

# 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**

Bendigo — 28 May 2012

#### Members

Mr A. Carbines

Ms J. Garrett

Mr C. Newton-Brown

Mr R. Northe

Mrs D. Petrovich

Chair: Mr C. Newton-Brown

Deputy Chair: Ms J. Garrett

#### Staff

Executive Officer: Dr V. Koops

Research Officer: Ms V. Shivanandan

#### Witness

Ms A. Howard, Principal Solicitor, Loddon Campaspe Community Legal Centre.

**The CHAIR** — Thanks for coming in, Anna. This is a cross-party committee set up by Parliament and one of a dozen or so committees that looks at various issues. Ours is to do with law reform. We have tabled our first report, which was an inquiry into donor-conceived children. This is our second inquiry. We gather information and write a report which makes recommendations for changes, which may or may not be picked up by government. Your evidence is protected by parliamentary privilege in the room but not outside the room. Could you start with your name, professional address and who you represent for the purposes of the transcript and then talk us through your submission.

**Ms HOWARD** — My name is Anna Howard. I am the principal solicitor at the Loddon Campaspe Community Legal Centre. The address is 54 Mitchell Street, Bendigo, Victoria. I am representing the Loddon Campaspe Community Legal Centre, which is a program of the Advocacy and Rights Centre here in Bendigo. By way of background to the Loddon Campaspe Community Legal Centre, we are one of 51, I think it is, community legal centres in Victoria. We are a generalist community legal centre, so we provide legal advice and assistance on a broad range of legal issues as opposed to specialist community legal centres such as the Tenants Union and the Human Rights Law Centre, which have special expertise. We are general in nature. Obviously we are particularly concerned about the rights of people who are living in our region.

Our region is quite large. It starts down at Gisborne and goes all the way up to Echuca — up to the Murray. Then it goes out as far as a bit beyond Maryborough and to the east just before Heathcote. It is a bit confusing because we are also running a pilot community legal centre in Shepparton and the Goulburn Valley region, and that takes in the portion of Victoria running from Shepparton down towards Seymour and beyond.

**The CHAIR** — And do you have volunteers working for you as well?

**Ms HOWARD** — We do have some volunteers. We run a night service on Wednesday night in Bendigo, and that is thankfully staffed by local volunteer solicitors. We are very fortunate to have great participation by local solicitors here in Bendigo. The same occurs over at the pilot service in Shepparton, and we have got some volunteers assisting in Echuca and Seymour as well.

What this submission, which you should have a copy of, seeks to focus on is the particular disadvantage that clients who come to us with an intellectual or cognitive disability face as Victorians who are living regionally or rurally. We think that the disadvantage that they face is different to some of the disadvantages that might be faced, or barriers that might be faced, by people who are living in the city with those conditions.

The community legal centre has provided a significant amount of advice to people with an intellectual disability. We checked over our stats and about a quarter of people who accessed our centre identified as having a disability of some kind. We are unable to know what proportion of those people had intellectual disabilities, but all we can presume is that it is probably quite high.

Also the numbers that have been reported do not necessarily tell the whole story. It is possible that more people have — —

**The CHAIR** — So clients are asked to tick a box when they register?

**Ms HOWARD** — It is asked by the solicitors at intake — a number of questions for purposes like this, so that we have an understanding of the demographic and of our clients so we can target services appropriately to the needs of the community.

**The CHAIR** — So the question is not asked as to what type of disability? It could be a physical disability?

**Ms HOWARD** — It could be. We ask, ‘Do you have a disability?’, and then sometimes solicitors will go further and ask what the disability is, but that is not always recorded. If it becomes relevant to their particular advice, then obviously it might be recorded in the notes, but we do not have a fast way of finding that out.

What I wanted to say is that it appears that there is a good percentage of clients who access the service who probably have an intellectual disability, and I know from speaking with the solicitors in the centre and also my own personal experience that those figures reflect the actual interactions that we have. It was very easy. We did not have to think very hard to think of case studies of people who had intellectual or cognitive disabilities who we had to assist because of some issue that they could not resolve themselves. Some of those case studies are

included in this submission. I would like to take you through just a couple, and I will leave the rest for you to read at your leisure.

When we refer to intellectual disability in this submission, we would like to say that we are not only referring to intellectual disability as an identified or diagnosed disability. There are other things such as cognitive disability. I heard the gentleman before me talking about autism spectrum disorders, and certainly that is our experience. When people present to the community legal centre with those conditions, we would generally acknowledge those as an intellectual or cognitive disability of some kind. Our understanding and experience is that people who live rurally and regionally experience disadvantage. This has been the subject of another inquiry that was held by a similar committee, the Rural and Regional Committee, two years ago, I think it was.

**Mr NORTHE** — I was part of that. I was there.

**Ms HOWARD** — Okay. Our centre presented on some of those issues, and as a result of that inquiry a number of recommendations were made about access to justice, particularly in rural and regional areas. What we would say is that those recommendations that were made relate to people with intellectual disabilities as they do to people without them, but they are perhaps even more important for people with intellectual disabilities who have another layer of disadvantage that applies to them. One of the recommendations made in that report was the need for a community legal centre — a permanent, funded community legal centre in the Goulburn Valley. That currently does not exist. We are running a pilot service there. We are not sure — we do not have any indication about whether that pilot funding will be rolled over beyond 30 June this year, but it is a significant area. Shepparton is the only Victorian town that has been selected by the federal government for income management measures.

That issue has the capacity to impact on people with an intellectual or cognitive disability because it will affect people who are in receipt of disability support pensions along with other types of pensions as well. It has the capacity to impinge on people's human rights, and it is more important, really, than ever before that there be services available to the people that that will affect in the Goulburn Valley region. I have handed out to you a copy of the report that was done last year about the need for funding the service beyond 30 June last year, and that did happen, albeit an extension of pilot funding. We wait with bated breath to find out what will happen beyond 30 June this year. Further information about rural and regional disadvantage is included in a report by Deakin University, *Postcode Justice*, and I have referenced that here in the report.

One of the issues that we find in delivering services to people with an intellectual and cognitive disability at the centre is that because we are covering such a broad region we have to undertake a lot of our advice via telephone. This presents significant difficulties for some people who have an intellectual or cognitive disability. Sometimes it might be difficult for that person to explain their legal issue over the phone. It can be more difficult for a support person to assist that person if you are not all in the same room together, if you are doing a three-way conversation. Obviously we try to respond to the needs of our clients, but we cannot always get in a car and travel out to Echuca just to see someone. We do have outreach locations — at Maryborough, Echuca and Kyneton — so that we can try to make it easier for people to access a face-to-face service. But there are limits to the service, and I think those limitations impact on people with intellectual and cognitive disabilities more so, possibly, than others without them.

In terms of accessibility there are also issues around not just legal services and our service but other services, such as the court. It is quite well documented that people on low incomes are more reliant on public transport, and so it becomes increasingly more important for those people that things like support services, the courts — all those things — are accessible by public transport, and in our experience that is not always the case. Particularly in rural and regional Victoria we find that people with intellectual and cognitive disabilities may not have access to support people, support services, or they are having to travel a great distance to access them, and as a result they do not. That has implications for them; it may have legal implications for them if they go unnoticed. They mount up and become worse than if they had been identified, and possibly with the assistance of a support worker they could have been identified earlier.

Perhaps I will quickly take you through this case study about one of our clients who had an intellectual disability. He had received a number of phone calls from phone marketing companies saying, 'If you sign up now we'll give you a free holiday, and if you sign someone else up we'll give you a free laptop'. So he signed up and he signed up his partner, who also had an intellectual disability. By the time he came through to us he

had contracts with five telephone providers, all with exorbitant costs attached to them, late penalty fees. He just did not have comprehension to realise he had signed up over the phone. When he made contact with our service he actually came in in person. I subsequently tried to have phone conversations with him, and it was abundantly clear to me that that person had an intellectual or cognitive disability. How the marketing people, the salespeople, had not recognised that is beyond me.

In any event, we assisted this gentleman to negotiate with the telecommunications companies. We made complaints to the Telecommunications Industry Ombudsman and assisted him to negotiate waivers in all of these matters — except one where the company just kept changing its name and saying, ‘Oh, no, that agreement we made doesn’t hold, and we are not this company and we’ll have to review it again’ — you know, just sort of dodgy business. A further complaint to the Telecommunications Industry Ombudsman saw it finally resolved. That client was absolutely dependent on public transport. It was impossible to have a conversation with him over the phone that was meaningful for him, probably, and that I could decipher, so face-to-face appointments were needed. Bendigo was the easiest place to access for him, and he came once a week to have access to his child, who was in a foster care arrangement, and that was funded by DHS. But he could not really afford to come down here at any other time.

We only had about 15 minutes between when his access finished and when he had to get off to the bus to go home again; it was the only bus service. That was just a limitation in that matter that made it really, really difficult to provide a proper service to that person. I think there are a number of things that were a barrier for that person who has an intellectual disability and are probably a barrier for others who have intellectual disabilities — that reliance on public transport, that the telephone is not the best way to conduct communications; all those things combined. But in the end we were able to get a result for the person.

The last point I want to make about accessibility to services is that at the moment the community legal centre is investigating a movement in the United States about medical-legal partnerships. It is in its infancy, this thinking, in Australia. It is really about improving partnerships between health providers and legal service providers, because often people who have health issues have legal issues attached to them. It is about improving the referral pathways. In some situations there is a co-location of services. There are many examples of them operating in the United States, and there are a couple in Australia.

The intention is that you break down the barriers to accessing legal services for people experiencing health issues. These partnerships have demonstrated socio-legal impacts on health and the associated health benefits of having effective legal advocacy on behalf of patients. I think that medical-legal advocacy is an area that would possibly improve referral pathways for people with intellectual or cognitive disabilities to legal services, because they may be more likely to be linked in with health services than they are with legal services. That is something that our centre is looking at at the moment. In the submission I have included some information for you, both national and international, about those partnerships.

A couple of the issues that we see include the comprehension of legal process and procedure. We run family violence applicant legal services at various courts, and in that area in particular we find that people with intellectual or cognitive disabilities may find the legal process overwhelming. People have to complete the application forms themselves, and there is no assistance, really, provided. At the Magistrates’ Court the registry staff may be able to tell people what generally should be included, but they are not going to assist them to express their fears or certain situations that have happened in a way that might meet the legislative test once the matter goes before a magistrate.

We have certainly had situations where we have assisted clients where we have gotten to court, they have already put their application in, we have read the application and it just does not make sense, or it has one line and no way will it meet the test. But from unpacking the issue with the client, there are significant safety concerns and significant issues. Had that client gone before a magistrate on their own there was a great possibility the matter would have been struck out. We think there is an issue with that process and procedure.

The other issue about courts and process, particularly for people living rurally and regionally, is the fact that in Melbourne there is a Special Circumstances List for infringements and for other matters. There is no such list in regional areas, or anywhere, I think, outside Melbourne. The three special circumstances areas are: mental health and intellectual disability, drug and alcohol issues, and homelessness. It means that when people have matters where they have got fines — for travelling on CityLink or being on public transport, whatever it is —

and they do have an intellectual or cognitive disability, that may have contributed to the offending behaviour, Magistrates in rural and regional Victoria are not trained in the same way that magistrates in the Special Circumstances List are trained to deal with and respond to or really impose appropriate penalties or circumstances on those people appearing in that list.

I have been involved in matters where someone has had a cognitive or intellectual disability and a magistrate has taken into account special circumstances, but instead of waiving a fine has halved it, when it was a significant fine and there was no way that person was ever going to be able to pay it off. If that occurs, then the likelihood is that that person will end up back before the courts and possibly end up with a custodial sentence. So it is a serious issue and it is one that we feel presents itself on a relatively regular basis up here.

Regarding awareness of legal rights and options, I will not say anything much about that, apart from the fact that obviously it is important to recognise that if someone has a support worker or carer they might be in a better position to understand or to explain to the person their legal rights and options. But if a person does not have a person like that to make them aware or if there is not sufficient community legal education or material that is digestible for persons with intellectual or cognitive disabilities, then they may not recognise that they even have a legal issue or that their rights have been infringed upon. We have detailed a case study there about someone who did not realise that she had been unfairly dismissed from employment. You have to apply within 14 days, and that 14-day period had well and truly passed by the time she came to us on a separate issue, but we realised that this had occurred.

I suppose one other issue is to do with people who are represented people, so people who have an administrator in place, usually involuntary, where decisions are taken out of their hands. Obviously that is a significant thing. One of the biggest concerns for us has been around those people who are represented who feel like they have nowhere to go; they have no-one to talk to. We have recently become aware that State Trustees are moving part of their business up here to Bendigo, and that is great for people who are based in Bendigo, because I believe they will have some face-to-face casework services available. I think not having that option is a real problem. The people in that situation come to us and express real frustration that they just get a telephone call and that they cannot get hold of anyone when they might have a real need to access funds and a genuine reason for accessing those funds.

In the situation that I have detailed in the submission, the person had an intellectual disability. He had received a speeding ticket or a traffic infringement of some kind and had notified his administrator immediately. It had been lost in the system. The administrator did not do anything about it, did not pay the fine, so all these late penalty fees applied. It got to an enforcement order stage. They still did not act upon it. So the enforcement order had been made and it was at a point where a warrant could have been issued for the arrest of that person, and there was still no action on behalf of the trustee. In the end we assisted that gentleman to try to tell State Trustees to get their skates on and do something about it, but they were saying, 'Oh, well, just pay the amount out of that gentleman's fund'. He should never have been paying the late penalty fees in that circumstance, and that required significant advocacy on our part to tell the administrator that that was not appropriate in the circumstances. So it raised this issue that without advocacy and support, represented people may not actually know that these sorts of things are occurring.

**The CHAIR** — On the issue of people who have disability and other people being aware that they do have a disability, do you have any ideas as to how that can best be communicated to people who may not twig that there is an issue?

**Ms HOWARD** — Are you referring to the telephone call situation?

**The CHAIR** — Any sort of contact, whether it is with your organisation or others. There have been suggestions about the idea of an identity card that they could present to someone when they come to an office and say, 'Here is my issue that you need to be aware of before you start talking to me'. Is that the sort of thing that would be of use, or is it potentially discriminatory?

**Ms HOWARD** — I would be worried about an identity card. Obviously it could not be made compulsory to show it, and so people would still be exercising discretion as to whether or not they disclose that information. At the community legal centre we often investigate and ask the questions and we try to find out all the facts about a person's circumstances in our particular field I do not feel like we necessarily miss those people. But I think in

other services that are not necessarily trying to find out whether or not a person has an intellectual disability, such as someone in a shop who is selling something, it does not necessarily matter to them, whereas for a lawyer trying to represent a person and advocate for them as best as possible it is a really critical issue, so I think we try to push the point a little bit more. If any questions come up that might make you wonder whether that person has an intellectual or cognitive disability you might do some further questioning.

**The CHAIR** — And what about your clients' dealings with the police? Do the police have the same way of operating, being on the lookout for this sort of thing, or would some sort of identity card be of assistance there?

**Ms HOWARD** — To be honest, I have not gone into too much detail about interaction with the police because we do not do a huge amount of criminal work. Someone like Legal Aid are probably better placed to talk about the experiences of people in interacting with the police. But I am thinking about a matter in Bendigo where I know a person who has an intellectual disability, and it is very apparent in the circumstance I am thinking of. I think in that situation police temper their behaviour and are good at responding appropriately. But also there is pressure by the community for police to respond in a particular way. You know, if a person is acting in an aggressive or dangerous manner, then police might respond in a way that the community expects them to respond.

**Mr NORTHE** — Anna, can I just ask a question? We have terms of reference for this inquiry. There are a hell of a lot of organisations — advocacy groups, community legal centres, Legal Aid, and even PILCH, the Department of Human Services, the police, our regional advocacy groups and Centrelink; how are they all interlinked or intertwined to make sure that people are getting the right and correct services? Do you see it operating well at the moment, or is it really a bit of a mishmash? Do you have any suggestions for improvements to those linkages?

**Ms HOWARD** — Yes, I do think there is a fair amount of disconnect between different services. Obviously with privacy laws as they are you need to obtain authorities from people before you can obtain information from Centrelink or before you can even talk to their health worker in some situations. There could be improvements. I am not only talking about improvements in medical and legal partnerships — I think there could be other partnerships that could be explored to improve referrals to appropriate places. I think a lot of people get shifted and shunted around and end up at the wrong place.

We have people come to us for an issue that may not be a legal issue, it is just that there is no-one who can provide them with proper advocacy support. That could be better provided by a social worker, for example, but for whatever reason they are not engaged with that service. As community legal centres I think that is what we do well. We are well engaged with our community. We know about the services that are available and we generally know good referral pathways. I do not think all organisations are good like that.

**Mr NORTHE** — No. I think undoubtedly that is the case. Without putting you on the spot too much, how do we actually improve that engagement to make sure that if somebody turns up to Centrelink and it is obvious that they need some other support services they are engaged with other services? Is there a way and means that you can see or a model that you might know of that operates in other jurisdictions?

**Ms HOWARD** — All I know is that from a community legal centre perspective we are very involved in committees and things that happen at a local level, like a family violence prevention network and a child-friendly city committee, and you meet the people and key operators in other organisations. As a result, by knowing those faces, in a sense in rural and regional Victoria the referrals should be better; the referrals should be easier because you know those faces and we work close by each other. Perhaps there are learnings; perhaps in a way regional Victoria is in a good position to improve or to provide the best kind of service for those people. But I think it is getting in there and doing the work that sometimes is difficult. It is hard to prioritise attending those meetings.

It would be hard for someone from Centrelink, for example, to prioritise attending some little local community meeting, but they actually have broader purposes than just that particular meeting or issue that you are meeting for. Sometimes those big government departments are not as engaged as other smaller organisations that operate, and perhaps there are some learnings there.

**The CHAIR** — We are almost out of time. Do you have more to go?

**Ms HOWARD** — My final point is contained in my written submission, so I will let you read it.

**The CHAIR** — No, go through it. It is not an urgent rush or anything.

**Ms HOWARD** — The final point is about supports in place for parents who have intellectual disabilities. We have some involvement in child protection matters that end up in court. In our experience a large percentage of the people that we have assisted have had intellectual disabilities. It is well documented that people with intellectual disabilities are overrepresented in the child protection system. In our experience a lot of the issues preventing returning children to the care of their parents is around the necessary supports not being available for those people, especially in rural and regional Victoria. For example, it might be a young parent with an intellectual or cognitive disability who lacks parenting skills, but there is just no program or place in a program that provides the support for that parent to gain those skills. Therefore either they will have to travel to Melbourne to attend those kinds of programs or the children are taken off them. They may have to do the limited skills development courses that are available to them, but in terms of intensive courses or intensive supports, they are just not available to those parents.

In terms of the child protection act and the best interests of the children, that act really is working towards reunification of parents and children, and ‘best interests of the child’ recognises that a child should be cared for by its parents — its mother and its father. We think there should be an emphasis on improving supports for parents with intellectual disability so that the children can be returned to them at the earliest possible point.

**The CHAIR** — Thank you very much. That was very helpful.

**Ms HOWARD** — Thanks for hearing me.

**Witness withdrew.**