

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Friday, 5 November 2021

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Ms Harriet Shing

Mr Lee Tarlamis

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WITNESS (*via videoconference*)

Ms Emily Piggott, Advocacy Coordinator, VALID.

The CHAIR: Hello, everyone. Welcome back. We are pleased to be joined now by Emily Piggott, who is the Advocacy Coordinator for an organisation called VALID. It is a tremendous advocacy organisation for people with disabilities.

Emily, thank you so much for joining us. If I could let you know that all evidence taken today is protected by parliamentary privilege, and that is provided under our *Constitution Act* but also under the standing orders of the Legislative Council. Therefore any information that you provide to us today is protected by law. You are protected against any action for what you say during this hearing. However, if you were to repeat those same comments outside this hearing, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

We are very pleased that you have been able to join us and to provide your submission. If you would like to make some opening remarks, we will then open it up for a group discussion. Thank you.

Ms PIGGOTT: Thank you very much, Chair. Thank you so much for inviting me to give evidence today. I would just like to start by acknowledging the traditional owners of the land from which I am speaking, which for me are the Wurundjeri people of the Kulin nation. I pay my respects to their elders past, present and emerging. I acknowledge that sovereignty was never ceded and that our First Nations people are the most incarcerated people on Earth. I also acknowledge that First Nations people with disability are over-represented in criminal justice systems around Australia.

My name is Emily Piggott, as you know. I am the Advocacy Coordinator at VALID in Victoria. VALID is the peak advocacy organisation in Victoria for people with intellectual disability. VALID's individual advocacy service provides independent disability advocacy to over 250 people per year. A large proportion of those people that we work with are involved in the criminal justice system. In August 2021 we completed the Justice for All project. VALID's Justice for All project gave voice to the experiences of people with intellectual disability involved in the justice system, and the final project report will be available on VALID's website on Monday. What I would like to say to you now is based on the voices of VALID's advocacy clients and the work of the lived experience consultants from the Justice for All project.

The first issue I would like to raise with you is about disability rights. I raise this one first because one of the strongest messages we receive from people with intellectual disability is that they do not have rights when they are involved in the criminal justice system. It might be tempting to think that people who are guilty of a crime would say that to avoid consequences, but what people with intellectual disability tell us is that they do not have disability rights because nobody knows what they are. People with intellectual disability have not been educated about their rights, and many professionals across the justice system are not aware of the United Nations Convention on the Rights of the Persons with Disabilities, nor are they aware of the legislation in which some of those rights are enshrined in Australia.

You will have already heard about the extraordinary rates of disability amongst people involved in the criminal justice system in Victoria. It is already well known that people with many types of disability are over-represented in our justice system, so I ask you now: isn't it about time we viewed the criminal justice system through the lens of disability rights? We have started to listen to First Nations people when they tell us about their trauma and what makes them feel safe, and we have started to listen to victim-survivors of family violence when they tell us about their trauma. I think now we can start listening to people with disability when they tell us about their trauma, and we can do a better job at making them safe as well.

The second issue like to raise with you is about the criminal justice system workforce. When I use the term 'workforce' in this context, I am including any person who is employed in the justice system, like police, magistrates, judges, prison officers, corrections and even policymakers. We know from the academic literature and from what people with intellectual disability tell us that there is a stark lack of awareness, training and skill in the area of disability rights and disability practice in the justice system. We hear about the lack of understanding staff demonstrate of concepts such as reasonable adjustment, accessibility and self-determination.

We hear that many justice system staff do not know how to adjust their communication for a person with intellectual disability. Most staff do not understand disability-related behaviour or how a lifetime of stigmatisation and discrimination can affect people, and I would invite you to imagine it. Imagine what it feels like to be treated as defective your whole life and what effect that has. What people with intellectual disability tell us is that many professionals in the criminal justice system lack empathy and often simply reinforce feelings of exclusion and marginalisation. What we hear loud and clear from people with intellectual disability is that if systems allow a culture of blame and lack of empathy and understanding, then staff will feel justified in behaving abusively.

The third issue I would like to raise with you is the lack of alternative options for people with intellectual disability. If we ask the question, ‘How can we prevent people with intellectual disability from behaving illegally or doing harm in the community?’, the answer does not have to be the revolving door of the criminal justice system. In Victoria we have a really significant lack of alternative options for people to be diverted away from the criminal justice system, and rather than spending money on restorative justice programs, advocacy, specialist disability support and treatment programs, housing, employment, community support, we are now spending money on expanding the prison system. It makes me wonder: does the Victorian community know that there are cheaper, more effective, evidence-based, human rights compliant options available to us?

The fourth issue I would like to raise with you is that of safeguarding. People with intellectual disability tell us that when they are in custody in Victoria they do not have access to safety. Instead they report that what they experience is abuse, neglect, violence, exploitation, bullying and torture. There is no-one they can call for help, there is no body that will investigate, there is no accessible, freely available service that can help. And we know from the report recently released by the Independent Broad-based Anti-corruption Commission, or IBAC, in June this year that the issue of violence against people with disability is very real in Victorian prisons. People with intellectual disability tell us that they want independent, accessible, safe, free and readily available support to report abuse. When Victoria sets up the national preventive mechanism under the Optional Protocol to the Convention against Torture, or OPCAT, in 2022 people with intellectual disability want disability expertise involved in that body. They do not want yet another government system that does not uphold their rights and does not even know how to make information accessible to them.

Friday afternoon—I thought it was maybe a good time for a story, so I would like to tell you about a real person who I know and who I have known for many years. John has been involved with the criminal justice system for about 30 years. He has an intellectual disability, mental health issues and a range of physical health problems as well. His offences have usually been property damage, stalking, assault, fire lighting, making threats and harassment-type offences. He has been charged with well over 50 crimes in his life. He has had periods of times when he was not in trouble, but over the last 30 years he has spent probably more than 20 years on some sort of order or in prison. John was raised in an impoverished, neglectful family with a violent father, and from the age of 11 until the age of 17 he was sexually abused by a priest. He was unaware that the priest’s conduct was wrong, and his home life was so terrible there was not anyone he could tell about what was happening to him. John ended the abuse when he assaulted the priest, set fire to the church and attempted suicide. When John did report his abuser and he was charged, the priest was ultimately found not guilty of a crime. John’s response to this was to pour petrol over his body and set fire to himself.

For the next 30 years John collected charges and spent periods of time in custody. He was not able to maintain relationships or employment, and he attempted suicide regularly. Due to his history of sexual abuse, when John is in custody he finds stripsearching utterly devastating. Strip searches reminds him of being abused. When he is in a shared cell, John finds having to urinate and defecate in front of other prisoners terrifying, humiliating and dehumanising. Many of John’s offences have been attempts at retribution or at getting justice; they are desperate attempts to be heard and believed. You will be pleased to hear that John has now told his story and has found some relief from the lifelong pain he has endured, and I am also very pleased to say that John is watching me talk to you today. But John’s story is not unique, unfortunately, and we know that because of the work we do at VALID.

Nothing I have raised with you today is really new. What I have raised is already known. It has been talked about for many years. Much of what I have talked about today has been raised thanks to the disability royal commission. The 2013 Law Reform Committee Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers—that is a very long title—faced similar issues. That inquiry produced a 418-page report that made many references to the likes of people with

intellectual disability and to human rights frameworks. VALID contributed to the 2013 inquiry, as we are today. Forty-seven recommendations were made as a result of the 2013 inquiry, including recommendations for disability training for corrections staff and police, access to advocacy for people with intellectual disability involved in the justice system, training for judicial decision-makers and guidance on appropriate communication techniques. It even mentions the important role advocacy plays in safeguarding the rights of people with intellectual disability.

But what has changed since 2013? Decades of strong, powerful disability activism and advocacy in Australia has allowed us to imagine what full participation, inclusion, equality and human rights actually looks like. Today I am coming here to tell you that I know a group of self-advocates who want you to hear them, so I call on you today to do something different and make some change for all of those people. I am really grateful for this opportunity to speak to you and I do encourage you to read the *Justice for All* report—the final version when it is on the website on Monday. Thank you.

The CHAIR: Thank you so much, Emily. That was very powerful, and I am so pleased that John is hearing that and is hearing that him telling that story will not be in vain. It is so important, and I am so sorry that we see report after report and everybody knows what needs to be fixed but we just do not seem to get to that point of doing it. Yes, I hope that something different will happen this time. Certainly I think you have just recruited three more advocates for your cause.

Ms PIGGOTT: Marvellous!

The CHAIR: You are very, very persuasive, Emily.

Ms PIGGOTT: Feel free to give me a call anytime.

The CHAIR: Thank you. Yes, you are just down the road so I may well do that. Emily, as you said at the outset, we know the over-representation of people with intellectual disabilities. We had the department in this morning. They went through the statistics with us. We know. We know the risk that it puts people like John in. We know that we have the NDIS. We know that it is so expensive to put someone in a prison when we could be building a home. We all know that. One of the things that has struck me—and just because we have got limited time, I want to maybe drill down on something—is that we have the NDIS but it seems that people who hit the justice system do not seem to have the NDIS. There does not seem to be a good crossover or there does not seem to be a good way for the NDIS to work with people who are brushing up against the justice system. I am wondering if you have got any comments around that interplay between the NDIS and our justice system.

Ms PIGGOTT: Thank you, Chair. Firstly, I would say that there are enormous barriers for people accessing the NDIS in the first place, so there are huge issues with the interface between state systems and the NDIS. If you are in prison and you do not have someone who can support you to access the NDIS, then you simply cannot. If you do not have funding or someone who can pay for an assessment to access the NDIS, you simply cannot, because the evidence required to meet access to the NDIS is different to that required by Centrelink or required by the state for any programs. There is a huge disparity between what people were previously able to access in the state and what people are now able to access through the NDIS. For those people who do get on the NDIS, it can be incredibly difficult because the scheme does draw a pretty hard line on what is offending and what is disability. But those of us who work in disability and have done for a long time know that this is a completely unrealistic and arbitrary line, because you cannot determine what is disability-related offending and what is simply offending.

We also know that for a lot of the people that we work with we have seen certain behaviours, which we call behaviours of concern, that have existed in childhood, and they have been protest behaviours—behaviours people have exhibited because they have not been able to cope with their environment, they have not coped with education, they have struggled to learn, they have struggled socially, and so they have engaged in, you know, hitting, biting, spitting, screaming, shouting. As they get older, some of those people go on to become involved in substance use, become involved with, you know, peer groups that are quite detrimental to them. They might also go on to assault members of the community, and this sort of behaviour that we would in the disability system call behaviours of concern continues into adulthood.

Once people hit adulthood it is very difficult to keep people away from the criminal justice system, because if you are a person who goes out in the community and punches people, most people in the community will view

that as a crime, but that might be something that you have done to cope since you were a child. You might have done it to your parents, you might have done it to peers or you might have done it at school, and yet we still have a system that totally criminalises that behaviour. Once someone goes into the justice system, it is very, very hard to repair the narrative, to repair their image and to convince the NDIA that actually this is really longstanding behaviour and it is related to their disability. It is not that this person has gone and shoplifted over and over again because they wanted something. There are so many people with intellectual disability who are committing offences that are really related to their disability, and yet we really struggle to convince the NDIA that those people need support to manage that behaviour.

The CHAIR: In your submission you go to the continuous assessments and the continuous testing that really affront your members and constituents, but one would have thought that that would be a trigger—that as their planning for release you would see some assistance to get onto the NDIS. Does that happen, and does it happen all the time or rarely?

Ms PIGGOTT: It does happen some of the time, but unfortunately since the state rolled back a lot of the services that were previously provided there are now huge gaps that I suppose a lot of people had not anticipated. Because accessing the NDIS is not easy. If you have a cognitive disability, you cannot do it on your own; you need support to do it. In fact I would probably need support to access the NDIS, because it is really hard. It is like other massive schemes or bureaucracies: you kind of need to know how to navigate it. You need to know what language to use, you need to know what assessments you need—what will be accepted, what will not—and so you need support to do it. So there are lots of people, particularly those who cycle in and out of prison regularly, who simply never get to see anyone who can sit down with them and say, ‘Let’s look at what you’ve got. Let’s send it in and let’s wait for the rejection letter, and then we’ll write back, and then we’ll see what other assessments we can get’. But there is also a huge gap for people, because if you go into prison and you have got, you know, a psychological assessment from 2014 that talks about your offending and says that you have a cognitive disability—it says that there are functional impairments—that is not enough for the NDIS, because you have to use the language of the *NDIS Act* to meet access. So there are lots of people who have old assessments, have old pieces of paper that they have collected, and they do not go anywhere and they do not do anything. The fact that the state is not routinely funding assessment for people to meet access is really problematic. I know that there is a lot of work being done in the department of justice and Department of Families, Fairness and Housing to try to work on these issues at the moment, but maybe that work should have been done in 2013, not in 2021.

The CHAIR: Absolutely, Emily. I think when we are trying to look at how we stop that revolving door, one would have thought about spending time on those applications, spending time to ensure that that person on leaving prison has got the supports that they need to prevent them going back to prison. So it would be money extremely well spent.

Ms PIGGOTT: One of the other problems, I think, is that there is a huge reliance on the NDIA to fund absolutely everything. One of the problems with the state rolling back a lot of support is that there are things that the NDIA simply will not fund. Also, it is a market-based system, and we know that for people with disability that is often not safe. So we need the state to actually take responsibility for those people who need stable accommodation, who need services specific to their disability and their offending. We need treatment services. We need proper housing. We cannot leave all of this to the NDIA and say, ‘We hope it goes well for you. See you later’.

The CHAIR: No. Thanks, Emily. Tania.

Ms MAXWELL: Thank you, Chair. Emily, I think we should have had you in for a whole day, actually.

Ms PIGGOTT: I do like talking, so you know that probably—

Ms MAXWELL: There is so much to talk about, and even so much outside of the scope of the justice system in relation to NDIS. I have got a very good friend who works in that sector—I am up in Wangaratta, so a very rural and regional area—and I know that she is often frustrated, one, with the lack of therapeutic housing. So rather than just putting people with a disability in a home, they need that ongoing support. It might be that, yes, they have got work, but it is still being able to have those individual support workers that can go home with them and set them up. And we do not have that; we lack that. I am wondering whether you feel that

that could be an earlier intervention to prevent some of this offending? So do you think that if those services were implemented earlier with a therapeutic approach and a strength-based approach, it would have an impact on the number of people that are actually incarcerated with a disability?

Ms PIGGOTT: Absolutely. Yes, absolutely. The research has told us for many, many years that wraparound services are the things that enhance people's quality of life and allow people to function in the community. If people have really complex support needs, if people need a large amount of support and if that is put in early, even in early childhood, if we can stop the pipeline, that is what works, and the evidence has been there for years and years and years. We also know from the evidence that enhancing people's quality of life, enhancing their capacity to exercise their rights and self-determination, also has a huge impact. So unfortunately the strange thing that we do now is wait for people to offend, pop them in prison and then expect them to engage in therapeutic programs in a system that is punishing them, and then wonder why they come out broken and angry. If we can put in support right at the front end, then, yes, we have a huge, huge, huge chance of stopping that pipeline.

Ms MAXWELL: Yes, so more investment in that earlier intervention as opposed to what we are actually spending on incarceration.

So I am wondering whether you know what sorts of assessments are done when a person is either remanded or incarcerated. Is there a holistic assessment that is done in relation to trauma, disability—is that all identified as soon as they are incarcerated, or is it done at all?

Ms PIGGOTT: That is a very, very big question. I do not have the expertise to answer that conclusively, but what I do know is that for a lot of people when they go into custody identifying themselves as having a disability is dangerous, and so a lot of people will not identify themselves as having a disability. There will be people who will go in—and this is very similar to when people are arrested. People will try to mask what is going on for them. They may not be understanding instructions; they may not be understanding what is happening to them, but rather than saying, 'I'm not understanding'—it is dangerous. So a lot of people will not be identified as having a disability. So a lot of those people then go through the system being seen as problem people, non-compliant, having behavioural problems, angry. Sometimes the pipeline for those people is ending up in a management unit, which might mean 23-hours-a-day lockdown. There are lots of people who are identified as having a disability in prison, and a lot of those people do receive very specific assistance and support because of a disability. As far as I know there is no particular screening that occurs that would take a kind of holistic overview of a person, and I suppose in a sense there would be people with disability who would not want that, because why would you want a system that is punishing you to be looking at other elements of your life outside the system?

In terms of assessment, there are quite comprehensive mental health services in the Victorian prison system and, as we know, Forensicare; you know, there is Thomas Embling Hospital, and there are a range of services provided that way. There are extremely limited services provided for people with intellectual disability, and so in terms of assessment it is very, very hit and miss. It also very much depends on the person in the system being identified, and so it depends on which prison you end up going to. So if you go into custody and you end up being sent to a prison where nobody really knows who you are, it is possible that no-one will pick up on the fact that you have an intellectual disability.

Ms MAXWELL: Okay. Thank you.

The CHAIR: I will go to Kaushaliya. Thank you.

Ms VAGHELA: Thanks, Chair. Thanks, Emily, for your submission and also for your time today, and thank you for telling us John's story. And I would like to acknowledge John, who I understand is watching today's public hearing.

Emily, my question to you is regarding your submission. In your submission you talk about the need for an individual profile communication tool for people with intellectual disability to use with police, courts, lawyers and other justice system professionals. Can you please explain how that would work in a day-to-day sense and if it exists and what the technological requirements are, if you know them?

Ms PIGGOTT: Thank you so much for asking that question. I am not aware of this existing in Australia. It is possible that it exists somewhere else in the world; I am not sure. This arose from the Justice for All project, because the group of people who were working on this project always talked about how when they are arrested, when they go into custody, it is really scary. And sometimes you tell someone you have a disability and they do not believe you. They think that you are substance affected—you know, a variety of things go wrong. Various members of the group talked about, ‘When I’ve been arrested, police don’t listen to me. They don’t believe I have a disability. They think I’m substance affected. They know me from when I was a teenager. They just think I’m a troublemaker, and I go off. And I get really angry and I start screaming and shouting, and then it gets worse’. So all of the members of the group talked about times when they have gone into custody, they have been in court, they have been arrested, when they have really felt like they have wanted to be able to say something to the person that they are with, and yet they have never felt like they have really had that opportunity or that anyone is listening. It is also really difficult for some people to verbally communicate, and so saying, ‘Hi, my name’s Emily. I have a disability. I need you to do X, Y and Z’ is an impossible task for some people.

So the idea that they came up with was: we need some kind of tool that allows us to communicate. And we talked about: is it a card? Is it a sheet? Is it a USB stick? What is it? We do not know what the technology is. But the purpose of it is that you say, ‘Hello, my name is—I am interested in dogs and AFL’, and that is something that just immediately humanises you and creates some kind of common humanity with the person who is arresting you or the person who is sentencing you. The second thing is being able to say, ‘I have a disability’, which is kind of saying, ‘I need you to listen to me, and I need you to take this seriously’. The third thing that we talked about was when you have a disability and you go into custody or you are in court, sometimes you are going to get really stressed, you are going to get really upset and you may not behave in a way that you necessarily want to. So sometimes you really need something to communicate to people, ‘These are my support needs, and these are the adjustments I need you to make for me’—so ‘I’m Emily, I have a disability. When I’m really stressed, I get really angry, and I might swear at you. When I’m swearing at you, I’d like you to say, “Are you okay?” I’d like you to sit beside me, offer me a cup of tea’ or really, really simple things like that, so that a person with disability can feel like the person that they are communicating with actually is responding to their needs rather than going, ‘Whoa, what’s wrong with this person?’, which is a really common experience for people being arrested.

They have this overwhelming sense that the police are looking at them and going, ‘We know there’s something wrong with this one, but we don’t really know what it is’. And it just escalates the anger, the fear—it just escalates. And so we came up with this idea of having a tool that allows a bit of space so that you do not have to do it verbally, so that you can hand it over—something that makes people feel like the person at the other end is going to treat them as a real human being, not just as a problem.

When we talked about it as an idea we talked about how certainly at point of arrest was a really important place but also in courts, because all of the people that we talked to said that mainstream court is really disempowering, really awful and they find magistrates scary. They do not use plain language; they are poor communicators. But specialist courts most people said were fantastic. They really like the experience of sitting down with a magistrate and talking face to face with a magistrate and being able to tell their story. So that was one of the things, where people said, ‘If only there was a way that we could make other magistrates like that’. So the idea was: well, if you were to give the magistrate something that is your information, maybe that is how we would do it.

Ms VAGHELA: So talking about courts, what kind of training do you think would assist judges, magistrates and lawyers to better understand the needs of people with a disability?

Ms PIGGOTT: The type of training people need is not my area of expertise by any stretch of the imagination, but I think that probably understanding communication is absolutely fundamental. Something that happens a lot for people with intellectual disability—and this is something that came up a lot in our project—is that the need to be believed is really huge. The details might be inaccurate, the story might be inaccurate, so it looks like you are lying, but it is about being able to communicate and understand, ‘Well, this person might say something that sounds wildly inaccurate, but I have to believe what’s behind it. I have to believe that they’re trying to tell me something that’s important’, and being able to understand that people with intellectual disability are not always going to be able to fully participate in the court process and so might say something at the wrong moment. I have seen magistrates shout at people with intellectual disability for doing the wrong

thing in court. Conversely, I have also seen magistrates be absolutely wonderful with people with disability, and I know of magistrates who are very, very hands on in dealing with all sorts of complex situations. I think it is about training people to understand how to communicate, how to make adjustments in their communication for people, but also understanding that some people with disability may behave in a certain way in the community and that that is related to their disability. It is not just that they are out there being antisocial and dreadful. Sometimes there are very, very clear reasons why a person behaves in the way that they do. So I think that having the capacity to listen to that story and understand, 'You did that because you didn't understand that you weren't supposed to do this thing'—that kind of stuff—is really, really fundamental.

I guess also I would say that understanding people's rights is the absolute foundation of all training in disability—understanding concepts like self-determination and that we do not just make decisions for people with disability, that we treat them as competent people. We do not just say, 'Well, you don't understand this process; therefore I'll just go over your head and make the decisions for you'.

Ms VAGHELA: Thanks, Emily. If times allows, Chair, I will come back with one more question.

The CHAIR: Sure. We will try. The previous witnesses were bail justices. The role that they play and the 24-hour support service that they offer, when I think about what you are saying about people who find themselves in crisis and who are brushing up against the justice system—I do not know if you know that bail justice program. But trained people that a police station can call—is that the type of thing that you are talking about with the 24-hour support?

Ms PIGGOTT: Yes. There need to be services, because there are people with disability who find themselves in crisis in the middle of the night and do not have anywhere to call. They can call Lifeline, but for people with intellectual disability often the supports that are available in the community are inaccessible. So it might sound really easy to make a call to Lifeline, like the way that we kind of think making a complaint to a commission is easy, because it is just using a phone, but we also have to remember that there are people with disability who cannot use a phone, who feel scared to use a phone, and also, if they have communication difficulties, who do not want to talk to a stranger at the end of the line or who might have problems with auditory processing, so phones just are not going to work. So having the capacity for a service that can actually support those people when something goes wrong 24 hours a day is something that the people in the group talked about a lot, and they talked about, you know: 'There are times when I will be up at 4 o'clock in the morning. I can't sleep. I feel terrible. I feel like going and doing something. I feel like killing myself. I feel like offending. I don't know what to do, and there's no-one I can call'. And unfortunately the services that we have traditionally had—there are just no overnight services. There is no-one that you can call other than Lifeline who is going to talk you through what is happening, and unfortunately NDIS, unless you are really lucky and you can employ support workers who would be happy to be available on call, which I have never heard of happening—this is just not a service that we have.

The CHAIR: Again, when we are thinking about prevention, this is really just another tool that we could be implementing. I do not know if Tania has any questions, because apparently I stole hers. But—

Ms MAXWELL: You have been doing it all day!

The CHAIR: I just mean she has got another one.

Ms PIGGOTT: I was just going to add that something that we do see with our clients is overuse of ambulance and police for crisis situations, because there are people who feel very unsafe in the middle of the night and will call an ambulance or call emergency services excessively, and it becomes nuisance behaviour. I have known people who have been charged for doing that when in fact they are feeling really unsafe in the middle of the night but they are not able to articulate that and they are not able to say, 'I actually just need to talk to someone. I need someone to sit with me for the next few hours'. So they end up in this cycle, and it costs huge amounts of money.

Ms MAXWELL: And that, I guess, is where therapeutic housing could come into play. But just following on from the Chair's discussion about having that support there, what about an independent third person, which is who children have when they go into the police station? Does NDIS provide that at all hours of the day and night—someone who is specifically trained in disability? You know, they make that call: 'Okay, we've got

Mary or John in the police station; we believe that there may be some sort of intellectual disability'. And they get on the phone and call someone in to come and support them.

Ms PIGGOTT: In Victoria the Office of the Public Advocate run the independent third person program.

Ms MAXWELL: Yes, they have disability-specialised—

Ms PIGGOTT: I am not aware of what training the ITP staff have. That would certainly be a question for OPA, and I know that that is a program that OPA would very much like to be able to expand. And it is incredibly important to have an independent person available for people when they are arrested. I guess one of the problems with that, though, is that that is a volunteer program. Also there are delays sometimes with getting an ITP out, because there are not enough of them. And that is no fault of the program; the funding is not there for there to be enough. So there are times when people will choose to go ahead with an interview without one, because the police might say, 'Well, it's going to take us 2 hours to get one here. Would you like to go ahead, or would you like to wait?'. Often people will decide that they want to go ahead. I mean, the structure and the way that program works is fantastic, but like most of our programs in Victoria it is incredibly underfunded. There is a program in New South Wales with an organisation called the Intellectual Disability Rights Service—IDRS—and they have two different programs. They have a justice advocacy service, which is certainly my dream for Victoria, but they also have a cognitive disability diversion program. They have a huge number of volunteers right across New South Wales, and they do a lot of this work of being the disability expert in the room—you know, when someone is arrested, they will go to court with the person, follow the person through their journey in the justice system, support them and provide advocacy for them.

The CHAIR: Wow.

Ms PIGGOTT: Yes. The program was recently refunded after they went through a bit of a crisis with funding, but that service has shown incredible success in that work. It is incredibly rights based. It is based on really good disability practice, and so they are having fabulous success with it.

The CHAIR: Fantastic. Thank you. Kaushaliya, a quick one?

Ms VAGHELA: Thanks, Chair. I was going to ask about a diversionary program, but, Emily, you read my mind and you already answered that. Just a quick one. You might be aware of the Assessment and Referral Court, which is run by the Magistrates Court of Victoria. This is a specialist court that focuses on accused persons with a mental impairment, including an intellectual disability or other conditions. Have you had experience with this program, and if so, what are your reflections on it?

Ms PIGGOTT: Yes, I most certainly have. I think my reflections on it are that the magistrates who choose to work in that program are amazing and very, very dedicated. I think they are absolutely to be commended for what they do in that program. I think they are quite constrained in sentencing legislation. So I think that in their consideration of human rights, for example, they are very constrained by having to use the *Sentencing Act* and the *Crimes Act*. As we know, the Victorian charter of human rights is not a particularly strong piece of legislation, and so unfortunately for the magistrates sentencing, from what I understand from talking to those magistrates, there are a range of other options that they would really love to be able to use but they simply do not have those options available to them. They also play an incredibly important role in an almost sort of case management sense with some people, with the fact that they monitor people, check in on people and really want to work out what is happening for a person. They really investigate, 'Who is this person? What do they need? What do they want? What will work for this person?'. It is such a fabulous approach, but they simply do not have the resources available to them. So it is fantastic for a magistrate to have that interest, but if they do not have the resources, if they are not able to say, 'Well, I think this person needs to be in stable housing' or 'Who is going to refer this person to this service?', then it all falls apart a bit. It is certainly problematic to have magistrates involved at that level, and I think that it can be very paternalistic having magistrates making decisions about the lives of people with disability. But I think probably a lot of that has arisen in the absence of anything else.

Ms VAGHELA: Thank you, Emily. Thanks, Chair.

The CHAIR: Emily, thank you so much for today and for your advocacy work. Thank you to John, who I hope is still listening, for allowing Emily to share his story. It was incredibly powerful, and it will not leave any

of us ever, I do not think. Thank you, and I am so pleased that some of that justice is coming your way as well over this time. Emily, thank you so much. This was so powerful and—

Ms PIGGOTT: Thank you.

The CHAIR: really wonderful. You have given us so much to consider. You will receive a transcript of today. Please do have a look at it. Make sure that we have not misheard or misrepresented you in any way. Ultimately that forms part of our report, but it will also go onto our website. I think we will be keeping an eye out for the report on Monday, and if anyone in your office remembers and flicks a link to the secretariat, I know they will be sure to share it with all of us. We will all try and remember to do it ourselves as well.

Ms PIGGOTT: One of the other things I would like to offer is: as part of the Justice for All project, we have made a short film which, thanks to COVID, is not actually complete yet, but it is very close to completion. It is a virtual reality film, so we have a headset. So if anybody wants to see it in a headset, we would be happy to come to you and show you when it is done.

The CHAIR: Wow. Emily, that sounds amazing. I remember Dementia Australia did something similar some time ago. Anyway—a conversation for another day. Thank you again. Thank you to everyone who has made today's public hearing possible—to all the secretariat, to Hansard and everybody else in the background. Thank you to the committee members. Thank you to all of the witnesses and anybody who has been watching.

That concludes today's hearing, and it almost concludes the workday week for some of us—for some, not all. But thanks again, Emily. See you all later. Thank you.

Committee adjourned.