



LAW REFORM COMMITTEE

Media Release

From Clem Newton-Brown, MP, Chair

5 March 2013

ENHANCING ACCESS TO JUSTICE FOR PEOPLE WITH AN INTELLECTUAL DISABILITY OR COGNITIVE IMPAIRMENT

The Victorian Parliament's Law Reform Committee today tabled a report recommending a number of measures to maintain and promote the rights of people with an intellectual disability or cognitive impairment.

The Committee was asked to consider the access and interactions that people with an intellectual disability or cognitive impairment have with the justice system. The Committee recognises the important role the police service, the courts and the legal profession can play to safeguard the rights of all people with an intellectual disability or cognitive impairment.

Common life experiences of people with an intellectual disability or cognitive impairment, such as limited education and training opportunities, increased dependence on others to complete daily activities, and social isolation, can be both a barrier to interaction with the justice system and a cause for coming into contact with it. Throughout the Inquiry the Committee heard how critical it is that people working in the justice system are sensitive to the particular needs of people with these impairments.

Committee Chair, Mr Clem Newton-Brown MP said, "Compared to people without a disability, people with an intellectual disability or cognitive impairment are more likely to experience barriers and disadvantages when seeking access to and interaction with the justice system. It is therefore important that the police service, the courts and the legal profession are aware of the needs of people with an intellectual disability or cognitive impairment, and have the right skills to ensure everyone in Victoria has equitable access to justice."

The Committee also heard that people with a cognitive impairment face similar challenges to people with an intellectual disability when interacting with the justice system, but do not have access to the full range of services available to people with an intellectual disability. The Committee recommends that the Victorian Government consider establishing case management services for people with a cognitive impairment who seek access to, or are interacting with, the justice system.

The Committee proposes a number of measures that recognise the important role the police service, the courts and the legal profession play in safeguarding the rights of people with an intellectual disability or cognitive impairment. The report contains 47 recommendations to the Victorian Government, including:

- that Victoria Police identify and make available a simple indicative screening test for use by police officers when they suspect that they have come into contact with a person with an intellectual disability or cognitive impairment;
- that the Victorian Government consider amending the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) to allow investigations into an accused's fitness to stand trial in the Magistrates' and Children's Courts; and
- that the Victorian Government consider establishing specialist advocacy roles within the Magistrates', Children's, County and Supreme Courts of Victoria to provide support to Magistrates and Judges to manage cases involving a person with an intellectual disability or cognitive impairment.

The Victorian Government has six months to respond to the Committee's recommendations.

Contact Mr Clem Newton-Brown for further comment on mobile 0411 255 179.

Copies of the report are available from the Papers Office, Parliament House, or at

www.parliament.vic.gov.au/lawreform

INQUIRY INTO ACCESS TO AND INTERACTION WITH THE JUSTICE SYSTEM BY PEOPLE WITH AN INTELLECTUAL DISABILITY

RECOMMENDATIONS

Recommendation 1: That the Department of Justice, with representatives from Victoria Police, the Office of Public Prosecutions, the courts and the Department of Human Services, establish a centralised database for the collection of statistics on people with an intellectual disability or cognitive impairment who have come into contact with the justice system. The database could include information on:

- the number of offences in Victoria involving people with an intellectual disability or cognitive impairment, either as victims or offenders;
- police reports and prosecution rates for such offences; and
- prosecution outcomes.

Recommendation 2: That the Victorian Government commission research to measure the incidence of interactions with the justice system and human services by people with an intellectual disability or cognitive impairment, and to identify opportunities to improve service deliver.

Recommendation 3: That the Victorian Government review available accommodation options to ensure that people with an intellectual disability or cognitive impairment are not denied parole solely due to the unavailability of suitable accommodation.

Recommendation 4: That the Victorian Government consider establishing case management services for people with a cognitive impairment who seek access to or are interacting with the justice system. The development of case management services should draw upon services that are currently provided to people with an intellectual disability, but also be reflective of the different support needs of a person with a cognitive impairment. The role of the case manager could include:

- providing continuing contact, support and information for the person;
- acting as a point of liaison for police, lawyers, courts and corrections; and
- being involved in the development of a support plan encompassing areas of supervision, accommodation and behaviour skills.

Recommendation 5: That the Victorian Government ensure that clients with a disability who seek assistance from disability advocacy services have adequate access to those services.

Recommendation 6: That the Victorian Government consider establishing a steering committee for the purpose of coordinating Government agencies involved in the care and support of people with an intellectual disability or cognitive impairment who are involved in the justice system. The steering committee should be comprised of senior departmental staff, and report regularly to the responsible Minister or Ministers. The steering committee could:

- identify services, needs and support required by people with an intellectual disability when involved in the justice system;
- identify the roles of agencies responsible for meeting those needs;
- develop interagency guidelines for determining the responsibilities of agencies where there is an overlap in service delivery; and
- establish guidelines to ensure that departments and agencies involved in the justice system exchange information where appropriate. These guidelines should take into account relevant privacy and confidentiality considerations and be developed in consultation with the Privacy Commissioner.

Recommendation 7: That Victoria Police develop separate sections in the Victoria Police Manual for guidance on mental illness, intellectual disability, and cognitive impairment respectively, and define appropriate responses for each impairment.

Recommendation 8: That the Victoria Police Manual be amended, with the assistance of the Department of Human Services and the Office of the Public Advocate, to provide guidance on how to identify a person with an intellectual disability or cognitive impairment.

Recommendation 9: That Victoria Police identify and make available a simple indicative screening test for use by police officers when they suspect that they have come into contact with a person with an intellectual disability or cognitive impairment.

Recommendation 10: That Victoria Police record all instances when an Independent Third Person provides assistance to a person during a police interview on the Law Enforcement Assistance Program.

Recommendation 11: That the Victorian Government evaluate the performance of the Geelong Community Support Register, and if benefits from the Register are demonstrated, consider introducing similar registers across Victoria.

Recommendation 12: That Victoria Police make available to police officers regular revision training on issues surrounding interaction with people with an intellectual disability or cognitive impairment. Training could encompass:

- techniques to improve identification of people with an intellectual disability or cognitive impairment;
- techniques to encourage effective communication with people with an intellectual disability or cognitive impairment;
- a component to raise awareness of challenges experienced by people with an intellectual disability or cognitive impairment when they become involved in the justice system;
- a component outlining the services available to people who have an intellectual disability or cognitive impairment; and
- a component outlining existing operational procedures that aim to provide support to people with an intellectual disability or cognitive impairment during police interviews, such as the Independent Third Persons program.

Recommendation 13: That Victoria Police consider establishing a Disability Liaison Officer position across major metropolitan and major regional police service areas to provide expertise in identifying and appropriately interacting with people who have an intellectual disability or cognitive impairment.

Recommendation 14: That the Victoria Police Manual be amended, with the assistance of the Department of Human Services and the Office of the Public Advocate, to provide enhanced guidance on how to improve communications with people who have an intellectual disability. Guidance could cover:

- the need to pitch language and concepts at a level that can be understood;
- the need to take extra time in interviewing;
- the risks of the person's susceptibility to authority figures, including a tendency to give answers that the person believes are expected;
- the dangers of leading or repetitive questions;
- the need to allow the person to tell his or her story in their own words;
- the person's likely short attention span, poor memory and difficulties with details such as times, dates and numbers; and
- the need to ask the person to explain what was said.

Recommendation 15: That the Victoria Police Manual be amended to provide enhanced guidance on how to administer a caution to a person who has an intellectual disability or cognitive impairment. Guidance could describe:

- the comprehension difficulties that a person with an intellectual disability or cognitive impairment may experience in comprehending the right to silence and police cautions;
- the possible evidentiary consequences of failing to understand the caution; and
- the need for the person to be reminded of the caution during the interview process.

Recommendation 16: That guidance contained in the Victoria Police Manual be enhanced to clarify an officer's obligation to obtain an Independent Third Person during an interview with a person suspected of having an intellectual disability.

Recommendation 17: That the Victorian Government promote the Independent Third Person program, and review incentives for participation in the program to ensure that enough suitably qualified people are able to perform the duties of an Independent Third Person.

Recommendation 18: That the Victorian Government develop a comprehensive community education campaign to increase awareness of legal rights, court processes, and legal assistance and support by people with an intellectual disability or cognitive impairment, their families and carers. The education campaign should be delivered in disability, community and education settings, and online.

Recommendation 19: That the Victorian Government ensure that specialist community legal centres and other agencies that provide services directly to people with a disability are able to adequately meet demand.

Recommendation 20: That the Victorian Government examine whether financially disadvantaged sectors of the intellectually disabled and cognitively impaired community are able to access sufficient legal aid.

Recommendation 21: That the Victorian Government ensure that psychological or psychiatric reports are available to determine whether individuals that come into contact with the justice system have an intellectual disability or cognitive impairment in all appropriate cases.

Recommendation 22: That the Victorian Government support the Law Institute of Victoria and the Victorian Bar to develop and distribute information to their members containing information on how to better interact with, and appropriately respond to, clients with an intellectual disability or cognitive impairment. This information could include:

- how to identify intellectual disability or cognitive impairment;
- issues involved in prosecuting and representing clients who have an intellectual disability or cognitive impairment
- disadvantages experienced by people with an intellectual disability or cognitive impairment; and
- organisations that can provide information to assist both practitioners and clients.

Recommendation 23: That the Victorian Government assist the Law Institute of Victoria and the Victorian Bar to develop and distribute information to members on appropriate communication techniques when interviewing a person with an intellectual disability or cognitive impairment. Communication techniques could include that:

- the interview be conducted where it is quiet and there are few distractions;
- extra time be scheduled for the interview;
- advice be given in clear, brief sentences and spoken clearly and slowly;
- plain English, short words and sentences be used;
- the client be encouraged to use their own terminology;
- communications by alternative means, for example using picture boards, be encouraged;
- one piece of information and advice be provided at a time; and
- questions be open ended.

Recommendation 24: That the Victorian Government consider establishing a mechanism to allow appropriately qualified independent support people to attend interviews between lawyers and clients who have an intellectual disability or cognitive impairment.

Recommendation 25: That the Victorian Government liaise with the Law Institute of Victoria and the Victorian Bar to consider amending the *Professional Conduct and Practice Rules 2005* and the *Victorian Bar Incorporated Practice Rules 2009* to require lawyers to discuss with a client with an intellectual disability or cognitive impairment whether the client wishes to have a support person present. If the client does wish to have a support person present, the lawyer should make enquiries as to whether a nominated or independent support person could provide appropriate support for the person.

Recommendation 26: That the Victorian Government support the Judicial College of Victoria to provide more training opportunities for members of the judiciary about best practice management in proceedings involving a person with an intellectual disability or cognitive impairment.

Recommendation 27: That the Victorian Government support the Judicial College of Victoria to develop, in consultation with members of the judiciary and the disability sector, guidance material on how the needs of people with an intellectual disability or cognitive impairment can be identified and appropriately met, including with modifications to court proceedings.

Recommendation 28: That the Victorian Government consider amending the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* to allow the trial judge to investigate an accused's fitness to stand trial.

Recommendation 29: That the Victorian Government consider amending the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* to require the court to determine, when considering fitness to stand trial:

- 1) the ability of the accused to understand, or respond rationally to, the charge or allegations on which the charge is based; or
- 2) the ability of the accused to exercise, or to give rational instructions about the exercise of, procedural rights.

Recommendation 30: That the Victorian Government consider amending the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* to allow investigations into an accused's fitness to stand trial to be considered in the Magistrates' and Children's Courts.

Recommendation 31: That the Victorian Government consider amending the *Criminal Procedure Act 2009 (Vic)* to ensure that uniform committal procedures are employed when fitness to stand trial is considered by the courts.

Recommendation 32: That the Victorian Government investigate procedures adopted in the United Kingdom for determining fitness to stand trial, with a view to examining whether these procedures could provide for opportunities to resolve determinations of fitness to stand trial in Victoria more expeditiously.

Recommendation 33: That the Victorian Government consider introducing legislation to provide a definition of 'mental impairment' in the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* to encompass mental illness, intellectual disability, acquired brain injuries and severe personality disorders, while maintaining criteria for determining fitness to stand trial described in section 6 of that Act and Recommendation 29 above.

Recommendation 34: That the Victorian Government extend the use of problem-solving court models currently operating in the Magistrates' Court of Victoria – particularly the Assessment and Referral Court List, the Court Integrated Services Program and the Neighbourhood Justice Centre – across Victorian Magistrates' Courts in major metropolitan and major regional centres.

Recommendation 35: That Victoria Police require police officers qualified to conduct audio and audio-visual recordings of evidence to receive training on effective communication with people with an intellectual disability or cognitive impairment, and awareness of the kinds of disadvantages experienced by people with an intellectual disability or cognitive impairment when they become involved in the justice system.

Recommendation 36: That the Victorian Government consider establishing a witness intermediary scheme modelled on the United Kingdom scheme to provide support for people with an intellectual disability or cognitive impairment. The role of the intermediary could include:

- communicating questions that have been put to the witness;
- communicating answers given by the witness in reply to any questions; and
- explaining questions of answers as necessary to allow them to be understood by the witness.

Recommendation 37: That the Victorian Government review current arrangements for the appointment of litigation guardians. The review could seek to:

- ensure consistent processes are employed by the courts to appoint litigation guardians;
- ensure that a mechanism exists to enable a person with a disability to locate a suitably qualified litigation guardian; and
- ensure that organisations currently acting, or required by the courts to act, as litigation guardians are able to draw upon funds to meet adverse costs orders should such orders be imposed by the courts.

Recommendation 38: That the Victorian Government consider establishing specialist advocacy roles within the Magistrates', Children's, County and Supreme Courts of Victoria to provide support to Magistrates and Judges to manage cases involving a person with an intellectual disability or cognitive impairment.

Recommendation 39: That the Victorian Government examine whether existing mechanisms for giving evidence by alternative means could be expanded, with a view to exploring whether these measures could enhance the level of participation that all people with an intellectual disability or cognitive impairment have in court proceedings.

Recommendation 40: That the Victorian Government consider amending the *Sentencing Act 1991* (Vic) to clarify the courts' ability to impose a residential treatment order for 'serious offences' and the status of residential treatment orders within the sentencing hierarchy available to the courts.

Recommendation 41: That the Victorian Government consider amending the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) to clarify Departmental responsibility for supervising and monitoring Custodial Supervision Orders and Non-Custodial Supervision Orders.

Recommendation 42: That the Victorian Government ensure the Department of Human Services and Department of Justice prepare pre-sentence reports in a timely and efficient manner for people with an intellectual disability or cognitive impairment.

Recommendation 43: That the Victorian Government continue to support Corrections Victoria in providing education, training, and resource programs for Corrections staff working with people with an intellectual disability or cognitive impairment.

Recommendation 44: That the Victorian Government continue to support Corrections Victoria to deliver and develop programs directed toward offenders with an intellectual disability or cognitive impairment.

Recommendation 45: That the Victorian Government ensure resources are provided for programs and services directed toward reintegration and rehabilitation of offenders with an intellectual disability or cognitive impairment into the community.

Recommendation 46: That the Victorian Government consider amending the *Sentencing Act 1991* (Vic) to allow the court to impose a justice plan when sentencing any offender with a 'disability' within the meaning of the *Disability Act 2006* (Vic).

Recommendation 47: That the Victorian Government amend the *Infringements Act 2006* (Vic) to create an appeal right against decisions made by the Magistrates' Court to impose imprisonment in lieu of payment of fines for people with an intellectual disability or cognitive impairment.