

3 April 2023

The Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
BRISBANE QLD 4000
Via email: lasc@parliament.qld.gov.au

Dear Secretary,

Submission to Inquiry into Support for Victims of Crime

Thank you for the opportunity to prepare a submission for consideration during this Inquiry.

As you would be aware, as the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.¹ There are several conditions that may affect a person's decision-making ability, including intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse.

Impaired decision-making ability can make people extremely vulnerable to the actions of others, particularly when combined with conditions that reduce physical mobility or affect someone's ability to communicate verbally with others.

In this submission I would like to draw the Committee's attention to the particular issues that impact on people with impaired decision-making ability when they are victims of crime, which are detailed below.

It is particularly relevant that these issues be considered by the Inquiry so that additional supports can be provided to assist people with impaired decision-making ability who are victims of crime to initially report those crimes and be taken seriously, and then move through the justice process in Queensland if required.

A number of issues become apparent when thinking about people with impaired decision-making ability as victims of crime:

- crimes committed in shared home environments;
- the discrimination and negative attitudes experienced by people with impaired decision-making ability when reporting crime, regardless of where it occurs, and
- a lack of information about people with impaired decision-making ability who actually enter the criminal justice system and have cases tried where they are a victim of crime (this may be due to the very limited number of cases progressing to this stage).

People with impaired decision-making ability residing in shared home environments

While many people with impaired decision-making ability reside in the community with family or friends, some, and particularly those with more complex conditions, reside in places that are shared and where disability or health supports are provided. These residences include disability

¹ *Guardianship and Administration Act 2000 (Qld) s 209.*

accommodation services, supported accommodation (boarding houses and hostels) and residential aged care facilities.

People with impaired decision-making ability in these accommodation settings may have entered, initially, through a decision made by a substitute decision-maker. It may also be incredibly difficult for them to leave, due to circumstances created by the disability supports they require or the lack of availability of alternative accommodation or service providers, or both.

Within these residences, family type relationships often develop between housemates, with service providers, or others (like the family and friends of other housemates) who visit the house regularly. While these relationships may not be 'traditional' in the intimate partner sense, they still constitute relationships in which domestic violence, including coercive control, can and does occur.

Unfortunately acts of domestic and family violence and other crimes committed in these settings often go unreported (due to a variety of environmental and contextual factors), or if they are reported they are not given the same level of priority and attendance as that which is provided to situations of domestic violence and crimes committed in other environments.

When crimes are reported and the police service does attend, again barriers exist, with police often not proceeding with an investigation or laying charges against alleged offenders. Reasons for this have been documented by the Australian Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission, amongst others. Both Commissions have reported that negative attitudes and discrimination by police lead to people with impaired decision-making ability being viewed as lacking credibility and reliability. The power imbalance experienced during interviews is also apparent, with reports of police using derogatory language and stereotyping victims.²

In its report examining violence and abuse in group homes in 2019, the Victorian Public Advocate noted that police face many challenges in delivering 'effective and equitable services to people with disability',³ including:

- a lack of awareness of, difficulty recognising, and discriminatory attitudes towards disability by some police members;
- a lack of understanding of family-like relationships in the group home context;
- making inaccurate assessments about the legal competence of people with disability;
- problems with interviewing and questioning techniques;
- underutilisation of diversion mechanisms, sometimes because of apparent lack of resources;
- the trajectory of each case often being set by decisions made at the first point of contact and being difficult to shift thereafter;
- police being trained to take control of the situation, which is not always the most appropriate response;
- bail reforms having negative outcomes for people with disability or who are otherwise vulnerable (for example, inadequate supply of disability housing results in people with disability being remanded in custody for relatively minor offences);
- a lack of understanding of systems issues, for instance that a person's involvement in the criminal justice system could affect their support arrangements that are now governed by the NDIS; and
- gaps and limitations in data collected, including failure to identify or record a person's disability, which makes it difficult to measure progress.⁴

A copy of this report is available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/142-i-m-too-scared-to-come-out-of-my-room> for further information.

² Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The Experiences of People with Disabilities Reporting Crime – Summary Report*, 2014, Carlton Victoria and Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice strategies*, 2014, Sydney New South Wales.

³ Office of the Public Advocate, Vic, "I'm too scared to come out of my room", November 2019, Melbourne, Victoria, p 71.

⁴ Ibid. p 71-72.

People with disability reporting crimes

In addition to crimes that occur in shared residential environments that police may be reluctant to prioritise, attend, and investigate, elements of policing culture also make it particularly difficult for a person with impaired decision-making ability to come forward and report a crime against them, regardless of where that crime has occurred.

A research report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) noted that many people with disability who are victims of crime reported fearing that they won't be believed or will be viewed as lacking credibility when they report a crime and that 'many people who are victims of crime do not believe that the police will protect them'.⁵

These issues are compounded for, in particular, women with impaired decision-making ability who have experienced sexual violence. The Disability Royal Commission's report noted that research has indicated that police consistently hold a belief that these women 'are promiscuous and that their story is not credible'.⁶ The report also notes, given that women with disability are thought to be at significantly more risk of sexual violence than others in the community, a 'significant concern that people with disability who are victims of sexual violence and other forms of violence, abuse, neglect or exploitation are far less likely to report the crime to police'.⁷

The Disability Royal Commission's report is available at <https://disability.royalcommission.gov.au/system/files/2021-10/Research%20Report%20-%20Police%20responses%20to%20people%20with%20disability.pdf> for further information.

Overall, this information highlights the inequalities experienced by people with impaired decision-making ability in terms of:

- having crimes against them recognised as such;
- securing police attendance; and
- having crimes investigated to the same extent as other crimes in the general community.

This means that crimes committed against people with impaired decision-making ability who are victims of crime often do not enter the criminal justice system at all. As a result, while there are some supports provided to victims of crime when court processes are begun, we need to consider making support available earlier, at the point that crime actually occurs and is reported, as well as within the criminal justice system itself.

Earlier intervention, and a change in the level of police responsiveness to people with impaired decision-making ability are needed.

More disability-specific support, training and education for police will assist people with impaired decision-making ability to report crimes, have them taken seriously and then investigated fully. On this score I do note the promising work of the Queensland Police Service's Vulnerable Persons Unit.

In addition, specific programs providing support persons for people with impaired decision-making ability may be of assistance.

One of the programs that the Committee may wish to investigate further is the Justice Advocacy Service (JAS), funded by the NSW Government and operated by the Intellectual Disability Rights Service (IDRS). This service supports adults and young people with a cognitive impairment who are in contact with the NSW criminal justice system – as victims, witnesses and suspects/defendants. The JAS

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Research Report – Police responses to people with disability*, prepared by the University of New South Wales Sydney, (Dowse, Rowe, Baldry and Baker), October 2021, p 10.

⁶ Ibid. p 11.

⁷ Ibid. p 11.

team use an individual advocacy approach by arranging a support person to be with the victim, witness or suspect/defendant when they are in contact with the criminal justice system.⁸

A similar program also operates in Victoria, Independent Third Persons (ITP), who support people with cognitive impairment and mental illness who are interviewed by the Victoria Police Service. The program uses trained volunteers who support alleged offenders, victims and witnesses, primarily to communicate with police.⁹

In Queensland police officers are required, under the *Police Powers and Responsibility Act 2000*, to have a support person present when a person with impaired decision-making ability is interviewed.¹⁰ A support person is, however, a person nominated by the person with impaired decision-making ability being interviewed, rather than a formal independent service like that operated by the JAS or ITP. Services like this, where support persons have a degree of knowledge of the law and how it operates (rather than just being a friend or relative nominated by the person) are undoubtedly more effective in these situations.

Supports within the criminal justice system for people with impaired decision-making ability

Even in situations where crimes against people with impaired decision-making ability reach court, another set of barriers and issues are presented.

This is, in a sense, illustrated by the limited information available regarding crimes against people with impaired decision-making ability moving beyond an initial complaint or report, with a number of advocates consulted during the Disability Royal Commission's research report (mentioned above) indicating that they did not have 'any victims who have made it past the complaint stage'.¹¹

In 2021 Queensland launched an Intermediary Scheme (QIS) as a two-year pilot program. The scheme 'aims to overcome communication barriers and create a more accessible justice system by facilitating the communication of evidence that may not otherwise be heard'.¹²

The QIS aims to:

- improve the quality of evidence;
- give police officers, the legal community and the courts a better understanding of the needs of vulnerable witnesses;
- improve access to justice; and,
- reinforce the importance of effectively and respectfully responding to child sexual offence allegations.¹³

In its pilot phase the scheme is limited to child sexual offence matters.

Dependent on the scheme's evaluation, there may be scope for programs like this to be extended to non-child sexual offences in the future, which will further improve the accessibility of the justice system to people with impaired decision-making ability.

The availability of these types of programs add to the existing provisions included in the *Evidence Act 1977* that facilitate access to justice for vulnerable witnesses, which include the possibility of:

⁸ NSW Government, Communities and Justice, *Justice Advocacy Service*, < <https://www.dcj.nsw.gov.au/justice/justice-advocacy-service.html>>, 2023.

⁹ Office of the Public Advocate Victoria, *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: The Criminal Justice Issues Paper*, March 2020, Melbourne Victoria.

¹⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Research Report – Police responses to people with disability*, prepared by the University of New South Wales Sydney, (Dowse, Rowe, Baldry and Baker), October 2021, p 61.

¹¹ Ibid. p 79.

¹² Queensland Courts, *Queensland Intermediary Scheme*, < <https://www.courts.qld.gov.au/services/queensland-intermediary-scheme>>, 1 March 2023.

¹³ Ibid.

- recording a witness' evidence prior to trial (referred to as pre-recording), which can be played in court and is as admissible as if the evidence were given in person;
- having the witness in another room to the defendant when the witness' evidence is being taken;
- having a support person with the witness while they are giving evidence;
- excluding the public from the courtroom while the witness gives evidence and whilst the pre-recorded evidence is being played; and
- the court limiting the questioning of a witness and disallowing improper questions.¹⁴

I note that the terms of the current Inquiry do extend beyond the court process, to include initiatives like restorative justice conferences, the provision of financial assistance to victims, and methods by which they can be kept up to date throughout the process. These are all important topics for the Committee to consider.

I would also be particularly keen for the Committee to further investigate concepts like Justice Reinvestment within this Inquiry. Justice reinvestment is the process of 'disinvesting from criminal justice agencies and reinvesting those funds into disadvantaged communities to improve education, employment, cultural and social outcomes'.¹⁵ While the report prepared for the Disability Royal Commission concluded that 'it is yet to be shown that Australian governments are disinvesting in criminal justice and reinvesting in communities'¹⁶ it does highlight that a justice reinvestment approach applied by the local police service in Bourke, and a community development approach used in Walgett, have been successful in implementing positive change. Strategies like this have the potential to improve the health of the criminal justice system as a whole, reducing the number of offenders, and victims, within the system.

I am aware that the Queensland Government has expressed interest in the role of a Victims of Crime Commissioner, a move I support. Such a role would see a renewed focus on people with impaired decision-making ability having crimes against them investigated and matters taken to court. This development might also see victims in these situations better supported in their justice journey.

My office is about to embark on a major project examining the criminal justice system and the journey that people with impaired decision-making capacity follow when they enter (or attempt to enter) this system as a witness, suspect/defendant or victim of crime. The project will commence early in the 2023/24 financial year with the release of a discussion paper. This will be followed with extensive stakeholder consultation, to be conducted across the State towards the end of 2023.

Thank you for the opportunity to make this submission to the Inquiry. While there are still many knowledge gaps that exist regarding the experience of people with impaired decision-making ability interacting with the criminal justice system, I hope the issues highlighted in this submission will assist the Committee in the interests of conducting a comprehensive Inquiry into the way we in Queensland support victims of crime.

Should you require further information regarding any of the matters I have raised, please contact my office on 3738 9513.

Yours sincerely,



John Chesterman (Dr)
Public Advocate

¹⁴ Ibid.

¹⁵ Brown et al (2016) in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Research Report – Police responses to people with disability*, prepared by the University of New South Wales Sydney, (Dowse, Rowe, Baldry and Baker), October 2021, p 32.

¹⁶ Ibid. p 32.