**Barriers to Justice:**

**The criminal justice system and people with disability**

**Our Experience** from the perspective of a parent/guardian

**PARAGRAPH 1**

1. ***What do you think are the biggest barriers for you or other people with disability in the criminal justice system?***

* The current Legislation and the knowledge (or lack of) that police, duty lawyers and magistrates have of this Legislation and of the person’s disability
* Vulnerable people continue to be discriminated against before the law with their human rights abrogated by a Criminal Justice System that works at a such a velocitythat both theduty lawyer and the magistrate have to work within a system with constraints on both time and resources and cannot properly consider their disability? The process isflawed and needs to be addressed.
* The Criminal Justice System is about *punishment* rather than listening to the person’s story and trying to find the cause of offending behaviour, address these experiences and implement appropriate interventions as early as possible so that recidivism is eliminated or at least minimised. *“round hole approach for the square pegs”*

**PARAGRAPH 2**

1. **What do you think could be done to remove these barriers and assist people with disability in the criminal justice system?**

* Legislative and administrative reform that provides appropriate diversion for people with disabilities who are charged **summarily** so that our most vulnerable are protected from significant injustice.
* Smarter laws and smarter court processes (not tougher laws); legislation needs to be brought into the 21st century
* The *Duty Lawyer Contact Form* needs to have a relevant question that seeks to ascertain whether the person before the court has a relevant disability that should be given appropriate consideration by the court. e.g. *do you have a carer? Do you have a guardian? Did you attend a special school?*
* Intense education of both the police and the duty lawyer with regard to people with intellectual disability, mental health issues or an acquired brain injury, especially that they understand that such people must have an advocate present when interviewed.
* Such people should be encouraged by the Court or their legal representatives to have their matters adjourned so that their disability can be fully investigated, rather than simply pleading guilty to facilitate the matter being finalised quickly. At present, the velocity of the Magistrate’s Court does not allow for this to occur.
* Front line police still do not ask that important question about capacity;it isimperative that any relevant disability is identified early so that appropriate interventions and diversions can be implemented. The police should take a proactive and interventionist stance and not use the criminal justice system as the default setting.

**PARAGRAPH 3**

1. **Can you provide information about support that has assisted you or other people with disability to participate in the criminal justice system?**

* **TASC** (The Advocacy and Support Centre, Toowoomba) [www.tascinc.org.au](http://www.tascinc.org.au) and the **QCJC** (Queensland Criminal Justice Centre) [www.qcjc.com.au](http://www.qcjc.com.au)
* A chance meeting in the Magistrates Court in April 2005 with a barrister from TASC (The Advocacy and Support Centre) was a defining moment which changed our lives and altered our path in the Criminal Justice System. That barrister was successful in his referral of our daughter’s extremely petty “summary” matters to the Mental Health Court. To access the Mental Health Court, a Forensic Psychiatrist’s report is required and these are costly and usually prohibitive for the individual who is likely to be on a Disability Support Pension. Consideration has to be given to the cost of such a report compared with the value of the stolen goods, sometimes no more than a few dollars.
* A person’s “capacity” or “fitness to plead” to SUMMARY offences must be given consideration. In the case R v AAM; EX PARTE A-G (QLD) [2010] QCA 305, the President of the Queensland Court of Appeal stated in her judgment that *“it seems unsatisfactory that the laws of this State make no provision for the determination of the question of fitness to plead to summary offences. It is well documented that mental illness is a common and growing problem amongst those charged with criminal offences.”*
* The judgment in the above matter made strong recommendation for both legislative and administrative reform, but despite our persistent campaigning and advocacy, and the exposure that this case has had, the judgment has not garnered the response from Government that it ought to.

**PARAGRAPH 4**

1. **Please tell us about any time that you or another person with disability experience barriers to achieving access to justice.**

* Our daughter was always introduced by the duty lawyer to the Magistrate with the remark *“my client is ………., she has an intellectual disability, her parents and guardians are present in the court today”*; transcripts from these court hearings indicate that the court was acutely aware of her intellectual disability, yet, her disability was never given due consideration. She was encouraged to enter pleas of guiltywhen she was overtly unfit to do so. Between 2001 and 2005 she was “pleaded out” on 7 occasions because we, like many others were of the view, *“you do the crime, you do the time”*, this was the simplest way of dealing with the matter.
* It was never suggested that her hearings in the Magistrates Court should be adjourned so that her disability could be further investigated. She certainly did not have effective access to justice at these times and this seemed manifestly unjust to us. According to the law, it is everyone’s legal right to have a “just outcome” and our daughter was not afforded a “just outcome”.
* If charges are “indictable” they can be referred to the Mental Health Court for appropriate intervention, but when they are not indictable, there is no alternative procedure and this encourages pleas of guilty.

**PARAGRAPH 5**

1. **Do you have any other thoughts, ideas or comments you would like to make about people with disability and the criminal justice system.**

* “Punishments” (fines, community service, and probation) that the Court applies are not conducive to people with disabilities.
* Our daughter was twice placed in the watch house for 4 hours when the police and her Service Provider contrived believing that *it would teach her a lesson* – so inappropriate. Because of her distress, she was quickly moved to a padded cell for her own safety.
* Requiring people with significant intellectual disabilities to sign a bail undertaking is futile – it is setting them up to fail, again. As guardians for our daughter with “legal matters” as one of our responsibilities, we cannot comprehend why the Court requires her to sign a bail undertaking. Section 11A of the Bail Act allows for the release of a person with an impairment of mind, yet it wasn’t exercised in her case, on repeated occasions. It seems that the Legal Representative must raise this section to the Magistrate for it to be considered.
* If the Police had full knowledge of legal proceedings of clients with disabilities, then perhaps they would not need to be charged because the outcome is already known – our daughter has been found, on 4 occasions, in the Mental Health Court, to be *unfit for trial and this unfitness is of a permanent nature.* To us, it seems futile to charge her for summary matters – it is a huge cost to society and this money could otherwise provide a whole lot of community support.
* No one should be punished because they have a disability, no one should go to gaol because they have a disability and their disability certainly should not be criminalised. Vulnerable people in Australia are being jailed for behaviours that emanate from their disabilities.
* Our daughter was refusing to attend court, she became traumatised, she had panic attacks requiring medical intervention and increased medication and her psychological health was being further damaged. The requirement for her to attend court was causing another set of problems because if she failed to attend, a warrant could be issued for her arrest. As her matters are referred to the Mental Health Court, the requirement for her to attend court needs to be questioned. She doesn’t comprehend any part of the court dialogue or process and she acquiesces with all comments made to her just to get this business finished with and out of here. (Nods and agrees with authority figures)

4. What will happen to your response?

The responses and experiences you have shared will provide the Commission with a much better understanding of what is working and what isn’t working for people with disability in the criminal justice system in Australia. It will assist the Commission to look at what can be done to remove barriers to access to justice. The Commission may publish a report and also discuss information at meetings and forums.