

MENTALLY IMPAIRED ACCUSED

Statement

HON ALISON XAMON (North Metropolitan) [10.16 pm]: I rise tonight because I wish to speak about the unhappy experience of two of my constituents whom I have been assisting out of my office. Unfortunately, their story is not unfamiliar to me. It is important that we start to talk about these issues. This couple is struggling with the fact that their son is a mentally impaired accused person. That highlights some of the problems in the system. This is a very articulate and committed couple, who recognise that their son has lifelong complex needs. They have been struggling to get their son the care that he needs while he is also dealing with the justice system. Their experience serves to highlight that even when a person has a committed and supportive family that has access to all the supports that are currently on offer, our system is continuing to fail some of the most vulnerable people in our community.

The fact that this couple has approached me at this point is particularly concerning. I am aware that they have been dealing with this issue for years yet, despite their best efforts, their son's situation has only deteriorated further. Their son acquired a brain injury during birth. Their son is now in his 40s, and they have spent four decades fighting for the best interests of their son. This couple has been granted plenary guardianship over their son, because he has an intellectual disability, coupled with a psychiatric condition and a history of substance use. His finances are managed by the Public Trustee, and he has been admitted into the People with Exceptionally Complex Needs program, so by any measure he is recognised as being an extraordinarily vulnerable person.

Earlier this year, unfortunately their son was charged with a number of serious offences, and he is currently being held on remand at Hakea Prison. Getting to Hakea did not happen overnight but was a long process. The parents have relayed to me that in the period leading up to their son being held on remand, he was experiencing deteriorating mental and physical health. He was living in accommodation that was not suited to his needs, and they could see that he was becoming unwell, but they were effectively unable to intervene to prevent his downward spiral, so he ended up becoming severely unwell. He was eventually involuntarily detained at Graylands, from where he escaped a number of times, and it is alleged that when he absconded, he committed a string of offences.

During the time he has been kept in remand — this is the first issue — he has dismissed three lawyers, and is now choosing to represent himself, and it is clear that he does not have the ability to do this. With the guardianship order, the State Administrative Tribunal has declared that he is unable to make reasonable judgements on matters relating to his person, and is in need of oversight care and control in the interests of his own health and safety and protection of others, and yet he has been left to defend himself in a court of law. My constituents' current and most pressing concern is for their son to be appropriately represented and for his disability and his mental impairment to be taken into account. In my view, my constituents' request for assistance should be considered entirely achievable. They want to retain a lawyer on their son's behalf, and they would like to ensure that their son is being detained in an environment appropriate for him. Despite the fact that this couple has, for 44 years, been navigating the system and are connected with many government agencies, they feel that at the moment they are really struggling to be heard, rather than being partners in achieving the best for their son as well as the community. They continue to advocate, when others would not, and we really need to think about how we would deal with such a situation.

Unfortunately, like many people with an acquired brain injury, their son is very vulnerable in prison at the moment. He has been beaten up twice already, and he has found himself deeply in debt to other prisoners. Like a lot of people with psychosocial disability, his medication is in demand in the prison, and so he is not necessarily getting the medication that he needs. We know that this is not a particularly unique story. About 40 per cent of the people in our prisons have some sort of acquired brain injury, although many of them have not had a formal diagnosis. It happens that this man has had such a diagnosis. We are talking about a man who has a clearly documented disability, and a recent documented history of acute mental illness, and there is no doubt that prison will only exacerbate this further. It has always been a concern of my constituents that he end up in a suitable environment, such as a disability justice centre, but in order to be eligible he needs to come under the Criminal Law (Mentally Impaired Accused) Act. I am aware that the Attorney General is utterly committed to reviewing that act and, having had many conversations with him, I am aware that he is taking his time to make sure that it is done properly, and I have some respect for that. However, at the moment it

means that men like this young man are in absolutely invidious situations, not being able to be appropriately dealt with by the law, being kept in entirely unsuitable accommodation, and unable to access the one place in this state that should be the right place for someone like him to be appropriately detained.

Despite decades of time and resources being invested into this person, we have not been able to alter the trajectory of his life, for a range of reasons, which really highlights the inadequacy of the services that have been available to date. That is the story for so many people with mental impairment who fall foul of the justice system. I am concerned that he has been unable to get legal assistance, and his parents have been unable to ensure legal assistance for their son, and he will be effectively left to represent himself. I am really concerned that the Criminal Law (Mentally Impaired Accused) Act, as it currently stands, seems to be the only option that can be pursued for this man. I am very concerned that he is in Hakea, and is clearly unsafe. It is clearly not the place that is right for him. His parents are at their wit's end trying to get the right supports for their son. They love him the way that we all love our own children. A little bit of me always thinks that there but for the grace of God go I, because any one of our children could be a recipient of an acquired brain injury at any point. This can be and is often the story for far too many people. We need to be able to do more to help people in this situation, and I will continue to advocate for these parents.