

***Prosecuting Mental Impairment Matters* guide Launch**  
**28 November 2012**  
**Colleen Pearce, Public Advocate Victoria**

I would like to begin by acknowledging that this meeting is on the traditional lands of the Wurundgeri people. I pay my respects to their elders, past and present, and acknowledge their spiritual relationship to their country.

I would also like to acknowledge Victorian Director of Public Prosecutions, John Champion; Chief Justice of Victoria, the Honorable Marilyn Warren; Chief Judge of the County Court, His Honour Michael Rozenes; Chief Magistrate, the Honourable Peter Lauritsen; Solicitor for Public Prosecutions, Craig Hyland; Chief Crown Prosecutor Gavin Silbert; the staff of the Office of Public Prosecutions and other distinguished guests.

I am delighted to be here at today and I thank you for your very kind invitation to launch the *Prosecuting Mental Impairment Matters* guide.

The Office of the Public Advocate (OPA) promotes and protects the rights of people with disabilities in Victoria and works to eliminate exploitation, abuse and neglect. OPA is an independent, statutory body that is on the side of people with a disability. At OPA, we have a vision of a community where all people, regardless of their ability, are able to participate fully and be treated with dignity and respect.

On a daily basis, at least some parts of OPA are dealing with a vulnerable person with a cognitive impairment or a mental illness who is struggling to participate, and have a voice, in the criminal justice system. It is clear that they face significant barriers in gaining access to justice. Many of the people we work with are victims of crime, usually a crime of violence. From OPA's perspective, addressing violence against people with disabilities is a pressing human rights issue, and a key priority for us. OPA has an important advocacy role in making these people aware of their rights and assisting them to exercise those rights.

In 2010, OPA published the report *Violence against People with Cognitive Impairments* which examined 86 guardianship cases involving people with cognitive impairments who had experienced violence. Sexual violence was reported in 32 of these cases. Our study also found that women with cognitive impairments can have multiple perpetrators of violence in their lives. For example, some women in the study were systematically abused by family members over several years, while others were exploited by numerous strangers.

One of the ways OPA supports people with a cognitive impairment or a mental illness is through the Independent Third Person (ITP) Program. This program has 286 volunteers who attend police interviews when a person being interviewed has an apparent cognitive impairment or mental illness. The role of the ITP is to facilitate communication between police and the impaired person during the police interview. The person interviewed may be a witness, a victim or an alleged offender. In the past financial year, our ITPs attended 2237 police interviews. Of these interviews, 2237 were alleged offenders, 154 were victims and 43 were witnesses. ITP attendance at these interviews has doubled in the past 10 years.

People with cognitive impairments experience sexual assault at a far higher rate than people in the general population. Numerous studies have found that people with

cognitive impairments, particularly people who have an intellectual disability, mental illness or dementia, are vulnerable to sexual assault. For example, in one study, the incidence of sexual assault among women with intellectual disabilities was found to be as high as 90 per cent.<sup>1</sup> Now, let us just think about that; 90 per cent. That is a very disturbing figure.

We also know that, although there are high rates of sexual assault perpetrated against people with cognitive impairments, few of these cases are reported to the police. In some cases, this may be because the person does not realise that what has happened to them is a crime. In other cases, the person might lack the support they need to report the crime to the police. Alternatively, the person might report the sexual assault to someone they know, only to have their story dismissed as being untrue. And, unfortunately, OPA has heard of instances in which this has happened.<sup>2</sup> The cases that are reported to the police are unlikely to proceed beyond the investigation stage. Of the cases investigated, only a small proportion will go on to be heard in court, and even fewer will result in a successful prosecution. It is clear that people with cognitive impairments who have been sexually assaulted face significant barriers in gaining access to justice.

Our experience confirms what many of you already know; that victims of crime are often vulnerable as a result of the trauma they or loved ones have suffered because of the crime; the nature of the crime; and the fact that they have little, if any, knowledge of the criminal justice system and prosecution process, particularly where the accused person is prosecuted under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

A study conducted by Margaret Camilleri identified factors that can act as either 'disablers' or 'enablers' of justice for victims of sexual assault who have cognitive impairments.

Some of the 'enabling' factors that Margaret Camilleri identified include being believed when they tell someone about the crime; the availability of advocacy and support to assist the person in reporting a crime to the police; receiving an empathetic and informative response from the police, and continuity in support throughout the criminal justice process.

For a victim of crime, the criminal justice system can be a complex maze, and very disempowering when they do not understand what is happening in the very processes that they find themselves participating in. The *Prosecuting Mental Impairment Matters* guide fills a gap in the information available to victims and their families. It is an important 'enabling' factor and improves the support available to a victim of crime as they negotiate their way through the complexities of the criminal justice system.

Up until now, victims of crime, where the accused is prosecuted under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* have only had limited access to information and resources which explain how the process works and what level of involvement they are likely to have in that process.

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<sup>1</sup> Frohmader, C. in Salthouse, S. and Frohmader, C. 'Double the Odds': Domestic Violence and Women with Disabilities' (Paper presented to the Home Truths Conference, Sheraton Towers, Southgate, Melbourne, 15-17 September 2004).

<sup>2</sup> McGuire, M. *Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System* (OPA 2012), p.68.

This impacts on their ability to articulate their needs and rights in relation to the process.

The offences dealt with under this Act are often serious and the prosecution and supervision process may last for many years.

The *Prosecuting Mental Impairment Matters* guide will assist victims of crime to understand the process. It will also be useful to those people working with victims and their family members to understand and explain the process.

The Victim and Family Member Form will greatly assist those victims who wish to make a statement to the court about the impact of the crime on them. These victims will now be able to give the court a more complete picture of the circumstances of the offending and the impact of the crime on them.

I am delighted to launch the *Prosecuting Mental Impairment Matters* guide. The guide has come about because of the hard work of a number of people and I would like to take this opportunity to congratulate them for their commitment to advancing the rights and interests of victims of crime and ensuring this important project has come to fruition.