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

Melbourne — 21 February 2012

Members

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Executive Officer: Dr V. Koops
Research Officer: Ms V. Shivanandan

Witnesses

Ms S. Timmins, Policy Officer, Ethnic Communities Council of Victoria;

Mr K. Hitchen, Executive Director, Action on Disability within Ethnic Communities;

Mr A. Maule, Solicitor, Association of Employees with Disability Legal Centre; and

Mr A. Francett, Program Director, and

Ms N. Hantke, Team Leader, Eastern Regional Mental Health Association.

The CHAIR — Welcome, everybody. We are a cross-party committee. For those of you unfamiliar with the way they work, Parliament gives us terms of reference to investigate and we then prepare a report that goes back to the Parliament, and we make recommendations as to changes that would improve the situation that we have been investigating. This is one of three inquiries that we are doing at the moment. Everything gets recorded, and you will get a copy of what you have said and you will have the opportunity to correct that if there are any mistakes. Anything you say and hear is protected by parliamentary privilege, but not anything you say outside the room. Be aware of that.

We are pretty informal here. We have got a copy of your submission. Have you organised how you are going to present it? Will it be one or two of you or all of you talking through it?

Ms TIMMINS — Keith will be presenting.

The CHAIR — For the purpose of the transcript, if we could just run through everybody's names, professional addresses and who you represent and then launch into it.

Ms TIMMINS — I am Susan Timmins. I am a policy officer for the Ethnic Communities Council of Victoria. We are at the Statewide Resources Centre, 150 Palmerston Street, Carlton.

Mr HITCHEN — Keith Hitchen. I am the Executive Director of Action on Disability within Ethnic Communities. I also speak for the Ethnic Communities Council of Victoria — I am an executive member.

Mr MAULE — Alistair Maule. I am a solicitor with the AED Legal Centre, 2 Elizabeth Street, Melbourne. We provide legal services to people with disability.

Mr FRANCETT — Alf Francett. I am a program director of Ermha at 67 Robinson Street, Dandenong.

Ms HANTKE — Nadine Hantke. I am a team leader of a cultural diversity program at Ermha at the same address as Alf.

The CHAIR — With the Ethnic Communities Council of Victoria, is that an umbrella organisation for your organisations? What is the connection there?

Ms TIMMINS — Keith, as he said, is on our executive committee. Our former chair is on the board of Ermha, so we are familiar with their work and we thought they would be suitable to represent here today, and my director is aware of the work of AED.

Mr HITCHEN — To answer your question, they are a body that represents about 100 ethnic organisations.

Ms TIMMINS — We are a statewide peak advocacy body for multicultural communities in Victoria. We have about 200 members from ethno-specific community organisations and multicultural organisations.

The CHAIR — Keith and Susan, your evidence is on behalf of ECCV and the evidence of the others is on behalf of their particular organisations?

Ms TIMMINS — That is correct.

The CHAIR — All right. What have you got to tell us?

Mr HITCHEN — I should begin by acknowledging the traditional owners of the land upon which we are here and their elders past and present. I would like to thank the Law Reform Committee for accepting our submission and this inquiry for giving the ECCV the opportunity to speak at this hearing. As I will state again, the ECCV is the statewide peak advocacy body for culturally diverse communities in Victoria. We made our submission in order to ensure that the experience of culturally and linguistically diverse Victorians is taken into consideration. I will use the term 'CALD' to represent this group of people for this report.

The report is based on a review of available literature as well as stakeholder consultation, so you are aware of that. To be clear, today we seek to speak for all CALD Victorians as well as stakeholders.

When we talk about those from CALD groups that have an intellectual disability we are potentially dealing with a sizeable group of Victorians. This becomes clear when we consider that approximately 44 per cent of

Victorians were either born overseas or have a parent who was born overseas and that more than 230-odd languages are spoken and 120 religious faiths are observed throughout this state.

People from CALD communities who have a disability fall victim to multiple layers of discrimination — that is to say, discrimination that is based on their ethnic or cultural background as well as their disability. In light of this we believe that people with intellectual disabilities who are from CALD communities require particular and additional measures of support when accessing and interacting with the justice system. Many, especially those from new and emerging communities, have described Australian legal and justice systems as complex, confusing and overwhelming. On research and consultation, many people from CALD communities have struggled to locate and to understand legal information and advice in community languages. Many are unsure regarding their legal rights and responsibilities. Naturally this lack of information and understanding affects those within CALD communities if they have an intellectual disability, and it also affects those families and carers.

Today we would like to expand on some of our key recommendations as they relate to community education, language services, relationships with police, accessibility of services, cultural responsiveness and court processes that people from CALD backgrounds have to deal with.

Let us have a look at community education. We recommend that the Victorian Department of Justice develop a CALD-specific community education campaign to highlight the legal rights of those with intellectual disabilities. To this end we recommend liaising with local ethnic community organisations, migrant resource centres and state peak bodies to ensure that the information is well targeted, accessible and widely promoted.

The co-location of community legal centres and migrant resources has been identified as an effective strategy for enhancing community knowledge regarding matters of justice, and this is something we would encourage.

We advocate for the provision of more and better rights-based information to those arriving in Australia. We feel that this information needs to better highlight the specific rights and services available to those with an intellectual disability. It is our hope that the wide circulation and promotion of such rights information may go some way to overcoming the culture-specific stigma and prejudice that can surround intellectual disabilities in certain communities.

I will speak a little about stigma. There is an issue that arises from certain cultures wherein people with intellectual or physical disabilities or mental health issues are seen in a variety of different ways, particularly with the cultures, but there is a stigma attached to having a person in the family with an intellectual or physical disability, and a lot of cultures tend to hide it away and not tap into the services as much as they could; and I will bring that point up a bit later.

It is also hoped that a wide circulation of information about rights may go some way to overcoming the culture of the specific stigma I have talked about. Stigma can result in the reluctance to seek disability-related advice and support, as I was saying with stigma, all of which serves to further marginalise CALD individuals who have an intellectual disability.

Language barriers present a major challenge for CALD community members seeking information about their rights and interacting with the justice system. We recommend that at all points of interaction with the justice system those from CALD communities be supported in their rights to have an interpreter and to have accessible information.

We need to ensure also that those who work in the justice system are trained to effectively make use of professional interpreting services, and ECCV fully supports positive training in the justice system.

We also recommend that those working as an independent third person undergo training in this regard. For any matters of justice it is essential that we do all we can to ensure that all voices are heard and understood. It is also important that interpreters and clients be made fully aware of confidentiality requirements, as they are pertinent to interpreters, because one of the issues that arise in core groups — and I will just make this fairly quick — is that in CALD communities a number of them are fairly tightly knit and when they use interpreters in the service, if they are part of that community, the issue that arises is that they are scared that whatever they say will be translated into that CALD community through the friendships and knowing each other. So it is very important to try to always make people aware that interpreters hold information confidentially, but also the interpreters need to be trained to the point where they hold information under confidentiality agreements.

This is important because what happens is that when you have a small ethnic community that does not have fully trained interpreters, they will use people ad hoc who can talk the language, and then it starts to get spread out, and when they are talking about people with intellectual disabilities and people with physical or mental health issues, the stigma attached behind that affects the way the relationship happens.

This sort of process in the CALD group causes anxiety, and we can all imagine that it is not easy to disclose sensitive information to a person who you most likely are going to meet within your community. Many also fear that when they disclose information to some local, they risk such information being circulated around the local community, not just in their own community, and all measures should be taken to ensure that interpreters are not sourced from within the local community and that the clients are better assured of their privacy in that process. That is what we are really pushing for.

In a broad sense there is a matter of trust and confidence — two words that seem to come up time and again while we worked on our submission, and I will say those words again: trust and confidence. It has also become evident to us that a lot of work remains to be done on behalf of both the Victorian justice system and the CALD communities in order that the trust in the system may be enhanced and sustained.

With relationships with the police, for instance, recent researchers have observed a lack in trust between members of the police force and members of particular CALD groups. For those in the CALD communities, mistrusting police — and for that matter government services — can be the result of experience of authoritarian regimes from their own culture, compromised rules of law and corruption in the country of origin. I will give you a quick example of one of our clients. An African client was driving and was stopped by police. His culture is that you do not physically look at people of authority — it is a tribal culture — and so he kept looking away, down at the bottom of his car, and the police automatically thought that he was hiding something. They took him out of the car and searched for an hour. He was not hiding anything or doing anything like that. They went through a whole process of searching for an hour. Because of the way he reacted on a cultural basis, it caused a bit of an issue between the police and himself. There were no charges laid or anything like that, but it would have saved time for the police and for himself. At the end of the whole conversation he came back and said — and this is in hand — that they had told him that they were sure that he was hiding something and that they were going to check him out all the time and hassle him. That was his impression of it. There are things that could be taught within the police process of professional development about certain cultures and certain things that happen and that they need to look at those. Police may not be aware of all these complexities or be able to understand and react to certain behaviours. That was the reason why I mentioned that. This can cause confusion and negative interactions.

Many of the CALD community lack trust due to experience of being overpoliced and racially targeted. Many claim to have experienced aggression from police. Those concerns are most commonly voiced by young people in new and emerging communities. Lacking confidence can result in the underreporting of crime and a reluctance to engage with police and support services.

The CHAIR — Keith, can I interrupt for just a moment to let you know that we have until 20 past 10, just so that you are aware of the timing in terms of who wants to say what. About how long does everybody else have to present?

Mr MAULE — Five minutes.

Mr FRANCETT — Yes, 5 minutes — I will keep it really short.

Ms HANTKE — The same.

Mr HITCHEN — I will just finish off in a few seconds, then. Such community perceptions affect those with intellectual disability as well as families and carers. We wish to highlight the importance of a multicultural advisory unit in Victoria Police. We are aware that there is a liaison unit as a trust-building mechanism. Due to the positive feedback we have received from some of the CALD community and constituents, we recommend that the Victorian government provide the resources necessary to continue the projects associated with the unit.

That said, we need also to consider and investigate the issues that are emerging around some of the community policing activities to see how these may be best addressed. These include police control over community policing projects, cultural stereotyping, increased concentration on or overpolicing of young people, lack of knowledge of power imbalances between police and young people, and the misconception that individual officers can create cultural change within such a large organisation.

From there, I think I might just give others the opportunity to talk, and I may come back if there is time.

Mr MAULE — Thanks very much. I might just say what work we do and talk about some experiences in connection with that. The AED legal service provides legal services for people with disability, usually in the discrimination field in the areas of employment and education. A good number of those people are intellectually disabled. Our experience of that is that the person arrives — particularly, of course, if they also have a language problem — and all they know in reality is that they feel they have been unfairly treated in whatever way it might be, but they find it very difficult to articulate that. That is what we try to do on their behalf — basically get to the heart of what it is that they are saying. That can be a very time-consuming operation because of a disability and/or a language difficulty, if that happens to be the case. We then try to explain to them, in legal terms, what may be possible or not, and take the matter through from there.

Often we can negotiate some sort of settlement for them — with the employer usually, or the school — and that is the best resolution that can be achieved normally, because it is then consensual. The client is usually happy with that. Often we enable people with a disability to get their job back, for example, despite strong opposition to that, often, from the employer. They come around to understand where it is they may have fallen down, and we can help guide them through the system and achieve a good outcome.

The CHAIR — Alistair, can I just clarify: are you referring particularly to people with intellectual disabilities, or generally?

Mr MAULE — I am trying to confine it to that. But that is general; that would in fact apply across the board.

The CHAIR — Given our terms of reference, could everybody try to focus their evidence on intellectual disability? That is all we are able to consider.

Mr MAULE — Yes. More often than not these people have had difficulties with a supported employer. Obviously supported employers are there to help, so often it is sad that we have to take them on. But no organisation is perfect, and they can fall down. We help them to understand where that may have occurred, or not. It is sometimes the case that we will run the full distance. I think that the difficulty is that we have a very large case load — an ever increasing case load — and the legal resources available at the present time are very limited. There is our organisation, and there is a disability advocacy service as well. There are two of us, basically, to deal with all the people in Victoria, and that places a big workload on us.

As I say, with intellectually disabled people it is a very lengthy process to try to get to the heart of the matter, to get them to understand and then to implement the process. What I am stressing is resources, particularly in manpower terms — of lawyers and paralegals — who can assist in the process. That is a question of funding. I suppose if that can be assisted in any way, I think that would be a tremendous thing for disabled people, in particular intellectually disabled people.

The CHAIR — Thank you.

Mr FRANCETT — I will just be talking about disability purely and about my experiences over 20 years. Basically what I want to talk about is that it is well known that people with a disability — and I am going to be really quite precise here — are actually being denied basic rights. In particular, if someone has an intellectual disability and is trying to access psychiatric services, it is known within the Department of Human Services and the people who work in DHS — case managers in disability services in DHS — that they find it really difficult, or if someone is being diagnosed with a disability, it is used as an exclusion criterion when trying to access psych services. As soon as someone has a disability, they say, ‘No, it is a disability issue’ and that they cannot help.

The CHAIR — So are you saying that the people diagnosed with an intellectual disability have trouble accessing psych services?

Mr FRANCETT — Not just trouble — they are basically denied access. Someone has to be really out there for them to access psychiatric services. I mean really extreme behaviour where it is impacting the community so much and the police are called in so much — that is when they get assistance from psychiatric services. Like I said, it is common knowledge within the department also, so if you talk to anyone in the department who works in disability, they will tell you how difficult it is to have their client group access psych services. It is the same with drugs and alcohol. I understand that psych services are under pressure, but they use drugs and alcohol and in particular disability claims as exclusion criteria. As soon as they hear that, they say, ‘No, you have to go back to disability services’.

The ripple-down effect is significant. Because their behaviour becomes quite unpredictable, they come to face the law and are in front of the justice system when they did not need to be there. It is just a ripple-down effect, and it is basic human rights that they are being denied. I think this to-ing and fro-ing is well known and needs to be addressed. If people are of different colour or are exhibiting psychosis or whatever, they should be able to be treated just like anybody regardless of whether they have an intellectual disability.

On top of that, talking about exclusion, when they will engage in some discussion — sometimes you cannot even get to a discussion point — and someone with a disability tries to explain or tries to ask questions, the person with an intellectual disability, depending on if their IQ is quite low, cannot articulate exactly what is happening for them. Psych services will say, ‘No, there is nothing wrong with the person’ because they cannot articulate it, but when they go back into the community they are really hyperactive, they are paranoid, they think someone is watching or they are giggling, which is not their normal presentation, but they cannot articulate that because of their disability. When someone tries to come in to actually explain that, they get dismissed because they did not hear it from the actual person.

There is something quite wrong when basic human rights are denied because someone has a disability. Like I said, all you have to do is talk to people who work in disability within DHS. They will explain that that is not uncommon.

The CHAIR — What about access to the justice system?

Mr FRANCETT — It all depends. Because they cannot articulate it — because of their disability — what you find is that they are constantly just bouncing around. That is the challenge. They withdraw and do not actually say anything, because they are quite overwhelmed and also frightened. That has been my experience.

Ms GARRETT — Just a question for everyone who has spoken: in terms of when you find clients or people with an intellectual disability butting up against any part of the justice system, be it civil or criminal, is it usual that there is a family member there? How does an independent third-party process work? Is that working effectively when there are these issues about articulation, et cetera? How could that be improved, or what are the gaps?

Mr HITCHEN — To answer that question from a CALD perspective, no, it does not necessarily mean there is a family member there. Normally either it is a service and an interpreter or just a service, from our experience. Family members would attend if they are younger, but once a person with an intellectual disability is — we deal with a lot of the older group, and the parents are in their 70s and 80s. To physically get around and do a whole lot of other things is just impossible for some of them, even though they are carers.

Ms GARRETT — But as a matter of course, is a service worker there as an interpreter? They get that?

Mr FRANCETT — They get all the services from the police.

Ms GARRETT — So the police will organise all of that, recognise it as a disability and — —

Mr FRANCETT — Yes. From my experience the police actually do respond and — I am talking about disability — they will have an advocate there. That would be my experience.

Mr HITCHEN — Not all our experiences are the same as that but, you know — —

Mrs PETROVICH — Thank you very much. This is a really interesting point, and we have heard it in other areas and at some of the regional hearings, around misunderstandings and issues for justice in relation to people who have disabilities but there is not evidence or a diagnosis of that additional aspect of mental illness. How can we, as a community, better identify that for the police, DHS and the court system? Is there a way that you could suggest that would assist in firstly getting those people diagnosed, but then also giving them something that would assist in people understanding their condition a little better?

Mr FRANCETT — I do not want to point the finger here, but there needs to be a willingness within psychiatric services that they are prepared to actually engage. If we cannot get them to engage, it becomes really difficult because what happens when someone has been left untreated is that it is like any treatment: if you leave it untreated, then they say, 'Hang on, there is a problem here. Let's treat it now', and a couple of years have gone by and the treatment becomes a lot more difficult and sometimes it does not have any effect at all, and some persons might pass away.

It is the same with a mental illness. If someone is left untreated over a year or two, once it has finally been acknowledged, and the person has been living without any treatment, for them to respond to treatment, it becomes even more difficult and the impairment actually becomes more chronic, and that is what happens when someone is left untreated and then they are bouncing within the justice system. My experience also is that sometimes when people enter the forensic system is when they got properly diagnosed; which in itself is criminal also. That is when they come out being case managed and they get support given to them. That is not unfamiliar, and that is a real tragedy.

Mr HITCHEN — Can I just say the way our system is set up in this state is that mental health issues and intellectual disabilities are separated, and if you get funded under one of those services, that is all you can provide, so it makes it very difficult for services to provide an alternative to people, for instance, with intellectual disabilities if you fund it under a mental health system because it does not count, does not do anything, and it is not acknowledged at a departmental level or higher. So that becomes an issue. I am not saying it should or should not be, but that is really what it is from a service point of view.

Mr FRANCETT — That is an important point. When drug, alcohol and mental health amalgamated and you had one director in the Department of Health overseeing both services, that is when drug and alcohol became more aligned with mental health, and I think when disability is also within the Department of Health — with one director overseeing both services — you might get a more integrated response in the community.

Mr HITCHEN — The other issue is that if a person has a dual disability — a mental health issue as well as an intellectual disability — it is very hard to diagnose, and the services will bounce the person across both sides because it is a question of: am I funded for this bit or aren't I? So it becomes an issue within a service level and how to deal with that at a funding level, so there is a financial cost to it.

Ms HANTKE — Just quickly on that, I feel I represent more of the grassroots level here on this table because we deal with cases on a daily basis basically, and on the same topic, even if there is a suspicion or diagnosis that has been organised for disability or intellectual disability, the wait lists are horrific. Even if we refer someone who has a mental illness and an intellectual disability as well, they might be on waitlists for up to five years with the DHS, so obviously that is an issue too.

I guess I am here really to elaborate a bit more on Keith's points, basically more from practical cases. We work mainly with newly arrived community members. Lots of them do not necessarily have a diagnosis of intellectual disability. It also comes from the nature of being in the country for only half a year or one year, so they really have not yet gone through the whole process. We refer a lot of people for neuropsychological assessments and so on to get all this going. However, what we face with many clients are issues around memory, concentration and being confused very quickly. Obviously they have issues from not only previous torture and trauma experiences but also the migration itself as well as mental illness, which impacts on their ability to understand quickly what is going on around them.

The worst comes when they get into the justice system. To be honest with you, I have been in Australia for seven years, and sometimes I still struggle to understand what is happening in the courts and what the proceedings are, why I am here, how long we have to wait and when I see a lawyer. There are a lot of problems for people who have no English skills at all, and obviously I am more fluent.

There is an absolute lack of signage and picture-based explanations. There is also an absolute lack of freely available interpreters. Usually these people need an advocate with them to help them to navigate through the system. We do not usually have these advocates available. They might be available for someone who has a very low IQ, because that is how the system responds, but for someone with, let us say, just a very mild intellectual disability or some cognitive or memory issues accessing the legal system, they do not have someone available to support them straightaway; I have not seen that. What they get is the duty lawyer, and usually they are quite rushed. They are just available for a few minutes or an hour or so, and then there is no follow-up. The person gets left back out of the system again.

There was another really massive issue that we faced a few months ago. I do not know if I misunderstand the system, but a client was referred to a lawyer, they applied for legal aid funding and no funding was provided for interpreters. I could not understand how this could have worked. Ermha stepped in and supplied the interpreter because we supported him on the mental health side of things. I do not know how he would have communicated with that lawyer otherwise.

These are really core and substantial issues in the system, whereby we deal with people who may understand no English at all or even the information they are provided with, because these days we work in Dandenong and in all those culturally diverse communities. There are many communities that do not read, so even handing over translated brochures does not always give the full range of information. These people usually walk out of a process with about one-third of the information that I estimate we get on a day-to-day basis. We read things and we hear things, but that is not happening.

In addition, it is even more confusing. We deal with a lot of Afghani families, for example, or families from Iran or Iraq where suddenly rights and responsibilities are very different in Australia to how they were back home. Usually they are not informed enough from the start. I think practical changes could be made. For example, we had a case recently where an incident occurred involving family violence. The husband was taken to the police station. He did not have enough time to be informed by an interpreter about what his options were, what it meant and where to from there. He admitted to crimes and received an AVO, and he was not able to see his children for the next half a year. Also, his wife did not really know what she was doing. They are trying to exercise their rights, but there is no follow-up for them. There is no explanation about what an AVO is. She rang him a week later to say, ‘Can you look after the kids, please?’. The kids were fully under an AVO and could have no contact with him. It is very confusing. It needs much more support which should not need to be asked for. None of our clients go to the reception at court and say, ‘Can I please have an interpreter?’. They are intimidated and frightened, and they do not speak up. Therefore, I think we need to provide them with the right supports.

The CHAIR — We only have a minute or so. Does anyone have any further questions?

Ms TIMMINS — Could I make a comment, Chair, as part of the ECCV, to focus on that CALD element and about what Nadine has had to say? A lot of this comes back to lacking knowledge of rights and support services and lacking engagement in support services. This is quite common in CALD communities, as they are very underrepresented in terms of their engagement with government support services across the board. This comes back again to the trust and confidence issues that Keith has spoken about. There are also issues such as the language barriers and lacking awareness of available services and support structures.

Culturally specific stigma is often a deterrent to seeking support. Lacking trust in government services at times results from experiences in their country of origin of non-responsive services. There is also the lack of any comparable service in the country of origin, which I think Nadine spoke to as well.

Over the top of all of this is a common concern that cultural requirements and sensitivities will not be appreciated or respected by service providers and by, for instance, the legal system. I am aware that this inquiry is related to the justice system in particular and not to, say, DHS, where a lot of people from CALD backgrounds with disabilities are not engaged with disability services. When people with intellectual disabilities come into contact with the justice system, they come into contact with that interface between these two services — disability services and the justice system.

Cultural responsiveness is a very big issue. In terms of what that means, it is actually quite difficult to answer because we are talking about diversity; there is no one-size-fits-all approach, and this is the reason ECCV advocates very strongly for partnerships between government services and local ethno-specific community organisations that have that trust with their constituents and that are in many cases the first point of call for people from CALD communities seeking information and advice.

Very recently at the ECCV we conducted a focus group on access and equity issues, and most of the people in that focus group — in fact all of them, and they represented new and emerging communities, ageing communities, international students — said that they do not go necessarily to government service websites for information. They go to their local community organisation, because this information is not accessible to them. For instance, I have been to the Department of Justice's website, and there are translated materials, which is great and we welcome that, but these are quite complex materials.

There is also a difference between availability and accessibility in terms of: do the community members know that information is available and do they know where to go for it? In most cases the answer to that question is no, so they will go to their local ethno-specific organisation, and it is these organisations that are increasingly strained by this demand on their resources. These partnerships between government services and community organisations and the resourcing of community organisations to better cope with this demand on their time and resources is very much called for.

The CHAIR — Thank you very much, everybody.

Mr HITCHEN — Could I add one more little thing, if you have got half a second?

The CHAIR — Yes.

Mr HITCHEN — I am fully in support of the multiculturalism liaison officers' role within the police. I think there are about five in Victoria. I am not aware of an intellectual disability officers group. If there is not, it would be good if that was encouraged; if there is, I think that they need to get out a bit more and advertise themselves, because the concept is right. The training that goes with it would be great. I just wanted to add that.

The CHAIR — Thank you very much everyone.

Witnesses withdrew.