

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 May 2012

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Witnesses

Mr J. Lesser, Magistrate,

Mr G. Rutter, Manager, Court Support and Diversion Services, and

Mr G. Hardy, Program Analyst, Assessment and Referral Court List, Magistrates' Court of Victoria.

The CHAIR — Welcome, everyone. We have been given this reference from the Parliament to inquire with the community, and we have sought submissions. Thank you very much for your contributions and for coming in today. We will prepare a report that gets tabled in Parliament, and the government may or may not take up our recommendations. Thanks for your input. We record everything here. You are protected by parliamentary privilege in this room, and you will get a transcript of the hearing today to check that it is correct and accurate. So if each of you could start with your full name, professional address and who you represent, and then talk to your submission.

Mr LESSER — My name is John Lesser. I am a magistrate of the Melbourne Magistrates' Court, which is at 233 William Street, Melbourne.

Mr RUTTER — Glenn Rutter. I am manager of Court Support and Diversion Services with the Magistrates' Court and the Department of Justice. I am at 436 Lonsdale Street.

Mr HARDY — I am Glen Hardy. I am the program analyst for the Assessment and Referral Court List with the Melbourne Magistrates' Court. My professional address is 436 Lonsdale Street as well.

Mr RUTTER — I should indicate that Viv Mortell, who is the program manager for the Assessment and Referral Court List, is here really just having a look as it were, to see how the committee is working. Clearly she was also involved in the lead-up to the submission which we put in last year.

The CHAIR — All right. Will you take us through your submission?

Mr RUTTER — Thank you for the opportunity to talk to the submission. We can walk through the submission, but I suppose we have some key points that we would not mind talking about as they come through. Obviously we use the same definition of intellectual disability as the Disability Act, but that raises an interesting question, I think, for the court because not everyone who we would say has a disability or an intellectual disability actually meets that criteria. We do not actually know how many people who come through the court have an intellectual disability. We have a fair idea of those people who come through our court support services, which is a subset of the accused coming through the court, but we generally do not know how many coming through the court have an intellectual disability — and coming through the court as in, obviously, an accused but also as victims and as witnesses. There are different ways in which people with an intellectual disability encounter our organisation. But we certainly see a lot of people who would be in the borderline intellectual disability grouping. I suppose we are keen to make that point — that 70 to 85 IQ group is probably a bigger group for us than the group that has an IQ under 70.

The other group which interfaces with the Disability Act but which does not have an intellectual disability and which we see a lot of is the group with an acquired brain injury. I think in some ways that is an elephant in the room for us because here is a group that is serviced, probably, by an underdeveloped service system. It is a group that keeps offending and the systems are probably not in place to do the rehabilitation work yet. It constitutes a significant group of people who are presenting, and maybe during the presentation Glen Hardy, who is on that research group, might talk about the research that Corrections did — if you have not heard about it — about acquired brain injury. The prevalence rates are 40 per cent of people coming into prison with an ABI. There is something going on there. It is not intellectual disability, but it is a subset of the same problem. We use that definition, but there is a broader group that I suppose we have some concerns about.

The other thing around who comes before us is the group we know very well, which are those in court support services who do not just come with an intellectual disability; they come with multiple disabilities and multiple psychosocial issues. They are often a fairly complex group and yes, there are some people with a straight intellectual disability with lots of supports and families and so forth around them. We probably do not see that many of them. The group we tend to see, particularly as accused but also to some extent as victims, are people who are not well supported in the community and who have concurrent substance abuse issues or mental health issues and certainly homelessness and trauma histories and those sorts of things. Diagnostically it is a little bit arbitrary just to be talking about intellectual disability. They have got lots of other issues and needs going on for them.

I suppose the other thing, too, talking as a court is we are not just talking about accused, witnesses and victims; we are also talking about people who interface with us through civil matters as plaintiffs and complainers — probably not a lot in reality — but particularly through family violence matters as people who are taking out

orders or on the receiving end of an order. We also see a significant number through our infringements process, so these are fines and enforcement in particular. One of our programs, which we will talk about, is the Enforcement Review Program, which is like a safety valve in the enforcement of fines. That is a place where we see quite a few, and we will talk about our programs.

In going through our submission, one of our wishes almost has been that we would like to see more people who come to court and who have an intellectual disability come with supports — come with advocates, family and so forth. They tend to get representation from Victoria Legal Aid when they do not have other forms of representation, so they have legal representation. But it really helps the process for two reasons when they come with an advocate or with a family member. The first one is that it actually takes a fair bit of work that sometimes the lawyers do not have the time to do; they try but sometimes they do not have the time to talk to the person through the process so they understand what is happening, they understand what is going to happen and afterwards they are debriefed.

We know with the ARC list that a couple of the guys are from we put a lot of effort into trying to make the courtroom, which is laid out in a not-dissimilar manner to this room — we can make the court processes understandable, but for a general courtroom when Magistrate Lesser is setting up in Court 1 on the bench, it is fairly rapid fire. In a main court, like Court 1 in Melbourne, they are going through the matters every 10 minutes. There is not a lot of time in the court to explain matters, so we are really relying on someone being with the person beforehand to explain what is going on and afterwards to explain what has happened. That is one of our wishes: to encourage those who are connected with a person, whether they are formal advocates or informal supports, to actually be there as part of the process, and we have made that point in our submission.

Mr LESSER — Perhaps the other thing to say while Glenn is thinking forward is that we tend, I suppose, to focus on high-level offending — the more serious offences — and obviously people with intellectual disabilities sometimes are caught up in that. But the group we see far more regularly within the Magistrates' Court are what I would call high-volume, low-severity offenders. They are often people who get caught up with things like transport infringements, minor thefts and those sorts of things and sometimes drug and alcohol-type offending as well. It is not dissimilar to what might be going on within the general community but often with very specific overtones that relate to the disability.

If I can give you one example, we had a young fellow in the Assessment and Referral Court List whose major offending was around almost repetitive behaviour that he had developed of walking along the street and opening car doors where they would open and basically pinching money out of the consoles. It was nothing more serious than that, there was no damage to cars or anything, but regular and repetitive offending of that nature. Our aim of course with that process is to try — I suppose in a sense — to modify that behaviour by way of extra supports to reduce the potential for him to do that on a regular basis. A flavour of alcohol often used to underpin it, so trying to deal with the alcohol issues and trying to encourage a dialogue between him and the police so he understood more about how his offending was affecting policing, how it was affecting the local community and so on.

That is the sort of thing you would more likely see in this context than you might see in a more broad and general context. Within the time we were dealing with him we did not stop his offending but we certainly reduced the regularity of it and the number of repetitions over a period. Those sorts of things are more nuisance things, but they are the sort of people we are likely to see through the court very regularly.

The CHAIR — If a person turns up without an advocate, whether it is a professional or a friend, magistrates basically just have to make an assessment based on their name being called up and making an assessment within an instant as to whether there may or may not be a problem.

Mr LESSER — If they are in the mainstream, that is probably right. There may be other markers as to why we want to identify them. I think Glenn's point is that it is often difficult to do that without, for example, a person whose responsibility it is to look for those sorts of signs. Within the more specialist organisations, like the ARC list particularly but also more generally the support services, obviously we would be getting referrals from people who might know them. It might be the legal representatives or it might be the prosecution, because often what will come out of a prosecution will be an informant who actually says to the prosecutor by way of information with the brief, 'This person clearly was not able to be interviewed', for example, because they were

intellectually disabled or they had an independent third person at the interview. Sometimes that identification is actually made by the police before the prosecution even gets under way.

The CHAIR — Yes.

Mr LESSER — Clearly where we identify, we will then look at what support services the person already has and what others we might be able to provide through things like the Court Integrated Services Program or the bail support programs.

Mr RUTTER — Whilst the prevalence or numbers of people with an intellectual disability are relatively low, we are doing that day-to-day for things like mental illness or acquired brain injury. It is a fairly regular thing and the magistrates are keeping an eye on that. Certainly with people coming through remand, downstairs particularly at Melbourne with the police cells, they are keeping an eye on it and we are regularly called in. We have a Forensicare staff member on site at a number of the metropolitan courts, and at some of the rural courts we have the local mental health service. They will go down and have a look at someone who the staff in the holding cells have concerns about. So there is a fairly regular checking process. Where someone can end up standing before a magistrate is probably a situation where they have been on bail and they have turned up without representation. It is a matter, from the bench, of trying to ascertain what they need. We do have duty representation — duty lawyers — at most of the courts; it is a matter of spotting that that is actually needed, and we do not necessarily know. People do not walk around with a sign saying, ‘Help me, I have a disability’.

Mr LESSER — And it is fair to say that there are people who are quite resistant to getting that help as well. There are occasions when we have someone who will not talk to the Forensicare nurse, for example, and is clearly not acting within the normal range, if I can put it that way, for whatever reason. It is not always clear why that might be, so trying to then ascertain what is actually going on can be very problematic. One of my colleagues was saying last week that he felt completely hamstrung because he really did not know how to deal with a person who just was not engaging with the system at all and was on remand, so he was very keen to get him out and back into the community but obviously was concerned to make sure that the person had supports that were going to be viable, if you like. So it can be a real issue. Fortunately that is not the norm. Usually we can identify what might be underpinning certain types of behaviour, but it takes a little bit of doing sometimes.

Mr RUTTER — The other side was this point around the high-prevalence, low-severity group. A lot of the attention I am sure you are probably hearing about goes to the high-severity, low-volume offences. Those are the violent, out-there-in-the-public, front-page sort of crimes and there is need for the statewide forensic services — those sorts of things. They attract a lot of the attention and I suppose a lot of the resourcing, but we still think there is a lot of work to be done with that group of high-volume, low-severity offenders. There are actually two groups, and the systems and the heavy-duty resourcing often goes, with some justification, to the high-severity, high-profile sort of crimes, but we want to do a pitch saying that there is actually another group there, and they are a bigger group. In terms of getting crime rates down, we think that in some ways there is a better win there — a better buy for the dollar — with that group. I am not saying that we also do not need to do something smart with the high-violence offenders.

Around the presence of advocates and families over within the court, the other side of where that is really useful is actually informing the court as to the person’s situation. I think that is one of the things the judiciary values, and I am speaking on behalf of the judiciary here. It values having those people in the court who can add to the story, because there is a story there. It means that there is better finetuning of any sentencing and better understanding of the context of the crime. There is a story to be told, and sometimes it takes someone else, like a family member in the court or an advocate, to actually give some of that story.

Mr LESSER — Perhaps I could paint you a picture. You have probably all been in a court. You have seen how general courts operate. They are very unforgiving places, I think, for the average citizen. Most people are under enormous pressure just by being there, much less having to participate in any practical way. One of the underpinnings of the Assessment and Referral Court List is to try to soften that off as best we can for people with different disabilities, including intellectual disability.

One of the ways we do that is to sit around the table rather than having the magistrate on a bench, and another way we do that is to effectively involve anyone who wants to be involved. That will include, in the case of someone with an intellectual disability, family members and support services often. For example, we had one

person who was housed at Yooralla and the Yooralla support person was always in court when that person was there. There will often be an advocate or support worker from DHS disability services, which means the person actually does meet the disability criteria to get services through DHS. We have had regular contact with a few workers there who have been in and out of court with clients on a regular basis. More importantly, where there are multiple disabilities, as there often are, we might also have a mental health worker, we might have a drug-and-alcohol worker and so on.

One of the strengths of that process is that we can take a bit more time over the situation. As Glenn says, we can get a bit more background and understanding of what has been happening with the person and then look to develop a program which will assist in that behaviour modification, if that is the right way to approach it. We can also act as a catalyst for better coordination of the services around the person.

What we often find is that there is a siloing effect that happens with people who cross over the disability sectors. We had one remarkable experience with a young woman who basically ticked all the boxes in terms of disabilities. We had what was virtually a case conference around the table in the ARC list, and whilst I am not trained to be a case conference coordinator, the impact of us, both in my authority as a magistrate and each of the services hearing what the other services were doing and working out, if you like, between them how they could coordinate those better, led to a very good outcome in terms of better supports around that person through the process they went through in the court. I cannot say to you that that young woman will not be back having offended again, but again I would argue that we have probably put her in a much better place to either not reoffend or at least reoffend far less often and far less seriously.

I guess that is the hallmark of what I would say these specialist services can do, one, if you have the time and, two, if you have the resources around the person to do it. The cost benefit of that is very difficult to analyse, but I think from your point of view, looking at the issues and themes that your reference requires, sometimes you actually have to look at the up-front costs against the savings you might see in other parts of the community: less police resources, better servicing, better quality of life and all of those things, all of which are hard to put a dollar figure on but I think are clear criteria for assessing how people can better interact with the court system and better interact with the justice system generally. The big-ticket item is always keeping people out of jail because you can actually cost what that is per day, but for these people it is often really about the resourcing, particularly the police. People butt up against the police on a very regular basis because of the nature of their offending and how difficult they might be to manage in the community. The better we can service them, as it were, then we save a lot of money on those sorts of resources.

Mr RUTTER — And certainly there was one client on the list who did not have an intellectual disability there — their diagnostic position was a bit different — but I think they went from daily police contact prior to being on the list down to every three or four weeks whilst they were on the list. So there is a saving there. I think it also gave some respite to the police officers. It was not a big Melbourne station; it was an outskirts station, and I think they were a little bit sick of the person.

Mr LESSER — I think what it also did — one of the side benefits, if I can put it that way — is that one of the prosecutors actually went out and spoke to the local police and gave them some strategies for actually dealing with this person in a different way, and that was from the experience that the prosecutor had gained through the more collaborative process, if I can put it that way.

Mr RUTTER — So the ARC list is currently being evaluated. Glen is actually involved in crunching the data. I think the initial data looks good, but we will have an evaluation that KPMG are currently doing, probably by August.

We have some other programs that have been evaluated and that we think work as well. One of the other flagship programs is the Court Integrated Services Program. That is three case management teams: a team at Melbourne, a team at Sunshine and one at Latrobe Valley court. They provide case management for four months for people, including people with an intellectual disability, and our rate for intellectual disability is about 3 per cent we think. Certainly the evaluation for that was externally done. It showed some clear cost savings — I think a \$2.50 return for every \$1 going out a couple of years. Interestingly there is a trajectory change. There is a group where, two years out, the offending has clearly dropped off significantly, and to have a four-month intervention — our intervention is that we link people with services. We find out what they need and we link it for them in the community. Two years later we are still showing a significant impact with a big enough group

that there is a clear cost saving that comes out of that. That is the sort of program we are quite invested in trying to continue and, if possible, expand.

An older program which is, I suppose, an early version of that, where we have a single case manager and CISP has the same idea. We case manage people for all sorts of presentations. They are people mainly that lawyers refer. We try to figure out what they need, and we link them. It is mainly alcohol, drug and alcohol — 80 per cent drug and alcohol and about 70 per cent mixed cognitive impairment, acquired brain injury, mental health or intellectual disability. Again it seems to work that for enough of them we change the trajectory. The first time, sometimes, they reoffend and come back, so we give it another burst, but that seems to have an impact.

The other program the court runs is the Drug Court, which is currently at Dandenong. That is a sentencing court. These other programs work on a bail basis, so a person is bailed and they get a bail condition to comply with the program. The Drug Court is a sentence court so people are sentenced as an alternative to prison, so there is a cost saving there automatically, and they see a surprising number of people with a mental disability as well. Fairly low numbers go through that program but because it is an alternative to prison you are saving the money up-front.

The other little program the court runs is the Enforcement Review Program, which is what we call ‘special circumstances’. This is a list that is presided over normally by a judicial registrar for people whose fines have reached the point where they are about to go to prison. It is for those who can establish that their fine-attracting behaviour, and we are talking council fines, CityLink — it is amazing how many people drive up and down the Tullamarine without an e-tag for a long period of time — this whole range of fines is often tens of thousands of dollars, and where they can establish that that fine-collecting behaviour, for lack of another term, is connected to a mental health cognitive impairment, intellectual disability or drug problem, there are dispensations that a judicial registrar can give. They can dismiss, they can give undertakings, they can say, ‘Okay, I want you to go off and do XYZ program and come and see me in 3 months and then we will talk further’.

Given that I think the current rate — and I could be wrong — is about \$129 a day to work off a fine in prison — so if you go to prison for a day that is \$129 — and these are people with tens of thousands of dollars worth of fines, this is an alternative to that group who really should not be in prison because their fine collecting is not related to their — they are not consciously doing it. So it is a safety valve in that system. It costs more than \$129 to have the person in prison.

Mr CARBINES — Staying in there for a day? I wonder.

Mr RUTTER — Well, they don’t. They go in potentially for months and months. It can be a real system clogger. And the state has to have some ultimate enforcement of fines. But for a group who cannot connect with their behaviour — they are not fully in control of the behaviour that leads to the fines — this one is a safety valve that makes sense in the system. And it is amazing who the prosecutors are. Melbourne City Council is one of the biggest prosecutors that brings people in, and CityLink, as well as the Department of Transport — travelling without a ticket. So that is a busy little program that acts as a safety valve in the system.

So the court does see that it has a role in working with this group. In the cases of the ARC list, which Magistrate Lesser has talked about, and CISP and CREDIT/Bail — they are the three sort of on-bail programs that we have — we rely largely on slotting people into community services, and we think we are fairly good at figuring out what someone needs in a quite nuanced kind of way, and then we try to find it for them in the service sector.

We have some capability to buy some services, particularly to try and get people into things that otherwise they would not be able to access because of cost, but we rely on connecting with the service system. We run into the same problems that you as a committee are probably hearing about — the problems in the service system around this group — so we will not go through that, but we bump into that and try and find solutions. A positive thing for us is that we have found we can build some good bridges with the service sector. We are building up an incredibly strong relationship, and Viv Mortell, who is in the room, has been leading that with disability services, around trying to get some staff crossing over, doing some shadow shifts and building some good relationships with disability services but also with the community sector.

So there is a joining together of sectors, and I think that is something that the court has probably seen as an institution that sits by itself, but we are joining up and actually getting some good work happening for clients out of that. But we are limited in terms of what we can do with what is in the service sector, which is why the

acquired brain injury for us is such a massive problem. It is a group sitting there but the service sector is nowhere near as comprehensive as it is for the people with a disability.

Mr LESSER — Can I raise a couple of issues just around that, because I am looking at your terms of reference and things you should address in particular. It seems to me that there are a couple of gaps that are worth raising with you, and make what you will of them, but interestingly, all those responses, if you can call it that, that the court has had over the years have come out of a continuation of an effort to identify people with disabilities and then respond in an appropriate way, and that in fact started with a role which was developed way back in the late 1990s of a disability coordinators role, which effectively got consumed by CISP when CISP got under way as a pilot.

But we have been revisiting our thinking on that, and we think there is actually a really strong argument in having a person who has that responsibility, and the great advantage — and we said this in our submission — of that one person is that that person can then be a catalyst for the contacts with the service sector. It can be a catalyst as an advocate if need be before magistrates at very early stages of somebody coming before the court and can then map out what might then need to occur. That is a role that we think would be very valuable in terms of both the cost of the role and the savings it would bring in a whole range of ways, and that goes to things like advocacy as well.

Mr RUTTER — Yes, and John may not be in the loop for this, having just come back from leave, but we are actually going to go into pilot mode for that role for three months. We have found a way of doing that.

Mr LESSER — Okay.

Mr RUTTER — With a spare position — a position that we have not previously filled. So we will go back to a position we used to have that we lost and see whether there is merit in having a focus particularly on disability sitting within the court.

Mr NORTHE — Just on that one, Glenn, Ian Condon was the previous court coordinator, I understand?

Mr LESSER — Yes.

Mr NORTHE — So is there only one coordinator across the whole — —

Mr LESSER — There was. There has not been one at all.

Mr NORTHE — No, I understand. So you are only really talking about one person?

Mr RUTTER — Yes, but between ARC, CISP and CREDIT/Bail, we have a presence in 11 courts, and there are 52 or 53 courts that the court runs. So we are not in every court but in most of the major courts, but yes, there are some gaps in our service offering.

Mr NORTHE — I suppose I was getting more specific about the coordinator. So it is really only one position?

Mr RUTTER — Yes. Rightly or wrongly a lot of our focus goes to Melbourne, which sees 45 per cent of the matters, so Melbourne is the hub and that is the place where we can pilot new things. Where we have court support positions they do tend to take on that role. Part of what we are working with at the moment is that our roles seem to be case-management focused, so what we find does work is a period of four months of case management — a minimum of four months works — but to have someone holding on to a viable caseload, they are not then able to jump into court because the magistrate has someone before them who they want some help with, so we are trying to balance flexibility and actually doing that good day-to-day case management work, so we will free up a position at Melbourne, go back to something that used to be there and see whether having someone who is able to go along to Court 1 because there is a matter there and be responsive — but in a sense we have the 11 sites and other courts will actually call on those from time to time.

We hold our expertise within the programs, particularly within ARC. It has some strong expertise around acquired brain injury and intellectual disability and mental illness, but also within the CISP program we have two disability positions and four mental health positions that are where the staff — we select on the basis of not so much their technical knowledge because we are not paying at a level where we are getting clinical skills.

They are not clinicians, they are case managers, but we are looking for some speciality but also a service navigation experience, so the ability to connect with the service system. One of the complexities of the way community services operates in Victoria is that it is quite maze-like. Services are often there but it is a matter of understanding which doors will open to which things for which person. That is what we think we are reasonably good at — finding out what somebody needs and then finding it for them through the maze of the service system.

Mr LESSER — I think the other side of that which is inherently true is that you would have heard the term ‘postcode justice’. One of the difficulties with the way we operate these days, as Glenn says, is that we have had to cherry pick. Most of these things start as a pilot, they are a pilot usually in one location to start with, and then in the case of CISP, they have been expanded out to three and in the case of CREDIT/Bail to about 11, but the truth of the matter is that there are plenty of people in Victoria who would benefit from these sorts of support services who just have no access to them. And we understand the financial constraints and the resourcing constraints and they are true of the service system too but it is not to be underestimated how important that is, that from the court’s point of view what we would ideally like to do is offer these services across the board and we know you are in a position where you say, ‘Well, we have limited resources’ — we understand that — but it is worth reiterating that intellectual disability, like mental health and other things, really is across the board.

The way the ARC pilot works at the moment, there is a proper venue rule, so it can only operate out of Melbourne at the moment whilst it is a pilot. We would certainly be arguing, if the evaluation is as we think it might be, for ultimately having some access to this — or being able to refer matters in from other courts if it is to be located in Melbourne, which would make sense — but with a capacity that where there is a challenging person, for example, in a rural or regional area they can be referred back in. I do not think we will ever have the wherewithal to be able to say every court should have a CISP or every court should have an ARC list — that clearly is not going to happen — but I think there is a lot to be said for being able to use the skills and expertise that we are developing in a broader context, if I can put it that way.

I think that goes for things like the advocacy roles as well. I notice that is very important; you are talking about rights and so on. I think the reality for people with intellectual disability is that the supports they get in the community are excellent supports — often limited, but excellent — but being able to access good legal advice when they need it, good combinations of legal advice and support advice, is really the key. Again that can be a bit sporadic, because most of the best advice happens to be Melbourne based; it does not always translate across all the suburban and regional areas in the way that perhaps we would like. I think that is an area that perhaps requires a lot of careful thinking from government to use the resources — not only government resources but obviously the court’s resources as well.

Mr NORTHE — I think one of the things that is a bit problematic — the way I see it, anyway — is the fact: when does the advocacy kick in and when is it understood that a person has an intellectual disability or otherwise? As you say, I think it is quite sporadic at the moment. I am not sure there is a better system in place where you can actually pick up these people earlier and provide them with that advocacy and assistance.

Mr LESSER — Once they have been assessed by DHS and they have got accreditation so they can be put on a justice plan, for example. Generally we know that in advance, but having said that, you have people who move in and out of that. You have people who have been on justice plans in the past, and then when you actually say to DHS, ‘We think this person has got an intellectual disability’, they get another assessment and they say, ‘No, they don’t meet the criteria’. It is sporadic in that sense. Of course there is that group that Glenn was saying, which is a large group of people who are just above the line, if I can put it that way, whose functionality is often compromised, but who would not necessarily be able to get services through DHS. That is a huge barrier. I think the marker is 70; is that right?

Mr RUTTER — That is right; yes.

Mr LESSER — It is a relatively low marker. There are plenty of low-functioning people who are getting by in the community on one level, but when it comes to bumping up against the police or the courts or getting involved in drugs and so on their decision making is compromised, and that is what gets them into trouble. That group is much more difficult, because identification of them takes some effort and there is not the obvious marker of a disability certificate that says the person is entitled to services.

Mr NORTHE — On the police systems, is there any justification for having some note on their systems where they are able to at least figure it?

Mr LESSER — I understand. I am not an expert on the LEAP system, but the LEAP system is very comprehensive, and they do build up a picture of people. If they have interactions with people — certainly with mental health issues, for example — that will be flagged in some way. There is a bit of an issue about that in terms of not wanting to effectively tar people with particular brushes, but I guess from the police's point of view if there are issues about how they approach, deal with and get a best result with individuals, then it is quite important for people to know in advance how they are going to deal with a situation. You would want to talk to the police more generally about that, but I think that is a bit of a two-edged sword. I think there are flags that they use. The extent of them, what they might say and how that would prepare an officer in the course of their duty I cannot say.

Mr RUTTER — You are right that some of this should be happening at arrest point. There is that role of the independent third persons and when they kick in and when they are used and not used. There is another program which we are a part of and I am a fan of, which is the police SupportLink program, where they have set up an electronic referral system to services so that police officers at the point of arrest can now make a referral to our program at Melbourne. This is a pilot — we are having a partial rollout — but that starts to change the game for police when they see themselves as not just enforcement but as a referral agency to services. The lift-off from that program has been quite good. We are quite happy with the referral rate coming through. The way that it is set up is they do not come through unless they have met certain criteria. They have got to tick some boxes before the referral comes through. There is some exciting stuff happening with the police I think.

Mr LESSER — I did a study tour in the UK amongst other places a couple of years ago. One of the interesting things they have done is a lot of work on trying to get early referral, so pre-court sort of stuff. They are putting a lot more emphasis on what the police are doing in the police station when they get somebody who has a mental health issue or an intellectual disability issue and so on. There are other models around that are perhaps worth having a look at. Again, I guess it is a question of probably not either/or, it is rather trying to coordinate all of those.

The CHAIR — We have got a couple of minutes left.

Mr NORTHE — Glen was going to give us an update, was he not, on the ARC evaluation?

Mr HARDY — Just some of the early data from when the ARC commenced looking at those with intellectual disability. Out of all those clients we have accepted onto the program, 16 per cent have had a diagnosed intellectual disability. I know both Glenn and Magistrate Lesser have been talking about that borderline, the 70 to 75 IQ range. Four per cent of those who have been accepted have fallen in that range, so outside the intellectual disability range but just in that range where we do have troubles linking in with services.

Mr RUTTER — It needs to be put in the context of the ARC list sees a particularly compressed subset of the accused group coming through. For me it says the ARC list is meeting its target to actually assist that group.

Mr HARDY — Probably one of the pleasing things is that out of those who are accepted who have an intellectual disability there are quite high rates of completion of the program — 87 per cent of those with an intellectual disability complete their time on the list.

Mr NORTHE — Glen, you have a lot of percentages there, but what are the actual numbers in totality? Do you have those figures there?

Mr HARDY — In terms of the referrals or those who accepted, the 16 per cent, that was 23 clients accepted on the program had an intellectual disability.

Mr LESSER — Our numbers overall are quite low really, Russell, to be honest. Glen may be able to give you the total picture, but we have had a lot of referrals in. We have obviously had less accepted for a whole lot of reasons. A number of criteria have to be met, so the numbers that we have been able to run through the program have been largely driven by our clinical capacity at this stage, and we are trying to work towards increasing it over the next 12 months to see whether we can move people through in a slightly different format

so we can broaden the scope in the numbers. I think it would be fair to say in the first 18 months particularly we probably were working at a fairly high level with people — a lot of time and effort, but a much smaller group, if I could put it that way. What we want to do is see if that can be expanded out to a broader group and still do good work but not necessarily at the same level for all of them.

Mr RUTTER — Probably within that group there is a subgroup who would be amongst the most challenging people in the state. We are aware that some of the people we have are well known to the Chief Psychiatrist and the Public Advocate and people like that. They are the top tier of complexity — the MACNI, the multiple and complex needs-type group. In particular I think we were hit quite early on with some of those, and they chewed up a lot of our time, which is a learning. They have done okay. Some of them have done exceptionally well on the program, but there is the amount of time it takes when you start dealing with to intersect with your services to that person. There are 12 different agencies that you invite to the table and you have to start getting a bigger room because of the number of players. Then you are in a case coordination-type role. They have been very intensive. As individuals it is still interesting sometimes. Putting more services in does not actually improve the quality of care. Sometimes it is a matter of stripping down to what is most important. That has been a factor. It is a finite team; it is a team of five people who are dealing with this group, so they have had a finite carrying capacity. It has ramped up this year. We are running higher numbers. It will be interesting, when we cut the data for the year going forward, to see whether that changes the outcome.

ARC is very much a pilot. It is a pilot that is developing as we go on. It is not something for which we designed a model, pressed the ‘Go’ button and that was it. We have actually learnt and evolved. Even though the evaluators are attracting the data, we are still tinkering with this and tinkering with that, trying to put extra carburettors on it and trying to get it going a bit faster.

Mr LESSER — I think the last thing that I would like to say, which it is important to say, is that the attitude of the service system to the court has been interesting. When we started there was always some resistance, not surprisingly, to judicial intervention, if you like, in a service system which is clinically based. But I think one of the successes we have had, particularly with that very complex group, is that the service system can see that the court can do things that they cannot do. They can, in a sense, move people around in a way perhaps in that bail pre-sentence situation where we can make things happen. So I think there has been quite a good acceptance that even though it might not be a perfect world, having a court involved for highly complex people is quite a good thing.

We would see that as an indicia from our point of view of success, because whereas you might have got resistance from them when they first came into the court to be involved, once they have been there — and I am thinking in particular of a couple of the workers from DHS — they know that they can come into court, they can talk freely, they can involve the person in the process, so they improve the trust relationship between themselves and the client, and that the court can have some monitoring and mentoring role with that person which they possibly cannot have for a whole lot of reasons. I guess it is a question of us trying to develop those strategies and use that power, if you like, wisely to try to move people away from offending behaviour or to a less frequent and serious offending behaviour.

Mr NORTHE — Yes, and it is very well received generally.

The CHAIR — Thank you very much for coming in today.

Mr LESSER — Thank you so much for your time. It is much appreciated.

The CHAIR — It is a very comprehensive submission. Thank you.

Mr LESSER — You are welcome. Thank you for having us.

Witnesses withdrew.