

# Submission

THIS SUBMISSION WAS PREPARED BY THE FEDERATION OF COMMUNITY LEGAL CENTRES (VICTORIA) INC, IN CONSULTATION WITH MEMBER CENTRES

September 2011

## **Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers**

## **Response to Parliament of Victoria Law Reform Committee Inquiry**



Federation of  
Community Legal Centres  
VICTORIA

Level 3  
225 Bourke Street  
Melbourne  
Victoria 3000

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Tel: 03-9652 1500  
Fax: 03-9654 5204  
administration@fclc.org.au  
www.communitylaw.org.au

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### **Inquiries to:**

Dr Chris Atmore  
Policy Officer  
Federation of Community Legal Centres (Victoria) Inc  
03 9652 1506  
policy@fclc.org.au

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Federation of  
Community Legal Centres  
(Vic) Incorporated  
Registration A0013713H  
ABN 30 036 539 902

# Acknowledgements

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Disability Discrimination Legal Service  
PILCH Homeless Persons' Legal Clinic  
Women's Legal Service Victoria

# About the Federation of Community Legal Centres (Victoria) Inc

The Federation is the peak body for 49 community legal centres across Victoria. A full list of our members is available at <http://www.communitylaw.org.au>.

The Federation leads and supports community legal centres to pursue social equity and to challenge injustice.

The Federation:

- provides information and referrals to people seeking legal assistance
- initiates and resources law reform to develop a fairer legal system that better responds to the needs of the disadvantaged
- works to build a stronger and more effective community legal sector
- provides services and support to community legal centres
- represents community legal centres with stakeholders

The Federation assists its diverse membership to collaborate for justice. Workers and volunteers throughout Victoria come together through working groups and other networks to exchange ideas and develop strategies to improve the effectiveness of their work.

## About community legal centres

Community legal centres are independent community organisations which provide free legal services to the public. Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year.

Generalist community legal centres provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria.

Specialist community legal centres focus on groups of people with special needs or particular areas of law (eg mental health, disability, consumer law, environment etc).

Community legal centres receive funds and resources from a variety of sources including state, federal and local government, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of hundreds of volunteers across Victoria.

Community legal centres provide effective and creative solutions to legal problems based on their experience within their community. It is our community relationship that distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

Community legal centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome.

Community legal centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

## Introduction

The Federation welcomes the opportunity to contribute to the Inquiry. Our specialist member centres, Disability Discrimination Legal Service, Villamanta Disability Rights Legal Service, Mental Health Legal Centre and AED Legal Centre, focus on the provision of legal assistance to clients with disabilities.

The work of the Federation's 45 other community legal centres (CLCs) also commonly entails assisting people who are disadvantaged, vulnerable or marginalised in Victorian society. CLC clients are predominantly low-income, and include many Victorians who are young, elderly, Aboriginal, culturally and linguistically diverse (CALD), homeless and/or who have disabilities. The Commonwealth Government's Review of the Commonwealth Community Legal Services Program noted that collated data demonstrated that 58% of community legal sector clients received some form of income support, 82% of clients earned less than \$26,000 per annum, and almost 9% of clients had some form of disability.<sup>1</sup>

CLCs aim to provide a bridge to the justice system so that it is accessible, welcoming and fair for all Victorians. Genuine access to justice also means that there are adequate, appropriate and accessible remedies available to address violation of rights, and that all members of the community have an understanding of the legal system, their rights within it, and their options for achieving justice.

## Failure of the justice system

We believe that if the experiences of our clients with intellectual disabilities are a litmus test for whether the Victorian legal system genuinely provides access to justice, then the system must be said to be failing. Lack of access to justice is an issue for people with intellectual disabilities as persons of interest and offenders throughout the criminal justice process: from policing to the courts, to prisons and secure facilities, to post-release. For more comment on the treatment of people with intellectual disabilities as alleged and convicted offenders, we refer the Committee to the submissions to the Inquiry from our member centres, Villamanta Disability Rights Legal Service and Victorian Aboriginal Legal Service (VALS), which we endorse.

The barriers faced by people with intellectual disabilities are also generally applicable to those with any cognitive disability.<sup>2</sup> In many situations, these are also barriers faced by our disadvantaged clients who do not have disabilities, but such barriers are more insurmountable for those with cognitive disabilities, and especially so if they are also members of other disadvantaged groups.<sup>3</sup>

Our lawyers and paralegal workers also see the results of the justice system's failure in our clients' treatment as victims of crime. We refer the Committee to the joint submission to the Inquiry from Women with Disabilities Victoria, Domestic Violence Victoria, the Federation of Community Legal Centres, Women's Legal Service Victoria and Family Law Legal Service, and Maroondah Halfway House (Women with Disabilities Victoria and others), concerning the lack of access to justice for women with cognitive disabilities who have suffered sexual assault or family violence. It is also important for policymakers to address the fact that many people with cognitive disabilities who are convicted of crime are also victims of offences during their life. As one illustration, we refer the Committee to the VOCAT Case Study 2 in the submission to the Inquiry from Women with Disabilities Victoria and others.<sup>4</sup>

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<sup>1</sup> Review of the Commonwealth Community Legal Services Program (March 2008)

<http://www.ag.gov.au/www/agd/agd.nsf/Page/RWP6DE98B3437EEB6FDCA25742D007B0738>

<sup>2</sup> See eg Brain Injury Australia, *Policy Paper: Out of Sight, Out of Mind: People with an Acquired Brain Injury and the Criminal Justice System* (July 2011). For this reason in the remainder of the submission we refer to 'people with cognitive disabilities'.

<sup>3</sup> For a more detailed discussion, see: 'Access to Justice for People with a Cognitive Disability', Submission to the Inquiry from Victorian Aboriginal Legal Service (VALS); Brain Injury Australia, *Policy Paper: Out of Sight, Out of Mind: People with an Acquired Brain Injury and the Criminal Justice System* (July 2011).

<sup>4</sup> See also VALS' submission to the Inquiry.

People with cognitive disabilities also often fall foul of the infringements regime, and find it very difficult to get justice when they have been discriminated against. They may be subject to multiple legislative regimes, ostensibly for their own protection, but which in reality often restrict their lives in ways that people with cognitive disabilities would not necessarily choose if they had the option.<sup>5</sup>

Victorians with cognitive disabilities find it extremely difficult to access justice in the family and civil law systems. For example, we refer the Committee to the submission from Women with Disabilities Victoria and others concerning the higher parenting standard to which mothers with intellectual disabilities appear to be held by the Department of Human Services. Our clients who have cognitive disabilities also find it much harder to obtain justice when they have a tenancy, consumer law or debt matter.

It is not only the formal justice system that does not effectively provide for our clients' needs. Often our clients are unable to access appropriate support services in relation to housing, drug and alcohol treatment, particularly if they have multiple disabilities or health issues, or have suffered violence.<sup>6</sup> In many cases, if such supports had been available at an early stage, people with cognitive disabilities would not have gone on to be convicted of criminal offences or to face further difficulties with aspects of the civil law system.<sup>7</sup>

The lack of adequate data collection and research with regard to the experience of people with cognitive disabilities in all aspects of the justice system is also a significant impediment to understanding the interaction between cognitive disability and the justice system and improving responses.

While as outlined, there are many access to justice issues that we could detail in this submission, we draw on our member centres' casework and focus below on the areas of infringements, intervention orders where the person with a cognitive disability is the respondent, and discrimination.

## The infringements system

The *Infringements Act 2006* (Vic) (Infringements Act) acknowledges that people with 'special circumstances', including a cognitive disability,<sup>8</sup> should be treated with a more supportive and therapeutic approach than other 'offenders'. In the parliamentary debates surrounding the introduction of this legislation, the Legislative Assembly was told:

One of the features of the penalty infringement system has been that a number of socially disadvantaged people, particularly people suffering from mental illness, have been caught up in the penalty infringement system in a repeated way due to the fact of their mental illness and their consequent difficulty in understanding the nature and effect of some of their conduct.

It is particularly questionable whether or not people who may be suffering from a mental illness are being appropriately dealt with through the penalty infringement notice system at present and a number of reforms included in this legislation will address those issues. It is appropriate and right that legislation addresses those issues.<sup>9</sup>

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<sup>5</sup> See eg Federation of Community Legal Centres, 'Review of Guardianship Laws – Response to VLRC Consultation Paper February 2011' (June 2011) <http://www.fclc.org.au/lrs.php#Disability>

<sup>6</sup> For a more detailed discussion, see VALS' submission to the Inquiry.

<sup>7</sup> See eg Brain Injury Australia, *Policy Paper: Out of Sight, Out of Mind: People with an Acquired Brain Injury and the Criminal Justice System* (July 2011), especially 27-28.

<sup>8</sup> *Infringements Act 2006* (Vic), s 3: special circumstances include 'a mental or intellectual disability, disorder, disease or illness', 'a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the Drugs, Poisons and Controlled Substances Act 1981' and 'homelessness'.

<sup>9</sup> Victoria, Parliamentary Debates, Legislative Assembly, 2 March 2006, 464 (Tony Lupton).

People whose special circumstances result in the person being unable to understand that conduct constitutes an offence, or unable to control conduct that constitutes an offence, may apply for 'internal review'<sup>10</sup> of an infringement or 'revocation'<sup>11</sup> of an enforcement order. If an enforcement order is revoked but the enforcing agency does not withdraw the infringement, the matter is referred to the Special Circumstances List of the Melbourne Magistrates' Court.<sup>12</sup>

As the Legislative Council was told:

This bill goes a step further to try and prevent special circumstances matters flowing to the court by having notices withdrawn by the issuing agency.

Where the person's circumstances are genuine, it should be possible for the person or, more likely, someone on their behalf, to provide evidence to the agency of the person's condition and seek to have the notice withdrawn. This provides benefits to all parties. Unnecessary matters are not prosecuted by the agency and, for the people involved, fines are avoided and matters do not escalate.

As an added protection, the bill provides that where a person has their application for review on special circumstances grounds rejected by the agency, the agency can only prosecute the matter to open court. The default cannot be lodged at the proposed Infringements Court. This is another filter to prevent people with special circumstances being channelled into a highly automated enforcement process.<sup>13</sup>

PILCH Homeless Persons' Legal Clinic (HPLC) and the Federation acknowledge the sound policy reasons for respecting the needs of these vulnerable citizens. The infringements system is commendably designed to reduce the number of low-level strict liability offences brought before the Court. However, in practice, the protections included in the legislation are often ignored by enforcing agencies and, in the experience of many community legal centres, these vulnerable clients are required to attend court as a matter of course. This adds significantly to the stressors in these people's lives, as well as having significant resource implications for the Court, community lawyers, support workers, mental health clinicians and carers.

#### Phil's story

Phil has an acquired brain injury, which severely limits his short-term memory. As a result, he often fails to validate his public transport tickets, and receives fines whenever he comes into contact with ticket inspectors. His financial counsellor prepares a 'special circumstances' application every 6-12 months for Phil, and assists him through the legal process to have the fines revoked. His financial counsellor has inquired into getting an Access Travel Pass, but has been told that because Phil is 'physically able' to use tickets, he is not eligible for this pass.

The infringements regime provides an apposite example of sound policy and smart legislation that seeks to reduce exposure to the criminal justice system for vulnerable people (including those with a cognitive disability), but which is then not supported by government agencies, and which consequently results in increased and inappropriate court-based interventions for people with a cognitive disability.

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<sup>10</sup> *Infringements Act 2006* (Vic), s 22.

<sup>11</sup> *Infringements Act 2006* (Vic), s 65.

<sup>12</sup> *Infringements Act 2006* (Vic), s 71.

<sup>13</sup> Victoria, Parliamentary Debates, Legislative Council, 28 March 2006, 948 (Gavin Jennings).

### Queenie's story

Queenie sought assistance from the HPLC with a large number of outstanding infringements. Queenie had been diagnosed with an intellectual disability and had cycled through homelessness, mental health services and the corrections system. The last time Queenie had appeared before a Magistrate, she had been told that she would be sent to prison if she appeared before the Court again. HPLC lawyers assisted Queenie to apply for the waiver of fees and charges added to her infringements so that she would only be required to pay the initial amount of the infringement (which was still an oppressive amount of debt for someone in Queenie's circumstances). The Infringements Court revoked Queenie's enforcement orders, and the infringements were then transferred to the Magistrates' Court. Queenie refused to attend Court, because she was so frightened that she would be sent to prison.

## The intervention order system

People with cognitive disabilities can face barriers when they attend the Magistrates' Court in relation to family violence or personal safety intervention orders. We refer the Committee to the submission to the Inquiry from Women with Disabilities Victoria and others, concerning women with cognitive disabilities who are applicants for such orders.

People with cognitive disabilities can also be respondents to intervention order applications. Women's Legal Service Victoria (WLSV) assists women with cognitive disabilities who are either applicants or respondents, in the Melbourne Magistrates' Court. In WLSV's experience, parties in intervention order proceedings are usually unrepresented at the first mention date because there is no legal aid available, and it is often considered not worth paying a private solicitor (even if the client is able to do so). Both applicants and respondents may therefore seek advice and assistance from the WLSV duty lawyer.

Both applicants and respondents face various barriers at court:

- lack of training of court staff, lawyers and magistrates concerning disabilities, and the relevance of gender to disability issues;
- lack of time for lawyers to take proper instructions from a client with a cognitive disability;
- lack of support for the woman with a disability to be assisted to understand proceedings or obtain help with other disability-related needs.<sup>14</sup>

An Intervention Order is also not necessarily the most appropriate way to proceed against a woman with a cognitive disability, and may not assist in protecting the Applicant. WLSV describes a 2010 case:

As duty lawyer in the Melbourne Magistrates' Court we were asked to assist a woman who was the respondent to an application for an intervention order under the *Stalking Intervention Orders Act 2008* (Vic). The applicant was a male who was temporarily residing in the same block of units as our client. The allegation was that she had held a knife to his throat as he was annoying her.

In interview our client disclosed that she had some mental health issues but was not specific. She also admitted openly that she had threatened the applicant as alleged. Given this admission we advised her that she would not be able to contest the application for an intervention order, but that it would be appropriate for her to consent to an order 'without admissions'. The client indicated that she was happy to do so. However, she then stated that it would not make a

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<sup>14</sup> For more detail on these barriers, we refer the Committee to the submission to the Inquiry from Women with Disabilities Victoria and others.

difference as she intended to breach the order that evening by seeking out the applicant and threatening him again.

We had to advise our client that she could then be arrested by the police and could face time in jail if convicted of breaching the order. The client became very agitated in the court building and became very angry and vocal. Security staff was called. At this point, her support worker arrived at court, who advised the duty lawyer that the client was diagnosed as having paranoid schizophrenia, multiple personality disorder and bipolar disorder. The duty lawyer appeared before the Magistrate and had the matter adjourned for the client to seek appropriate medical attention.

Where there is not sufficient evidence against the respondent, the Registrar at the Magistrates Court is not able to screen out applications, which means that the respondent still has to attend court. This can be a very stressful and difficult experience for a woman with a cognitive disability. The Registrar may also allow an application where the applicant is suffering paranoid delusions and there is not sufficient evidence against the respondent.

Given these kinds of barriers and experiences, it is perhaps not surprising that many clients with a cognitive disability fail to attend their court hearing, and so end up with an order being made against them without their having been heard.

## Discrimination

This section of the submission focuses specifically on the operation of the *Equal Opportunity Act 2010* (Vic) and the *Disability Discrimination Act 1992* (Cth).

### **Access to the courts**

The experience of people with cognitive disabilities who experience discrimination and seek redress illustrates one of the most fundamental barriers to accessing the justice system – difficulty in obtaining lawyers and hence lack of access to the courts.

#### *Access to lawyers - expense*

For many reasons, people with cognitive disabilities tend to have a low or no income, and so are usually unable to afford the assistance of a lawyer.

Reports by people with disabilities reflect the fact that Victoria Legal Aid (VLA) does not usually accept clients who request assistance who make complaints under discrimination legislation. This is largely because the means test continues to apply to VLA applications. For example, if a person has more than \$300,000 equity in a home, or earns more than approximately \$255 per week (minus rent and costs of dependent children) they will not qualify for assistance.

The Disability Discrimination Legal Service (DDLS) assists people with disabilities to make complaints under discrimination legislation. However, the service has a total legal and non-legal staff complement of 2.6 EFT. The majority of discrimination complaints made to the DDLS concern discrimination in education and employment. Often these complaints cover periods of many years, and trials involving such complaints can easily run for between one and six weeks. If court action is necessary, DDLS must therefore usually rely on referring the client for more intensive legal assistance.

The Law Institute of Victoria Referral Service simply provides the names of three law firms, who often require money upfront. People with disabilities therefore cannot usually access such legal services. The Public Interest Law Clearing House (PILCH) often does not accept referrals due to a variety of reasons. For example, one of DDLS' clients was refused assistance due to the fact that a barrister had offered to assist him on a speculative basis. PILCH will only accept the referral if the barrister offers to



assist the client on a pro bono basis. The difficulty for clients is that very few barristers, if any, will agree to do pro bono work when it could involve a three-week hearing.

Even some of the largest law firms in Melbourne have declined to assist our clients due to 'resourcing' issues. Some firms may offer to take on a client but not on a 'no win no fee' basis, which makes the costs prohibitive for most clients with cognitive disabilities. Other firms will advertise 'no win no fee', but once they discuss the matter with the client it emerges that there are various conditions that apply before the firm will take on the case, such as a requirement that the case has to be overwhelmingly meritorious.

The consequence is that people with disabilities are often simply unable to engage lawyers in order to pursue bona fide legal complaints under discrimination legislation.

#### *Access to lawyers – ability to obtain instructions*

Unless a lawyer has specific experience and training in disabilities, numerous difficulties arise in the lawyer/client relationship. Various issues affecting communication between a lawyer and client may be pertinent for particular people with cognitive disabilities, including:

- accommodation for deafness/hearing disability such as Auslan interpreters or lip reading;
- accommodation for other specific disabilities of the client such as wheelchair access;
- competence to give instructions;
- effects of medication;
- impact of the disability on social and communication behaviour;
- requirement for augmentative and alternative communication methods.

#### **Operation of the courts**

##### *Expense*

People with cognitive disabilities making complaints under discrimination legislation will ultimately arrive at either the Victorian Civil and Administrative Tribunal (VCAT), or the Federal Court of Australia.

VCAT is traditionally a 'no costs' jurisdiction. The positive aspect of this is that the client is usually not liable for the other party's costs if they run a case that is unsuccessful. However, one of the few instances where law firms may agree to assist someone in running a discrimination complaint is if they can recover their costs from the respondent if the case is successful. At VCAT this will not occur, and therefore payment of legal fees may only be possible through any compensation that a person with a disability may be awarded through a successful case.

As discussed above, if a law firm knows that it will not be paid, it is unlikely that they will represent a person with a disability. If the person with a disability knows that they will lose any compensation they may receive in order to pay legal fees, then they may lose motivation to pursue a complaint of discrimination.

The other option, the Federal Court of Australia, is a costs jurisdiction, and hence if a case is run and lost, the applicant is responsible for payment of the respondent's costs. People with disabilities are usually unwilling to put themselves in this position. In lengthy trials, fees can amount to hundreds of thousands of dollars. While a person who is completely impecunious may feel confident that they have 'nothing to lose', others may have a mortgage, a car, or a few thousand dollars in the bank, which to them is a significant amount to put at risk.

Children with disabilities, or people with disabilities who have been deemed to require a litigation guardian, put the guardian at risk of the same loss.<sup>15</sup> As a result, litigation guardians are not volunteer-

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<sup>15</sup> See further our submission concerning the cost issue for litigation guardians: Federation of Community Legal Centres, 'Review of Guardianship Laws – Response to VLRC Consultation Paper February 2011' (June 2011) <http://www.fclc.org.au/lrs.php#Disability> 15-16.

ing to perform such a role, and there is often no one to actually go on the record for a discrimination case.

### *Understanding of disabilities*

Court decisions involving people with disabilities reflect a lack of understanding and accommodation of those with disabilities that is so significant that it can affect the outcome of the hearing.

For example, in *Walker v State of Victoria*,<sup>16</sup> the plaintiff, Alex Walker, was a boy with multiple disabilities including Asperger's Syndrome - a social and communication disorder - Severe Pragmatic Language Disorder, and Attention Deficit Hyperactivity Disorder (ADHD). Expert testimony and medical reports tendered in evidence explained that a child who has these disabilities, when the environment (in this case, a school) is not able to be adjusted appropriately, will not be able to comply with the standards of behaviour expected of children without Alex's disabilities.

However, Alex was frequently referred to in the Court's decision as engaging in 'misconduct'. The judicial commentary, instead of treating Alex's 'behaviours' at the school as manifestations of disabilities that the school had not provided for, put the responsibility on Alex to comply with the existing standards, and therefore failed to reflect an understanding of his disabilities.

In doing so, the Court's approach did not appear to follow the spirit of the 2009 amendment to the *Disability Discrimination Act 1992* (Cth), which includes in the definition of disability:

To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.<sup>17</sup>

As a result of the manner in which the *Walker* decision was written, the autism advocacy group A4 wrote to the Court objecting to the manner in which Alex was portrayed.

Given the co-morbidities of other disabilities present with cognitive disability, it may commonly be the case that person with a cognitive disability approaches court with multiple disabilities. If members of the judiciary do not understand the impact of each disability on the person, incorrect assumptions, based on the misconception that the person can control their responses, can often be made, and consequently the person will not have their right to be free from discrimination upheld.

## Conclusion

People with cognitive disabilities face barriers at all stages and in all aspects of the justice system. Many people, including even those with high levels of education, find the current justice system difficult to understand and access. This difficulty is exacerbated for our clients, whose disadvantage and social exclusion can mean that they are not even aware of any of the processes that affect them.

Even 'getting in the door' is difficult, because people often do not know their legal rights or have not been provided with information and referrals in a meaningful way, are not understood, or are not responded to appropriately. Even if a person with a cognitive disability does understand that an application has been made or that a hearing is to be held, he or she may not understand the documentation or the processes involved.<sup>18</sup>

People with cognitive disabilities can only be empowered if complexity is genuinely reduced and legal processes are tailored to their specific needs. The individual's wishes must be honoured as much as is

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<sup>16</sup> *Walker v State of Victoria* [2011] FCA 258.

<sup>17</sup> *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (Cth), Sch 2 cl 6, amending s 4(1) of the *Disability Discrimination Act 1992* (Cth).

<sup>18</sup> See eg Federation of Community Legal Centres, Response to Consultation Paper 'The Role of VCAT in a Changing World' (June 2009) [http://www.fclc.org.au/lrs.php#Courts & tribunals](http://www.fclc.org.au/lrs.php#Courts%20&%20tribunals).

possible in the particular circumstances, and in order to attain the goal of access to justice in all aspects of the reformed system, appropriate specialised support, including legal advice and representation, should be provided. Such substantial changes are especially urgent in the context of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and Australia's obligations under the Convention on the Rights of Persons with Disabilities.<sup>19</sup>

The Federation therefore emphasises that people with cognitive disabilities should not be treated as less worthy of fundamental human rights protection or as automatically less capable of participating in decision-making concerning their own lives, than people who do not have a cognitive disability. We believe that genuine participation requires providing access to independent and accessible legal advice and representation to all persons with cognitive disabilities.

In our view what is needed is a paradigm shift toward a social model of disability which the Victorian Government can use as a framework to review and further develop inclusive legislation, policies and procedures that facilitate access to justice by all members of society irrespective of any 'impairment'.

As a part of this process, it is essential that data collection, monitoring and evaluation be undertaken with regard to the experience of people with cognitive disabilities in all aspects of the justice system, with the aim of improving access to justice and fulfilling Victoria's human rights obligations.

## Recommendations

1. The Department of Justice should adopt a social model of disability as a framework to review and further develop inclusive legislation, policies and procedures which facilitate access to justice by all members of society irrespective of disability.
2. The Victorian Government should commission a detailed cost analysis, along similar lines to the costing undertaken by KPMG concerning the cost of family violence to the Australian economy,<sup>20</sup> in order to assess the potential savings of providing increased specialist support services for all people with cognitive disabilities who might otherwise have increased criminal and civil justice issues and more intensive engagement with the justice system.
3. Regular training and adequate resourcing, developed and provided in consultation with people with cognitive disabilities and their advocates, should be provided to the police, the judiciary, court staff, duty lawyers, prosecutors and private solicitors involved in the criminal justice and civil law systems in order to improve their identification and understanding of the needs of clients with any cognitive disability, and to enable those clients to be assisted to engage effectively with all aspects of the legal system. Training and associated resourcing should include information about different forms of cognitive disabilities and provision for the related needs of persons with such disabilities.
4. The Victorian Government should increase funding for specialist legal community centres and Victoria Legal Aid lawyers with expertise in disability, in order to enable people with disabilities to have free/affordable access to legal representation, irrespective of the complexity of their matter. Adequate funding should also be provided to enable people with cognitive disabilities, their families and carers to have access to specialist advocacy services so that they can more easily negotiate the justice system.

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<sup>19</sup> Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008).

<sup>20</sup> National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children* (March 2009). See also Access Economics, *The Cost of Domestic Violence to the Australian Economy* (2004).

5. Adequately resourced specialist disability support services, such as those supporting people with mental illness, intellectual disability and brain injury (eg personal carers, communication assistance staff), should be accessible at all stages of the justice system.
6. The current failure of justice data bases, including police and court systems, to reliably record data about people with disabilities must be addressed as a priority. Data collection and research must include disaggregation by gender and type of cognitive disability, and examine the experience of people with cognitive disabilities as victims, witnesses and offenders.
7. Training should be increased for people issuing infringements, including police, ticket inspectors and others, to encourage them to issue official warnings rather than infringements.<sup>21</sup>
8. Practice across infringement enforcement agencies in processing internal review applications should be improved and consistency ensured, including via codification of the *Attorney-General's Guidelines to the Infringements Act 2006*.
9. Section 69 of the Infringements Act should be amended so that agencies are required to 'opt in' to refer special circumstances to the Magistrates' Court.
10. Section 160 of the Infringements Act should be amended in order to allow Magistrates greater discretion to deal with infringements involving people with cognitive disabilities, consistent with other Infringements Act provisions and the *Sentencing Act 1991 (Vic)*.
11. The number of infringeable public space offences should be reduced.

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<sup>21</sup> As permitted by *Infringements Act 2006 (Vic)*, s 8.