

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

Geelong — 20 March 2012

Members

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Witnesses

Mr D. Moyle, Coordinator, Youth Justice Community Support Service, and

Ms D. Rygiel, Coordinator, Youth Connections, Barwon Youth.

The CHAIR — Thank you both for coming and coming early. This committee was set up by Parliament to investigate topics that the Parliament thinks need looking at for potential law reform. We gather information from the community and stakeholders and then put together a report that we present to the Parliament. Then hopefully the Parliament will act to implement some of those recommendations that we make. It is a direct way for the community to have influence on new laws that could be made to benefit the community. Hansard records everything. You are protected by parliamentary privilege in the room here, but not outside the room; just be aware of that if you are making any comments to the media outside. If you could start with your names, addresses and who you represent and then launch into what you would like to tell us.

Mr MOYLE — My name is Daniel Moyle. I work for Barwon Youth, and the address is 12–14 Halstead Place, Geelong West.

Ms RYGIEL — My name is Danielle Rygiel. I also represent Barwon Youth, and our head office is at 12–14 Halstead Place, Geelong West.

The CHAIR — There are a lot of issues around this issue but what we are particularly interested in is access to justice for intellectually impaired people. So if you could focus on that, that would be great.

Mr MOYLE — I might just provide some context. Barwon Youth has been providing justice programs for over 20 years. We have a fair bit of experience in terms of working with youth justice clients, or juvenile justice as it used to be. Danielle has put down some notes as well that she might cover. In regard to some of the things we have observed and issues we have seen regarding young people with a disability not only accessing services but also some of the barriers in terms of youth justice, one of the things that we have seen, or I and my team have seen, is that young people, especially those who have an intellectual disability, when they, for example, receive a youth justice order, sometimes there can be a real struggle for them to comprehend the complexities of that order. Obviously at-risk young people struggle at the best of times to comprehend some of the complexities of youth justice orders, but particularly young people who have an intellectual disability. That can be a real issue.

It is really important that when young people become involved in youth justice that there are many support services available, and it is particularly important that those trained around disability provide some of that support around youth justice orders, particularly in compliance. With youth justice orders, there is not just the component of support that is provided by youth justice workers. There is no doubt that with a youth justice order comes things that you have to comply with, and obviously if you do not comply, then you can be breached and then you have to go back to court. Depending on where you are within the hierarchy of sentencing, you can end up finding yourself with a custodial sentence.

The CHAIR — Where is the youth justice order within the hierarchy?

Mr MOYLE — Once you have gone with cautions and warnings, then you get to your bonds, and once you go past your bonds you end up at the level of orders, so that you have probation orders, then you have youth supervision orders and then you have youth attendance orders. Youth attendance orders are really the last step, I suppose, before a custodial sentence.

The CHAIR — Are we talking about just Children's Court matters?

Mr MOYLE — For the moment we are just talking about Children's Court matters. We have had young people who have been in custody. Our observation would be that the level of support that is provided to those young people with an intellectual disability within the custodial setting can certainly be up for debate and question. Obviously all young people who receive a custodial sentence are at risk, but young people who have a disability are especially at risk, and I would argue that the supports that are provided for young people with an intellectual disability are not as great as they could be within the custodial setting.

Ms RYGIEL — It is interesting. Dan and I were reflecting on this before we came. When I started in the field, my background was with youth justice — I am talking about 23 years ago. Back then young people with an intellectual disability, if placed in a custodial setting, Turana, which is now the Melbourne Youth Justice Centre, actually had a specific unit designed for young people with a disability with special supports in place. Along the way that has disappeared, so the young people who go through the system are mainstreamed and placed with other quite vulnerable people with often quite challenging behaviours. Because of their own level of

vulnerability, some of the impact of placing them into a mainstream unit can be quite challenging. I think that is true for staff as well if they are not adequately trained in how to deal with young people with disabilities.

Ms GARRETT — Do you find that there is an issue about diagnosis of children with intellectual disabilities? Is it readily identified that this person has an intellectual disability, or is that part of the problem that people are just going through without proper identification?

Ms RYGIEL — I currently work in a federally funded program called Youth Connections. We work with young people in the education system at risk of disengaging from education. I also know of a program called Transitions to Employment, which is a disability-funded program through Futures for Young Adults, and it is around transitioning young people from secondary education into post-secondary options. One of the things I have seen along the way through my experience as a caseworker in my current position is that often young people are being transitioned from primary into secondary education without having been diagnosed with an intellectual disability. We have seen them disengaged at year 7.

I can think of a case I worked on five years ago where I met a young person who had gone into year 7 after two months of being disengaged, and it was about six months down the track when they were referred to our service for some family support. When I met with the young person the first time I had red flags going, and then by the second visit I felt something was clearly not right, so I met with the school that she had been transitioned to to ask if there had been an educational assessment and a support plan put in place for the young person. They checked through and said no, so I requested that one be completed. When they did the assessment, her aggregate score was 51 per cent. That had not been picked up in primary school. She had been supported through — —

Ms GARRETT — ‘Aggregated’ — what does that mean?

Ms RYGIEL — When they do assessments around intellectual disabilities they assess a whole range of areas, so it might be verbal language — —

Mr MOYLE — It shows their level of cognitive impairment.

Ms RYGIEL — She was 51 per cent. To be eligible to be registered with disability services the cut-off point is 70 per cent. There was quite significant impairment there but that had never been picked up. Consequently she disengaged from secondary school and we were unable to get her back in. That led to some extremely high-risk behaviour being undertaken in terms of placing herself in very vulnerable situations with older men. She also became involved in some minor offending behaviour, for which she received a warning. Later she became pregnant and then she became homeless. There was a roll-on of issues that impacted on her. That could have been picked up in primary school and supports put in place to support her mum — who I suspected was borderline as well, and I spoke with mum about whether she had ever been assessed. Mum really struggled around some of those parenting skills to manage and identify the needs and supports that had to be put in place for this young lady.

Mr MOYLE — I suppose going back to young people who receive a custodial sentence and who have an intellectual disability, certainly it could be argued that a custodial sentence is a punitive approach. Some may disagree, but certainly that would be one of the arguments. Obviously young people with an intellectual disability can have low comprehension and issues around impulse control. Depending what their level of cognitive skill is, they may not even understand that this is a punitive approach — that is, you are being sent here because it is the last straw and you are getting a consequence; you are being punished for your behaviour. They do not understand that.

I think we need to rethink the whole justice system in terms of how we sentence young people. I am talking in the context of young people because I am a youth worker and that is the context in which I work. I just wonder sometimes whether we just have to rethink the whole thing, because I believe we are working within a system — and Victoria is still one of the most liberal and innovative systems in terms of youth justice in the country — where we have the lowest sentencing rate for young people in the country. As we speak, in Victoria we only have around 140 young people in custody, and that is the lowest in the country.

Having said that, is it a benefit to a young person? Certainly we could argue whether it is a benefit for a young person to be locked up at all and whether it is a benefit for a young person who has an intellectual disability,

whether it be mild or extreme, to be receiving a sentence. It could be argued that it is not appropriate, and obviously that would mean turning things upside down in terms of the way we do things currently. These are issues that need to be talked about and addressed.

Ms RYGIEL — And do we need to look at other diversionary-type programs to address some of those behaviours so it does not get to the point where chronic offending starts to become a pattern which may result in them being incarcerated? Even programs like the ones we have through our workplace — the youth justice conferencing victim offender program — has had clients with a disability. Maybe we should be looking at other forms of mentoring-based programs. There is a range out there that maybe we need to look at as well as more community education.

Mr NORTHE — I am not sure whether or not this is right, and maybe you can tell us from your own experiences, but I think that a lot of the evidence that has been tendered to us thus far has been around the notion of a young person who comes before the police with an intellectual disability and what happens from that point. There has been a lot about training and education for police in how to interact and how well the independent third person works and the notion of maybe having a family member or somebody more familiar with that particular person as part of that discussion. I suppose what I am getting at is that I would hate to think that young people with an intellectual disability are being incarcerated because they do not have the supports even when they are having those discussions with the police at that early stage. I wonder what your thoughts and experiences are around that?

Mr MOYLE — I do not know whether I can comment because I have not seen anything with my own eyes in terms of police dealings with young people with a disability. But certainly any education that is proactive at that very early stage is extremely important. Now across Victoria we have the youth support service, which is that early intervention so young people at the warning or cautionary stage can receive a referral from the police to community organisations to provide early intervention and diversion. Certainly more training for police and for those who are at that very early stage is going to be very beneficial so there is no disability discrimination. There are going to be certain behaviours that police do not quite understand, and they are going to be there because of a person's disability. If police treat them like any other member of the community, they will be discriminating against them.

Ms GARRETT — In terms of identifying and providing support and early intervention for people with intellectual disabilities, and your example was a powerful one about someone getting to year 7 and then completely disengaging and all of that consequential conduct, do you have thoughts about how that could best be dealt with? Is it through the school system? Is it through — —

Ms RYGIEL — On Friday I participated in another forum through the Victorian Equal Opportunity and Human Rights Commission around students with a disability and their experiences in the education system. A few things were highlighted there. One was the lack of training — a teacher's experience — which is along similar lines to what was mentioned in relation to police. I think over their whole degree course they might get three days of training. Often there is really limited awareness in what to pick up on.

In terms of primary education, because you have a lot of one-on-one interaction with one teacher over a 12-month period, there tend to be informal supports put in place. Where there is a huge gap is in those transition years from primary to secondary education, and in my experience that is where I have seen a significant portion of young people disengage from mainstream education.

Ms GARRETT — That is very interesting.

Ms RYGIEL — Because it has been handed poorly. That is across the board, but young people with a disability struggle even more because they need to feel connected, to have that one-on-one relationship and the importance of being able to engage and identify with a person. Once that is removed it just creates a whole range of anxieties that are clearly impacting on that transition.

Certainly I think there needs to be more transition support. Whether we look at something like mentoring as support as part of that process so there is a link they have when they move on to secondary schools — I think the education system probably needs to look at the way it is structured and operates to make that more user friendly not just for young people with a disability but for young people in general, because mental health is a

growing area that we are seeing with young people with anxiety. That is also resulting in a lot of disengagement. That would be my initial — —

Ms GARRETT — It is an interesting point about the transition period between primary and secondary —

Ms RYGIEL — I think it is a huge one. Also, I think working more with parents around that. It is really interesting, because with the pilot program we are running at the moment we have an offshoot which is called the Enhanced Workplace Learning Program, which is targeting secondary school students. It is being run through another organisation that we are partnering with. The purpose of the program is to go into secondary schools, including Barwon Valley School, which is one of our high-needs disability schools in Geelong, to work with young people in years 10 to 12 around work readiness.

But a lot of work is also going to be done with parents around accepting that, because what I have seen more recently, through my involvement in TTE, is that often parents have much anxiety about transitioning their children, so unless there are adequate supports in place for the parents, there are a whole range of other barriers that you start to encounter. It means that a lot of supports that are out in the community can be missed because often parents will streamline their child down the disability services line rather than at times taking into account what is in mainstream that can also be of support. Not all young people with a disability will go to a disability-specific school; some will be transitioned into mainstream. I think community education awareness support and more family support is probably a really valuable way to go.

Mr MOYLE — Family support is really important because if you have a look at any young person involved in the justice system and if you look at the support structures in their life, they are often minimal. That is the same with the young people with a disability who end up entrenched in the justice system. There is very little support. It is about working very early on to ensure there are supports both in the education system and within the family so those structures are in place.

The CHAIR — Thank you very much for your contribution; it has been very helpful. We can see your passion, and the microphone did not worry you at all, Danielle. Good on you both.

Mr MOYLE — Great. Thank you.

Committee adjourned.