Submission:
Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers

This paper is a submission to the Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers being conducted by the Law Reform Committee.

Leadership Plus is a community-based organisation providing advocacy assistance and leadership development to people living with disability. Advocacy is funded through the National Disability Advocacy Program and our advocacy work focuses on people living with an Acquired Brain Injury (ABI).

Leadership Plus is the lead agency of Disability Rights Victoria. Disability Rights Victoria is a consortium of eight disability advocacy agencies across Victoria. Members of the consortium provide advocacy assistance to individuals and are also involved in self advocacy and systemic advocacy. Leadership Plus works to resource the consortium in responding to systemic issues identified through individual disability advocacy work.

Leadership Plus is also a member of the Victorian Coalition of ABI Service Providers (VCASP) and sits on the VCASP Criminal Justice Sub-committee.

This submission aims to provide the Inquiry with insight into our disability advocacy work with individuals engaged with the justice system. As a specialised service, this submission focuses on, but is not limited to, people living with an ABI.

Leadership Plus takes the position that the findings of this Inquiry should be extended to include people with an Acquired Brain Injury. Thus this submission focuses on Section C of the Inquiry’s Terms of Reference:

(c) consideration as to whether the findings of the inquiry have broader application to people with a disability other than an intellectual
disability, for example those with an acquired brain injury or neurological condition leading to cognitive disability

In addressing Section C our submission focuses on four key areas prevalent in our disability advocacy work:

- The Children’s Court: People with disability and/or ABI as parents engaged with DHS Child Protection
- Criminal justice system: People with disability and/or ABI as offenders
- Lack of access to appropriate services post-release and the impact of broader social factors such as unstable housing
- Dealings with police

Background: Acquired Brain Injury and Advocacy

In the last reporting period (July 2010 – June 2011) Leadership Plus provided individual advocacy assistance on 43 advocacy issues involving the justice system. These issues include matters relating to:

- Criminal Justice
- Personal Injury
- Child Protection
- VCAT
- Discrimination

Leadership Plus adopts a rights-based approach in its advocacy work. Advocates make use of the Victorian Charter of Human Rights and the UN Convention on the Rights of Persons with Disabilities (UNCRPD) to strengthen and inform individual case work. Leadership Plus specialises in providing advocacy to people living with acquired brain injury.

Acquired Brain Injury (ABI) is a hidden disability often misunderstood by the community. The term ABI is used to describe all types of brain injury after birth. Brain injury can be a result of:

- Stroke
- Head trauma
- Substance abuse
- Brain infection

Unlike people with an Intellectual Disability, people with an ABI exhibit cognitive changes and changes in behaviour which were not necessarily present pre injury. These changes have an impact on the individual and their families. People with brain injury can experience:

- Changes in physical and sensory abilities
- Changes in ability to think and learn
- Changes in behaviour and personality (e.g. disinhibition and impulsivity)
• Communication difficulties
• Medical conditions (e.g., pain, migraine, onset of epilepsy, increased chance of developing depression and mental illness)

Losses from ABI are complex and diverse for each individual. The effects of brain injury vary for each individual and therefore advocacy seeks to ensure a tailored approach. Because memory, impulsivity and concentration disturbance is heightened after a brain injury Leadership Plus recognises that people with ABI require independent assistance to navigate the justice system.

For those whose lives have experienced the impact of brain injury there is significant trauma and grief experienced. Most people with an ABI need to adapt to a loss in cognitive function and personality change. It is therefore not uncommon for people with ABI to experience:
• Family break down
• Homelessness
• Loss of employment
• Isolation

The impact of brain injury goes far beyond the person who has an ABI. It includes family, friends, work colleagues and the broader community.

Terms of reference

a) Key issues and themes:

(i) Participants’ knowledge of their rights

The essence of disability advocacy work is to assist people in understanding their Human Rights. As such, advocacy plays a significant role in supporting people to have knowledge and understanding of their rights.

When a person with an ABI or other cognitive impairment is required to participate in the justice system there are significant and ongoing issues of disadvantage, stigma as well as scarce service and support resources available. These issues are still not well understood by:
• Police
• Legal Representatives
• Justice workers
• Other formal bodies – e.g. DHS Child Protection

In our advocacy work we find people with an ABI or other cognitive impairment, often:
• Do not understand the broad legal framework and structures within Victoria and Australia
• Have limited or no understanding of the legal process they must undertake
Have difficulty knowing who to trust in the legal process
Do not understand legal language, legal terms or legal concepts
Become overwhelmed by the volume of new information they need to process
Require independent assistance in working through the information and problem solving
Have difficulty making decisions at crucial points in the process
Not aware of their rights when engaged with the justice system.

The provision of disability advocacy aims to redress this disadvantage. For example, an advocate would:
- Provide a context in which to understand the legal process.
- Spend time explaining the legal process, what options are available, likely outcomes, risks involved
- Provide information, including legal terms and legal concepts, in an accessible format (easy English, audio, diagrams)
- Provide information to legal representatives and others on the impact of disability and how to best engage with the client
- Ensure legal representatives understand clients views and help facilitate communication between legal representatives and clients
- Prepare client prior to meeting with legal representatives
- Attend appointments with legal representatives and court personnel
- Assist with the gathering of helpful information for the legal matter (e.g. Neuropsychological Assessment; Stat Dec; Medical reports)
- Provide a report to the Court outlining the social welfare issues and the impact of disability where appropriate
- Attend court hearings

Children’s Court

In Australia an estimated one-in-three cases in the Children’s Courts includes a parent with a disability.¹

Proceedings in the Children’s Court raises many issues around participants understanding of their rights. Leadership Plus regularly provides advocacy assistance in Child Protection matters. Leadership Plus would say parents with a disability challenge the mainstream idea of parental competency. In our experience as advocates, there is significant discrimination experienced by parents who live with disability. Our advocacy work in relation to Children’s Court centres on the experience of parents whose children are either threatened to be removed or have been removed and living in care.

For people with an ABI or cognitive impairment, their difficulty in understanding the process often exacerbates the stress associated with

attending Children’s Court. Understandably, many parents are emotionally charged which hinders concentration and their decision-making abilities.

In Australia an estimated one-in-three cases in the Children’s Courts includes a parent with a disability. The Children’s Court is a particularly challenging environment for people with ABI or cognitive impairment. The child protection system can be confusing and often parents do not have a clear understanding of what will happen on the day of court or why they are there. This makes it difficult for legal representatives to take instruction, and for parties to the proceeding have their voices or opinions heard.

“One legal representative advised of the difficulty of meeting the needs of parents with a disability within the Legal Aid system. He advised that there was inadequate time to ensure his client has understood what is happening and what future options may exist. He also advised that it is impossible to spend the time required to go through a judge’s decision to explain the decision effectively to their clients.”

DHS Child Protection reports are provided to Court on the day. Often this is the first opportunity the parents have had to view the document. This results in:

- Insufficient time to work through the documentation
- Significantly disadvantages persons with disability who experience difficulty reading, retaining and understanding high volume of information
- People are expected to read and absorb the report (which contains sensitive information) then provide instruction to their legal representative

The court environment is highly stressful, due to factors such as:

- Limited time with legal representative
- Scarcity of interview rooms or areas of privacy
- Inside interview rooms PA announcements come over constantly, interrupting the discussion and distracting the client
- Time is limited and people are under pressure to reach decisions

Case Study 1

Bianca, a mother of two in her early thirties who lives with an Acquired Brain Injury, experiences on-going difficulty navigating the Child Protection system and the Children’s Court. Bianca has a four-month old baby in her care and a 10 year old daughter who has been under the care of DHS child protection since she was a baby.

3 Fitt, K. Our Forgotten Families: Issues and challenges faced by parents with a disability in Victoria, 2010 p. 30
Bianca sought advocacy assistance in responding to DHS application to Court to extend the current orders for her 10 year old daughter. Bianca expressed her desire to increase the access time with her daughter to two hours per fortnight. The advocate observed that Bianca had difficulty in:

- understanding the role of Child Protection and why they are involved;
- receiving information from Child Protection which is presented using complex language and in high volume, for example Court reports and case plan;
- understanding or being aware of her rights as the child’s legal guardian; how to apply these rights when working with the Children’s Court;
- understanding the role of the Children’s Court; how they are connected to child protection, timely process.
- understanding the mediation process; the purpose of the process.

The advocate observed that DHS Child Protection demonstrated very little understanding of Bianca’s brain injury and the impact of her disability on her life. DHS Child Protection did very little to accommodate Bianca’s disability, such as not providing information in a more accessible format. Bianca expressed that she did not feel empowered to communicate issues during child protection case plan meetings.

Recommendation 1: Independent advocacy support to parents with disability when going through Children’s Court process to have knowledge and understanding of their rights and provision of information in an accessible format.

a) Key issues and themes:

(ii) Availability of appropriate services and supports

Evidence suggests that people with an ABI are ‘substantially overrepresented in the Victorian prison population’\(^4\) and that issues related to their ABI are ‘likely to become more apparent following release’\(^5\).

In its advocacy work Leadership Plus has observed that people with an ABI who are involved with the criminal justice system may be disadvantaged without access to additional support.

In Victoria people with an intellectual disability involved in the criminal justice system can receive disability services before, during and after court, mandated by provisions in the Disability Act 2006. Such a comprehensive system does not exist in Victoria to support the needs of people with ABI involved in the criminal justice system.\(^6\)

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Leadership Plus has observed that one of the key areas of need for support for people with ABI is during the period of post-release. Evidence confirms the need for specialised supports and services to be in place for individuals with an ABI:

“The severe cognitive and behavioural deficits identified in these individuals [with an ABI] have significant implications … in terms of their need for support and assistance upon release”

An example of critical needs includes accommodation options with appropriately trained staff as well as ABI specific services, such as case management, attendant care and Neuropsychological intervention.

People with an ABI presenting for specialist ABI case management services are often characterised by an active alcohol or other substance misuse issue, a mental illness, family breakdown, homeless or at risk of homelessness. Experience of ABI case managers suggests that generic services are reluctant to accept referrals due to the nature of disability and associated behaviour of those with ABI.

Recommenation 2: People with an ABI have access to a system comparable to that available to people with an intellectual disability involved in the criminal justice system.

Recommenation 3: Legislative and policy reform to uphold the rights of people with ABI and to strive to reduce the numbers of people with an ABI involved in the criminal justice system.

a) Key issues and themes:

(iii) Dealings with the police

Leadership Plus has found in our work police officers that have displayed a good understanding of disability and have assisted to enable people living with disability to pursue police matters with good outcomes. There have also been a number of situations where police appear to have misread a situation.

Case Study 2

Roseanne is a 30 year old woman living with ABI. Recently after having a couple of drinks with a friend she went to get some money from an ATM. In the car park of KFC she was circled by a group of 15-20 young men. They

taunted her, pushed and shoved her and stole her purse and mobile phone. They exposed themselves to her and threatened to sexually assault her.

It appears that a call was made to the police. It is unknown who called the police, possibly an onlooker. The police arrived and as you would imagine Roseanne was upset. The majority of the young men fled the scene. Roseanne yelled at the police and attempted to explain the situation. The police did not listen to her and her behaviour escalated as she was not understood. The police smelt alcohol on her breath and charged her with being drunk in a public place. She was taken in and locked up for a period and released at 2am in the city with no phone or money.

Roseanne soon came into contact with the police again that night when looking for a place to sleep on the street in the city at 3am as she was not able to get home without money or make a call without her phone. The police advised her to seek assistance from the Salvation Army. It was the Salvation Army who assisted Roseanne in seeking medical attention at the Emergency Department.

Roseanne is now deciding whether she will pursue this matter further with the police.

### Case Study 3

Michael is a 65 year old man living with an ABI. Michael was charged with being drunk in a public place and sought advocacy support for this. The charge sheet stated that Michael was ‘consuming alcohol and being abusive to passengers and bus driver’. Michael was fined $478.

Michael has a medical certificate which states that he has trouble with his balance (due to brain injury, which is not uncommon). Michael was arrested and taken into the police station. Michael raised the following concerns regarding dealings with the police:

- Michael was not breathalysed or blood tested and has a condition which affects his balance, yet was still charged with drunken behaviour
- Michael was not allowed to see a Doctor despite requesting one when he arrived at the police station
- The police did not have a key to unlock the back of the divvy van and had to use an angle grinder. This took a long-time and made Michael anxious, overwhelmed and less able to deal with the situation
- Michael’s name and details on his charge sheet were incorrect but police did not correct them

Leadership Plus commends the Office of the Public Advocate and the Victoria Police on the work done to ensure an Independent Third Party is available to all members of the community with a cognitive impairment when making a statement to the police.
Recommendation 4: Continuation and further strengthening of the Independent Third Person Scheme.

Leadership Plus also commends the Victoria Police on the initiative of training officers as Mental Health and Disability Liaison Officers. It is our understanding that training for these 120 positions across the state is currently voluntary. Leadership Plus see this as a terrific move forward by the police in further broadening their understanding of the complexity of disability and improving the policing experience and outcomes for people living with disability in Victoria. These Liaison Officers also potentially provide a helpful ‘point of contact’ with the police in our disability advocacy work and community workers in general. It provides an opportunity to further develop collaborative efforts in addressing issues related to disability.

Recommendation 5: Further strengthening of the Victoria Police Mental Health and Disability Liaison Officers initiative, moving from voluntary to compulsory.

a) Key issues and themes:

(iv) The operation of the courts

Having ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD), Australia must meet its commitment to ensure “effective access to justice for persons with disabilities on an equal basis with others”.

Despite the challenges associated with the Children’s Court outlined above, it is important to note that Children’s Court is highly valuable to the child protection system. It is the only independent investigation which takes place in determining what is in the best interests of the child.

“… It is felt that while difficult, the court process at least provides the opportunity for some to be heard and to have child protection processes examined externally. A reduction in the role of legal advocates in the process would lead to a reduction in access to fair and equitable processes for families who feel that they have already been ‘forgotten by every part of every system.”

Case Study 4

Vince, a 27 year old father of two living with an acquired brain injury and intellectual disability is illiterate and takes daily medication to treat depression. He lives in a caravan park, having experienced periods of homelessness.

9 OV, own motion investigation into the Department of Human Services Child Protection Program. 2009, Ombudsman Victoria: Melbourne
Other than Vince’s partner, who identifies as his carer there is no formal support in place.

What became clear in the advocacy work is that Vince did not understand Child Protection’s position. Child Protection would not consider ‘reunification’ with either mother or father. So, despite his children having been in care for over three years, Vince had very limited understanding of Child Protection’s involvement and why the case was before the Children’s Court again.

Neuropsychological Assessment identified that Vince needs to receive verbal information several times before the information is understood. Written information needs to be provided to Vince in audio format so that Vince can listen to it a number of times. Child Protection continues to communicate with Vince via letter and one phone call. Vince is frustrated, confused, and disempowered.

This case highlights how people can easily miss out on information and find themselves years into a legal matter yet still not have an understanding their rights as Guardians of their child/children.

Recommendation 6: Comprehensive training in ABI be developed and delivered to all justice system personnel.
RECOMMENDATIONS

Recommendation 1:
Independent advocacy support to parents with disability when going through Children's Court process to have knowledge and understanding of their rights and provision of information in an accessible format.

Recommendation 2:
People with an ABI have access to a system comparable to that available to people with an intellectual disability involved in the criminal justice system.

Recommendation 3:
Legislative and policy reform to uphold the rights of people with ABI and to strive to reduce the numbers of people with an ABI involved in the criminal justice system.

Recommendation 4:
Continuation and further strengthening of the Independent Third Person Scheme.

Recommendation 5:
Further strengthening of the Victoria Police Mental Health and Disability Liaison Officers initiative, moving from voluntary to compulsory.

Recommendation 6:
Comprehensive training in ABI be developed and delivered to all justice system personnel.
References


Fitt, K. Our Forgotten Families: Issues and challenges faced by parents with a disability in Victoria, 2010


OV, own motion investigation into the Department of Human Services Child Protection Program. 2009, Ombudsman Victoria: Melbourne