



Breaking the Cycle



Summary Report

'Breaking the Cycle'
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Summary Report

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Contents

Glossary	2
Key Messages	3
Background	4
Methods	4
About the ITP Program	5
Research Findings	6
Further Information	12
References	12

Glossary

ITP: Independent Third Person. ITPs provide support to people of any age who are believed to have a cognitive impairment or mental illness during their interviews with Victoria Police. ITPs also provide assistance to police in these interviews.

ITP Program: Independent Third Person Program managed by the Office of the Public Advocate

OPA: Office of the Public Advocate

Repeat presenter: A person who has used the Independent Third Person Program more than once

The program: The Independent Third Person Program

Key Messages

- ④ The Office of the Public Advocate (OPA) manages the Independent Third Person (ITP) Program. The program trains volunteers to assist people with cognitive impairments and mental illnesses to communicate in their interviews with Victoria Police.
- ④ OPA is concerned about the number of people who are ‘repeat presenters’ before the program. A repeat presenter is a person who has used the program at least twice. OPA’s records indicate that one third of people who access the program are repeat presenters. These findings tie in with broader research which shows that people with cognitive impairments and mental illnesses can be vulnerable to having repeat contact with crime.
- ④ People with cognitive impairments and mental illnesses in the criminal justice system require access to early intervention strategies, including advocacy.
- ④ The program has a clear opportunity to provide an early intervention strategy targeted at people with disabilities who are at risk of having repeat contact with crime. The program has the strong desire and the right ethos to assist these people.
- ④ ‘Breaking the Cycle’ developed a model for a practical and cost-effective advocacy and referral scheme that can be implemented by the program. The proposed scheme capitalises on the positive relationships that exist between ITP volunteers and the people they support in police interviews. These positive relationships provide an opportunity to launch clients into the services and support they need to live a more productive life.

Background

'Breaking the Cycle' was a one-year research project by OPA.¹

The project investigated the key human rights issues identified by OPA's ITP Program.

The program trains ITP volunteers to help people with cognitive impairments and mental illnesses in their interviews with Victoria Police. ITPs also assist Victoria Police in their interviews with them.

The project came about because OPA was concerned about the number of people who are 'repeat presenters' before the program. A 'repeat presenter' is a person who has been supported by an OPA ITP in at least two police interviews. 'Breaking the Cycle' looked at the lives of these people. The project tried to find out how we can help them break the cycle of poverty, isolation and contact with crime. To this end, the project developed a model for an ITP advocacy and referral scheme. The model scheme responds to the needs of ITP clients who have had repeat contact with crime, or who are clearly at risk of doing so.

The project was funded by the Victoria Law Foundation. OPA thanks the foundation for its support of the project.

Methods

The research consisted of:

- ethics approval
- a literature review
- interviews with 46 people, including people who have used the program, family members of people who have used the program, ITP volunteers, and professionals in the disability and criminal justice sectors²
- a survey with 55 members of Victoria Police
- a review of ten years' of data from the program
- action research to test the proposed ITP advocacy and referral scheme.

About the ITP Program

The program assists people with cognitive impairments and mental illnesses who are interviewed by Victoria Police. The program also assists police in their interviews with them. In order to do this, the program provides trained volunteers to:

- facilitate communication between the person and the police
- assist the person to understand their rights
- support the person through the police interview process.

Any person who is believed to have a cognitive impairment or mental illness has the right to use an ITP when they are interviewed by the police. ITPs assist people of any age who are interviewed by the police as alleged offenders, victims or witnesses. An ITP can be an OPA volunteer, or a close friend or family member of the person being interviewed. OPA's position is that it is preferable to use a trained ITP volunteer, rather than a friend or family member. This is because trained ITPs are independent and objective, familiar with police processes, and better able to help the person understand their rights.



Research Findings

What We Learned About Equality

Continue Promoting the Human Rights of People with Disabilities

Australia ratified the United Nations *Convention on the Rights of Persons with Disabilities* in 2008. In doing so, Australia has agreed to take positive steps to ensure that people with disabilities are equal members of society. Among other things, the convention requires that Australia assist people with disabilities achieve equality before the law. This means that people with disabilities must be treated fairly by the legal system. Likewise, they should enjoy the same rights as anyone else who is in contact with the law.³

People with Disabilities Experience Ongoing Inequality

“I’m trying to get my life in order, but at the moment I can’t get my life in order, that’s for sure.”
Dave, ITP client

Much work needs to be done to ensure that people with cognitive impairments and mental illnesses achieve their human rights. People with cognitive impairments and mental illnesses continue to be disadvantaged in Australian society. These disadvantages can include:

- poverty
- poor housing or homelessness
- lack of opportunity
- social isolation
- insufficient services and support
- vulnerability
- community prejudice.

These disadvantages contribute to the fact that people with cognitive impairments and mental illnesses are over-represented as alleged offenders and victims of crime. People with cognitive impairments and mental illnesses are also particularly vulnerable to having repeat contact with crime. In light of this, Australia needs to take further steps to protect and promote the human rights of people with disabilities.

Advocacy is a Key Tool for Promoting People’s Rights

“I can speak up for the people who can’t speak up. By helping them, I’m helping myself.”
Eric, ITP client

People with disabilities who are in contact with the criminal justice system need access to timely and appropriate referral and support services, including advocacy. Advocacy is the act of speaking up on behalf of other people. It is also the act of speaking up on behalf of oneself. In this sense, advocacy is not just about formally representing the interests of other people. It is also about supporting vulnerable people to become advocates in their own lives (‘self advocates’).⁴

What We Learned about Repeat Presenters

One Third of ITP Clients are Repeat Presenters

“It’s important to believe in people’s ability to keep out of crime. Though sometimes I have thought: ‘You’re in a vicious cycle’.”

Jason, ITP volunteer

OPA’s data indicates that just under one third of ITP clients are repeat presenters before the program. They account for roughly 60 per cent of the total number of interviews attended by OPA ITPs. Therefore, while the majority of *people* will use the program once, the majority of ITP *interviews* involve repeat presenters. This indicates that a significant proportion of the program’s resources are directed towards repeat presenters.

Most Repeat Presenters are Young Men who are Alleged Offenders

“I reckon I’ve had more than 40 police interviews.”

Luke, ITP client

Most repeat presenters are men who are under 26 years of age. Typically, they are interviewed by the police as alleged offenders in relation to crimes such as theft, assault or property damage. Some of them have had long histories of contact with the criminal justice system. For example, Luke (who is quoted above) first attended a police interview when he was 13 years old. Luke says that as soon as he turned 18 years, he was “locked up” in prison “over driving charges”. Luke has been attending police interviews for about a decade, and he is struggling to find ways to live a more positive and fulfilling life.

Women Tend to be Victims of Sexual Assault

“Sometimes he gets, what do you call it, very violent.”

Janet, ITP client

A proportion of repeat presenters are women who have experienced rape or sexual assault. Some have attended several police interviews as a victim of abuse. Sometimes the ‘cycle of crime’ plays out in other ways. Take, for example, Rachael. Rachael was interviewed by the police as the victim of an assault perpetrated by her then-boyfriend. Following the assault, Rachael broke up with her boyfriend. However, according to Rachael, her ex-boyfriend would not stop harassing her. Rachael decided to “teach him a lesson” and she scratched his car with a Stanley knife. She was interviewed by the police as an alleged offender in relation to this incident of property damage. Rachael’s case illustrates that having contact with crime can in itself be a risk factor for having future contact with crime.

People Come from Complex Circumstances

“Since me head injury, everything has just snowballed... I class meself as depressant. I smoke huge amounts of marijuana.”

Kieran, ITP client

Repeat presenters are a very diverse group of individuals. However, there are common features that unite them. The key feature is that they come from very complex and difficult circumstances. Therefore, it is rare for people in this cohort to have one clear problem for which they require assistance. Instead, they tend to have a ‘cluster of needs’. For example, some people might experience mental ill health, homelessness and family breakdown at the same time. These complex circumstances both precipitate, and are exacerbated by, people’s contact with the criminal justice system.

What We Learned about People’s Support Networks

Service Provision to this Group of People is Inadequate

“I think that if disability services see that someone’s got the life of crime, they should step in and say: ‘Why don’t we help the fella?’.”

Dave, ITP client

It is rare for people who are repeat presenters to be unknown to services. However, their engagement with services tends to be ineffective. In some cases, people are linked in with services, but they have significant outstanding needs that are not being met. In other cases, services do not seem to provide proactive support to them. At times, services appear to be at a loss as to how to respond to people’s complex needs. The clear message from the people who took part in this project was this: just because they are receiving services, it does not mean that they “are sorted”. Indeed, the fact that these people keep cycling through the criminal justice system is a clear sign that something is amiss. The project found that advocacy interventions are required to assist services in working more effectively with this group of people.

Families are Burnt Out

“We know that Johnny needs help, and we need help too. But you have to jump up and down and scream ‘til you’re blue in the face in order to get it.”

Phillip, family member

The family members who took part in the project were strongly committed to providing support to the person with a cognitive impairment or mental illness. However, families emphasised that they were struggling to cope with the complexity of the person’s situation and behaviours. These difficulties were exacerbated by a lack of support from services. In addition, some family members had experienced violence perpetrated by the person with a disability. Due to these pressures, family members indicated that they were experiencing burnout. For these reasons, some family members said they were unsure how long they could keep supporting the person with a disability.

What We Learned about ITPs

OPA ITPs are Viewed Very Positively by the People they Support

“The Third Person helped with the way that questions were put to me. Once he was in there, the tone of the conversation changed, and that. The police treated me respectfully, not being smart arses.”

Kieran, ITP client

The project spoke to people about what it was like being supported by an OPA ITP. The feedback from people about the program was very positive. People said that having an ITP present in their police interview made them feel calmer, more confident and “protected”. This increased sense of wellbeing could have a positive impact on people’s ability to think clearly and to communicate with the police. People emphasised the importance of having the ITP there as “someone on my side”. In addition, many people believed that police processes would be properly followed because the ITP was there acting as a ‘watchdog’.

ITPs Have an Important – but Difficult – Role to Play

“Sometimes, even though the person might understand their rights, having someone there with them might give them a bit more confidence to exercise their rights.” Assistant Coordinator, ITP Program

Many professionals emphasised that ITPs can strengthen the rights of people with cognitive impairments and mental illnesses who are interviewed by the police. However, they indicated that the ITP role can be an onerous one. Some professionals felt that the ITP role was too demanding for volunteers. These people thought that ITPs should be paid for the work that they do. Other professionals highlighted the tensions that can exist as a result of ITPs having to assist both the person with a disability and the police. For example, one person raised the concern that ITPs were not “as assertive as they could be” with the police. Some professionals felt that these concerns could be mitigated if ITPs gave people “stronger encouragement to contact a lawyer”.

Identification of the Need for an ITP is a Key Issue for the Program

Identification of the need for an ITP was seen to be a key issue by interview participants. Many professionals noted that they had clients with cognitive impairments and mental illnesses who had been interviewed by the police without an ITP present. Likewise, many of the clients who took part in this project said that they had attended police interviews alone.

There is no doubt that identifying the need for an ITP can be very difficult. It is, therefore, encouraging to note that the police who took part in the survey for the project (the majority who had ten or more years’ experience with Victoria Police) displayed a nuanced understanding of disability issues. Nonetheless, some professionals felt that negative attitudes could be a barrier to police identifying – and following up on – the need for an ITP. These professionals felt that knowledge about, and empathy towards, people with disabilities varied among police. It was suggested

that some of the “younger officers” appeared to lack an understanding of disability issues. By comparison, it was felt that the more experienced officers tended to be “very good” and “very flexible” in their approach.

There are Mixed Views about Family and Friends Acting as ITPs

“I’m used to having a parent be my Third Person. Sometimes it’s actually bad having your parents there.”

Rachael, ITP client

Current policy allows police to choose whether to use an OPA ITP or a family member or close friend of the person being interviewed. For this reason, some people are supported in police interviews by someone they know, rather than by an OPA ITP. Police have identified that family members and friends can offer a level of “comfort” and “familiarity” to the person being interviewed. In addition, some police have advised that they have experienced difficulties in obtaining OPA ITPs. However, other professionals raised concerns that family members and friends often lack the ability to ensure that the person being interviewed understands their rights. Moreover, some of the clients who took part in the project said that it was easier for them to be objective during the police interview when their family members were not present.

What We Learned about Referrals

A Referral Component is the Missing Link in the ITP Program

The mandate of the program is to assist people in their interviews with Victoria Police. Therefore, the ITP role finishes when the police interview has concluded. Some ITP volunteers said that the lack of a referral component is the key limitation of the program. The volunteers reported feeling frustrated that they are seeing “the same people, again and again” being interviewed by the police. In part, this frustration stems from the sense that the program has a very limited capacity to assist people beyond the police interview. As one volunteer put it: “You sit with them during their interview. You spend time getting to know them and after all that, you just walk away”. The feedback from ITP volunteers is that this is a missed opportunity.

People Would Trust their ITPs to Link Them in with Help

“With a volunteer, it’s like, you’re not just anybody; you’re a trained person and you understand what the situation is.”

Irene, ITP client

The clients who were interviewed as part of the project felt that the program would benefit from developing a referral component. People indicated that they would trust their ITP to try and link them in with assistance. Some people also noted that it was important to be offered help, even if they did not want to accept this offer. For example, Aaron said that, although he did not want to be referred to services by his ITP, “it would definitely help to have that sort of system set up”.

Referrals Need to be Couched in a Positive Framework

“People often say to us that a positive relationship with an individual who is seen to help them is a building block, whoever that individual is.”

Revolving Doors Agency

Professionals indicated that people with disabilities are far more likely to engage with referrals if these are couched in a positive framework. This means that referrals should not be driven by risk management. Likewise, referrals should not be motivated simply by the desire to keep people ‘out of trouble’. Rather, referrals should send a clear message to the person that they matter, and that they have the capacity to lead a productive and fulfilling life.

Repeat Presenters Would Benefit from a Targeted Referral Service

A number of referral initiatives operate at the front end of the Victorian criminal justice system. The initiatives are catered towards the broader community, rather than the needs of people who are repeat presenters. The project found that repeat ITP clients would benefit from an advocacy and referral scheme that is specifically targeted towards their needs.

What the Model Looks Like

A Practical and Cost-Effective ITP Advocacy and Referral Scheme

“The volunteer has got the front-running at that point [the police interview]. So you would think that, if at all possible, you would develop systems in the future that might be able to launch that person into supports.”

Court Support Officer

The project developed a model for an ITP advocacy and referral scheme. The model is practical, cost-effective, and targeted to the needs of repeat presenters. The model preserves the independence of the ITP role. ITPs would continue to assist people in their interviews with Victoria Police. However, ITPs would be trained to identify people who may be eligible to receive further assistance from the program. In such cases, the ITP would have a referral conversation with the person after the police interview had concluded. If the person consented to a referral being made, their details would be passed on to a professional ITP advocate. The ITP advocate would conduct a screening and assessment to determine the person’s needs. If appropriate, the professional would make advocacy-based referrals on the person’s behalf. In this context, advocacy would involve promoting the wishes, rights and best interests of the person. It would also involve trying to facilitate the person’s effective engagement with services and support networks.

What the Project Recommended

OPA Should Seek Funds to Pilot the Model ITP Advocacy and Referral Scheme

The key recommendation arising out of the project was that OPA should seek funds to implement a two-year pilot ITP advocacy and referral scheme.⁵ The scheme should respond to the needs of ITP clients who have had, or who are clearly at risk of having, repeat contact with crime. The pilot would be staffed by a dedicated ITP advocate, and would assist a target of 100 clients each year.

Further Information

The summary and the full report from the 'Breaking the Cycle' project are available on the OPA's website at <http://www.publicadvocate.vic.gov.au/research/>

References

1. Refer to the full report for this project: McGuire, M. *Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System* (Office of the Public Advocate, 2012). The full report refers to extensive interview materials and 19 case studies and stories.
2. The project protects the identities of all interview participants. Therefore, the report uses pseudonyms, rather than people's real names.
3. Article 5, United Nations *Convention on the Rights of Persons with Disabilities* 13 December 2006 (entered into force 3 May 2008).
4. Forum of People with Disabilities, *Advocacy: A Rights Issue* (2001) p.5; Victorian Law Reform Commission, *Review of the Bail Act: Final Report* (2007) p.202.
5. For the full list of recommendations arising out of the 'Breaking the Cycle' project, refer to McGuire, M. (2012) pp.8-9.

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