INQUIRY INTO ACCESS TO AND INTERACTION WITH THE JUSTICE SYSTEM BY PEOPLE WITH AN INTELLECTUAL DISABILITY AND THEIR FAMILIES AND CARERS – Submission 09/2011

SUBMISSION – Thursday 6 October 2011

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Mr Laurie Harkin
Disability Services Commissioner
Victorian Disability Services Commissioner – October 2011

Background

The Victorian Disability Services Commissioner (DSC) commenced on 1 July 2007 under the Disability Act 2006 (the Act) to improve services for people with a disability in Victoria.

This independent statutory office works with people with a disability and disability service providers in Victoria to resolve complaints.

Our complaints resolution process is free, confidential and supportive and we encourage and assist the resolution of complaints in a variety of ways including discussions, conciliation processes, or under certain circumstances through investigations.

Over the four years since the establishment of this office we are able to compare the experiences we have gained in responding to over 2,000 matters to date.

Victorian disability service providers readily contribute to our growing body of knowledge by reporting each year on the number and types of complaints they receive and how each complaint was resolved. This information is used to identify systemic issues and inform the ongoing development of the disability service system.

The themes and conclusions we draw from service provider’s data and our own data, that captures our experience of the complaints brought to our office, informs our submission to this Inquiry.

We provide a summary of a few emerging trends and systemic issues we have identified for consideration in this inquiry in order that better outcomes may be achieved for people with disabilities who are accessing the criminal justice system.
Summary of key areas addressed by this submission

a) key issues and themes, including but not limited to:
   i. participants’ knowledge of their rights;
   ii. availability of appropriate services and supports;
   iii. dealings with the police; and
   iv. the operation of the courts;

b) measures within Australia and internationally to improve access to, and interaction with, the justice system, including but not limited to measures that seek to:
   i. break down barriers to the justice system and enhance participation;
   ii. deliver just and equitable outcomes;
   iii. facilitate collaborative and co-ordinated approaches across government departments and agencies; and
   iv. provide responses that address the circumstances of the offender and offence concerned.

c) consideration as to whether the findings of the inquiry have broader application to people with a disability other than an intellectual disability, for example those with an acquired brain injury or neurological condition leading to cognitive disability.

* Paragraph (c) was inserted by resolution of the Legislative Assembly on 30 June 2011.

Submission to INQUIRY INTO ACCESS TO AND INTERACTION WITH THE JUSTICE SYSTEM BY PEOPLE WITH AN INTELLECTUAL DISABILITY AND THEIR FAMILIES AND CARERS

Victorian Disability Services Commissioner, October 2011
Issues identified in enquiries and complaints specific to this submission

a) Key issues and themes:

Participants’ knowledge of their rights

A key aspect of DSC’s work with people with a disability involves the promotion of people’s right to make a complaint and to speak up about issues or adverse events experienced in service provision. DSC’s experience suggests the need for increased rights awareness education and training for people with a disability about all of their rights, including their right to access to justice.

A proportion of complaints to DSC are about incidents of alleged or actual assaults by staff or other clients. Whilst these incidents are required to be reported to the police by the disability service provider, it is DSC’s experience that clients, their families and even staff may not be aware of their right to have an Independent Third Person (ITP) present (ITP – Office of the Public Advocate funded program) and the responsibility of the police to organise an ITP.

The right of a person with a disability to additional or specialised support to make witness statements (through for instance specialist police units and Visual Audio Recorded Evidence - VARE) also does not appear to be widely known.

Availability of appropriate services and supports

It has been the experience of DSC that there is a need for greater advocacy support to enable people with disabilities to effectively participate in the justice system.

Furthermore, greater access to communication aides or knowledge of an individuals specific communication needs is vital to ensuring active participation in the justice system.

The accurate identification of a cognitive disability also plays an important role in the provision appropriate services and supports. It is often the case that people with less visible disabilities are not seen as requiring additional support, thus not always referred to appropriate services and or supports.

Dealings with the police

It has been the experience of DSC that people with disabilities can experience delays in police conducting initial interviews regarding alleged assaults, deciding whether or not to proceed to investigation, and concluding an investigation. These delays and conclusions can have a significant impact on clients and their families in terms of access to justice.
as well as impact on the capacity of the service provider to provide remediation and effective responses to the adverse event and trauma experienced whilst the police processes are still in process.

Delays in investigation can result in people with an intellectual disability experiencing difficulty in recalling information as an aspect of their disability and often it is suggested that they can be relatively easily swayed and confused by people who set out to influence them as to the facts and sequence of events in an incident under investigation. This is often compounded by investigating police having only a limited understanding of effective strategies to deal with people with disabilities, which can impact on the effectiveness of police interviews and the investigation process.

Flexibility is required by police and other participants in the justice system when dealing with people with disabilities (in particular in relation to interview location/duration).

As outlined above, when dealing with the Police, people with disabilities are to have an Independent Third Person Present (OPA Program). It is the experience of DSC staff in dealing with complaints is that this requirement (which is outlined in a Protocol between OPA and Victoria Police) is not always met.

b. Measures within Australia and internationally to improve access to, and interaction with, the justice system, including but not limited to measures that seek to deliver just and equitable outcomes

DSC’s experience of dealing with complaints involving alleged or actual assaults of people receiving disability services indicates that people with an intellectual disability are often confronted with stereotypical responses from within the justice system. For example, a person with an intellectual disability who has been a victim or witness to an alleged assault are commonly not seen to be credible witnesses. There is a view that people with an intellectual disability are not reliable in that they may not be able to provide the same answers to questions under cross examination. The way questions are phrased can confuse and mislead people with a disability and this should not act to exclude them from participation in the justice system. In DSC’s view, the justice system needs to adopt a set of agreed methods and required skills for interviewing people with an intellectual disability to ensure that they have equal and fair access to justice. The ‘Tips for Communication’ contained in the ‘Ready Reckoner- Responding to People with a Cognitive Impairment’ published by the Office of Public Advocate provides a useful starting point for developing effective methods for interviews, which needs to be complemented with appropriate training, skill development and options for specialisation of interviewing police officers.
c) Consideration as to whether the findings of the inquiry have broader application to people with a disability other than an intellectual disability, for example those with an acquired brain injury or neurological condition leading to cognitive disability.

DSC’s experience would suggest that the findings of the inquiry are likely to have broader application to people with a disability, particularly those people who rely on augmented communication or other forms of support to communicate.

5. Conclusion/ Recommendations

On the basis of DSC’s experience of dealing with complaints involving alleged or actual assaults of people receiving disability services and their interaction with the justice system, we recommend that consideration be given to:

I. The need for increased rights awareness education and training for people with a disability about all of their rights including their access to justice;

II. The need for increased availability of advocacy support for people with an intellectual disability and their families in dealing with the justice system;

III. A recognition of the significant impact delays in police processes can have on access to justice for a person with an intellectual disability, together with access to remediation and effective responses to the person’s experience of trauma and the adverse event;

IV. The ongoing need for police induction and training to address stereotypical views of the capacity of people with an intellectual disability to provide evidence; and

V. The need for specialist training, agreed methods and flexibility of police approaches to interviewing to ensure that people with an intellectual disability receive appropriate support to provide evidence in order to receive equal and fair access to justice.