

20 January 2014



The Executive Director  
Australian Law Reform Commission

## **Equality, Capacity and Disability in Commonwealth Laws**

Thank you for the opportunity for Touching Base Inc to respond to the issues paper titled *Equality, Capacity and Disability in Commonwealth Laws*.

Touching Base was established in 2001 with the goal of assisting people with disability and sex workers to connect with each other. The Touching Base Committee of Management is led by sex workers and people with disability and is supported by organisations including People with Disability Australia Inc, Cerebral Palsy Alliance (formally The Spastic Centre of NSW), Family Planning NSW, Multiple Sclerosis Limited, and Scarlet Alliance – Australian Sex Workers Association.

Underlying our objectives and activities are the following principles:

People with a disability have an intrinsic right to sexual expression. This right includes having relationships, having sex, and to explore and express their sexuality and achieve intimacy with dignity and privacy, without personal or systemic barriers. Furthermore, necessary personal and systemic supports must be provided for the expression of this right.

The principles adopted by Touching Base strongly parallel the five framing principles embraced by the Australian Law Reform Commission in approaching the inquiry: dignity; equality; autonomy; inclusion and participation; and accountability.

These principles both drive and articulate changing approaches to disability. As your issues paper points out, we have seen the decline of care models where a decision-maker is *substituted* for the person with a disability to models where a person is *supported* or *assisted* in making their own decision. This is an important and positive development, but one in which we still have a very long way to go in practice. Touching Base, with others, is at the vanguard of this path.

It is commonly said that principles matter most when the issues are at their hardest or the environment at its most complex. Access to sexual services for people with a disability can be hard and complex, although mostly, it need not be.

Specific difficulties in practice include:

- Sex can be embarrassing and thus ignored by many carers and clinicians;
- The legal framework for the provision of sex services is inconsistent and often antiquated;

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- Religious and homophobic views – personal and organisational – can cause emotional pain and conflict, often between belief and kindness;
- Privacy can be hard to maintain particularly in relation to family members;
- A greater paternalistic propensity to see “vulnerability” on sex rather than other matters;
- Sexual desire is one of the last human feelings to ‘close down’ as individual mental and physical capacities decline (suggesting it should have the lowest threshold when evaluating legal capacity, rather than the opposite);
- Sex workers have historically been marginalised and continue to have a negative image for some;
- A failure to acknowledge that some people with physical disability simply cannot obtain sexual pleasure on their own (unlike the rest of us), but require the assistance of another;
- Historical perceptions of people with a disability (including those with dementia) as non-sexual;
- Some people assume that a person with a disability is unable to make a decision based on appearance (usually hastily conceived).

These are very practical issues which many members of Touching Base negotiate on an everyday basis. In that sense Touching Base is right at the forefront of some of the difficult issues you need to consider.

We believe it would be worthwhile if a number of the Committee Members were given the opportunity to discuss some of their practical experiences with you. In particular, this would help frame rules and guidance driving the supported and assisted model, thereby limiting substituted decision-making and what might be termed *de facto* substituted decision-making (which can be more insidious). The personal contact can diminish preconceptions and provide valuable nuance.

We thank you for your acknowledgement of Touching Base in the issues paper and the reference to our *Policy and Procedures Guide for Disability Service Providers Supporting Clients to Access Sex Workers*, 2011 (see n373). We would be pleased to provide clarification of any of the content in the guide.

We also wish to formally endorse the submissions of Family Planning NSW and People with Disability Australia (in respect of which we have been shown a late draft).

We look forward to the Discussion Paper, but as suggested would welcome the opportunity to meet with you in the meantime.

Yours sincerely

Saul Isbister - President

Grant Wardell-Johnson

on behalf of the Committee of Management

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