

# 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**

Geelong — 20 March 2012

#### Members

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#### Witness

Mr R. Coverdale, Director, Centre for Rural Regional Law and Justice, Deakin University.

**The CHAIR** — Thanks very much for coming, Richard. The Law Reform Committee is a cross-party committee set up by Parliament. We investigate terms of reference which are given to us by Parliament and report back on what we found. Then what we recommend may or may not be picked up in the form of new legislation. The process is that we will ask you to talk through your report. You do not need to read it word for word; just highlight the issues which you think are relevant to our terms of reference and we will ask questions as they arise. Everything is recorded; you will get a transcript of the proceedings and will be able to make corrections if they are needed. You are covered by parliamentary privilege in this room, but not outside. Just be aware of that in case there is any external media interested in what you have got to say. If you could start for the purposes of the transcript with your name, professional address and who you represent.

**Mr COVERDALE** — My name is Richard Coverdale, I am the Director of the Centre for Rural Regional Law and Justice at Deakin University, Waurn Ponds, Geelong.

**The CHAIR** — So what would you like to tell us?

**Mr COVERDALE** — I did actually have a prepared presentation but, as you suggest, I will just try to go through a few of the points. The first thing I will do is to say just briefly what the Centre does and is. The Centre has a mission essentially to enhance access to improved justice systems and services for rural and regional Victorians through research, education and engagement. The particular research report that I will be referring to is a report that I produced in 2011, the middle of last year, of which I also presented some findings to the Rural and Regional Committee's inquiry, which I think Russell was heading. So some of this might sound familiar — sorry about that! Just as further background, my interest in this area certainly relates to my work within the Centre and that particular research project, *Postcode Justice — Rural and Regional Disadvantage in the Administration of the Law*, but it also stems from my work several years ago in establishing and managing Villamanta Legal Service, which is a statewide disability legal service. I cannot quite remember when it was that we established it; I think it was probably around 1995. The focus of the centre was on intellectual disability, so I am familiar in broad terms with the issues though I have been out of that field for a number of years now.

Just to provide you with some background to the Postcode Justice research report, it was undertaken through funding from the Victoria Law Foundation. It was based on 62 interviews and 117 surveys of human service organisations and law firms across regional Victoria. The objective of the research was to determine if regional communities were disadvantaged when participating in the justice system compared with their metropolitan counterparts. The findings of the research were strongly in the affirmative.

**The CHAIR** — Just to focus your contributions, our terms of reference cannot extend beyond the brief that we have been given, which is basically access to justice for mentally disabled people, so if you could focus your contributions on that, that would be great.

**Mr COVERDALE** — Sure. I suppose the critical thing I have to say is that the issues that arose from the Postcode Justice report impact on regional Victorians generally but also specifically on people with a disability. The comments I make all have that broad impact and that specific impact as well. The comments will be focused on largely the Magistrates Court. While the Postcode Justice research covers a whole range of areas from courts to the delivery of legal information and advice, effective law reform activities and a range of other matters, I will just focus on the Magistrates Court here.

Just as a starting point, physical access to courts is an issue broadly and obviously specifically relevant to people with an intellectual disability. In 1880 there were 235 court locations in Victoria. We went to 65 court locations in 2000 and we now have 54 court locations. That is a fairly simplistic example of access issues, but nevertheless, if we are talking about access to courts for people with an intellectual disability, they are faced with a lot fewer courts and a lot fewer locations. For people in regional and more remote areas of Victoria it is a lot harder to get to those services, and not all of those 54 courts are available each weekday; some of them might only be available for one day a fortnight or whatever. That has a significant impact for people, particularly if you align that with basic issues that regional Victorians have with public transport — the limited public transport system.

People with an intellectual disability are more likely to be on statutory incomes or low incomes and negotiating public transport adds an additional dimension. That could be in trying to get to courts in regional areas. It might be also in relation to complying with court orders: they live in a smaller community and have to go to a larger

regional centre for correctional services. The difficulties in going to those areas usually has an impact on the rest of the family and carers when they need to be assisted in going to the courts. That might be for long, frequent hearings, or to fulfil court orders. Driving them to the correctional services that might exist in a larger regional centre also is an issue, for example, going to courts in Melbourne and/or receiving forensic psychologist assessments. That is an example that is raised quite frequently through the Postcode Justice report.

In terms of court amenities, unfortunately the reduction in the number of courts has not been reflected in more effective, more efficient court facilities. For many satellite courts and those courts that are outside the headquarter courts in regional areas, the 40 or so smaller regional courts, in many cases there are significant issues in terms of the court amenities. They relate to the physical space. Again, specifically raised in the Postcode Justice research were instances of people with a disability negotiating with their solicitor or the duty lawyer, or whoever might be dealing with support service organisations, within a foyer of a small local court or out on the street. Most of the smaller local courts are located in the main street. That sort of environment makes it difficult for most people, but for a person with an intellectual disability who is trying to deal with the range of things that might be occurring within that setting it is particularly traumatising. It impacts on their ability to give evidence in matters where there are, for example, domestic violence issues.

Many, in fact most, of the satellite courts do not have security measures and do not have security staff. It was cited a number of times to me that in those instances people felt very intimidated in terms of going to those courts. Clearly it would have an impact on their ability to give evidence and in fact the likelihood of taking a matter to court if they knew that the other party was within a few feet of them within a small local Magistrates Court.

There are still a very limited number of videoconferencing facilities within the smaller regional courts, which has an impact on the ability to have remote witnesses presenting or indeed on the use of the services of specialist courts and court programs that might exist in the larger regional courts and in the metropolitan courts. In terms of court programs and specialist courts, many of them have a direct impact on people with an intellectual disability. There are court programs and court services that are provided in a number of larger regional centres and in metropolitan areas which are not available in the smaller centres. Eighty per cent of the regional human service organisations interviewed and 54 per cent of the regional lawyers interviewed for the Postcode Justice research indicated that there was limited local access to court programs compared with metropolitan Melbourne; 88 per cent of human service organisations and 63 per cent of regional lawyers indicated their clients were disadvantaged by a lack of specialist courts in regional Victoria.

I guess the broad problem is that while the whole therapeutic jurisprudence model or problem-solving court model is being developed and implemented and should be applauded, that model relies on services being available in all courts. Where they do not exist, there is clearly disadvantage for those communities that do not have those specialist courts and specialist programs. I understand that there has recently been a review of that and the courts are looking to roll out programs on the basis of consultations that took place over 2010 and 2011, but there is no public information available on the outcomes of those consultations and no public information on the court framework program which has been developed on the basis of those consultations.

The other fundamental problem is that there is no budget set against the program or a time frame to roll out those court programs to regional areas. So it is very difficult to assess with any certainty whether that is going to adequately respond to the sorts of issues that exist.

In terms of court programs, I have listed a number of examples in the Postcode Justice report. As I say, many of those do have relevance to people with an intellectual disability, particularly programs like the ARC program, the Assessment and Referral Court list, which is a specialist court list to meet the case management needs of accused persons who have a mental illness or a cognitive impairment. That is only available at the Melbourne Magistrates Court. The Enforcement Review Program, which was actually raised by a number of people in the Postcode Justice report, is a specialist list for people with a mental impairment or intellectual disability dealing with outstanding fines. Those amounts can be significant for those people, particularly again when they are on a statutory income. The Enforcement Review Program is only available at the Infringements Court in Melbourne. So where people do want to use that service, they have to negotiate public transport to get there, often from fairly significant distances, and part of the reason they have outstanding fines is because they do not necessarily have the funds to manage paying those fines.

Other generic specialist programs like the Family Violence Division have an impact on people with an intellectual disability. In fact the program itself says that it specialises its services for disadvantaged groups, however it is only available in Heidelberg and Ballarat. The sexual assault list, which unfortunately is a significant issue, particularly for women with an intellectual disability, is only available at the Melbourne Magistrates Court and the larger regional courts. I do not know how that impacts on the small courts. There are also a number of court programs like CISP, specialist family violence services, the Criminal Justice Diversion Program and CREDIT/Bail, which are only available in a limited number of regional areas. There is a particular program that has achieved a lot of success, as I found from my consultations with the courts and with services in regional areas, which is the Mental Health Court Liaison Service. That has had particular benefits in regional centres where it is available. There are half-time positions in larger regional centres, and there are full-time positions in metropolitan Melbourne. With half-time positions, obviously it is difficult for those liaison officers to actually access the smaller courts when they are effectively half-time. This program is specifically for people with a mental illness. It would be very useful to have a similar program for people with an intellectual disability.

A final comment is in relation to the general provision of services for people with an intellectual disability in regional areas, and how that impacts on justice system services. Again the therapeutic jurisprudence model very much relies on the notion that there are services and programs to support people in regional areas that they can be referred to as part of that problem-solving approach. Unfortunately there continues to be a significant limitation on the availability of those services or the extent to which those services can provide a service to people using the courts. I will stop there and happily respond to any queries or comments.

**Mr NORTHE** — Thank you, Richard, and good to see you again. We finally got you back again. Without putting words in your mouth, obviously in an ideal world it would be great to have an extension of the programs and services that are currently offered in a limited number of courts and precincts. In your words, would you be able to articulate to the Committee where the need is and where those particular gaps are? Are there more than others with specific programs in specific regions that you can identify?

**Mr COVERDALE** — In terms of intellectual disabilities specifically, I cannot. I can indicate areas that I think would particularly benefit people with an intellectual disability, but part of the problem is that there has not really been any research that actually specifically looks at the needs of people with intellectual disabilities in terms of justice system services in regional areas.

**Mr NORTHE** — That is the point that I am currently angling for. My subsequent question was going to be: if you are not, are you aware of any work that has been undertaken?

**Mr COVERDALE** — No, not in Victoria, and I think that is badly needed. One of the points I would make is that I recognise that it is unlikely that we will get to the point where we will have equivalent services programs both in the communities and through the courts in all of the regional centres as would exist in metropolitan Melbourne and probably the larger regional centres. However, what we need to do is to overtly acknowledge that and then look at the consequences, and knowing the limitations look at ways in which that can be responded to. That requires a degree of flexibility, but it also requires a degree of ongoing monitoring so that we are aware of how these things might actually be impacting on people with intellectual disabilities where these services and programs do not exist. I guess the important points are acknowledging and responding in flexible ways where they can occur, and continued monitoring, rather than allowing those issues to develop so far that the inequities are so outrageous that it is then up to the media or someone else to actually publicly raise those issues.

Part of the problem is that it is a fairly disparate group. There is no organisation responsible for reviewing what is happening for people with intellectual disabilities within the court system. As I say, I will just talk specifically about the Magistrates Court and a bit about the infringements court, but there are a range of issues in terms of police dealings with people with an intellectual disability, which really need to be independently assessed and reviewed, through to court outcomes in terms of sentencing and so forth, which we do not have a lot of detailed information on, and it is fairly dated and still fairly ad hoc information in terms of the presence of people with intellectual disabilities within the criminal justice system. We need to be far more accurate in understanding that before we can effectively impose ways of better managing that system. That is a long way of saying, ‘Sorry, I cannot give you any definitive answers’.

**Ms GARRETT** — Just regarding independent third persons who can assist people with intellectual disabilities, we have had a lot of evidence over the last weeks about how important that is in navigating ways that you are butting up against the justice system. Do you feel that is a major issue in rural and regional Victoria?

**Mr COVERDALE** — Again, it is only anecdotal. I was an independent third person years ago, and even managing a centre focused on people with an intellectual disability was a challenge. It was only on three occasions when I actually acted as a third person. It is a challenge to maintain an independence, it is a challenge to understand the limitations of understanding of the person who is being interviewed by the police, and for someone who is stepping into that role with, I guess, limited training it is a challenge. But in terms of the program, I think it is an important program. I think people probably need to have more focused training for that role. If it is anything like it was when I was doing it, which was probably about eight years ago or more, there probably needs to be some vetting as to who appropriately fits that role, because they can be very important roles depending on the sort of case that is being dealt with. Again, I am not sure to what extent there has been independent reviews of that independent third person program. Given its significance in a person with an intellectual disability's introduction to the justice system and how that might result, it is a fairly key role.

**Ms GARRETT** — Just on that, if I may, Chair, some of the other issues that have been raised, not surprisingly, are training for police et cetera, and the legal profession, but training for police appears central with particularly some of the submissions that have been made by disability advocates. We had some evidence from a woman who was both working in disability advocacy and also the mother of someone with a major intellectual disability and other issues. Her experience seemed to be that some police were very, very good and where you knew the police there was an ability to work through some of the issues and understand the particular issues facing the individual. Do you find that perhaps even in some of the smaller communities that happens, because it is a bit more tight-knit and they know the individuals? Is that going on?

**Mr COVERDALE** — Yes, it works both ways. It comes down to the individual police officer to a limited extent. The police officer may well know the person, may well know the sorts of services and supports that are available in that local community and may be a terrific help in terms of determining how best to manage. On the other hand, they may be prejudiced and have a limited view of their role and assistance. They may be limited in their knowledge of both the police role and the sorts of services that might exist. It reminds me of one instance, and this was about a girl who did not have an intellectual disability but was sexually assaulted when she was 15. I should say that this was prior to the courts speeding up the response to the sexual assault issues. She was interviewed, and at the time was not effectively interviewed by the police. They did not include video evidence and the matter was held off for quite some time — I think she was 18 when the matter finally went to court. Between 15 and 18 her vulnerability and appearance and so forth had changed, and in terms of an understanding of her position at the time and that vulnerability, that was lost because they had not videoed the evidence, as was required by the standing orders at the time. That is just an example. But there seem to be instances with police where the level of training available was not always as high in some of those more remote, or regional, areas as it might have been in metropolitan areas. So the failure to video the evidence in this case completely disadvantaged the girl who was assaulted. It is not a direct example, but it is about the need for equally effective training in those areas.

**The CHAIR** — Thank you very much for that, Richard. It was very helpful and informative. Thank you for coming along and providing such a detailed report as well.

**Witness withdrew.**