

CORRECTED VERSION

LAW REFORM COMMITTEE

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

Melbourne— 7 November 2011

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Mr S. Pappos, Housing Services Manager, Australian Community Support Organisation.

The CHAIR — Thanks for coming in, Stan. My name is Clem Newton-Brown, I'm the Chair of the Law Reform Committee. Jane Garrett is Deputy Chair; Russell Northe; Donna Petrovich; and Anthony Carbines, who couldn't be here today. We are a cross-party committee set up by Parliament to investigate terms of reference, and this is one of our references that we're looking at at the moment and, once we've heard from all people who want to submit and heard some oral evidence from some of those people, we will prepare a report to Parliament as to recommending changes to legislation. Anything you say here is protected by parliamentary privilege but not outside the room.

For the transcript, if you could start with your name and professional address and who you represent and then go through and highlight what you wanted to in your submission.

Mr PAPPOS — My name is Stan Pappos. I work for the Australian Community Support Organisation, the address is 1 Hoddle Street, Richmond. I'm currently the Housing Services Manager but I've previously held a number of roles, particularly doing care roles and that's where I started, so I've got direct experience with both the clients, their families and the criminal justice system.

With regards to the submission, I must admit I wasn't formally involved in the write-up of this particular submission but some of the key points that I would like to particularly focus on is the interaction that the service system and people with disabilities have with the police in particular and the relationship there. One of the points we are making is that we would like for that relationship to be strengthened, particularly with issues around communication, the way that people with a disability are treated once they come into contact with the criminal justice system. Usually the first port of call is obviously the police and certainly we would advocate for additional staff training of the police as well as the appointment of a disability liaison officer who perhaps can assist members of the police force with their interactions with this particular group of people.

The other issue is probably more of a systemic one, and that relates to the length of time that cases take to get to court. People with a cognitive impairment quite often don't make that association that if they've offended in January 2011 and they're in court in January 2012, there's a fair degree of time that's passed, and by that stage the response quite often is: why am I here again, what is this about? That was last year, this is the here and now. That's a feature of the people that we work with, that they are quite structured in the way they think, and I think they're not necessarily all that adaptable and all that patient when it comes to these lengthy delays in the criminal justice system.

The other point we've highlighted is around communication and the way in which people with disabilities are informed of both their rights and their responsibilities. Whilst the Disability Act 2006 goes into some length around their rights, it doesn't necessarily speak to the way in which we as a service system ensure that the responsibility is also met adequately and the way in which that information is disseminated. There's a fair degree of work that still needs to be done in that area and whilst we are improving in ensuring people with a disability have access and knowledge and awareness around their rights, the responsibility section is certainly lacking.

In terms of court processes, we've highlighted some examples where problem solving courts in particular have worked quite well with this particular group of people, particularly the Assessment Referral Court List and the Neighbourhood Justice Centre, but access to those particular problem-solving court environments isn't always all that easy. Certainly in our experience they're quite therapeutic, the fact that the Magistrate is involved, particularly in the ARC list, they're quite in-depth and involved in the whole process and, in most of our experiences, it has been quite productive and I think it's led to an enhanced understanding between the service sector and members of the judiciary around some of the pressures that exist, some of the things that are often tried with this particular group of people and sometimes they work and quite often they don't work.

The one determining factor in all that that I can speak from my experience is the person's motivation and regardless of whether they've got a mental illness or an intellectual disability or an ABI, if there's no motivation for change, for positive behaviour change to occur, then the service system can try so much but it's not necessarily going to work. Sometimes it just means that there's persistence and sometimes things need to be tried over a particular period of time before any positive behaviour change occurs.

Certainly we are quite supportive of court diversion, particularly when they're summary offences, certainly not when they're serious offences that need to be considered. ACSO has got a vast experience in working with a whole range of people with a variety of offences ranging from quite low level offences to quite severe offences that impact on members of the community so there's considerations there as well around the interplay in the criminal justice system and how perhaps we can assist our clients to gain a better understanding around their own actions and the impact they have on other people. That again relates to the issue of responsibility and how we go about addressing that and whether there's a process or a way of disseminating that information where it's easily communicated, where it can be easily understood, and where there's an incentive as well on people and client groups that we support, where they've got the motivation, I suppose, to want to learn more around what are their responsibilities as active citizens. Again, a lot of work has been done in social inclusion of people with disabilities but it's an area where more work needs to be done. I think that's about it.

The CHAIR — Are there any questions?

Mrs PETROVICH — Through you, Chair. Thank you for your submission. Have you got any suggestions for improving access to justice for intellectually disabled people? Often the focus is on improving the means by which information is provided to these people, their carers and professionals in the justice system, how can we better communicate and how can we better provide that information to them?

Mr PAPPOS — It would be useful for there to be some sort of consumer participation or engagement of this particular kind of group and maybe that even needs to happen at the level of the Victorian Law Reform Commission — perhaps once your findings are made to say: hey, look, what is your point of view? Quite often we don't include them in these discussions and I know it's certainly something my organisation has been strongly focusing on. I think we've got to listen closely to what it is that they're experiencing, where the gaps perhaps exist, and then seeking to

address those gaps systematically and then rolling that out. Quite often a lot of the discussions that take place around this are left up in policy but not necessarily implemented so I think that with consumer participation hopefully that can be strengthened and I think that may even need to extend to families and carers who are impacted by the contact with the criminal justice system and perhaps they need to be involved in those discussions as well. I know VALID, who you had on the panel before, does a significant amount of work with families and carers and strong advocacy for their clients, but perhaps there needs to be regular forums where they're involved in those discussions. I hope that answers your question.

Ms GARRETT — Through you, Chair. Certain suggestions that have been raised — I know the Chair raised the suggestion in some of the first hearings about would it be of assistance to have something like what we've heard New South Wales has, a vulnerable persons card — obviously the language needs to be careful and respectful — but what is your view of something just to alert, be it the police or other authorities, transport authorities, that individuals may be coming up against with behaviours that may not be seen as part of courteous behaviour and the like? Do you think from your experience something like that might just help chop some things off at the path?

Mr NORTHE — Sorry, can I interrupt. When you're answering that, I'm just interested in your thoughts on what Jane has asked whether a voluntary card has merit rather than a compulsory card?

Mr PAPPOS — There may be merit in a voluntary card, and I'm glad that you clarified that because I think something that's compulsory perhaps — —

Ms GARRETT — Could be viewed as discriminatory.

Mr PAPPOS — Absolutely. A lot of the people we work with and support don't like the label "disability" and as much as possible they shy away from it. They fall between the gaps of not really being accepted in mainstream but not being accepted by disability either. Most of the people who offend in Victoria who have an intellectual disability fall in the multi-borderline range. Whilst that can be a way of going about it, I think where services and supports are involved it's key to involve members of the local police in the person's care plan. What we've found is a lot of the people we work with, as much as they have a mixed view of police, when the police are involved in some capacity — and that may be informal visits where they just get to know them and they build that relationship — it is quite reassuring and I suppose it leads to an increased feeling of: look, I feel safe but I also know that I've got some responsibilities here as well. A card itself may be helpful but I think — —

Ms GARRETT — It's not a silver bullet, of course.

Mr PAPPOS — No, sure. It may be helpful and I think if it was trialled on a voluntary basis and then evaluated to see how effective it is, then I think that may go some way in perhaps assisting the police when they do come in contact with our clients, but I do think that strengthening the relationship by involving the police where supports are involved is beneficial, and I will give you an example. In Coburg we have a criminal justice service where we have the police informally involved with the clients and they will just come over and have a bit of a conversation and a coffee, and it builds up on that relationship so if there is contact further down the track with the

police, then there already is that awareness. It's not to say they're forgiving but they're certainly a lot more understanding, depending on the severity of what's occurred.

Ms GARRETT — What you've trialled in Coburg, for example, is that usually something that is initiated by the service provider or the police?

Mr PAPPOS — That's been initiated by us, by the service.

Ms GARRETT — Is that very regional? Obviously there's not a broad blanket but it sounds like a really good idea just to break down the — —

Mr PAPPOS — There aren't many services such as the one that I've described in Coburg in existence in the whole state of Victoria; I think there's only two services that are classified as criminal justice services in Victoria. The problem with that is a lot of the people we are describing don't necessarily live in those supported environments, a lot of them live in flats or with families and sometimes they're homeless, so the voluntary card may be of assistance to those people but, again, they live day by day and they access services when they feel the need to, it's far more reactive than proactive. The success of that card may hinge on whether they consider to carry it around on them or not and that can be problematic, I think.

Ms GARRETT — Through you again, Chair. You're based in Richmond, I imagine you do work with the housing estates and the like?

Mr PAPPOS — Yes.

Ms GARRETT — So there would be programs whereby the police are visiting the housing estates in manners other than confrontational ones to build those relationships. Are those programs targeted specifically at intellectually disabled or cognitively impaired people?

Mr PAPPOS — Some of them are.

Ms GARRETT — How have those gone, are they successful?

Mr PAPPOS — I know we've got a project at the moment in Fitzroy where people are living in little self-contained units. The protocols are yet to be established with the police, and that's mainly because the program is in its infancy still, but I think that that's something that probably needs to be established.

One of the other things that's worked particularly well, and going back to the example of people who aren't necessarily living in those supported environments, is if there are protocols with police, emergency services and even hospitals where if this person presents and they say their name is such-and-such, they come up on the system, so to speak, and there's a point of contact and it's not about labelling the person or having any more information than that. It's kind of been done informally to date and we've worked with a number of people who will regularly access emergency services, they will live out on the street but they will turn up to the Royal Melbourne Hospital and they will say: I need somewhere to live today, and I'm not feeling well. Because there's protocols in existence, which work quite well, the disability services case managers have been contacted or the past service providers have been contacted and

told: look, we've got such-and-such who has turned up on our doorstep and we just want to check whether this is okay, or do you have anywhere that they can live?

Maybe those linkages can be strengthened which can then lead to, I suppose, better responses within the service system as well. Again, I think it needs to be with the person's privacy kept in mind, I think that the information that's disseminated needs to be carefully considered so it isn't just a person's entire history or entire criminal history, because that can also have adverse effects where people or hospitals or whoever may be quite reluctant to have anything to do with them, in which case that person misses out on a service altogether.

The CHAIR — Going back to the card idea, I think there's an ID that kids can get if they don't have a driver's licence to show — —

Ms GARRETT — Key Cards.

The CHAIR — If you had a Key Card with maybe an endorsement, like you have an endorsement on a driver's licence to drive a truck, would that perhaps help with the stigma that people might feel if they've got a card that says I have a problem and here is the information, if they had an ID card that everybody else has got which has got that endorsement that flags it for police to have a more careful look at it?

Mr PAPPOS — I think it's certainly a good idea, provided it's not unfairly stigmatising the person. I think the point you made there is the key, that the endorsement needs to be something quite subtle and lets people know that if this person is pulled up on the street and the police ask them for identification, they pull it up and say: okay, I have an understanding that you may have services connected. And maybe it needs to be around services rather than the person's individual disability.

The CHAIR — It could just be a code so their mates don't know what it is and the police can look at it and know this guy has got this problem, we need to look into this.

Mr PAPPOS — Yes, that may be a way of approaching it.

Ms GARRETT — Obviously many of the recommendations made here have been about increasing training of police in dealing with these situations, whether there is a specific unit within the police that would co-ordinate that training and people could be alerted to. Do you have any thoughts about that or do you think it needs to be every officer has some training?

Mr PAPPOS — I know at this stage they receive about 10 days of mental health training during their 18 week course — I think it's still 18 weeks. What I would say in respect to the police is I think their resources are quite stretched and we're in a day and age at the moment where they're not just about keeping law and order, there's a welfare component to what police are now doing. I'm not sure if the police culture has caught up with that but certainly some of the police we are dealing with are responding in that way where they are a little bit more welfare and social minded in their approach to our clients.

If I could just go back to your question again because I think I've lost the point of it?

Ms GARRETT — Yes, maybe we both have. I think it was about whether there would be a sort of referral unit within Victoria Police where there would be specialist people who could handle particularly difficult — —

Mr NORTHE — Such as a police liaison officer.

Mr PAPPOS — I think it's something that we made mention of in the submission, that we would support the idea of a disability liaison officer who can be contacted because although all the police are now trained in mental health, the one thing that they remember is Section 10 of the Mental Health Act and that's probably it, and they know about the CAT team, so they know when to involve the CAT team, and that's about it. Whereas there probably needs to be someone within the police force, maybe it needs to be a unit of disability officers or mental health officers because they've got gay liaison officers and multicultural liaison officers, and maybe they need a unit that's just a point of referral to say: look, we've got so-and-so, we've had contact with him, we've found this difficult, or we've come up with the Key Pass and it's got that particular code, can you assist us further, do you know who to speak to? I think perhaps that may then strengthen the linkages to the services that are in existence. I don't know how many police officers, for example, know about disability services within the Department of Human Services and what their role and involvement is in all this.

Mrs PETROVICH — It's actually my understanding that they do know pretty well but I know in rural and regional areas there's an additional layer of complexity to that too, that often the services may be 100 kilometres away and of course if they've identified somebody who is off their meds or whatever, that probably takes their one available service, their one van, off the road for the rest of the night. So there are some real resourcing issues around that too.

Mr PAPPOS — Absolutely. I think it's something that's worth considering, something certainly that we've discussed within our service system for quite a while and it hasn't quite come to fruition but I think the idea of a specialist unit that can be accessed rurally as well as in metropolitan Melbourne would be a good idea. They could be a resource unit as well to say that this is the way you can approach it, we can get in contact with such-and-such service and there may be a service in existence who can come up and pick up that person rather than the police having to use their one van, for example, to travel 100-odd kilometres.

Ms GARRETT — In a similar vein, earlier we had evidence from a rep from the Legal Services Commissioner talking about some of the complaints about lawyers not being trained properly to deal with these issues and, again, whether or not some of those recommendations could tie around at least ensuring there was a partner or a senior lawyer within the firm structure who had had proper training, accredited training even, who could then be a bit of a mentor for others within the firm regarding these very clear issues. Do you have a thought on that?

Mr PAPPOS — In our experience, because we've had experiences with Villamanta and Victoria Legal Aid, both in the civil and in the criminal jurisdiction, with the civil it's around supervised treatment that comes under the auspices of the Disability Act, and certainly where they've been involved in representing clients' interests in VCAT hearings it's led to an increased and enhanced understanding of the clients and

certainly the way the information is conveyed and the discussions that are had during those hearings, although it's still early days, they're certainly starting to use less complex language, easy English, which is a common reference that we make in the disability field to say this is information that's easy to understand.

I know that they were also developing a tool for those, going through the civil regime with the supervised treatment orders, around the process and what the process means and when they can ask to have a review, all those sorts of things, and I think that would be useful to do also in the criminal jurisdiction as well.

With all due respect to members of the legal fraternity, I think it's quite difficult sometimes to shy away from the complex legal jargon so I just think it may be that we can't move too far away from that. If it's a County Court matter, for example, and it's a serious offence there are requirements and processes that need to be followed, and it just may be that those hearings need to be broken up into components so that the lawyer can sit there with their client and say: do you understand what's happening now? Do you have any questions to ask me? Because quite often they're large chunks of time that people spend in courts and most of our clients sit there and lose interest. Not even that, they just don't have an awareness about what's happening, it's almost a bit like an out of body experience where they're not quite sure, is this even about me, I'm not sure, because my name is mentioned here and there but the discussions are — —

Mrs PETROVICH — It happened a long time ago.

Mr PAPPOS — Exactly. Even in the VCAT hearings there's a long way to go in terms of improving those processes but quite often those periods can be long-winded and there can be discussions over semantics and they need to happen but they may need to happen in a separate forum, so that forum just remains a problem-solving hearing.

Mrs PETROVICH — More a tribunal based forum?

Mr PAPPOS — The STO hearings are happening in the tribunal and even there the legal arguments can be quite complex at times and the discussions with regards to treatment plans can be over semantics or this should be their role, for example, and that means very little to the client who is sitting there.

Ms GARRETT — Who feels more alienated through that process.

Mr PAPPOS — Yes, exactly. We've been fortunate in those hearings that we've asked for special leave for our clients so that they don't have to sit there throughout the hearing, or they can be involved for most of the hearing but for certain sections, particularly where there are discussions around their level of risk and when you're labelling them again, that they're not sitting there enduring all that again where they're just told how bad they are rather than all the good points about who they are and their strengths.

Mrs PETROVICH — Chair, if I may. I think that's a very practical approach. The only concern I would have is that perhaps you seem to be shutting those people out of the process.

Mr PAPPOS — I think there's good and bad components that can be drawn out of the current legal practices that take place in the Magistrates', County and Supreme courts, in the VCAT hearings and in these problem-solving courts. The one thing that's worked well in the Assessment Referral Court List is the Magistrate sitting at the same table and having a round table discussion where there's still some legal arguments but in essence it's aimed towards benefiting the person and being very based in therapeutic jurisprudence so that's something, I think, that's worked quite well and perhaps if that can be taken and extrapolated into these other hearings it would be beneficial, then it's a question around some of the members of the judiciary may need some insight into the disability service system and what this all means for our clients as well.

It's been a bit of a mixed reaction — you can go before certain magistrates and judges and they can be quite understanding and empathic and they will take the time as well to explain the process to the client, and others just zip right through it, particularly in the Magistrates' Court, because there's the next case to get to, so a lot of the meaning behind why the person is there gets lost.

Mr NORTHE — When we're talking about alternative dispute resolutions around that, I'm not sure if you have heard any of the previous evidence but there was a little bit of discussion around that and I think Donna asked a question. Where do you draw the boundaries in maybe seeking to go into ADR rather than into the court system as such?

Mr PAPPOS — Certainly I think if they're low level offences they should be in a diversionary sort of program, and I think the Assessment Referral Court List has established this where they're saying: we won't accept anyone who has committed any serious violent or sexual offences.

Mr NORTH — Do you see that as a good model that potentially could be enhanced?

Mr PAPPOS — Certainly. I think with every model there's always scope for improvement, and I think that's probably the case even with the Assessment Referral Court List. I know it's still early days with that particular model but I do think that that's something that could be replicated and it's the same with the Neighbourhood Justice Centre in the City of Yarra. The only issue there is that only people from the City of Yarra can access that service. The one thing that I think is quite remarkable about that particular courtroom in the Neighbourhood Justice Centre is that there's windows and when there's discussions around someone's offences and the impact it's had on the community, the community is visual, it's out there, they can see it, so I think that's quite powerful whereas quite often it's — —

Ms GARRETT — Removed.

Mr PAPPOS — That's right; going into a courtroom it's all very far removed from what's actually occurred, and here we are in this courtroom where it's all very formal and technical. I think, the meaning for the people we support is often lost.

The CHAIR — Thank you very much.

Witness withdrew.