

# 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

#### Witnesses

Ms C. Jacksen, Coordinator, Victims Assistance and Counselling Program,  
Ms H. Dingwall, Team Leader, Victims Assistance and Counselling Program, and  
Ms S. McCallum, Case Manager, St Luke's Anglicare.

**The CHAIR** — This is a cross-party committee which has been set up to investigate various inquiries. This is our second inquiry, the first one being a report into donor-conceived children. We gather information, put together a report and then present it back to government, and we hope that they will take up our recommendations, which they may or may not do. Your contribution is fed into that process. Could you start with your name and professional address and who you represent and then talk us through your submission.

**Ms JACKSEN** — Chris Jacksen, St Luke's, 47 High Street, Bendigo. Is that what you mean by professional address? I am a counselling services manager.

**Ms DINGWALL** — Helenmary Dingwall. Address: 47 High Street. I am the team leader of the Victims Assistance and Counselling Program.

**The CHAIR** — And you are both with St Luke's Anglicare?

**Ms JACKSEN** — Correct.

**Ms DINGWALL** — All three. Thank you, firstly, for your invitation to address the committee today. I will make a brief introduction. We are representing the Victims Assistance and Counselling Program, which is administered in the Loddon area of Loddon Mallee by St Luke's. I will make a short introduction, then we would like to make comments on three areas: victim impact statements; VOCAT, which is short for Victims of Crime Assistance Tribunal; and, thirdly, resources for our clients with acquired brain injury and their carers. That is, in a nutshell, what we would like to address with you.

Firstly, just a few notes about ourselves: as you know, who we are is a Department of Justice-administered program, and we are responsible for that tender in the Loddon aspect of the Loddon Mallee region. It is administered separately in the Mildura-Mallee end. There are three case managers in our team — that is full-time equivalent. Sheree is full time. I am 0.8. We have another full-time worker, and we have somebody who assists us at 0.2 at the moment, but that will be ceasing shortly.

Where we are: as you know, we are at 47 High Street, so we are Bendigo based, but one of the salient issues for St Luke's is that we have outreach in four local government areas. In the Macedon Ranges we work out of Kyneton; in the Central Goldfields we work out of Maryborough; in Mount Alexander out of our Castlemaine office; and in the Campaspe region out of Echuca. We have a designated officer who goes out to those offices of St Luke's. So we can provide a relatively localised service. What we do, as you know, is on the public record for these services and the aims of our program, so I will not go into that unless you wish to ask specific questions. However, in general terms our focus is on the recovery of victims of crime — and that is victims of violent crime, so violent crime against the person, not property crime — and their families. We are not involved with the perpetrator or the other side of the justice system; it is specifically victims of crime. I will take a deep breath and stop being nervous now.

**The CHAIR** — There is nothing to be nervous about.

**Ms DINGWALL** — Our team sat together and considered what we could contribute from our experience, and based on a number of client cases we have decided to focus on these three areas. Firstly, I would like to speak about victim impact statements. In this case it happens to be a client I saw, and it is a person who has significant intellectual disability. This was an adult who was referred to us by the Department of Human Services, and he was to attend court. The perpetrator had been found guilty, so that is an appropriate stage for a person to make their victim impact statement.

What was significant about this case is that this young male was the victim of multiple counts of sexual assault by a guardian, and he was now in the care of the Department of Human Services. The case manager referred him, and he attended our Bendigo office with his support worker. As he was not literate, I had to gain his consent to write down for him the statement he would like to make. It took considerable time for him to relax because he saw me as somehow a plainclothes police officer, which I am not. We proceeded with the interview, and because he was determined to leave that day with the statement complete, I wrote a draft statement for him while he and his support worker did other things for a while. We were able to put the draft to him. He was satisfied that I had captured some of his language, and a final copy was made. He went that day to the police station because he had to deliver it to the police officer. He was very proud of it.

In court it was his support worker who read that statement on his behalf. There was a guilty verdict, and the guardian is in prison for many years. What was terrific was that the judge praised him in his courage in being able to speak in court, and I wanted to put that right at the front. That was a really satisfactory outcome for that client, but I want to highlight why that worked. It was successful because DHS took a lot of responsibility in this regard. His case manager understood his rights, knew what they were and assisted him to understand the process, so he was significantly prepared for the process and came with a trusted support worker. Because that support worker was male he felt it was a conflict of interest because the guardian was a male. He had been sexually assaulted by a male. He felt he was not the person to be involved. The outcome was not only literally satisfactory but also emotionally satisfactory for this man.

It was the high degree of support that made this a successful outcome for this man. However, to achieve that, it was highly time consuming for all parties — for DHS, for the support worker and for the author, in this case myself — taking on additional organisation regarding referrals and spending time to really understand what was required. What is also significant to us is that this is one of the very few victim impact statements that have come to us. There may be many more out there and we do not know about them, so it is a knowledge of rights that came through DHS that made this possible. It was an assisted referral, otherwise people will not get to us. That is the first area.

The second area is in regard to VOCAT. Here I am looking at four cases, and Chris will contribute to one of them. VOCAT is short for Victims of Crime Assistance Tribunal, which is a provision under victims of crime law. In all cases these are young adults. The first two that I wish to highlight are young single mothers who are on disability support pensions, both of whom have infants. The first one needed a review of her VOCAT claim, which was already complete, but she was still within the six-year time in which it could be reviewed. The lawyer who did the initial application was no longer doing VOCAT claims, so she was left without a lawyer. As it was a fairly complex area, it needed to have a lawyer, but of course that person would not be paid, so it took considerable time and frustration for her until we found a legal aide who was willing to assist her, because there was very little likelihood that she would succeed and therefore the fee would not come from VOCAT to a commercial lawyer for that service. As a result of this, she did not get what she wanted, which was a revision of the amount that she was awarded by the tribunal, because she had considerable difficulty understanding the complexities. Once the award is made, unless there is a change of circumstance there will not be a review of it. However, we were able to gain through a psychological report further counselling services for her, because the trauma that she had experienced in the first instance was now becoming relevant to her now that she was a young mother.

Similarly, the second instance was a young mum on a disability support pension. In this instance it was her first assessment for Victims of Crime Assistance Tribunal. She had considerable difficulties understanding why that psychological report was needed. It is a standard practice in Bendigo jurisdiction that a psychological report is required, and it required considerable liaison between our caseworker and the psychologist to assist her to not be anxious about the psychological report that was to occur, in the process of which it also became clear that potentially the child also had significant intellectual impairment and that we had not one client but two. This required a lot of additional assessment on our worker's behalf and on the psychologist's behalf to make a case for her to gain her rights as a victim of crime under the tribunal.

The second two cases were young male adults. The first case is a young man who was 17 at the time he approached us. An award had been made on his behalf when he was 10, and he was about to turn 18 and therefore would be eligible to administer his own funds. Because of our concerns in the assessment and our liaison with the Office of Public Prosecutions masters office, it was decided that an additional assessment would take place, and it was deemed that he was neither sufficiently literate nor numerate to administer his own funds.

Fortunately for him the OPP assessed him as requiring a case manager from the OPP office. Although things are now working well for him from that side, he is a young man without family support and there is not a support worker for him in the community, so he drops in on us from time to time whenever he is needing assistance from a literacy point of view to make an application to his case manager. It is a service that we would willingly provide but it is extremely time consuming, and it is a situation where he would be assisted if he had a support worker. Of all three of the cases that I am highlighting there is not a support worker involved with these young people, so they have considerable struggles cognitively negotiating the system.

The fourth case is in relation to the carer of a young man whose cognitive impairment is as a result of acquired brain injury. Chris, perhaps you are more familiar with his circumstance.

**Ms JACKSEN** — I do not think he had an acquired brain injury. He was actually born with a disability. It goes back about 18 months, but I think it highlights a gap in the VOCAT system, so that is why I am going to go through it. A woman came to visit me seeking support as her disabled son had been assaulted when he went to purchase some items from the service station. I think it was at night, but it does not really matter. Anyway, once he was assaulted he was eligible under VOCAT, but she was very distressed also because she asked the son to go and get the items from the service station. He was fine and he was able to get VOCAT, but because the son is over 18 she is not eligible as a secondary victim because it says that you are a secondary victim obviously if you have witnessed an event but also if he or she is the parent or guardian of the primary victim of the act of violence and the primary victim of the act of violence is under the age of 18 years. Because the son was over 18, she was not eligible, but her needs were probably the same as if he was under 18. Her caring responsibilities were obviously increased and became more demanding.

She was very stressed. She was fearful and anxious when he went out that it would happen again, because they picked on him and assaulted him because of his disability and she felt guilty that she had asked her son to go and buy the item. He liked to be helpful. For me, that case really highlighted that with VOCAT if the child is under 18, then the parent or guardian is eligible, but when you have got a disabled son or daughter and they are over 18, you are not eligible. The requirements are probably the same for the carers. That is one that comes to mind, but it comes up a lot. They often require counselling, which we can help them with a little bit. But they expect that they will be eligible too, and they are really quite shocked when they find that they are not eligible for VOCAT and that only the primary victim is.

**Ms DINGWALL** — That is a good bridge to our third area, which is acquired brain injury and resources. We have now seen a number of situations where there has been serious assault resulting in head trauma. Because of our location, head trauma patients of this severity are transported to Melbourne and are either in the Alfred or in the Children's, depending on the appropriate hospital. These hospitalisations are sudden. It is an emergency and as a result of a serious assault. It means that there is relocation of family members who are then de facto carers because their family member is suddenly unconscious and in hospital, and there is a string of disastrous consequences for these families financially, so they are suddenly relocating to Melbourne. There is assistance at the hospital through social work and through our agency in Melbourne.

Our southern region has the Alfred in particular within it, and they provide a lot of the liaison for Alfred-based hospitalisations. Nevertheless, there can be considerable periods of time, up to some months, particularly if that involves rehabilitation. There is loss of income for the family members, there is of course the loss of income for the person who is injured and there are all of the additional expenses for families involved in these circumstances.

Where that relates to resources from the justice system is that it takes a long time for diagnoses to be stabilised. When there is a head trauma of this nature it is very often months to years before the medical profession will be satisfied as to the nature of the head trauma. Therein lies the gap that we are very concerned about, because as you would understand until there is a diagnosis and a prognosis it is not possible to finalise insurance payments. There is extraordinary duress for these families financially, and there is a lot of chaos in the families.

**The CHAIR** — Are you talking about private health insurance?

**Ms DINGWALL** — People are often without private health insurance and they are often not eligible to receive VOCAT until after the criminal case has been heard, and that is understandable. There is a provision within the award for interim payments. Of course anything that is within a hospital is paid for by the hospital, but there are extraordinary numbers of extra needs and some people who are parents have suddenly been thrust in the position of becoming primary carers for an injured member of the family.

As you will know, once again this highlights this case where if these young people are under 18, the parent is eligible as a secondary victim. Nevertheless, there is still the time. However, if this young person is over the age of 18, we have the gap that Chris has already highlighted, and as you will know from the crime statistics a very vulnerable age group is 18 to 24 in the culpable driving area, in the driving endangering life area and in the criminal assault area. This is an area that we really wish to put the microscope on in regard to the distress that

this causes family members in not having access to additional resources, and because of the chaos that is going on in their lives they are not necessarily accessing information about the justice system. They are more concerned about the health issues for the young person. It is even more distressing if it is an adult where there is not a family member engaged.

We currently — very recently, in the last month — have an acquired brain injury client who has taken 18 months to come to us. She is 49 years old and she is living in a nursing home; she now has an appointed guardian from the Public Advocate's office and has no family member in Australia because she is a migrant. She is isolated. She is a person for whom English is a second language and she is in a situation in our region where she is at a considerable distance from a community here in Bendigo with whom she could speak her first language. This is a real issue if there are no carers for somebody who has an acquired brain injury. They really are getting lost in the system. That is our first step. Do you have anything you want to add, Chris?

**Ms JACKSEN** — No. That is it basically.

**Ms DINGWALL** — So to questions.

**Ms JACKSEN** — Yes, let's go to questions.

**Mr NORTHE** — I have a comment first. It is good to hear your perspective; it is something that is a little bit different from what we have heard in previous submissions. It is good to hear that, and I congratulate you on your submission and the ideas you have suggested. I think it was very well done, from my perspective.

**Mrs PETROVICH** — I do not even know what I am going to ask you, but it was a fantastic presentation. I am probably a little bit gobsmacked about the volume of work that you are doing.

**Ms DINGWALL** — That would be 272 clients a year with three people.

**Ms JACKSEN** — That is our funded number, but we sometimes go over that.

**Ms DINGWALL** — We have exceeded that in the last financial year, because we are three people.

**Mrs PETROVICH** — You have three people here. I am familiar with your annex in Kyneton.

**Ms DINGWALL** — I go to Kyneton. Sheree attends at Echuca. Chris is no longer working in the team as a case manager.

**Ms JACKSEN** — I was previously.

**Ms DINGWALL** — She is very familiar with all this material. Our third member, who is not here today, attends at Maryborough. We are the people who go out there.

**Mrs PETROVICH** — When you are doing your casework and you are dealing with complex issues, are you able to readily access those other services such as Legal Aid and perhaps other external advisers through the Department of Justice and DHS to assist you in guiding your clients? Is there enough referral, from your perspective, to back up when your client has to go to Melbourne to be with their child when they are in another circumstance?

**Ms DINGWALL** — Taking it from the top, in the first instance I think we have excellent liaison with the Department of Justice. We could not ask for better internal support from that particular office. I think it is harder here on the ground in Bendigo with local access, particularly with people who have minimal resources; I am speaking about people on pensions, because they have to have access to Legal Aid. It is fine with VOCAT, because of the provision under the law for a fee payment to lawyers who will take that on, but it is extremely difficult once the award has been made. If there is a variation, it needs to go through Legal Aid because it will no longer attract a fee, and of course the officers here are really overworked. It just so happened that in the one case I highlighted there was a retired Legal Aid lawyer who was just assisting. He was almost an honorary lawyer, and he was just a very compassionate person who took on that case. But they are overworked here, and we have considerable difficulty with Legal Aid simply because they have too much to do — not for any other reason. They are excellent if we need them.

In regard to the third area, DHS are also overworked, so we do not have as much facilitated referral as we would like to see. Chris, would you like to say something?

**Ms JACKSEN** — Yes. The other problem I have found with Legal Aid is when the perpetrator is getting Legal Aid from the same solicitor. Even with VOCAT I have had that too in a small town. I used to work in Maryborough. We made an appointment to see a VOCAT solicitor and when we got into the story a bit he said, 'I'm really sorry, I can't represent you'. Then we thought, 'Where are we going to go now?' because it is not a big town and there is not a lot of choice. That conflict of interest is a problem.

**Mrs PETROVICH** — And it is quite specific to rural areas, because of the constraints in the towns. We were talking about your victim impact statements, and obviously your office is a small office. You made a commitment to that young man to go through and assist him because of his lack of literacy. Are there other alternatives for people in that position to have somebody to go through it with them to assist them with their statements?

**Ms DINGWALL** — You say 'other alternatives'; what are you thinking about?

**Mrs PETROVICH** — I am thinking primarily that he does not understand the law, he has limited literacy and he is probably quite traumatised by having to put his thoughts down anyway.

**Ms DINGWALL** — He was.

**Mrs PETROVICH** — Is there an alternative agency or resource other than organisations such as yours to assist him?

**Ms DINGWALL** — It is actually a requirement of our funding from the Department of Justice that we provide this service, so we are the primary agency to do this. However, he could do that with a lawyer who somebody would pay, but that is unusual because it does not attract a fee. One of the new provisions that we really welcome in the revised victim impact statement situation is that drawings can be done, particularly with children. It has occurred to us that this would be highly appropriate with cognitive impairment because of the cognitive developmental issues. Either giving a verbal statement to court that is recorded or drawings or pictures — non-linguistic language; no language, but other means — could now be acceptable. This could also be helpful particularly with acquired brain injury because, again, quite often the faculty that is impaired is the speech faculty. In these cases there could be other means. But this requires time and it also requires media. Speech detectors, recording, filming or photographs require a certain skill and capacity, which we are not exactly trained in as social workers. It also requires additional resources, which we do not have the finance or the time to do easily. We can do it, but it requires enormous creativity and generosity on our part, which means our other casework then suffers because we only work regular hours.

There is certainly a very positive move to be more thoughtful under the new victim impact statement legislation. I think that some of the provisions that are there for children would be highly appropriate for people with cognitive impairment. I think that is something that could be highlighted, because as we know, there are multiple intelligences, and if the speech and intellectual intelligence is impaired, the visual or musical or other capacities may be highlighted. But this really requires very sensitive and thoughtful collaboration, and that is not necessarily something that we are skilled in or trained in. It so happens that we have a bunch of visuals on our team, so we have fun, but we do not have the time to go there as much as we would like.

**The CHAIR** — All right. Just one final question. Do you find that when people have a mental impairment, whatever the cause, there comes a point in age where they are less likely to have the support of anybody?

**Ms DINGWALL** — Surely.

**The CHAIR** — At what age does that normally happen?

**Ms DINGWALL** — This is in the carer area. Maybe you would like to comment, Chris?

**Ms JACKSEN** — Certainly the older they are, the less likely it is. I guess that comes back to the point I was making. Some people are going to be carers for life. These people are going to be dependent on them for life, depending on the disability. I just think in VOCAT we should recognise that some people will be carers for the life of disabled children.

**The CHAIR** — If you have had a disability from childhood, you are more likely to have the ongoing care.

**Ms JACKSEN** — That is probably true actually; I think that is true.

**The CHAIR** — But if you get the injury when you are an adult, you are less likely to have that family support.

**Ms JACKSEN** — I think that is fair to say, as a general rule.

**Ms DINGWALL** — Certainly one of the acquired brain injury clients I saw in the Campaspe region had not long moved there from the Geelong area and was in a new de facto relationship. Once she realised the financial and time burden, she threw him out. He was homeless when he rang me. I trod on some toes and did not make friends with some of my colleagues. I saw his homelessness as urgent because he was living down in the railway yard under some tin in the same town in which a gang had bashed him. I felt he had to be removed from that town immediately, and I had to really advocate strongly — that would be mild language — to have him accepted into the SAP program in another town. He was put in emergency motel accommodation, because as a male he did not fit the criteria for emergency accommodation that is often available for females. But I felt there were urgent reasons for him to be removed.

He had no-one advocating for him, because he had lost a new de facto relationship and he was way out of the reach of his normal networks. He needed a support worker at that point, and I personally escorted him to Centrelink, which really went out on a limb for him in backdating — which is not what they do — an emergency payment so he could have food at the motel because he could not cook. He at least had accommodation and he at least had an immediate emergency payment, because he was going from the Salvation Army, which was providing food one day to somebody else another day. He was literally going from meal handout to meal handout in a town where he had no resources.

This is a person who has been hospitalised twice and who has considerable amounts of metal replacing bones in his head. Had he been assaulted again so soon after surgery, we could have had a person who was permanently in a hospital for the rest of his life. And there was nothing for him. It was an emergency.

**Mrs PETROVICH** — Well done.

**The CHAIR** — Thank you very much for that. It was very helpful.

**Mrs PETROVICH** — Great work. Thank you very much.

**Ms DINGWALL** — The gap is where we want you to look.

**Mrs PETROVICH** — You have highlighted some anomalies in other areas today, so that is very good.

**Ms DINGWALL** — Thank you very much.

**Mr NORTHE** — Well done.

**Witnesses withdrew.**