission thus far, we recommend that The Australian Government Commission a comprehensive review of the Disability Discrimination Act 1992 (Cth) (including the 3 sets of standards that are prescribed under the Act) and its enforcement. This review should explore the feasibility of:

* Harmonising the Disability Standards for Accessible Public Transport and the Access to Premises Standards.
* Establishing a central agency that is tasked with the responsibility of enforcing the three sets of standards that are prescribed under the Disability Discrimination Act 1992 (Cth), and any new standards that are adopted in the future. This agency should be tasked with reviewing compliance data; investigating violations and reports of misconduct and applying penalties for failure to comply with the standards.

Furthermore, as a number of new technologies have emerged since the DDA and its associated standards came into effect, a future review should carefully consider the need for additional standards to be put in place to ensure people with disability are able to access goods, services and facilities on an equal basis with others. We refer primarily to the emergence of touch screen technology across the financial services industry and the subsequent roll out of EFTPOS devices which are not accessible to people who are blind or vision impaired. The presence of such devices in retail environments has resulted in people who are blind or vision impaired being forced to divulge their PIN to a customer service representative in order to complete a transaction. While a number of individuals have pursued complaints under discrimination law in relation to this issue, these devices continue to be rolled out with little regard for the access needs of customers who are blind or vision impaired. The inaccessible nature of these devices not only compromises the dignity and independence of our constituents, but also forces them to breach the e-payment code by divulging their PIN to a third party. While this situation continues to cause a systemic breach of privacy amongst people who are blind or vision impaired, those affected do not have the resources at their disposal to enable them to pursue the matter in court. This situation is only likely to worsen in the absence of standards which would mandate the accessibility of banking services across Australia, as other banks are already starting to develop their own touchscreen EFTPOS terminals,

## Barriers to Accessing Justice Under the Convention on the Rights of Persons with Disabilities

In addition to ratifying the Convention on the Rights of Persons with Disabilities, the Australian Government has also exceeded to the optional protocol to the Convention. The optional protocol allows a person with disability to bring a complaint before the United Nations Committee on the Rights of Persons with Disabilities in instances where they feel that their rights have been breached by a state party to the convention. For the purposes of the Australian context, the term ‘state party’ refers to the Commonwealth or an agent on behalf of the Commonwealth; noting that Article 4(5) of the Convention states that the provisions of the Convention extend to all parts of federal states without any limitations or exceptions.

In order for a complaint to be accepted by the Committee, the complainant must first be able to demonstrate that they have already exhausted all domestic remedies that are reasonably available to them. As outlined under section 3 of this submission, however, there are a number of barriers that currently prevent people with disability from exhausting the remedies that exist within Australia to enable them to address matters of disability discrimination.

Further, the only domestic mechanism by which an individual can currently pursue a matter under the Convention on the Rights of Persons with Disabilities is the Australian Human Rights Commission’s complaint-handling function. Under the Australian Human Rights Commission Act 1986 (Cth) the Commission has the power to investigate complaints about breaches of human rights by state parties to the convention. These powers are set out under Section 11 (f) of the Act, which states that the Commission has the power to:

* inquire into any act or practice that may be inconsistent with or contrary to any human right; and
* if the Commission considers it appropriate to do so--endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry

In effect, the provisions set out under Section 11(f) should mean that people with disability could ask the Commission to investigate a breach of their rights under the convention and attempt to have the matter resolved through conciliation. Through our recent advocacy work, however, we have continuously found that complaints lodged under the Convention on the Rights of Persons with Disabilities are not taken seriously by the Commission; particularly those made with respect to Australia’s obligations under article 4(1) and 4(2) of the Convention, which require that:

* State Parties undertake: ‘To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention’; and
* With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights’.

These substantive measures do not currently fall within the scope of the Disability Discrimination Act and are unique to the Convention on the Rights of Persons with Disabilities. While a number of our members have attempted to lodge complaints with the Commission under the Convention since it came into effect, these complaints have either been terminated, or the individual has been encouraged to reframe their complaint so it falls within the scope of the Disability Discrimination Act instead. We refer to the recent amendments to the Australian Human Rights Commission Act referenced under section 3 of this submission, noting that the chances of a complaint made under the Convention via Section 11(f) of the Australian Human Rights Commission Act being accepted and investigated by the Commission is even more unlikely in the current environment.

In light of the fact that Australia has signed and ratified the Convention and its optional protocol, it is absolutely critical that there is an effective, no-cost dispute mechanism available to allow people with disability to lodge complaints when they feel that governments are not meeting their obligations under the Convention. Many government entities are still unaware of their obligations to people with disability as set out under the Convention and the National Disability Strategy 2010-2020. The Commission’s alternative dispute resolution service could play a positive role in bringing about greater awareness of these obligations, and facilitating meaningful discussion between complainants and respondents about how the measures set out under these instruments can be implemented. If people with disability cannot rely on Australia’s National Human Rights Institution to take such obligations seriously, they will not be taken seriously by agents of the Commonwealth either. The Australian Human Rights Commission must therefore be provided with a clear mandate to properly investigate complaints that are lodged under the Convention on the Rights of Persons with Disabilities, and subsequently report to government on issues raised under the Convention. It is also critical that the Commission is properly resourced to undertake this work.

The lack of enforceability of the rights set out under the Convention ultimately comes back to the government’s failure to incorporate such rights into domestic law. Unless rights are able to be enforced and upheld, they are nothing more than an aspiration. According to The United Nations Division for Social Policy and Development:

“Ratifying the Convention or Optional Protocol indicates at least an obligation to be bound by these instruments and to perform such obligations in good faith.”

The Division for Social Policy and Development goes on to explain that:

“one of the fundamental obligations contained in the Convention is that national law should guarantee the enjoyment of the rights enumerated in the Convention. Members of Parliament should thus consider the best way of giving effect to the rights guaranteed by the Convention in domestic law.”

To-date, the Australian Government has still not taken positive steps towards incorporating the rights set out in the Convention into domestic law; although the Convention is referenced in a number of state-based instruments such as the Victorian Charter of Rights and Responsibilities and the NSW Disability Inclusion Act.

In consideration of comments made under section 5 of this submission in relation to the need for the Australian Government to Commission a comprehensive review of the Disability Discrimination Act and its enforceability, we submit that options for incorporating the rights set out under the Convention on the Rights of Persons with Disabilities into domestic law must also be considered in this process. This work must be undertaken in close consultation with people with disability and their representative organisations.

## Barriers to Accessing Justice Under Mainstream Legal Processes

Beyond the realm of Australia’s disability discrimination framework, our members have raised a number of frustrations in relation to the accessibility of mainstream legal information and processes. Some of these barriers have been summarised in brief below:

1. Much of the information that is available online in regards to legal rights, responsibilities and processes is still not provided in formats that are accessible to people who are blind or vision impaired. Information-based brochures and guides are commonly provided in pdf format which is incompatible with the screen reading software that is used by people who are blind or vision impaired. In our individual advocacy work, we have also found that there are still many Online contact and complaint forms that use graphical captchas which cannot be interpreted by people who are blind or vision impaired.

It is critical for all statutory authorities tasked with administering a complaint resolution service to offer information that is fully accessible to people who are blind or vision impaired, in compliance with the Web Content Accessibility Guidelines 2.0. This obligation also extends to legal aid offices and community legal centres. Where such services are government funded, accessibility of information must form a critical component of any future funding agreements.

1. Several of our members who have attempted to file matters to be heard in court have reported experiencing significant difficulty with completing the necessary paperwork. People are not generally offered or provided with assistance to complete this paperwork. In the absence of a neutral third party who is able to provide assistance with such tasks, people are forced to rely upon family members or friends. This can greatly compromise the privacy and dignity of the individual and in some cases, can also expose them to heightened levels of vulnerability.
2. Court processes commonly expose people who are blind or vision impaired to unfamiliar courtroom environments which can be difficult and stressful to navigate without appropriate assistance or support. A number of our Members have reported not being provided with adequate support to negotiate the courtroom environment when appearing in court either as a defendant or a witness.
3. People who are blind or vision impaired are often subjected to a perceived lack of credibility due to the negative attitudes and misconceptions of professionals working in law enforcement and judicial roles. Such prejudices most commonly impact upon women who are blind or vision impaired who have experienced family violence, and can be a contributing factor in preventing them from fleeing violent situations.

Indeed, the barriers that are experienced by people with disability in their interactions with the justice system are many and varied. In 2013, the Australian Human Rights Commission outlined the following five barriers as being uniquely experienced by people with disability in their interactions with the justice system:

BARRIER 1. Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disabilities.

BARRIER 2. People with disabilities do not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.

BARRIER 3. Negative attitudes and assumptions about people with disabilities often result in people with disabilities being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.

BARRIER 4. Specialist support, accommodation and programs may not be provided to people with disabilities when they are considered unable to understand or respond to criminal charges made against them (‘unfit to plead’).

BARRIER 5. Support, adjustments and aids may not be provided to prisoners with disabilities so that they can meet basic human needs and participate in prison life.

In its 2014 report, “Equal before the law”, the Australian Human Rights Commission laid out a recommendation to ensure the aforementioned barriers could be systematically addressed across all state jurisdictions. This recommendation involved each state developing a holistic and over-arching disability justice strategy. The Commission’s report acknowledged that these strategies needed to include clear actions and accountability measures, in recognition of the fact that people with disability:

* have the right to be heard and informed
* should feel safe and be free from violence so that they can live in safety and with dignity
* should be able to access the support, services and programs they need to prevent disadvantage and address a range of health and social risk factors
* are able to easily identify and access appropriate high quality services if they experience violence, or feel they are unsafe and at risk of experiencing violence
* are treated with dignity when they begin or defend criminal matters, or participate in criminal justice processes, and the legal system provides the modifications, supports and aids needed to participate
* when lawfully deprived of their liberty are treated humanely and provided with supports, adjustments and aids needed to participate in prison life and transition successfully to the community.

South Australia is the only state to have implemented a disability justice strategy to-date; although we understand that the ACT Government as already commenced work around the development and implementation of a disability justice strategy. All other states and territories must follow the example that has been set by the South Australian Government and implement their own disability justice strategy as a matter of urgency. strategies must be developed in close consultation with people with disability through their representative organisations.

## Conclusion and Summary of Recommendations

Thank you once again for providing Blind Citizens Australia with an opportunity to contribute to this important conversation about access to justice for people with disability. It is our hope that the Law Council’s work will build a solid evidence base for future work in this area; which may ultimately result in greater legal protections for our constituents.

Should you require further information in relation to any of the matters raised throughout this submission, please do not hesitate to contact us. We have summarised our key observations and recommendations again below for ease of reference:

1. Greater effort must be taken to properly educate people with disability about their rights and the legal remedies that are available to them; particularly in relation to disability discrimination law.
2. The Australian Human Rights Commission must ensure information about it’s complaint process is provided in plan and easy English so that it is accessible to a broader cross section of the Australian population.
3. The Australian Government must provide the Australian Human Rights Commission with a more sizable budget to enable it to properly resource its Investigation/Conciliation service.
4. To address the power imbalance that commonly exists between the complainant and the respondent, the Australian Human Rights Commission’s Investigation/Conciliation Officers must take a more proactive stance in encouraging complainants to have a support person or advocate with them during a conciliation conference and must provide complainants with appropriate information and referral as needed.
5. The jurisdiction of the federal court responsible for hearing matters brought under the Disability Discrimination Act 1992 (Cth) and associated standards must be changed so that it is a no costs jurisdiction.
6. The Australian government must Commission a comprehensive review of the Disability Discrimination Act 1992 (Cth) and its enforcement as a matter of urgency. This review should explore the feasibility of:

* Incorporating the rights set out under the Convention on the Rights of Persons with Disabilities into domestic legislation
* Harmonising the Disability Standards for Accessible Public Transport, the Access to Premises Standards
* Establishing a central agency that is tasked with the responsibility of enforcing the three sets of standards that are prescribed under the Disability Discrimination Act and any new standards that are adopted in the future. This agency should be tasked with reviewing compliance data; investigating violations and reports of misconduct and applying penalties for failure to comply with the standards.

1. The Australian Human Rights Commission must be provided with a clear mandate to properly investigate complaints that are lodged under the Convention on the Rights of Persons with Disabilities, and subsequently report to government on issues raised under the Convention. The Commission must also be adequately resourced to undertake this work.
2. All state and territory governments must implement a disability justice strategy in line with the recommendations put forward in the Australian Human Rights Commission’s 2014 report: ‘Equal before the law’. Disability justice strategies must be developed in close consultation with people with disability and their representative organisations.