

Submission in Response to the Australian Law Reform Commission Discussion Paper on Equality, Capacity and Disability in Commonwealth Laws

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About Vision Australia

- 1) Vision Australia is the largest provider of services to people who are blind, have low vision, are deafblind or have a print disability in Australia. It has been formed over the past eight years through the merger of several of Australia's oldest, most respected and experienced blindness and low vision agencies. These include Royal Blind Society (NSW), the Royal Victorian Institute for the Blind, Vision Australia Foundation, Royal Blind Foundation of Queensland, and Seeing Eye Dogs Australia.
- 2) Our vision is that people who are blind or have low vision will increasingly be able to choose to participate fully in every facet of community life. To help realise this goal, we provide high-quality services to the community of people who are blind, have low vision, are deafblind or have a print disability, and their families. The service delivery areas include:
 - early childhood
 - orientation and mobility
 - employment
 - accessible information (including library services)
 - recreation
 - independent living
 - advocacy, and working collaboratively with Government, business and the community to eliminate the barriers our clients face in making life choices and fully exercising rights as Australian citizens.

- 3) The knowledge and experience we have gained through interaction with clients and their families, and also by the involvement of people who are blind or have low vision at all levels of the Organisation, means that Vision Australia is well placed to provide advice to governments, business and the community on the challenges faced by people who are blind or have low vision fully participating in community life.
- 4) We have a vibrant client consultative framework, with people who are blind or have low vision representing the voice and needs of clients of the Organisation to the Board and Management through Local Client Groups, Regional Client Committees and a peak internal Client Representative Council. The involvement of people who are blind or have low vision and who are users of Vision Australia's services representing the views of clients is enshrined in Vision Australia's Constitution. Vision Australia is also a significant employer of people who are blind or have low vision, with 15.6% of total staff having a vision impairment.
- 5) Vision Australia has a formal liaison arrangement via a Memorandum of Understanding with Blind Citizens Australia (BCA), the peak national consumer body representing people who are blind or have low vision. This collaboration helps ensure that Vision Australia's systemic advocacy and public policy positions are consistent with BCA's programs and policies as far as possible.
- 6) Given that Vision Australia is a national disability services organisation, that we provide services at a local level through 60 service centres and outreach clinics, and given that each year we work with over 33,500 people who are blind, have low vision, who are deafblind, or have a print disability each year, we understand the impact of blindness on individuals and their families.
- 7) In particular, we are able to represent the needs, aspirations and expectations of our clients as they relate to their interaction with Commonwealth laws. For people who are blind or have low vision, the experience of equality and the exercise of capacity are important, just as it is for the rest of the community. Debate and discourse around decision-making in the disability space often overlooks the impact of lack of access to information has on the capacity of people who are blind or have low vision to be independent and to make informed decisions. In some cases, the way in which people who are blind or have low vision are obliged to make decisions amounts to a quasi-substituted decision-making process, and this situation is not addressed by Commonwealth laws, which rarely mandate the provision of information in formats that people who are blind or have low vision can access.

Introduction

- 8) The following comments provide a general response to the discussion paper. The comments focus mainly on the consequences for people who are blind or have low vision when unable to access information and the current failure of Commonwealth laws to recognise and address these consequences. Our key recommendation is that the Australian Government must play a leadership role by ensuring that all Commonwealth laws and regulations mandate the provision of information in accessible formats on request.

Impact of a print centric society

- 9) Blindness and low vision are impairments which currently lead to information disabilities because of systemic accessibility barriers. Although developments in technology have made it easier to produce information in accessible formats, in practice the use of standard print alone is increasing. This means that people who are blind or have low vision continue to be needlessly disadvantaged by an “information deficit”, the impact of which is felt through a relative lack of access to printed books and magazines. It also significantly limits the ability of people who are blind or have low vision to exercise capacity and autonomy in many areas of life
- 10) Article 9 of the UN Convention on the Rights of Persons with Disabilities (“the Convention”) calls on States Parties to take measures to ensure equal access to the physical environment, and to information and communications. The Convention also contains five specific references to braille, which is a primary key to literacy, numeracy and information access for people who are blind. However, Commonwealth laws and programs do not guarantee equal access to information for people who are blind or have low vision to the extent that is envisioned by The Convention.
- 11) The Disability Discrimination Act 1992 (Cth) (DDA) makes it unlawful to discriminate against a person on the ground of disability in key areas of life, such as education, employment and transport, however the provision of information is not explicitly listed as an area where discrimination is unlawful. Thus, financial information and other contracts are not required to be provided in braille or large-print, government forms are not required to be provided in accessible formats, and websites are not explicitly required to be accessible to people who are blind or have low vision.
- 12) DDA complaints have been lodged about lack of access to information. However, these have relied on a beneficial interpretation of other sections of the DDA, such as section 24, which makes it unlawful to discriminate in the provision of goods, services and facilities. However, the extent to which these sections apply in particular cases is not clearcut. People who are blind or have low vision are often reluctant to lodge complaints under the DDA about lack of access to information because they fear that a respondent may be successful in contesting the application of section 24 or other sections of the DDA.

Autonomy, Equality and Decision-Making

- 13) Lack of access to information has consequences for equality, autonomy and independent decision-making that cannot be overstated, but which are often ignored or downplayed. Commonwealth laws and regulations allow government agencies such as Centrelink to seek information from recipients of government benefits, but they do not require that information be provided in accessible formats. Nor do they require that correspondence from government departments and agencies be in accessible formats.
- 14) It is not uncommon for people who are blind or have low vision to be required to provide details to Centrelink by means of a printed form, which they are not able to complete independently. Centrelink does provide an accessible letters service, where correspondence is provided in

accessible formats on request, but this does not extend to accessible forms. One of our clients recounted a recent experience:

“I received a CD from Centrelink containing the text version of a letter telling me that I needed to complete a Review of the Mobility Allowance benefit that I receive. The form itself was in standard print, so I was not able to read or complete it. I telephoned Centrelink and was told that the form was not available in an accessible format, and I could get a friend to complete it. When I replied that it was not appropriate for me to give confidential information to a friend, I was told that I could go to a “blindness agency” like other people and get them to fill in the form. By this stage in the conversation I felt like I was a burden and a nuisance, even though I knew that no sighted person would accept this kind of response. The Centrelink staff member eventually agreed that my employer could fax them the relevant details of my employment status as an alternative to completing the form. This was done but the fax was lost and so my Mobility Allowance was cancelled because the form was not received by the due date. It took two further phone calls to have the benefit reinstated. There would have been no problem at all if Centrelink had provided me with an accessible version of the form. I find it extraordinary that in the 21st century the Government isn’t able to do something as basic to my independence and equality as this.”

15) This experience is by no means uncommon when dealing with government agencies. People who are blind or have low vision are frequently sent printed letters they cannot read which require them to provide information on printed forms they cannot complete. This may result in them losing a benefit without knowing why, despite it being easier than ever before to provide information in accessible formats, and notwithstanding that the Australian Government has signed and ratified a UN Convention that calls on it to provide equal access to information.

Information Access and Privacy

16) People who are blind or have low vision are often forced to rely on family or friends to assist them in meeting obligations imposed by Commonwealth laws or regulations. Thus, people who are blind or have low vision may have to accept an invasion of their privacy that would not be tolerated by the rest of the community.

17) In theory, a person could lodge a DDA complaint against a government department or agency in respect of a lack of access to information. The case study recounted earlier could have resulted in a DDA complaint against Centrelink, but in the several months it would have taken to have the complaint conciliated, the complainant would have lost the benefit. Moreover, conciliation of DDA complaints is almost always voluntary, as the Australian Human Rights Commission does not compel parties to attend a conciliation conference.

18) The effectiveness of legislation such as the DDA is predicated on a complaints mechanism that is often ill-equipped to provide protection in a fast-paced, deadline-driven world.

19) Many people who are blind or have low vision have come to regard a loss of privacy as the price they have to pay for living in a country that fails to promote and uphold their right to have equal and independent access to information. While no-one else would accept being required to disclose confidential or personal information to others in order to comply with government

requirements, people who are blind or have low vision find it necessary to lower their expectations.

Lack of Access to Information is Widespread

20) Governments are not the only authors of inaccessible information. Many organisations still provide key information only in printed format and require that customers give information in printed format. Vision Australia often hears about clients having difficulty entering into contracts because they are not given information in an accessible format or are unable to complete documentation in standard print. Examples include telephone contracts, rental agreements and applications for personal loans. There is no legislative or regulatory requirement that organisations, such as financial institutions, make their contracts available in accessible formats. The validity of a contract or consent form entered into if the person is unable to read it themselves and complete the documentation is also questionable.

In such situations, a person who is blind or has low vision may have few realistic options. While it is possible to lodge a DDA complaint against an organisation that refuses to provide information in an accessible format, there is never any guarantee that such a complaint will be resolved in the complainant's favour. It also usually takes several months for a complaint to be conciliated, which may be too long if a person is seeking rental accommodation or a home loan.

21) Vision Australia often receives inquiries from clients and health authorities about whether a person who is blind can give their informed consent to medical procedures. While some doctors and hospitals are willing to accept verbal consent, one client told us of an experience she had last year:

"I had waited three months to see a surgeon to discuss a procedure I need on my foot. When I went into his office he handed me a print brochure and said, "I can't go ahead with this appointment until you read this brochure that explains the procedure and outlines the risks". I said that I couldn't read it as it was in print and could he please read it to me. He said that he would not read it and I would have to go back another time after I had found a way to read it. Naturally I didn't go back, and I found a different surgeon, but I wasted three months waiting for the appointment, and in that time the pain I was experiencing in my foot became worse. When I found another surgeon I had to wait another three months. I just don't get why the first surgeon was so unreasonable. Maybe I should have lodged some kind of complaint against him, but I've got other things to do in life and I wasn't in a position to wait a year or so while a complaint was dealt with. I think the Government needs to make sure that I and other blind people get treated equally by the medical profession because we as individuals don't have any power to change the system."

22) Commonwealth laws must provide greater certainty about the validity of contracts entered into by people who are blind or have low vision and mandate the provision of legal documents in an accessible format on request.

23) Without greater legislative or regulatory intervention, the widespread assumption that everyone can read standard print is unlikely to change. We recently became aware of an incident that illustrates the prevalence of this false assumption. Arts Access Australia (AAA, the peak body

in the arts and disability space) was contacted recently by an organisation contracted by the National Disability Insurance Agency (NDIA) to conduct a survey about experiences with the Agency. The CEO of AAA is a person who is blind, as are a number of the other staff. The contractor offered to send a standard print survey to the CEO, and when asked if the survey was available in an accessible format, said that it was not. The contractor then offered to provide print copies for AAA's other staff, who also required a version of the survey in an accessible format. The contractor offered to complete the survey over the phone, but this represented a significant loss of confidentiality and anonymity for those staff who are blind. It is not difficult to design accessible online surveys or to provide them in an accessible hardcopy format.

24) This incident reveals an underlying assumption that staff and management of disability organisations are able to read print. If even the NDIA cannot appreciate the need to provide information in accessible, needs-appropriate, formats, then it is hard to see how individuals and organisations who have no experience of disability will become more aware in the absence of legislative incentives.

Information and the Political Process

25) The lack of access to information that people who are blind or have low vision experience extends far beyond dealings with government and large organisations. Lack of access to information produced by political parties, especially prior to and during election campaigns frustrates many of our clients. Legislation at both a Commonwealth and State and Territory level has led to greater accessibility of the voting process. For example, the iVote system used in NSW provides a suite of accessible voting options for people who are blind or have low vision. However, this legislation has not required political parties to make any of their ancillary information accessible.

26) Thus, it can be difficult for many people who are blind or have low vision to find accurate information about party "how to vote" cards and preferencing arrangements, as well as the various party platforms and policies. Being unable to access information about party preferencing often means that a person who is blind or has low vision votes with little idea of how their preferences will be distributed.

27) Lack of access to information has a significant effect on autonomous and informed decision-making. One of our clients provided the following insight:

"Often when a family member visits to help me fill in forms or go through the mail there isn't much time to read all the fine print and Terms and Conditions, so I often just sign things with only a general idea of what I'm agreeing to. And of course I rely on other people to fill in forms properly – I have no way of knowing if the information is in the right place on the form, and even if we have time to double-check it, I'm still never 100% sure that my intentions have been conveyed."

People who are blind or have low vision often have to make decisions that are informed by the information relayed by family members, friends, and colleagues. Thus, the decision-making process represents substituted decision-making rather than supported decision-making. The real-world consequences of this may not always be extreme, but have the potential to be.

28) There is no certainty for people who are blind or have low vision about their liability in the event that they enter into a legally binding contract or other arrangement on the basis of information mediated to them by others. Conversely, there is no certain protection for a family member or friend who relays incorrect information to a person who is blind or has low vision

29) Much of this uncertainty would be avoided if there were requirements for organisations to make information available in accessible formats.

Information Access and the NDIS

30) The National Disability Insurance Scheme (NDIS) was launched in several trial sites on July 1 2013, and is being introduced incrementally throughout Australia over the next five years. The NDIS represents a paradigm shift in the way disability supports are conceptualised and implemented. For people who are blind or have low vision, the NDIS provides new opportunities to support greater equality and participation in the social, economic and civic life. However, those opportunities will be restricted or lost if equal and independent access to information is not a part of the Scheme's foundation.

31) People who are blind or have low vision must have equal and independent access to information at all stages of their interaction with the NDIS. This includes:

- a. Prior to making an application to become a participant
- b. Making an application
- c. Being notified of outcomes of decisions
- d. Any interaction with an assessor
- e. The process for developing a plan
- f. Making the plan available, and making changes to the plan
- g. The system for lodgement of documentation
- h. The systems used by NDIA staff to administer the NDIS (to make employment with the NDIA feasible for a person who is blind or has low vision)
- i. Provision of all relevant materials by service providers, including both registered providers and mainstream providers.

Conclusion

32) People who are blind or have low vision face significant barriers to exercising their capacity, making independent and informed decisions, and participating in society with equality and dignity. Many of these barriers are the direct result of lack of access to information, despite the ready availability of technologies and tools to make information accessible. The Australian Government must play a leadership role by ensuring that all Commonwealth laws and regulations mandate the provision of information in accessible formats on request. Without such leadership, people who are blind or have low vision remain unable to realise the rights asserted in the UN Convention on the Rights of Persons with Disabilities, and will be compelled to accept a lesser standard of autonomy, independence and privacy than the rest of the community.