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The Independent Panel examining the 2014 family justice reforms



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Tēnā koutou,

### **IHC submission to the Independent Panel considering the 2014 changes to the family justice system**

IHC welcomes the independent review of the 2014 changes to the family justice system. We wish to draw your attention to issues for people with intellectual disability in the family justice system.

#### *Creating a family justice system that is responsive to people with intellectual disability*

Research<sup>1</sup> in 2014 by the Donald Beasley Institute looked at developing a more responsive legal system for people with intellectual disability in New Zealand and provides insights into the experience of people with intellectual disability in the Family Court.

People with intellectual disabilities, lawyers and judges emphasised the importance of the Court being able to operate in a way that ensured equal recognition before the law<sup>2</sup> and access to justice<sup>3</sup>. Recommendations covered making systems and processes responsive to people with disabilities as well as strategies to ensure lawyers and judges had the skills to communicate effectively with people with intellectual disabilities.

The research found that in order for people with intellectual disabilities to be active participants in the legal issues and processes that involved them they required legal information to be communicated in a way that they could understand. Elimination of unnecessary legal jargon and the reduction of information to key points are two critical ways this could be achieved.

People with intellectual disability particularly valued being able to build a relationship with a lawyer over time. Having lawyers, judges and processes that were capable of understanding the context of their lives and what this meant for quality legal representation and decision-making were also very important.

We urge you to keep people with intellectual disability, the findings of this research, in mind as you develop your report.

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<sup>1</sup> Mirfin-Veitch, B. Diesfeld, K. Gates, S. Henaghan, M. (2014). *Developing a more responsive legal system for people with intellectual disability in New Zealand: Executive Summary*. Dunedin: Donald Beasley Institute

<sup>2</sup> Article 12 United Nations Convention on the Rights of Persons with Disabilities

<sup>3</sup> Article 13 United Nations Convention on the Rights of Persons with Disabilities

*Need for independent support and communication assistance*

To access justice in the Family Court people with intellectual disability, including children and young, may need independent support and communication assistance in addition to legal representatives who understand intellectual disability.

*Parents with intellectual disability*

Parents with intellectual disability are particularly vulnerable to poor outcomes from the family justice system due to assumptions that are commonly made about their ability to parent. These assumptions are made at all stages of the family justice process and are compounded by a lack of practical supports for parenting that can lead to limited options for care agreements and orders.

*Children with disability in the family justice system - assessment of safety*

IHC is aware of cases where safety thresholds children with disabilities differ from their non-disabled peers. The family justice system must be capable of taking into account a child's disability and what that means for their safety, best interests and wellbeing.

*Children with disability in the family justice system - views*

The family justice system must include safeguards to ensure children with disability have their views taken into account in family justice decision-making and that, on an equal basis with their peers, their views as well as their best interests are put before the Court.

Children with disability may require communication assistance and/or a lawyer for child who understands disability and has the communication skills to be able to understand the child's views, including in cases where a child communicates non-verbally.

Thank you for considering this submission. We would be very happy to provide more detailed assistance to the Panel should that be helpful.

Yours sincerely,



Trish Grant

Director of Advocacy, IHC