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Re: Legal and Social Issues Committee

I am responding to the Inquiry into Victoria's Justice System as advertised in "The Age" and have complied this submission to raise aspects related to people with a disability.

Professional background:

I have worked with people living with a broad range of disabilities for over forty years, initially training as a Division 2 Nurse at Caulfield Hospital and later in positions including Advocacy, Support Co-ordination and Employment Support Worker.

I established Stabilise Pty Ltd seven years ago to address sexual expression opportunities for people living with a disability. We provide individual consultations, access to Adult products and Professional Development.

To the best of my knowledge, this is only service addressing these aspects of people's lives in a sex positive framework in Victoria.

The issues relating to people with a disability interfacing with Law Enforcement and the Justice system due to "inappropriate sexualised behaviours" has become more evident as have the gaps in fundamental service and information provision and opportunities to prevent people with a disability coming into contact with legal systems.

Our client's range in age from 15- 74 with services funded through NDIS, TAC, Workcover, Senior Masters office and State Trustees. Often there are underlying issues that have not been addressed including sexuality education and several of our clients have come to the attention of the police.

It seems bizarre that people with a disability are expected to abide by laws embedded in concepts that they have not been provided with education or formats to understand and are excluded from when seeking redress.

By reviewing the underlying issues, I am respectfully submitting these insights to the Committee for consideration.

Sincerely,

V. Chipperfield

Director.

*The Legislative Council agreed to the following motion: That this House requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 28 February 2022, on various issues associated with the operation of Victoria's justice system, including, but not limited to —*

*(1) an analysis of factors influencing Victoria's growing remand and prison populations;*

*(2) strategies to reduce rates of criminal recidivism;*

*(3) an examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime; and*

*(4) the consideration of judicial appointment processes in other jurisdictions, specifically noting the particular skillset necessary for judges and magistrates overseeing specialist courts.*

**(1) an analysis of factors influencing Victoria's growing remand and prison populations;**

**A.** People with a Disability have had ongoing over representation within the remand and prison populations. They often have “hidden” disabilities” such as Acquired Brain Injury (ABI), especially if there is injury to the frontal lobes.

Interactions with law enforcement and the judicial system may be underpinned by lack of access to, or awareness of supports that are available to them through NDIS, Veterans Affairs or, if sustained in vehicle and workplace accidents TAC or Workcover. These injuries can contribute to subsequent spiralling of their lives into drug and alcohol issues, homelessness, breakdown of relationships, isolation, loss of employment and the development of mental health issues such as anxiety, depression, Post Traumatic Stress Disorder and subsequent involvement in criminal activity.

**B.** People with Intellectual Disabilities can find themselves involved in the justice system due to “inappropriate sexualised behaviours” (masturbating in public spaces, soliciting sexual interactions from children and young people or sexually assaulting another person, including support staff and other residents in supported residential services) and jeopardising secure accommodation and support, community access and interaction, independent skills development and educational and employment opportunities.

**(2) strategies to reduce rates of criminal recidivism;**

**A.** Services for people with an Acquired Brain Injury in Victoria were developed in the 1988 under the “MICHI” joint initiative (Ministerial Implementation Committee on Head Injury) and a number of strategies were developed to support people from the initial injury through information provision (in 13 community languages) rehabilitation, specialist Support Co-ordination and Behavioural Support Consultancy Services including support for families through a network of support groups and the State wide ABI Advocacy Service.

This framework enabled the ABI sector to advocate for a Specialist disability Magistrates list.

Unfortunately, the advent of the NDIS and the push for generic service provision, this knowledge, expertise and service base no longer exists. It had been instrumental in diverting people with ABI from the criminal activities and assisting to redirect people to meaningful community engagement.

Melbourne City Mission established the first “Clubhouse” based on the psychosocial program developed in America for people with Psychiatric conditions (One was established in Melbourne by the Schizophrenia fellowship for people with psychiatric conditions).

The Clubhouse model provided a cost-effective program that addressed isolation, stigma and lack of purpose and gave people the opportunity to develop respectful relationships and friendships, skills development to enable a redefining of purpose, employment opportunities and a positive diversion program.

People with an Acquired Brain Injury and other disabilities would have benefited from having this type of program embedded in Community Health Centres/ Neighbourhood houses/ community hubs. Unfortunately, it has (also) been defunded.

**B.** People with an Intellectual Disability have been overlooked in the development of systemic approaches to address basic human development. Special Schools do not provide sexuality education/human development information/classes past AusVels level 3-4 (9 - 12-year old's), essentially stopping prior to the onset of puberty.

This has led to a range of issues, impacting on the individual, their support network, community, law enforcement and Justice system.

The current Royal Commission into the abuse and neglect of people with a disability may have overlooked this aspect.

As with anyone else in society, people with a disability can be survivors or perpetrators of sexual assault and abuse.

The differences are:

1. Many people with an Intellectual disability, high support needs and Neuro Diverse disabilities have not had basic, age appropriate or accessible sexuality education.
2. A general perception that sexual expression by a person with a disability is unacceptable.
3. Communication aids, devices and software (especially for people who are non-verbal) do not include images/concepts for the sharing of knowledge or information about private aspects of the body, personal development, sexual expression, respectful relationships or legal systems.
4. Courses for workers in the sector (Teaching/Therapy/Nursing/Support staff) do not included subjects on addressing sexuality for their clients.
5. Law enforcement and judicial systems have limited support, training or skills to work with people with cognitive impairment.
6. The “Independent Third Person” program (voluntary positions) is limited.
7. Family Planning Victoria was the acknowledged leader on information and training in sexuality issues for people with an Intellectual Disability in the State and provided intervention services for people with Intellectual Disabilities. Prerequisites were limited to the person having an Intellectual Disability and pre-existing involvement with the justice system. **This service has now ceased due to lack of funding.**

8. The ASK assessment (Assessing Sexual Knowledge) had been developed an assessment tool for people with an Intellectual Disability. Advice from a Behavioural specialist clarified this tool has not been updated in decades and relies on outdated and inappropriate imagery and concepts.

**Summary:** Sexuality Education and tools need to be imbedded in training packages for professionals including law enforcement and Judicial systems working with people with a disability.

Members of Law enforcement and Judicial systems require training/ support/ information when working with people with a disability.

Special schools need resources to ensure sexuality education is relevant and accessible to students with a disability.

Sexual expression needs to be acknowledged for all people as an aspect of their humanity and promoted in a framework based on respect, privacy and consent.

Communication aids need to be updated to include sexuality images and concepts.

**(3) an examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime;**

Anecdotal experiences from parents who attempted to support their child with a disability who had been sexually assaulted, highlighted the gaps in the process for survivors with a disability.

Law enforcement and Judicial systems deem these survivors as not credible witnesses.

Structural barriers for those who are non-verbal is embedded in the lack of communication software, images and concepts and exacerbated by fear of retribution due to their dependence on others, powerlessness and lack of independent supports.

One parent who supported their child with a disability to navigate the legal system after being sexually assaulted, reported that Judge determined that as the person had autism, anything else (like being sexually assaulted) would have a limited impact on them.

This child had been sexually assaulted on a school bus.

**Summary:** Magistrates and Judges need specialist training and support on cognitive disabilities.

**(4) the consideration of judicial appointment processes in other jurisdictions, specifically noting the particular skillset necessary for judges and magistrates overseeing specialist courts.**

**Suggestions:**

1. The appointment of Judges and Magistrates includes an awareness and understanding or support to develop:
  - a) awareness of the issues impacting on people with a disability.
  - b) the issues relating to specific disabilities especially involving cognitive impairment.
2. That people with a disability have the same rights for redress under the law as other members of the community.
3. Judges are provided with structural expertise to hear and determine cases involving people with a disability
4. The person with a disability is supported to have information made accessible by an appropriately skilled support person/independent Advocate.
5. The process be modified to ensure an inclusive and accessible system.
6. Awareness of the multifaced issues for people who are from Sexually, Culturally, Linguistically, religiously diverse communities including First Nations people.

## References:

<https://www.publicadvocate.vic.gov.au/opa-volunteers/independent-third-persons>

*Office of the Public Advocate:*

- *The CISO program is currently limited to prisoners with a diagnosed intellectual disability and **excludes** those with cognitive impairment caused by other conditions, such as mental illness or an Acquired Brain Injury.*
- *OPA is working with Corrections Victoria to:*
- *promote the CISO program and ensure every prisoner who is entitled to use it knows about it seek an extension of the program to cover all cognitive impairments.*

### **Independent Third Person**

*Independent Third Persons (ITPs) provide assistance and support to people with disabilities during police interviews when giving statements and participating in other police procedures. ITPs work specifically with people of all ages who have cognitive impairment such as an intellectual disability, acquired brain injury, dementia or mental illness.*

*An ITP must be committed to promoting the rights and dignity of people with disabilities.*

*An ITP is independent of police and the investigation, is objective and without judgement or bias.*

*This is a **voluntary position** supported by program staff within the Office of the Public Advocate.*

**Synapse:** Journal of the Acquired Brain Injury Associations of Australia September 2010  
Disabilities, Prisons & Legal issues.

**Family Planning Victoria:** <http://www.fpv.org.au/for-you/people-with-a-disability/cognitive-disability-and-sexuality> ISBN:978-0-9924422-3-1

**AusVELS:** Child sex development

**Magdalena McGuire,** Policy and Research Officer, Office of the Public Advocate ISBN:978-0-9924422-3-1

**Hayes, 1992:** Victorian Government Office of the Public Advocate, 2010

**Crossmaker,** 1991: Hayes, 1992: Healey, Howe, Humphries, Jennings, & Julian, 2008: Murray & Powel 2018

Simpson and Hogg (2001a) Page 11.