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 — 21 February 2012

Members

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Ms J. Boffa, Policy Manager, and

Mr D. Clements, Manager, Brosnan Centre, Jesuit Social Services.

The CHAIR — This is a cross-party committee. The other two members are not here today. We are a committee of five that investigates terms of reference given to us by Parliament. We are looking at three different inquiries at the moment, this being one of them. The process is that we call for submissions. We have had an enormous amount of information come in already. Then we have hearings where people come in and talk us through their submissions. At the end of it all we prepare a report which goes to Parliament. Then hopefully some of our recommendations will get picked as changes to the law in the future. It is a slow process of gathering information from the community and then feeding it back to Parliament.

Ms BOFFA — Can I just check how long you have allotted for us today?

The CHAIR — Forty minutes. If you could fight amongst yourselves as to how long each of you is going to have, that would be good.

Ms BOFFA — We are pre-bruised; we have sorted that out!

The CHAIR — We have written information, which we have all read, so it is a matter of highlighting the bits you think are most important. Everything you say here is protected by parliamentary privilege, but nothing outside the room. Your evidence will be recorded, and you will get a copy of the transcript. You should let us know if there are any mistakes in the transcript. I ask you to start with your name, professional address and who you represent for the purposes of the transcript, then launch into what you want to tell us.

Mr CLEMENTS — My name is Daniel Clements. I am from Jesuit Social Services. I am the Manager of the Brosnan Centre. The address is 10 Dawson Street, Brunswick.

Ms BOFFA — I am Julie Boffa. I am the Manager of the Policy Unit at Jesuit Social Services. My address is 364 Church Street, Richmond.

Mr CLEMENTS — In the context of a response, we have provided a written submission around the work we do and the intersect that we have predominantly between our work in justice with people who have a disability, some of whom are diagnosed, some undiagnosed. Jesuit Social Services works in three key areas: justice and crime prevention, mental health support and wellbeing and community settlement. Today we would like to predominantly talk about our work.

It is a very small and discrete area. We specifically work with people who intersect at that area around justice and disability, and it is in the shape of residential accommodation that we provide from a property in Reservoir. It provides 12-month accommodation to four young people who intersect exactly those two sectors — justice and disability.

Julie, do you want to talk about the bigger picture at all?

Ms BOFFA — No, I will take over when you are done.

Mr CLEMENTS — The key thing for us in the context of the work we do is that our observations are that across the continuum around justice, people with a disability are regularly underdiagnosed, do not get access to support services as often as they should or need to and often fail to get access to diversionary programs and programs that will assist in supporting them. The context of the interaction between young people and the system, particularly those with an intellectual disability, is often problematic and does not work to their advantage. When you start with young people who commit an offence, at that very early stage, often they come from backgrounds where there is a history of overrepresentation around child protection and poverty, and they are at risk of homelessness. There is often family dysfunction and sometimes family violence, and then having an ID or ABI compounds the experience that they have and how they intersect with the welfare service system.

The CHAIR — What would be most helpful to us is if you could focus your comments on people with an intellectual disability.

Mr CLEMENTS — Yes, okay. To paint a bit of a picture, from the very first moment that they may get picked up for committing an offence there is an issue in the context of how police recognise, acknowledge or understand and how they engage and work with somebody with a disability. Often they are not aware of it. In addition to that, when the young people we work with enter the traditional legal system — in a court setting, for example — it is not something they are very familiar with or understand. Often the language is intimidating and scary. They do not understand what is happening. This is particularly the case with the high numbers of young people we see who are undiagnosed. When they enter the youth justice system there are often failings there in the context of the capacity of the people who work with them to diagnose the disability. Julie can speak a bit more to the data around that. That carries on along a continuum whereby they may move into adult correctional systems where once again there is not the capacity in those systems or within the prisons to accurately diagnose them. Sometimes it is picked up. That is not to say that there are not people working in there who are tuned in to the issues around disability, but the fact is that there are not enough staff who work in those areas and there are not enough resources surrounding the young people and the young adults who we work with as they work their way through the justice system.

On release they encounter exactly the same issues. With the young people we see at Perry House, for example, you need to approach the way you work with them in a different style. You need to watch your language, and you need to think about how you present information to them in the context of their rights and their responsibilities around what options they have available to them. While there is often very good intent from the disability case managers who work with these young people, the reality is that they have high case loads. They do not have the capacity to actually provide that intensive support to the significant number of young people they are working with.

Ms GARRETT — I have just a couple of questions on that. Perhaps this is a question for both of you. Has it been your experience that where there is an early diagnosis and support there is less likelihood that the person will end up butting up against the justice system? Is that a fair comment?

Mr CLEMENTS — Absolutely, yes.

Ms GARRETT — You mentioned the overrepresentation in families at risk et cetera of a range of factors. Running on from that, the second question is: where would a diagnosis normally be first triggered? Would it be at school?

Mr CLEMENTS — It could be a range of environments. School could be one environment, but often in our case it is through the justice system.

Ms GARRETT — So the first time they have been — —

Mr CLEMENTS — They have committed an offence, and they have been picked up by the police.

Ms BOFFA — But I think the broader issue is that there would be a diagnosis, if you want to call it that, or their behavioural issues have not been picked up. It might date back to maternal and child health; it might be that early in terms of professional systems coming into contact. Part of what I wanted to go on to talk about addresses the issue of early intervention. A question I would put is: what are those trigger points at which you would first begin to take note, and what are the relevant services that come into play? By the time they are hitting the justice system their behaviours are often quite entrenched. That is why I think the issue of overrepresentation comes into play.

Maybe I could take over there because what we did — and I gave you a copy — is prepare a presentation where we wanted to focus on three particular points. As Daniel said, we are a small-bit player, really, in the disability sector in terms of specific services. Indirectly there are a number of young people in our services who are affected by different levels of cognitive impairment. Our experience of the service system will not be as high as that of other people who have presented to you, but we think there is a really important case to be made for the overrepresentation of young people with a disability in the youth justice system and a need to think exactly about the question you have just asked — about how you can detect them, how early and how you can put in place services that will make a difference and divert them from any offending, let alone custodial care. That is our key point of the day and our key interest in coming to present here today.

We want to consider three points: the overrepresentation, the lack of statistical systems, and the early intervention responses and how you might think about them within the system. Again, lots of these facts were actually in our submission, but we think it is worth drawing them specifically to your attention. When you look at the prevalence of ID in the adult system, the department’s own report put it at about 1.3 per cent, just marginally above the population incidence of disability, so that report told us, whereas in datasets relating to the youth justice population the incidence is far higher. There is a snapshot of the youth justice centre at Parkville in the year before last at September 2010. They found that 14 per cent of those young people in custody were actually registered with disability services, so again they are actually the people who are registered and are diagnosed.

When we look at our Youth Justice Community Support Services data — that is a service that we actually deliver through Brosnan Youth Services — it is a subset of the youth justice population. Your grounds for eligibility are that you are relatively more at risk and you need a more intensive service than you can get within the wider youth justice population, so it stands to reason that it is actually to some extent screening some of the young people with disability into that service because they would be presenting with wider risk factors. The incidence there is 7 per cent in the quarterly snapshot across the state. They are very slow at getting their data out. The next quarter came through just a couple of weeks ago, and in that dataset the incidence was 9 per cent of the Youth Justice Community Support Services clients. Again it seems that the incidence in a custody population was 14 per cent, and in community populations it was probably somewhere between that 7 per cent and 10 per cent range. Again, that independent research done by Monash University of the Brosnan client set shows it being around 10 per cent, and then they found another 30 per cent in that borderline range which the formal classifications do not pick up. The incidence is really quite high. In particular it is that odd 10 per cent who are actually registered that we would focus on in particular as an issue of overrepresentation — or the 14 per cent who are in the youth justice custody setting.

You have probably seen this in our submission and in many others because it was in the DSFRP background paper, but that profile of young people shows that the incidence of intellectual disability and why they are presenting in the youth justice settings really need to be placed in the context of the types of risk factors that Daniel spoke about previously. It is not just an issue of disability, child protection, substance abuse, homelessness or all of them; they go together, compounding, and that makes the intervention a whole lot more tricky even if you do detect the trigger which you want to precipitate into some form of more intense service.

I think, again, there is the same fact that for some reason the youth offending population is much more highly representative of these young people than you find the adult system to be. When you look at the stats from the other lens, through the adult system, there are the facts that intellectually disabled people in the adult system can be younger, have three times the rate of youth detention episodes of non-intellectually disabled people and have a greater number of community corrections orders or prior sentences in terms of imprisonment or prior remand-only terms. It really does seem that when you get intellectually disabled young people with issues of behaviour management of whatever sort that leads to offending they are being picked up and detained at far greater rates than other younger people in the community, and they are a greater proportion of the population of young offenders than what you see later in life. It is the case, I think, that they are trying to intervene early and stop that pattern whereby these young people are overrepresented. I think it is a very stark case and something we need to take heed of.

The other thing that comes into play is this issue of housing and homelessness. You see it in just about any study. Certainly the New South Wales Law Reform Commission had a number of statements around that as well — the lack of appropriate services. The need for providing accommodation, care and support for people with an intellectual disability is well known. Although it is occasionally possible to find care for persons who have not committed offences, it becomes virtually impossible for those who have offended. The absolute same finding came from Corrections Victoria when they were looking at suitable accommodation options for people released from prison. Three of the nine ID clients in that cohort could not be found accommodation, whereas all the people without an intellectual disability could. They are overrepresented, and the problems they face broadly across many systems really compound upon them.

The CHAIR — Can I just clarify: about halfway down there it says 42 per cent of male prisoners and 33 per cent of females have an ABI; then if you go up to the second paragraph, it says 1.3 per cent have an intellectual disability.

Ms BOFFA — Yes. Again, I think the issues plaguing all these stats are classification issues. An ABI might not classify you as having a diagnosed intellectual disability for the purposes of registration with disability services; it depends on the level of severity and so forth, but it also depends on whether you actually put yourself up or have been put into a process that would get you registered as opposed to independent audits and research funding that test outside of it. It is like what happened at the Brosnan Centre as well. If you have somebody who comes in to assess, they will usually find a far higher incidence than what the official state-registered stats show, because they are actually targeting the inquiry. The state stats depend on somebody referring them or somebody putting their hand up.

The CHAIR — So 42 per cent of the whole male prison population has an acquired brain injury?

Ms BOFFA — That is what it said. Just taking that out of context, I cannot remember the context I read it in the report, but the report is there, cited. I do not know whether that is of a sample or of the population.

Ms GARRETT — It was in the previous submission from the ABI service providers. They had the same statistics.

The CHAIR — They did.

Ms GARRETT — And they had it then broken down into moderate and severe.

Ms BOFFA — So it is quite huge.

Ms GARRETT — Massively.

Ms BOFFA — So I think that is where the issues are around the actual registered disability clients who are then able to take advantage of the special services that come into play. Then there is the next range of people with the borderline disabilities and the ABIs who actually do not make it into the registered client bases and are not able to access those services.

The CHAIR — So as far as classification goes, in terms of disability and ABI, does one necessarily imply the other? If you are intellectually disabled, will that — —

Ms GARRETT — No, it doesn't.

Ms BOFFA — No.

The CHAIR — But if you have an ABI, are you necessarily intellectually disabled?

Ms GARRETT — You can be.

Ms BOFFA — It could affect some other form of your functioning — for example, a motor skill — not the intellectual capacity. So it does not have to follow, but often there are cognitive deficits. In the offending cohort you will usually find a cognitive deficit. Do you have more to say about that?

Mr CLEMENTS — Not really except that they do distinguish them. For example, at Perry House we are funded to take people with a diagnosed intellectual disability. That may be an ABI, but there actually has to be some other diagnosis to go alongside that. An ABI in itself will not necessarily get you access to Perry House. You have to be registered with disability services and have a disability services case manager and a registered ID.

Ms GARRETT — I think this has been an important theme through a lot of the submissions. We had Legal Aid, which has now set up a unit, as you would be aware, specifically dealing with persons with intellectual disabilities who are coming up against the system. The evidence there was that it clearly takes a lot of time and often they have not been diagnosed, so they have to be referred for specialist diagnosis. This lack of diagnosis seems to be quite a common theme.

Mr CLEMENTS — Absolutely, and there are not the services in the prisons or often in — —

Ms GARRETT — Or prior. These are first-time offenders who are adults and who have not been diagnosed.

Mr CLEMENTS — Services are expensive too. To get an assessment by a provider like arbias costs a lot of money. That can act as a prohibitor, I think, early on.

Ms BOFFA — There is also somewhere in there a question of individual choice and human rights as well. You could say to somebody, 'If you go and get assessed, you could fall within this range and you will be able to access all of these services', but they actually do not want to. They have got enough thinking capacity to not want to go and get that classification. They do not want to be one of those people.

Ms GARRETT — And families are the same?

Ms BOFFA — Yes. I am speaking very generally.

Ms GARRETT — Of course.

Ms BOFFA — It makes sense, but when we were writing our submission we discussed this issue around the lack of formal screening processes in prisons. We were certainly throwing around those two options. If there were some formal screening thing whereby you had to be subjected to an assessment to judge your level of cognitive functioning, that would be good, because then you would pick up more people and they could be screened under services. On the other hand, there was this whole issue of individual choice and human rights. There are actually people who do not want to be screened in and do not want to have a label and go through life with that label as well. So I think there is that.

Then there are the levels at which you set your thresholds as to what is an IQ versus what is borderline and then what is an ABI as another level as well. They can change, so it is historically over time where they are set. They have been looking pretty stable now for a while, but at some point they were a bit higher and a bit lower. There were too many people in so they changed the bar — those sorts of things come into effect as well.

There is a question of how you diagnose people, and then there is the level of disability that you choose as the threshold to bring your service intensity in. Our absolute experience within youth justice is that wherever you set that bar there is going to be another group of people who are effectively as disabled in terms of their capacity to access the type of life opportunities that you would hope for within society, but they are going to fall on the other side of the bar. They need that intensive support, and they cannot get it because they are falling on the wrong side of the threshold line for services.

That is where you move into more population-level responses; you have to try to take a broader brush stroke at earlier levels or at wider levels of social support so that you can scoop up the people who are falling in the gaps as well as targeting your services at the people you are formally classifying as being within the gaps. It plays out, for instance, in the job search and training spectrums as well. I read some research recently, I cannot remember the source, about how if you get a job within six months of leaving prison it absolutely, statistically, significantly reduces the likelihood of reoffending. It is much harder for people who are intellectually disabled to get jobs; but if they do, then the stat holds true for them too.

Accessing employment and the level of additional support required to remove the non-vocational as well as the vocational barriers for people to be able to access employment are equivalent to what you are talking about with Legal Aid. Yes, you can set up the special units, but you need to resource them intensively and give people that additional level of support. That was the case about overrepresentation. A lot of the cases are about the types of services that are coming into play too.

But another point we did want to make is this question around the prevalence and the pathways, and how much we can actually tell from the statistics. I guess you have seen enough submissions to have seen how many different numbers fly around. Even that critical key data about the incidence of intellectual disability within the youth justice system comes from a snapshot of 149 clients that the Youth Parole Board published. At every forum I have been to I have heard those stats cited, so I figure they are the stats. I do not know if you have heard about any other incidence of intellectual disability within the youth justice custodial settings, but I think it is a pretty sad indictment of our departmental systems that we are relying on a snapshot of 149 young people to understand the incidence of intellectual disability within the youth justice custodial settings in 2010–11. It is crazy.

The calibre of collecting stats at pertinent points is one issue. Then the extent to which the statistical systems are all fragmented is another. You have the police stats, which are extremely thorough, but I do not think they collect anything about intellectual disability. I have never seen it anyway, but I will have a look. Then you have the court systems and then you have Corrections Victoria or DHS, but those systems do not speak to each other. There is no common or unique identifier that flows with young people or into the adult system, so you cannot match up your datasets — you would not know. One of you asked the question earlier, 'Where do you first intervene?'. You would not necessarily know that somebody who is presenting in the Children's Court and getting a community order has a history dating back to the age of whatever in the police stats. Unless somebody said it, there is no way of knowing that sort of thing. Therefore in terms of understanding the broad impact on individuals' lives and society, and the cost of all the different service systems that are coming into play, you cannot track it across departments or systems — legal systems, helping systems, school systems or whatever.

In New South Wales they have that group I always forget the name of, so I hope I wrote it down in full.

Mr CLEMENTS — BOCSAR.

Ms BOFFA — That is it. I know the acronym; Bureau of Crime Statistics and Research. However they do it in New South Wales, they have a system that links up at least their justice system's datasets so they can portray the full set; therefore they put out a lot of really interesting reports and analyses of trends within that. That is a system across all the criminal justice system. But when it comes to people with any form of disability in Victoria, then that is a subset of the bigger problem. Again we think that is worth bringing to your attention.

The final point we wanted to make was about intensive intervention as early as possible, which is what we have effectively been talking about throughout. As we said in our submission, the overwhelming challenge for the justice and disability systems in responding to offenders with an intellectual disability lies as much, if not more, in responding to their multiple and complex needs as to either offending behaviour or disability in isolation.

When you think about how to intervene, that is the key point, because you do not just have the neatness of saying, 'I will address disability' or, 'I will address offending', because they interact and they are interacting with a whole series of other things that lead to the root causes of offending. In fact many of those things impede and impact upon the environmental influences on genetics or allowed systems in terms of what their base level cognitive functioning is going to be in the first place. These systems are absolutely interwoven, and therefore intervening earlier is a lot cheaper than intervening later. But if you want to intervene early in the types of environments that young offenders are often brought up in and then socialised in and as they go through life, then you need to really put in the resources at a level that is commensurate with the need you are seeing in those people.

I guess in thinking about how to present it for you today, we thought about punctuating it, because early intervention is used in a whole lot of ways. There is early in life and then there is early in offending and early in the maturational cycle before they move on to adulthood. We are mainly caught up in that third point because of where our services are predicated, and that is important. Problems are often very entrenched by then, so again we would really advocate, especially within the type of whole-of-government frame that you put this inquiry in, to see the problem as something that sits a whole lot back earlier in life. What it means is that the protecting Victoria's vulnerable children inquiry will probably be out in the next sitting of Parliament. It is highly likely to recommend in that early intervention space with children and family more broadly. I do not know whether it will make any specific reference to disability, but to that extent it probably does not matter because at that point it is an issue of supporting children and families and maximising the opportunity for social, emotional and intellectual stimulation for children both in the home and through other forms of child care or special programs and so forth. Then there are the particular problems for the early intervention program within disability services to work in conjunction with the broader social programs. I think that is really important.

I put in this other study because I heard about it recently. It is extremely interesting. It is a study by Dunedin university. It followed a cohort of 1000 children from birth to the age of 32 years. It showed really conclusively that childhood self-control predicts physical health, substance dependence, personal finances and criminal offending outcomes following the gradient of self-control, so the less self-control they measured at 3 and 5, the more likely you were to be involved in offending behaviour, substance abuse, have poor physical health outcomes and so forth. It is just another iteration of all of that work that is now being done around neurobiological science and brain development and the importance of early relationships and early child-rearing practices on getting the most out of whatever your baseline capacities might be.

Again, it is equally true in the universal systems for the intellectually disabled people that you can be intellectually disabled in Camberwell and you are going to have a much better outcome than if you are intellectually disabled somewhere in the wild west or whatever even if you start in the same place, because of the different levels of stimulation and opportunity that are presented in your environment. This is another example of the self-control gradient that they talk about in terms of your capacity to manage your emotions and your impulse control, which is highly related to subsequent substance abuse or offending behaviour. This is being developed absolutely in those preschool years. There is a whole range of those sorts of programs that it would be really good to look at at a whole-of-government, whole-of-community level if you want to intervene early in life. That is really important.

The next set of programs we talked about are the ones early in offending. As Daniel said, these intellectually disabled young people are getting a rough shot of it in offending and with the police and so forth from quite a young age. Again, as I said, we are not really completely over the services in this spectrum, but I am not aware of any specific police diversion programs targeted specifically at intellectually disabled young people. There are broad community ones as well — for example, one of the main programs they talk about is a diversionary program for young people, from either the courts or the police cautions, is the Ropes program. It involves the police officer and young person going out and doing a course of ropes, teaching trust and cooperation and so forth. That is probably grossly unsuitable for most intellectually disabled people.

Mr CLEMENTS — But it is not for some of those ones with a mild intellectual disability. We have some of those come through our services. Often there are programs that actually do mirror programs for people without an intellectual disability. It is just the pace that you would deliver it at, the language you would use and the way you would actually engage with the young person that might vary, but that is not to say that there would not be benefits associated with disability programs either.

Ms BOFFA — Yes. Those sorts of diversionary programs and making them sensitive to the needs of intellectually disabled young people are really important as well, as are virtually all of the mainstream options. Then you often need a special training overlay to cater for the needs of intellectually disabled people. Again that range of programs needs expanding more broadly in relation to all young people, but the intellectually disabled within them are a really specialised cohort.

Then the third set of services we are going to talk about are the ones early in the maturational cycle, which is our set. By then you need really intensive services. A lot more parts of the service system are now coming into play and might have a role to play in trying to address the problems, and that includes the child protection system and disability services. Often you have homelessness services, health services and substance abuse services, particularly at the severe end.

A whole range of service systems comes into play, and there is an increasing amount of evidence in literature about the types of services that can best assist at that end. Again, they are mainly talking about whole population samples, but you need to introduce this particular overlay or do more research than we have certainly done about what the specific types of services that might best assist people with an intellectual disability. They are highly likely to have the same features as the generic services, which include really low case loads, extended length of service and capacity to either directly include or broker in the substance abuse and the housing-type services with a strong emphasis on life skills and life skill development, which again come into play.

The CHAIR — We have a couple of minutes left. Does anybody have a quick question?

Mr NORTHE — I congratulate you on your submission. It is good to have a number of recommendations — 19 in total — and this little summary. It is a very good presentation. Well done.

The CHAIR — Is there anything further you want to conclude with to cover it off?

Ms BOFFA — Not me.

Mr CLEMENTS — Not me.

The CHAIR — All right, thank you very much.

Ms GARRETT — Sorry, I do have a question just before you go. We had a submission earlier today from a range of groups which were working within multicultural communities. They talked about one of the major issues in terms of assisting those with intellectual disabilities to not only know their rights but also access services, be they directly adjacent to the justice system or more broadly. They said there could often be stigmas associated within the family about someone with an intellectual disability and fear around that. Do you think that is an issue more broadly in relation to encouraging families to access services from the early stage — if you are born in Camberwell, you tend to be connected to that — or is it a broader issue?

Mr CLEMENTS — There is certainly a broader issue around stigma and the stigma associated with anything around intellectual disability. I am not sure that we would be best placed to comment on something like that in a competent way. But certainly I think breaking down the stigma associated with IDs would apply equally across — —

Ms GARRETT — That is what I meant. I did not mean within those communities; I just meant more broadly in the general community, whether that was one of the issues.

Mr CLEMENTS — Yes.

Ms BOFFA — Again, I think it would be an issue with the whole cycle for parents, if you are going to go really early, of coming to terms with the child that they have been given. It is just the normal factors that come into play. The more encouraging and the more available and accessible higher profile services are, the more likely it is that families will just bump into them in the normal course of their life, and that can assist with those issues, and then with the specific cultural groups that have particular resistance to seeking services, there is an overlay within that.

Mr CLEMENTS — It is the connectedness and availability sometimes; it is a link, at schools and those places where there is the intersect. Ideally it is not getting to that point where we are working with it through the justice system. Ideally it is happening at that early intervention, as Julie identified — so places like schools, and as early as preschool. There are people there who are best placed to actually pick up on behaviours that may not sit within the norms and they just raise eyebrows. That is an opportunity to start thinking about it and engaging the family in that dialogue.

The CHAIR — All right. Thank you very much.

Mr CLEMENTS — No worries.

Ms BOFFA — Thanks.

Witnesses withdrew.