

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers

Mildura - 16 November 2011

Members

Mr A. Carbines
Ms J. Garrett
Mr C. Newton-Brown

Mr R. Northe
Mrs D. Petrovich

Chair: Mr C. Newton-Brown
Deputy Chair: Ms J. Garrett

Staff

Executive Officer: Dr V. Koops
Research Officer: Ms V. Shivanandan
Administration Officer: Ms H. Ross-Soden

Witness

Ms J. Kennedy, Program Manager, Mildura Court Network.

The CHAIR — Welcome. This is a committee set up by Parliament with members from both Labour and Liberal on the committee and we basically get given references to investigate and report back to Parliament, so this is one of three references that we're working on.

The Deputy Chair is Jane Garrett, who is the member for Brunswick, she's not here today; Anthony Carbines, member for Ivanhoe is here today; and Donna Petrovich, who is the member for Northern Victoria and one of your Upper House members in this region; and Russell Northe, the member for Morwell, he's also on the Committee but unable to be here today. We've been given this inquiry to look at and basically call for submissions and we also come and hold actual committee hearings to hear people talk us through their submissions as well and it gives us the opportunity to ask some questions.

Ms KENNEDY — I wasn't sure whether I needed to put in a submission or whether I could just answer questions and give you a bit of a background on what we do.

The CHAIR — Yes, that would be good. Everything gets recorded and you're protected by parliamentary privilege in proceedings but not outside the proceedings. You will get a transcript of what's recorded today for you to check over, that it's accurate as well. If you could start for the transcript noting your full name and professional address and who you represent.

Ms KENNEDY — Jan Kennedy, I'm the Program Manager of Mildura Court Network.

The CHAIR — And the address there?

Ms KENNEDY — My home address?

The CHAIR — The address there is okay.

Ms KENNEDY — At the courthouse, 56 Deakin Avenue, Mildura.

The CHAIR — Perhaps just give us a general overview of what you do and then talk more specifically about the issue that we're here to talk about.

Ms KENNEDY — I would assume that you are familiar with the Court Network, I don't need to go into detail?

The CHAIR — I used to work as a barrister so I'm aware of it but it might be useful to explain the details of it.

Ms KENNEDY — The Court Network is a not-for-profit organisation with headquarters in Melbourne and it's active in two states, Victoria and Queensland. It was started 31 years ago by Carmel Benjamin and has been going stronger and stronger since then. It's volunteers who actually work in the courts with anyone who needs assistance. Their purpose is to provide support, information and referral, so we take referrals from organisations who contact us and say so-and-so is going to turn up for court, they are very nervous, this is the background to it, and we have someone

there to sit with them all day in the court, in the remote witness room or whatever it is that they need. We are there just to tell them what's going on, we give no legal advice or anything.

I just had one this morning who needed to find a solicitor in town. I could only give him the Yellow Pages and say: there's a room, sit down and find something. So there's no legal advice, everything is very confidential, and of all the organisations we're the only ones that work with everybody. We have witness support and duty lawyers, all this sort of thing, supporting the various parties, but the Court Network works with everybody, completely nonjudgmental and very confidential. The referrals come in and we can refer people out to other organisations and make contact for them, so that's the basis of it.

They're volunteers who actually work in the courts and they have very intensive training to start with and then a three months mentoring in the actual courts they're going to be working in. In Mildura, we work in all of the courts so we have the Coroner's Court, the Magistrates' Court, County Court and Supreme Court and Family Court, we deal with all of those, whereas in Melbourne and I think in Brisbane they tend to specialise in one court area but we cover the field.

We deal with both sides, say in an Intervention Order, but one Networker will not work with the two parties, although it does happen in a small court like this when sometimes there's only one person that's on. We don't necessarily ask them why are they there or anything like that, so we wait until they tell us in most cases, so we may not be aware that we are dealing with both sides.

The people with mental health problems do pose a problem for us because we're not trained in that. Most of us, apart from the initial training and mentoring, there's continuing education throughout the time that you're working and those sessions cover all sorts of things. I think the last one I went to was on people with mental health problems in the jails, so we do deal with them. We tend to get to know them; for some of them the court is a familiar place, it becomes part of their entertainment, part of what they do to fill in their time, and we have a few of those. It's the intervention orders generally, counter intervention orders, back and forth, back and forth.

The CHAIR — You said you're not trained in dealing with people with intellectual disabilities?

Ms KENNEDY — Not really, no. We might have one session on it, that sort of thing, but we're not social workers, the volunteers come from a wide range of backgrounds. Although we do have some social workers, their skills are not necessarily very useful.

The CHAIR — Do you think there's a need for better training for Court Network people?

Ms KENNEDY — I have found it useful myself to attend sessions on dealing with difficult people and things like that, it does help, I find that it helps. The Networkers have the right not to deal with someone they feel very uncomfortable with, so if they feel uncomfortable they will back off and leave it. Quite often if there's something happening in the foyer we are sort of at the frontline but we don't actually deal with

the trouble. We're likely to spot it because we're there so it's our responsibility to let the desk know or the police in the court or whatever to actually handle the situation.

The CHAIR — And if there's somebody who has clearly got an intellectual disability, would a Court Network volunteer deal with it by talking to the desk about this person seems to have an issue that they might need some help with?

Ms KENNEDY — We can do that.

The CHAIR — Or do you phone outside to one of the local agencies to see if you can get someone who has got some specialist training?

Ms KENNEDY — No, we're unlikely to do that, mainly because you wouldn't be able to get someone here in time. If there is a concern then we will talk to the desk and they can then call on someone, or they may know someone within the building who could help. We would be able to refer them onto someone but if it's a very difficult case it's likely to come to us with a referral so it would have some background, but in most cases it's just a matter of sitting with them and supporting them. If it becomes a difficulty, whether there's likely danger involved, then we would hand it over to someone else to deal with.

The CHAIR — In your experience do people who are struggling to understand the system clearly have an intellectual disability, do some of those people end up in the system going through and getting before the court and being dealt with and perhaps not understanding exactly what's going on?

Ms KENNEDY — I think that obviously happens to people the first time through. There are two cases I can think of. One was a lass who had to give evidence who was in the witness box, got through all of that all right, but then when she was told she could leave she stepped down and was just totally confused, didn't know what direction or whatever, and spotted me across the court and flung herself into my arms and sobbed on my chest. That doesn't happen all that often because those people generally have some professional support by the time they get there.

There was another one who had been slashed in the face by three girls and she was the victim and the witness. Because the three girls were Koori, they had barristers from Melbourne and she was just, I thought, battered; I thought it was a terrible situation. I had spoken to her before — the prosecutor had asked me if I'd sit with her — so I went into court with her and they were there to prove that she had forgotten what had happened and she was asked: are you sure you can remember? And they go on and on and on and on and on and then: please answer the question. She just sat there totally serene, listened to them, paused and said: that may be, but I know what I saw. She was able to handle that but when she came out she just went to pieces, and I think that was a situation where she needed support and needed more help, particularly when she went off down the street alone; she had no family support or anything like that. I thought that was one case that was not well handled.

Mrs PETROVICH — Through you, Chair. Obviously she was prosecuting so it was a police prosecutor in the court.

Mrs KENNEDY — Yes.

Mrs PETROVICH — The other people were represented by — —

Mrs KENNEDY — By defence barristers.

Mrs PETROVICH — So there was no official support for her, she was there on her own?

Mrs KENNEDY — No support, she was there on her own, and the prosecutor took it upon himself, I guess, to ask if someone would support her. We hadn't had a referral.

Mrs PETROVICH — Did that last have a mental impairment?

Ms KENNEDY — I think there was something there. She was a middle-aged woman, illiterate, she couldn't read or write, she was living in a boarding house, backpackers' boarding house, which is where the incident happened, and she had no employment, she was on a disability pension. As I said, we are reluctant, or I am reluctant, to probe too much, I try to take in whatever they will tell me. I'm an ex-schoolteacher and you are dealing with people with these problems in the schools so I would say, yes, she did have an impairment. But I thought if I got into trouble I'd love to have her as my witness, she was extremely good.

Mrs PETROVICH — Chairman, if I may. You're obviously frontline, your organisation is in the court, are there many people coming through the court system here in Mildura who have no representation?

Ms KENNEDY — There are a lot of support services in Mildura and most of these people do seem to have contact with them. In another case, she was Koori so of course there were quite a few supports for her, but actually in the court the first time I met her was at the inquest, she was all alone, she had no support, and I didn't quite understand why. She was very frightened, it was her partner's inquest, and his family blamed her and she was just alone there. I've learnt now that she is under a guardianship so there was definitely something there, probably alcohol and drug impairment. She ate half my lunch because she hadn't eaten for two days, so she just didn't seem to have any support when the rest of "her mob" had turned on her. I don't know why she didn't have support from Sunraysia Health or the drug and alcohol people. Obviously she had been through the system but on that occasion for two weeks she had no support.

Mrs PETROVICH — Obviously that's a very sad example but we've actually heard this morning as well that there are people with mental impairment or disability who are leaving the court with little understanding of what has just occurred. Is that your experience?

Mrs KENNEDY — Yes. We try to go out with them and make sure they don't just wander off and you say to them: did you understand what they said? No. That's when we can refer them, contact an organisation and refer them to someone who can follow up on it. Firstly try to find out what it is they don't understand, how much of it they did pick up, but in many cases they're totally blank, they just come out and have no idea of what was said to them. Magistrates are usually very understanding and very gentle and very helpful, but it doesn't get through; the whole atmosphere is one that is

not conducive to their feeling comfortable with it. I think I've gone through all the things that I had.

The CHAIR — What about the interaction with the police, do you observe what happens there?

Ms KENNEDY — Yes. Of course, the police force is a very large organisation so it varies tremendously. Certainly the police who work in the courts a great deal are very good, although there was one day in the court where I spent two and a half hours talking to one chap to stop him being arrested because every time the police went past he shouted insults at them, so it was just a matter of keeping him out of everyone's hair until his case went through because the police were absolutely livid because of the things he said to them. Highly intelligent guy but he had this particular problem. I taught a child who had exactly the same problems and I was able to just listen to him and let him talk. But, as I said, it was the police prosecutor that came out and asked me to help this woman.

If we go to the police they're always very, very helpful and they will take over the situation but, of course, when you get outside that group who are used to working in the courts and that sort of thing then you are going to get different attitudes and it's very hard to sort of put an overall label on it.

Mrs PETROVICH — Obviously as a group of volunteers you're often a great support to these people, but your agency in the court process has no interaction with either those who are representing or prosecuting or defending?

Ms KENNEDY — Not really, no.

Mrs PETROVICH — Obviously you spend a little bit of time with these people and you've just said then you've identified a condition that you recognised from somebody from your past experience. Do you think that all of these wide spectrum of issues are actually being acknowledged and perhaps understood that some of the behaviours are as a result of disability or impairment, and is there any way that we could actually help identify that as part of this process?

Ms KENNEDY — I'm not too sure as to whether it's recognised. I think it is recognised but not necessarily sympathetically. I didn't know whether to mention here but one thing that has concerned me, and it's only happened a few times, where someone who has obviously got a problem has asked if I can get them to see a solicitor or a duty lawyer or someone like that. They're normally on a list so I don't deal with that, but they will come and say: I need to talk to so-and-so. They're in the court. I'll go and speak to them in court and they will say: no, I'm not going to deal with her. You can see they've dealt with them in the past and they haven't been able to do anything so they would rather just not face the situation.

That's only a fairly rare occurrence in those cases, particularly three of the duty lawyers are quite fantastic, they will always deal with anyone regardless of whether they're entitled to help from the duty lawyer or not, so it is a rare occurrence and it's obviously one of those things that, yes, they recognise there is a problem there but they don't have the skills themselves to handle it. Yes, I do believe that the legal

fraternity would benefit themselves from some understanding of what's going on and perhaps things that they could do.

Mrs PETROVICH — Is that additional training to understand or is it actually an acknowledgment and identification issue?

Ms KENNEDY — I think it's fairly obvious that they don't have anything in their training to deal with anything outside the norm. Some, when they're forced to deal with it, do but that's a personal thing rather than a professional understanding. I think maybe there is a need for a formal identification of things and what can be done and who is responsible. Sometimes if I knew to call Mrs so-and-so from the such-and-such organisation, I could do that but it's not something that we can do because it's part of the confidentiality that we don't have that.

One of the things is we deal with them only on the day, if they come back again tomorrow it will be someone else dealing with them, so ours is a very encapsulated support. It seems to work. It means that we don't get involved and in a small town that's important too because you do meet these people in the street and in the supermarket and things like that. I've been hugged quite often in the supermarket.

Mrs PETROVICH — It can slow your shopping down.

Ms KENNEDY — Yes, that's true.

Mr CARBINES — Chair, I was going to ask with the Court Network where you draw your volunteers from, and I assume they must be from a range of different walks of life. Do you find there are many people who get involved in the Court Network who have a background in dealing with people with intellectual disabilities at all?

Ms KENNEDY — Sometimes you do occasionally get the professional who has retired. We have a nurse who has just retired and she's taken up the Court Network area. In many cases it's a personal experience with a member of the family, that sort of thing, and they bring that skill to everyone.

Mr CARBINES — You might have as a teacher in your own involvement.

Ms KENNEDY — Yes, you draw on your own past involvement and because it's limited we can't get too involved with these people. I don't believe I'm skilled to deal with any of the serious cases, so it's just there on the day. With the guy that I talked to, it's sometimes just a matter of sitting with them so that their agitation dies down, or that they know there's someone there and you can go into court with them.

There was one woman who was very agitated — we carry tissues and hand out tissues to them — and the Magistrate got quite cross with me for supporting her because he felt that what she had done was so unpleasant that she didn't deserve any sympathy whatsoever, but that's not my role to decide whether what she did was heinous or anything like that. So I just ignored him, I went out with her, because I was afraid she was going to do something violent, and I think she would have, she was likely to throw things around or smash things, she was very, very agitated, very, very angry and just by having someone there that wasn't judging her, wasn't even really aware of what

her problem was, it kept her calm until she could get through the business and head off. But, again, we don't go outside the court, although sometimes it's tempting.

The CHAIR — Thank you very much for your assistance, it's been very helpful and it's great work the Court Network does.

Ms KENNEDY — I got into it by accident so it's one of those things that I find it very interesting. You do feel you're doing some good, I guess, as I say, with the hugs although it's a no touch. One of our Networkers is very small and someone rushed out and grabbed her and kissed her on the top of the head, so that's the sort of thing that happens. Thank you very much for the opportunity.

The CHAIR — Thank you.

Witness withdrew.