

Our report for the Victorian Ombudsman's investigation into State Trustees

Wednesday, 10 October 2018

Our Civil Justice Program provided a report to the Victorian Ombudsman as part of her [investigation into State Trustees](#). The report, *State of Trust: Making sure State Trustees protects and promotes the rights of Victorians with disability*, contains 12 stories of our clients whose lives have been affected by the decisions and practices of State Trustees.

Our contribution is drawn from our legal advice, legal information and casework with people who are subject to administration orders, where State Trustees is very often the administrator. In the 2017–18 financial year, for example, we provided nearly 500 advices to over 250 people about administration orders; and legal information about administration orders in over 300 cases.

The report identifies that, in our experience, State Trustees has a 'one size fits all' approach that does not consistently recognise the unique needs of the individuals whose financial affairs they manage.

The report highlights concerning examples where State Trustees either did not know or understand how to advocate for clients' rights to have debts waived because they were 'judgment proof' or apply for their fines to be waived on the grounds of 'special circumstances'. For other clients, State Trustees' failure to notify Centrelink of changes in their income caused them to incur debts or be denied payments to which they otherwise would be entitled. In all these cases, our clients were effectively prevented from participating in activities or spending their funds in ways that they enjoy and contribute to their quality of life.

One of these clients was Jamie.

Jamie's story – failure to seek waiver of debt meant client missed out on cricket and camps

Jamie lives on his own in regional Victoria. He loves playing cricket for the local cricket club and he also has an intellectual disability.

In 2015 a court ordered that Jamie pay a large insurance company \$27,000 in

compensation following a car accident where Jamie was driving. State Trustees, who have been Jamie's administrators for over a decade, entered Jamie into a payment plan where he was to pay \$50 a fortnight. That payment plan would require Jamie pay this amount each fortnight until the year 2037.

State Trustees entered Jamie into this payment plan without contacting the insurance company and asking whether they would waive the debt because of Jamie's circumstances. Because Jamie's only income is from the disability support pension and he has no assets he is 'judgment proof'. This means that if the insurance company sought to enforce the debt against Jamie, the court would refuse to make an order forcing Jamie to pay unless he consented to that order.

Jamie was unhappy with being on an administration order and sought advice from Victoria Legal Aid through our Legal Help phone line. We contacted State Trustees on Jamie's behalf and advised them of their obligations to act in Jamie's best interests, including in relation to this debt. State Trustees took six months from when Jamie's lawyer first brought the payment plan to their attention to stop making the payments and start advocating on Jamie's behalf to have the debt waived.

By the time payments were stopped, Jamie had been making payments for nearly three years. This means over \$3,000 of Jamie's limited income from the disability support pension had been paid to the insurance company by State Trustees over that time. Jamie had missed out on doing things he loved like participating in his local cricket club games and going on camps for people with disabilities during that time because he was not able to afford them.

Informed by our day-to-day work with thousands of Victorians with mental illness and disability, the report highlights six key areas for improvements in both policy and practice to ensure State Trustees, and the regime in which it conducts its role as an administrator for vulnerable Victorians, can most effectively protect and promote the rights of Victorians with disability. Our recommendations are aimed at:

- maximising autonomy and building capacity
- acting competently in a represented person's 'best interests' and in consultation
- understanding the legal frameworks that determine the represented person's rights and responsibilities (including in relation to debts, fines and Centrelink)
- improving the responsiveness, appropriateness and accessibility of services
- making VCAT and the review process a meaningful safeguard
- building a workforce and culture that can bring the principles and protections in the current and new Acts to life.
- We will continue to advocate for systemic changes that strengthen our clients'

rights, autonomy and quality of life.

Read the full report

Read the full report [State of Trust: Making sure State Trustees protects and promotes the rights of Victorians with disability \(docx, 238.87 KB\)](#).

Read about our other [related strategic advocacy and reform work](#).

Was this helpful?

Yes

No

Last updated: 10 Oct 2018

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