

**WHOLE OF VICTORIAN GOVERNMENT RESPONSE
TO THE LAW REFORM COMMITTEE INQUIRY INTO
ACCESS TO AND INTERACTION WITH THE
JUSTICE SYSTEM BY PEOPLE WITH AN
INTELLECTUAL DISABILITY AND THEIR FAMILIES
AND CARERS**

5 SEPTEMBER 2013

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

On 14 February 2012 the Joint Parliamentary Law Reform Committee received terms of reference for an inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers, including:

(a) key issues and themes, including but not limited to:

- (i) participants knowledge of their rights;
- (ii) availability of appropriate services and supports;
- (iii) dealings with the police; and
- (iv) the operation of the courts;

(b) measures within Australia and internationally to improve access to, and interaction with the justice system, including but not limited to measures that seek to:

- (i) break down barriers to the justice system and enhance participation;
- (ii) deliver just and equitable outcomes;
- (iii) facilitate collaborative and co-ordinated approaches across government departments and agencies; and
- (iv) provide responses that address the circumstances of the offender and offence concerned.

The Inquiry was later broadened to include cognitive disability more broadly.

The Victorian Government response to each recommendation is as follows:

- **Support:** The Government supports the recommendation and is currently introducing or will soon introduce initiatives or activities that are in line with the recommendation
- **Support in principle:** The Government supports the theme of the recommendation but will seek to achieve the outcomes in a different manner to that suggested by the Committee. Alternatively, there may also be funding implications that the government has yet to consider or support may be contingent on the outcome of another process.
- **Support in part:** The Government supports one or more aspects of the recommendation but does not support the entire recommendation.
- **Not supported:** The Government does not support the recommendation.
- **Recommendation noted:** The recommendation is not directed to the Victorian Government.
- **Further consideration required:** The recommendation requires further investigation.

Committee Recommendation	Response	Comment
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>Support in principle</p>	<p>Victoria Police currently collects certain information relating to persons they charge, consistently with the <i>Information Privacy Act 2000</i>. This information can be a useful way in which the operations of Victoria Police can be tailored to those with an intellectual disability or cognitive impairment.</p> <p>The Department of Justice also collates information from various justice bodies that give a picture of the way in which justice services are provided and ways in which they could be improved.</p> <p>For example, the Victorian Government collects data on prisoners and offenders both in the adult correctional system and the juvenile justice system.</p> <p>The Department of Justice will continue to monitor the interaction between those with an intellectual disability or cognitive impairment and the justice system.</p>
<p>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 delivery.</p>	<p>Support in principle</p>	<p>As above, the Department of Justice will continue to monitor current data collection and the way in which services are provided.</p>

<p>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.</p>	<p>Support in Principle</p>	<p>Since November 2010, the Department of Human Services (DHS) has added 211 new accommodation options for people with a disability. A further 117 supported accommodation places are under development. In line with the recommendation, existing programs will be reviewed to ensure they are operating at optimum efficiency. From 2019/20, DisabilityCare Australia will provide accommodation support for eligible people with a disability.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>Support in principle</p>	<p>The Victorian Government already provides specific assistance for persons with a disability, to assist them in their interactions with the justice system.</p> <p>The Department of Human Services (DHS) funds Acquired Brain Injury specific case management which can assist people who are interacting with the justice system, including a paediatric service which focuses on training and secondary consultation.</p> <p>A protocol between DHS, Corrections Victoria and Victoria Police is currently being updated, to place a focus on ensuring coordinated and collaborative practice to maximise positive outcomes for people with a disability. The updated Disability Forensic Practice Framework will provide:</p> <ul style="list-style-type: none"> • instruction, guidance and information on supporting a person with a disability through

		<p>the criminal justice system, including advice on supporting a person through their order including monitoring and supervising orders</p> <ul style="list-style-type: none"> • advice on developing various justice related plans and reports • planning at various stages of the criminal justice system, including intensive planning and support when a person is coming out of a custodial setting. • advice on good practice when liaising with other service providers <p>Corrections Victoria and Victoria Police have protocols which provide:</p> <ul style="list-style-type: none"> • guidance on how these agencies can refer people with a disability to case management support provided by the Department of Human Services • advice on indicators of a disability. <p>The Victorian Government has also recently committed \$12 million to Services Connect, which is a service providing guidance and support in relation to Government services for those who use or encounter them.</p> <p>DHS will provide complex case management and behaviour intervention support as an in-kind contribution to DisabilityCare Australia, including to clients involved in the justice system.</p>
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<p>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.</p>	<p>Support in principle</p>	<p>Advocacy is the joint responsibility of the State and Commonwealth Governments.</p> <p>The Victorian Government will work with the Commonwealth Government to highlight this issue within the National Disability Advocacy Program in the context of the National Disability Advocacy Framework.</p> <p>DHS is working with DisabilityCare Australia and the Office of the Public Advocate to discuss a range of advocacy arrangement, including for clients in contact with the justice system.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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 	<p>Support</p>	<p>The Victorian Government supports this recommendation and will explore opportunities to utilise existing mechanisms, such as the Interdepartmental Committee on Disability and the Interdepartmental Committee on Serious Sex Offenders with a Disability, to establish a steering committee in line with the recommendation.</p>

consultation with the Privacy Commissioner.		
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government supports Victoria Police providing guidance to members in relation to interacting with persons having a mental illness, intellectual disability and cognitive impairment.</p> <p>Victoria Police currently provides special guidance for police members and staff in relation to persons with a disability through policy documents linked to the Victoria Police Manual (VPM) and through training.</p> <p>As the VPM itself is issued by the Chief Commissioner of Police under the <i>Police Regulation Act 1958</i> and is a procedural document guiding operational policing, it is not suited to the inclusion of such policies directly.</p>
<p>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.</p>	<p>Support in principle</p>	<p>As noted in Recommendation 7, the Victorian Government supports Victoria Police providing guidance to members in relation to interacting with persons who have a mental illness, intellectual disability and cognitive impairment, although Victoria Police will endeavour to achieve the outcomes in a different manner to that suggested by the Committee.</p>
<p>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</p>	<p>Support in principle</p>	<p>Victoria Police currently has a Ready Reckoner “Responding to a person who may have a cognitive impairment” tool intended to assist</p>

<p>intellectual disability or cognitive impairment.</p>		<p>police in outlining police procedures, recognising indicators of cognitive impairment, effectively communicating with persons who have a cognitive impairment and contacting agencies that may be of further assistance.</p> <p>The tool is available to the workforce through its intranet site. This document was prepared in conjunction with the Office of the Public Advocate.</p> <p>Victoria Police will review the content of this document with the Office of the Public Advocate to ensure that the document meets current needs.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government recognises the importance of recording the presence of an Independent Third Person (ITP). Victoria Police notes that there is already provision to record the ITP in the Attendance Register. The benefits of recording this data on the LEAP database, in addition to the Attendance Register, need to be further explored, as this will have cost implications for Victoria Police.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government will consider evaluating the performance of the Register.</p>

<p>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.</p> <p>Training could encompass:</p> <ul style="list-style-type: none"> • 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. 	<p>Support in principle</p>	<p>Victoria Police has a strong focus on mental disorder training.</p> <p>Current training initiatives with a focus on disability are included in the following:</p> <ul style="list-style-type: none"> • Operational Tactics and Safety Training • Recruit training – Law Level 3 • Protective Services Officer (PSO) training • Preparation and dissemination of a Mental Disorder Reference Card • Community guest speakers talking to PSOs and Recruits about their backgrounds and providing advice about their experiences and interactions with people with various types of disabilities • The Centre for Ethics Community Engagement and Communication addresses issues about audience and purpose and tailoring conversations to suit interactions with vulnerable members of the community.
<p>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.</p>	<p>Support in principle</p>	<p>Victoria Police has a network of Mental Health Liaison Officers across every geographical division to support colleagues and foster relationships with other agencies. These liaison officers have been appointed across Police Service Areas and the Departments of Specialist Support, Traffic & Transit Safety, Crime and Education. Each work area has determined the appropriate number and rank of their liaison officers.</p>

		Victoria Police is currently reviewing the role and functions of the Mental Health Liaison Officer and will consider this recommendation as part of that review.
<p>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:</p> <ul style="list-style-type: none"> • 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. 	Support in principle	<p>The Victorian Government supports Victoria Police providing guidance to members in relation to interacting with persons having a mental illness, intellectual disability and cognitive impairment, although it will endeavour to achieve the outcomes in a different manner to that suggested by the Committee.</p> <p>As set out above, Victoria Police provides a number of training programs and policy documents that provide guidance on interacting with persons with a disability.</p> <p>For example, recruit training provides a specific module on the use of cautions which defines practical ways in which members can ensure that a person who encounters a police member understands the situation and their rights.</p>
<p>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:</p> <ul style="list-style-type: none"> • the comprehension difficulties that a person with an intellectual disability or cognitive impairment may experience in comprehending the right to silence and police cautions; 	Support in principle	Refer to above comments in relation to recommendation 14.

<ul style="list-style-type: none"> • 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. 		
<p>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.</p>	<p>Support in principle</p>	<p>The VPM currently provides instruction to the effect that an ITP is to be present at the interview of any person with an impaired mental condition or capacity, who is fit to be interviewed as a suspect, the accused, an offender, a victim or a witness.</p> <p>The Victorian Government supports Victoria Police in reiterating the obligation under the VPM for this requirement.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government supports the Independent Third Person program. The Victorian government will work with the Office of the Public Advocate to review the current program and to consider options for improving its effectiveness.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government supports in principle the intent of the recommendation and will explore how best 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.</p>

<p>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.</p>	<p>Support in principle</p>	<p>Victoria Legal Aid (VLA) administers the Community Legal Services Program (CLSP), which provides funding for a number of community legal centres (CLC), and makes independent funding decisions in relation to CLCs. Funding is also provided by the Commonwealth Government.</p> <p>The Victorian Government has provided record funding to VLA in 2013/14 and in 2011 provided additional funding of more than \$9 million over four years to enable CLCs to continue to provide legal advice and services to Victorians, with a focus on family violence assistance and maintaining services in rural and regional Victoria.</p> <p>Over the next four years, the Victorian Government will provide over \$400 million of State funding for legal assistance, while the Commonwealth will provide \$244 million.</p>
<p>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.</p>	<p>Support in principle</p>	<p>See above recommendation 19.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government acknowledges the importance of the early identification of people with an intellectual disability or cognitive impairment, which often relies on the judgement of individual legal and other</p>

		practitioners. Victoria Legal Aid is best placed to determine the appropriate allocation of grants of assistance to obtain psychological or psychiatric reports where these are needed.
<p>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:</p> <ul style="list-style-type: none"> • 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. 	Support in principle	It is noted that the Law Institute of Victoria (LIV) and the Victorian Bar are independent organisations. However, the Victorian government will bring this recommendation to the attention of the LIV and Victorian Bar.
<p>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:</p> <ul style="list-style-type: none"> • 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; 	Support in principle	As for recommendation 22, above.

<ul style="list-style-type: none"> • one piece of information and advice be provided at a time; and • questions be open ended. 		
<p>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.</p>	<p>Further consideration required</p>	<p>The Victorian Government will evaluate the need for an independent mechanism for accessing a qualified support person when attending an interview with a lawyer and consider options for establishing such a mechanism. As part of any further consideration, consultation would be necessary with the Law Institute of Victoria and the Victorian Bar, as representatives of the legal profession, and with the Office of the Public Advocate, given this office's experience with the Independent Third Person program. Consideration would also need to be given to issues including:</p> <ul style="list-style-type: none"> • the qualifications required of an independent person who attends interviews with lawyers • who could organise and manage any group of people identified as suitable to perform this role • when it is necessary or appropriate to have an independent person attend an interview • how to avoid conflicts of interest • how to preserve client-lawyer confidentiality.
<p>Recommendation 25: That the Victorian Government liaise with the Law Institute of Victoria and the Victorian Bar to consider amending the <i>Professional Conduct and Practice Rules 2005</i> and the <i>Victorian Bar Incorporated Practice Rules 2009</i> to require lawyers to discuss with a</p>	<p>Further consideration required</p>	<p>See above related recommendation 24 and response.</p>

<p>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.</p>		
<p>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.</p>	<p>Support in principle</p>	<p>Over a number of years, the Judicial College of Victoria (JCV) has provided training for members of the judiciary on the complex needs of people with a cognitive impairment as part of its curriculum. The curriculum is revised and renewed on an annual basis.</p> <p>Programs are developed in consultation with judicial steering committees and directed to:</p> <ul style="list-style-type: none"> • the delivery of information about a range of underlying causes or conditions leading to cognitive impairment • the development of skills necessary for judicial officers to assist or manage people with a cognitive impairment in court (particularly, those who may appear as witnesses or as parties to proceedings). <p>Information based programs have covered a range of topics. In 2013, for instance, the JCV has run a mental health training series addressing in separate detailed sessions:</p> <ul style="list-style-type: none"> • Acquired Brain Injury • Addiction Recovery (alcohol and narcotics),

		<p>and</p> <ul style="list-style-type: none"> • Borderline Personality Disorder. <p>In previous years, the JCV has also covered such topics as psychotic disorders, schizophrenia, depression and bipolar disorders, where cognitive impairment may co-exist and/or play a contributory role.</p> <p>Skills based workshops generally focus on facilitated courtroom scenarios. By way of example, the 'Child and Cognitively Impaired Witnesses' program was developed and delivered over a number of years in the context of the system wide sexual assault reforms. The interactive program specifically provided judicial officers with practical techniques for dealing with challenges, and focussed on appropriate questioning and judicial intervention in the examination of cognitive impaired witnesses, as required by section 41 of the <i>Evidence Act 2008</i>.</p> <p>The JCV works with mental health professionals and other experts in this field to develop and deliver its programs and will continue this work. Materials developed for programs are placed on JOIN (the Judicial Officers Information Network) and are available as a repository of information for judicial officers on an ongoing basis.</p>
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		The Victorian Government supports in principle the JCV giving consideration to the incorporation of guidance material (in programs and/or training resources) on the needs of people with an intellectual disability.
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.	Support in principle	<p>The Judicial College of Victoria (JCV) provides training for members of the judiciary on the complex needs of people with a cognitive impairment, including acquired brain injury as part of its curriculum. Please refer to the response for Recommendation 26 regarding further detail.</p> <p>The Victorian Government supports in principle the JCV giving consideration to the incorporation of guidance material (in programs and/or training resources) on the needs of people with an intellectual disability.</p> <p>Refer to recommendations 36 and 38 and their responses.</p>
Recommendation 28: That the Victorian Government consider amending the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> to allow the trial judge to investigate an accused's fitness to stand trial.	Further consideration required	The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.

<p>Recommendation 29: That the Victorian Government consider amending the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> to require the court to determine, when considering fitness to stand trial:</p> <p>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.</p>	<p>Further consideration required</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.</p>
<p>Recommendation 30: That the Victorian Government consider amending the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> to allow investigations into an accused's fitness to stand trial to be considered in the Magistrates' and Children's Courts.</p>	<p>Further consideration required</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.</p>
<p>Recommendation 31: That the Victorian Government consider amending the <i>Criminal Procedure Act 2009 (Vic)</i> to ensure that uniform committal procedures are employed when fitness to stand trial is considered by the courts.</p>	<p>Support in principle</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.</p>
<p>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.</p>	<p>Further consideration required</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.</p>

<p>Recommendation 33: That the Victorian Government consider introducing legislation to provide a definition of ‘mental impairment’ in the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> 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.</p>	<p>Further consideration required</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform Commission and any response to this recommendation will need to be considered in the context of the Commission’s recommendations.</p>
<p>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.</p>	<p>Support in principle</p>	<p>The Victorian Government continues to support ongoing reforms to the court system, including the Neighbourhood Justice Centre and the Assessment and Referral Court (ARC) List, managed by the Magistrates’ Court. The ARC List helps people with mental illness or a cognitive impairment to receive appropriate support. Continued support will enable the courts to incorporate principles of problem-solving approaches more broadly.</p>
<p>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.</p>	<p>Support in principle</p>	<p>Victoria Police is currently provides training that meets this recommendation.</p> <p>Victoria Police training currently provides a module on interviewing victims with a cognitive impairment as part of the four-week Sexual Offences Child Investigation Teams course, which qualifies members to undertake Video and Audio Recorded Evidence.</p> <p>This training includes a half day on presentations and discussions relating to</p>

		<p>communication difficulties experienced by people with a cognitive impairment. It also includes a full day of practical exercises, where members are given the opportunity to interview members with a range of intellectual disabilities and cognitive impairments.</p> <p>Speech pathologists attend the training program to provide feedback to members and advice on alternative communication methods.</p>
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>Support in principle</p>	<p>The Victorian Government supports the theme of providing support for witnesses with an intellectual disability or cognitive impairment in the court system. Rather than commit to a specific model, the Victorian Government will investigate a range of options that seek to improve opportunities for witnesses with an intellectual disability or cognitive impairment to provide evidence in court.</p> <p>Also refer to recommendations 27 and 38 and associated responses.</p>
<p>Recommendation 37: That the Victorian Government review current arrangements for the appointment of litigation guardians. The review could seek to:</p> <ul style="list-style-type: none"> • 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 	<p>Support in principle</p>	<p>This is largely a matter of practice for individual litigants, organisations and the courts. However, the use of litigation guardians is a matter relevant to the Victorian Government's current review of the guardianship and powers of attorney regimes.</p>

<p>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.</p>		
<p>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.</p>	<p>Further consideration required</p>	<p>This recommendation requires further consideration.</p> <p>Refer also to recommendations 27 and 36 and associated responses.</p>
<p>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.</p>	<p>Support</p>	<p>The Committee has identified a number of research topics that would assist to identify the best means of supporting persons with an intellectual disability or cognitive impairment to participate in court processes. The Victorian Government will evaluate any further research to determine whether it demonstrates a need to adjust existing arrangements that support persons with an intellectual disability or cognitive impairment participating in court proceedings.</p>
<p>Recommendation 40: That the Victorian Government consider amending the <i>Sentencing Act 1991 (Vic)</i> 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.</p>	<p>Further consideration required</p>	<p>The Victorian Government will further consider the need to clarify the status of residential treatment orders in the sentencing hierarchy.</p>
<p>Recommendation 41: That the Victorian Government consider amending the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i> to clarify Departmental responsibility for supervising and</p>	<p>Further consideration required</p>	<p>The <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> is currently the subject of a review by the Victorian Law Reform</p>

<p>monitoring Custodial Supervision Orders and Non-Custodial Supervision Orders.</p>		<p>Commission and any response to this recommendation will need to be considered in the context of the Commission's recommendations.</p>
<p>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.</p>	<p>Support</p>	<p>Pre-sentence reports are prepared by Community Correctional Services Officers for the information of the court. When aware that an offender has an intellectual disability, practice procedure is to seek an adjournment of six weeks to enable a full and thorough assessment and report. Corrections Victoria is responsive to enquiries and collaboration with appropriate bodies and believes the pre-sentence report process is working effectively for all parties.</p> <p>DHS is required to prepare other reports for court outlining services available to reduce the likelihood of reoffending for adults and young people with an intellectual disability under both the <i>Sentencing Act 1997</i> and <i>Children Youth and Families Act 2005</i>.</p> <p>Practice advice is in place to support timely preparation of all reports including completion of assessments to determine if a person is within target group for supports under the <i>Disability Act 2006</i>. DHS is currently updating practice advice for the Disability Forensic Program and is committed to streamlining responses to court requests including when a</p>

		<p>target group assessment is required when a court report has been requested.</p> <p>The Disability Forensic Practice Framework will also provide guidance to divisional staff on establishing local relationships with the courts in their areas, this is expected to lead to improved communication between the two organisations and decrease the time taken to action requests.</p>
<p>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.</p>	<p>Support</p>	<p>Corrections Victoria currently provides education, training and resources to Corrections staff, including front-line operational staff. Over the past six years, staff have received introductory disability awareness and specialist training.</p> <p><i>‘Embracing the Challenges – Corrections Victoria Disability Framework 2013-2015’</i> (the Framework) will continue this training program to fulfil the stated aim that ‘Corrections staff are trained and supported in their work with offenders with a disability’.</p>
<p>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.</p>	<p>Support</p>	<p>Corrections Victoria delivers a range of offending behaviour programs designed for offenders with an intellectual disability or cognitive impairment. Over the period 2007-2012, 51 programs have been delivered, encompassing 450 episodes of service. Over the next three years, it is planned to</p>

		expand the range of programs suitable for this offender cohort.
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.	Support	<p>Corrections Victoria currently provides a variety of reintegration and rehabilitation programs for offenders including those with an intellectual disability or cognitive impairment. Many of these programs seek to address specific deficits, like independent living skills, which contribute to successful community re-integration.</p> <p>There is also a long-standing collaboration between Corrections Victoria and DHS detailed in a protocol which requires the involvement of DHS case management six months prior to the earliest release date of prisoners with an intellectual disability.</p>
Recommendation 46: That the Victorian Government consider amending the <i>Sentencing Act 1991</i> (Vic) to allow the court to impose a justice plan when sentencing any offender with a 'disability' within the meaning of the <i>Disability Act 2006</i> (Vic).	Further consideration required	This recommendation requires further investigation including whether the definition of disability in the <i>Disability Act 2006</i> would exclude some people with a cognitive impairment and include others for whom a justice plan was not appropriate.
Recommendation 47: That the Victorian Government amend the <i>Infringements Act 2006</i> (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.	Support	<p>Work is already underway to address this issue.</p> <p>The <i>Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013</i> was given Royal Assent on 4 June 2013.</p>

		<p>The Act amends the <i>Infringements Act 2006</i> to provide for a matter to be returned to the Magistrates' Court after an imprisonment order is made under section 160(1) if relevant special circumstances (which are defined to include intellectual disability and mental illness) had not been considered or considered fully or information was not available or before the court so as to make the decision to imprison a person excessive, disproportionate and unduly harsh.</p> <p>The Act also enables a person who has an order for payment by instalments to have the payment arrangement varied. The aim of this amendment is to ensure that the Act provides adequate allowance for the particular circumstances and needs of those who are given infringement notices.</p> <p>The amendments seek to ensure that even if a person does not present their special circumstances for the Court's consideration at a section 160 imprisonment hearing for unpaid infringement fines, the person will have a right to a rehearing.</p>
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