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

Bendigo — 28 May 2012

Members

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Mr I. McLean, Chief Executive Officer, Golden City Support Services.

The CHAIR — Welcome, Ian. This is a committee set up by Parliament to inquire into various references. We gather evidence from various sources and have hearings around the state as well, and at the end of it we will write a report in which we will recommend changes to the law for the Parliament to consider.

You are protected by legal professional privilege when you are giving evidence here, but not outside the room. Everything gets recorded by Hansard, and you will be provided with a copy of the proof transcript. Could you start with your name, professional address and who you represent and then talk us through your submission.

Mr McLEAN — My name is Ian McLean; I am the CEO of Golden City Support Services. We are at 48 Mundy Street here in Bendigo. The organisation is a provider of supports for community living for people with a disability.

The CHAIR — What type of disabilities do you cover?

Mr McLEAN — It is the range. We have three core elements of the organisation. They are: general community living support, whether you have a cognitive disability, an acquired brain injury, mental health disability et cetera or a physical or sensory disability. We have an area of our work that works with people with mental illness in community-based supports or what would be known as a PDRSS service, funded through the Department of Health, and we have an area that is funded from the Commonwealth that is supporting carers and people who are suffering from dementia in their own homes. The reflections I wish to make today are mainly on the area of developmental disability and also include some of the issues for people who at times may experience severe challenging behaviour to their environment and the interactions that that might bring with the law and in fact the legal service.

It is obvious that my short presentation may end up being wider than the scope of your inquiry and that is because I cannot see the way that the justice system and the law interrelate as being separate from the other social supports in civil society. Hence if I stray, you can bring me back onto track, or it might be of interest, the way that I might synthesise some of the issues.

The CHAIR — It would certainly be of interest, but just bear in mind that we are constrained by our terms of reference.

Mr McLEAN — I understand. First of all, the biggest thing to comment on is the benefit of how the police can work with and understand and relate to people who have a developmental disability or their understandings of the causes and the possible interventions for people if they at times are exhibiting challenging behaviour. In this area, for example, there are a couple of people in the police force who are — in fact it is probably indicative across the state — worth cloning. They are Neil Crouch and Margaret Singe; they are a good example here of what works well with the interaction with our organisation, the people we support and the police.

We are working at the moment with a cross-community group in regard to supporting and developing information and training for people with developmental disabilities in regard to their sexuality and in fact their expression. These two people I named are eager participants, along with people from community health — from CASA et cetera. That is the first plus.

Of course the quandary about being able to give evidence in regard to communication and a person's sometimes complex communication is one of the dilemmas that you would have already heard of in regard to, I would assume, people with a developmental disability coming into contact with the justice system. Certainly the independent third person is something that we would support and in fact relate to, but that is not looking for any transformation or change; that is already in place and generally works well with regard to the independent third person being especially attentive to understanding and in fact communication.

The CHAIR — So just explain to me how the independent third person works.

Mr McLEAN — When someone with a developmental disability is judged to need to be interviewed by police, under current law if someone is aware that the person has a developmental disability they are required to get an independent third person in who can work in the interview and be attentive to the person understanding the questions that are put and that the police, if they are doing the interview — —

The CHAIR — Is that a service your organisation provides?

Mr McLEAN — No, it is not.

The CHAIR — There is a pool of independent third people?

Mr McLEAN — Yes, that is exactly right. In fact it would probably be a conflict of interest for our support staff; even though they may know the person well and may be able to understand their communication well, it may not be sufficiently independent.

Mr NORTHE — Ian, on the same point, if I may. It has been said to the committee on some occasions that, 'Yes, I understand the importance of the ITP, but in some sense' — and without being disrespectful to people who are ITPs — 'it might be beneficial to have somebody who has an intimate knowledge of the particular person coming before the police, because the ITP might not always necessarily know and understand that person intimately and how they are responding to any questions or providing answers'.

Mr McLEAN — Certainly the ability for the independent third person to have an understanding of what complex communication may be and to understand the various forms of communication that people may need to have, and so therefore a knowledge of the person is of benefit. Certainly some of that can be communicated from those who are supporting the person, whether it is family or whether it is support staff. But you are right; sometimes it takes quite a deal of skill to understand what a person is in fact saying, yes.

Mr NORTHE — I suppose the point I am putting to you is: would you suggest any enhancements of the ITP under its current model and making sure that there is, where possible, that knowledge of a person who might have an intellectual disability — in that case they may be in the room with the ITP or — —

Mr McLEAN — Yes, I think being in the room with an ITP; that is where my thought was going down. I do not think that just having an intimate knowledge of the person qualifies you necessarily to be the ITP. But should that be in the room and be able to communicate with someone who knows what the expectation on the independent third person is? Yes, I think that would be useful.

I would also like to put that one of the other community supports that we have found of great benefit for the people we support when they make allegations in the circumstance that they are alleging that someone has assaulted them or sexually assaulted them that CASA has been an absolute brilliant sense of being able to spend time with the man or woman working through whether they want to progress it further, what is going to occur within the service system and what their choices are. Not that we have a lot of it going on, but over the last 15 years there would be three or four times that we have used CASA, and now the concern is the length of time it takes to sometimes get into CASA. They quote funding restraints in regard to their ability, and yet we have relied on their expertise in supporting people to work out whether they are going to report to the police, what that means and that they be supported through all the testings et cetera that might need to take place. I would like to put in a good word there, saying that that has been very useful, yet it has been compromised to some degree.

I suppose the other area I would like to talk very briefly about is people who sometimes can exhibit severe and challenging behaviour. It is very easy for this group to be misunderstood and for, for instance, the police to respond in a time of crisis and not know of the person or know what is going on. I do have in the back of my mind concern that one day a person who is on the autism spectrum may be in the middle of an incident in which they do not understand what is going on in their world or they have had frustration with communication or have been taken into a brand-new setting for the first time, and things there have not worked out or have shocked them — it is possible for this group to be tasered if things are not controlled. Over in the States you hear of worse happenings than that to people on the autism spectrum when of course police come and need to be attentive to containing a certain situation. This is an area that needs a significant amount of skill.

Then there is a point that may be outside your scope in regard to law reform. The Disability Act as part of law is one of the few current protections that people with a disability have in Victoria, apart from common law, which of course is also their protection. It needs to be said that as the purchase of service moves away from funding from the Department of Human Services to being able to be held by the family or purchased through a financial intermediary, that the protections under the Act are effectively made null and void.

The script of what is there at the moment: if you look at the Disability Act, there are definitions of residential rights with the provision of information and residential statement; there is access to the Disability Services

Commissioner; there is the community visitor program; and there is the Office of the Senior Practitioner. They are all there to look at the protections. All of those relate to services that are funded by the Department of Human Services,. We are moving more and more into a world that is purchased by family through funding or even, under the advent of an NDIS, an insurance scheme that all of the current laws under the Disability Act in regard to protections would be null and void. There has been a recent amendment to the Disability Act to expand the role of the Disability Services Commissioner. That still is not universal to everyone who provides services to someone with a disability. It is still limited in its scope, even after the current change.

I think we need to look at what protections we see as being necessary for some of the most vulnerable members of our community. Certainly the Disability Act, even though it was only enacted in 2006, is in some ways being left behind by the narrowness of scope. It really relates to not-for-profit organisations and the small group of people who are directly funded by a government department. The world is changing and has already changed to some degree, so I bring forward that concern that I think for a person who receives services, no matter from where they are purchased, in regard to support et cetera for community living, there need to be protections there, full stop.

I also wanted to put to the committee that people with severe and challenging behaviour are often not understood and are labelled, yet it is possible to reduce the severity and the incidence of people's challenging behaviour and therefore reduce the interaction that they have with needing to be contained or whatever the circumstance is. If we deal with issues of early intervention for the amount of access that people have to early intervention when they are diagnosed on the autism spectrum, a lot of the challenging behaviour that people express has to do with not understanding what social transactions are.

Early intervention within childhood actually reduces the development of behaviours of concern or challenging behaviour in those early times, and those patterns stick with someone throughout life. Once they are developed, they are in the toolkit of behaviours that someone has when they become overwhelmed by circumstances, so early intervention is very important in minimising some of the interactions that concern people to such an extent. Of course those interactions come from frustration with communication, feeling out of control, being bored, being in situations of anxiety, being overwhelmed, being sick or in pain — all of these things are causes of people's challenging behaviour. If that is not understood and they are seen for what is going on at the time, then the issue of reducing people's severe and challenging behaviour so they can benefit from community living, which this group does, and to also have an understanding within those that are going to intervene — often the police — in this for their wellbeing — —

Mrs PETROVICH — Can I interrupt there. We hear from many people who have made submissions that police are often at the coalface when these incidents happen. I think we expect a lot of our police officers who are put in sometimes pretty difficult circumstances. How can we better alert people to the fact that we have not got just purely aggressive behaviour but we have got somebody with a disability who is reacting in a particular way? How can we educate the broader community and those professionals who are in that position of having to deal with a variety of behaviours from all community members, and how can we better equip those people with that disability for their circumstance?

Mr McLEAN — This is a very paradoxical area, because the evidence base of what works for this group and how to support them has been there for over 20 years, yet there is no service system. We attempted to develop a service system in Victoria about 25 years ago, and then it has lapsed into a crisis response system. The crisis response system becomes a downhill spiral of physically restraining the person, chemically restraining the person or putting in more and more support staff to somehow do something good. That becomes the high-cost, low-effectiveness downhill spiral when in fact it is possible to train a group of staff to work positively through positive behaviour support strategies and through active support. These are all practice frameworks that have a research evidence base over a long time that work with supporting the person to understand their world so they do not get into crisis.

We need to fund a support service. When you talk about how many, about 20 per cent of people with cognitive disabilities — intellectual disabilities — will exhibit challenging behaviour at some time in their life. But the figure in the UK is about 24 in 100 000 people who will actually exhibit severe challenging behaviour unless they are well supported. You have got about 1500 people in the state of Victoria who deserve a service system to be built around them, supporting them, lowering the severity and the incidence of their challenging behaviour, and you will then minimise the interactions with the police that need to occur. The police are only called in to these circumstances when all else has really failed. The trouble is that things are failing very quickly when you are basing a service system on a crisis intervention that is high cost and has low effectiveness.

To that degree, even though it may be a bit outside of the scope, Professor Jim Mansell has just updated what is called the Mansell report, *Services for People with Learning Disability and Challenging Behaviour or Mental Health Needs* for the UK government. I would like to give you a copy, because he describes what the evidence base is that is required to support this group of people. I will table it for your interest.

I suppose that starts to draw to a bit of a close the span of topics that I want to bring to the attention of this particular group. Thank you.

Mr NORTHE — Ian, probably further to Donna's question, you talked about intervention. Is the diagnosis of people with an intellectual disability a problem? I guess when you have a look at the figures, even through Corrections, it almost appears to be the case that a lot of people slip through the system and are not diagnosed until they are actually incarcerated. Is that an issue that you see from your perspective?

Mr McLEAN — It brings me to a comment about those who would be seen as high-functioning but who have a mild cognitive disability. They are often missed. It is interesting; that is a point that I had down that I wanted to raise anecdotally. Not a lot of support has gone to people who might have a mild intellectual disability and are high functioning, and yet they are the very group that seem to be most apparent within the prison system — they get into prison the most easily. Whether a change in support to understanding the little bits of support that may be necessary at key times in the life of a person with a mild intellectual disability may be diversionary to all of that — that may be the case, because this group of people often have very little support, and yet they may not understand the world or have developed interesting ways of responding to their world which come into conflict with the justice system and others. Yes, I would agree.

But to answer directly, people who obviously require support to function in their day-to-day lives or who have severe challenging behaviour — that is, as a child they do not have severe challenging behaviour at first, but their social interactions do not seem to be quite explainable and the family will identify that there is something different about their child and will go off to have them tested. Whether or not someone is on the autism spectrum is capable of being diagnosed fairly accurately, but they are not the group that you are talking about getting in with the justice system. Whether their IQ testing is accurate enough to help support those who are high functioning but with only mild intellectual disability, I am not sure. People come into the purview of support systems when they obviously need support to function in their day-to-day lives. But it is an obvious dysfunction when you end up in jail.

Mrs PETROVICH — Just one final question on the point of when things go awry and somebody who has a mental disability or an impairment such as you were discussing is convicted: are there alternatives or considerations given to the sentencing if there has been a diagnosis, and how many times would you have seen people who have gone through that process without being fully diagnosed and the court being fully aware of the circumstance?

Mr McLEAN — There are only three cases that I can think back on — whether it is because of arson or because of other things that people have gone through the courts for — when the courts were made aware of the disabilities that people had. I have not seen the situation that you refer to. Those who were representing were very keen to provide the court with as much information as they could. Whether or not there was any rehabilitation for the person or their needs were understood is a separate question, and I do not really have any information to follow up on that would be accurate for this group.

Mrs PETROVICH — That is fine, thank you.

Mr McLEAN — It is true to say that one of the areas — and this is not answering the question directly — with mental disability that we also need to approach, and I think the police do, as I indicated with the good examples here, is that if you have someone who does not understand the social norm of dress and at times will disrobe in public, then public nakedness could get them in trouble with the police. But people with a development disability I think deserve for us all to see it first of all as an educational opportunity. I think they need support to not be in public view all the time, but the idea of having some punishment at the beginning of some of these areas that we have all had an opportunity to learn in is something that needs to be an opportunity here for developmental disability too — so when there are some of the social norms.

There was one other: taking something from a shop without paying. The understanding of the transaction that needs to take place to pay for something — people need the opportunity. I think the police do that well and I think the supports do that well, but it is a lesser example, I think, of the educational moments and the developmental moments.

I do not know whether to go here or not, but if someone was to access child porn and they have a developmental disability, then it is something that we all see as being something that should not happen; it is abhorrent. But someone deserves to go through an educational process as to whether or not that is legal if they have discovered that on a website. They need to understand that and be coached, not just taken straight off to court. Does that make sense, for someone with a cognitive disability anyway and for someone with a developmental disability?

Mrs PETROVICH — I think it makes sense in the context that the rest of us are struggling to address some of the issues of cyber and what is going on on the internet let alone for those people who have an impairment.

Mr McLEAN — Yes; thank you.

The CHAIR — Thank you very much. It was very helpful.

Mr McLEAN — Thank you.

Witness withdrew.