

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers

Mildura - 16 November 2011

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Mr R. Steel, Co-coordinator of Disability Services, Mallee Accommodation and Support Program.

The CHAIR — Good morning, everybody. My name is Clem Newton-Brown; I'm the Chair of the Law Reform Committee. The Law Reform Committee is made up of a number of members of Parliament, it's a bipartisan group. The Deputy Chair is Jane Garrett, who is the member for Brunswick, and she was unable to be here today; Anthony Carbines, member for Ivanhoe is here; as is Donna Petrovich, who is the member for Northern Victoria, one of your local members in the Upper House; and Russell Northe, the member for Morwell, he's also on the Committee but unable to be here today, so it's the three of us today.

The Law Reform Committee is one of several committees that Parliament has set up to do inquiries into various issues, and this particular inquiry is access to the justice system by people with an intellectual disability and basically we're calling on people to give us their evidence at hearings and then at the end of all that we will write a report and recommendations to Parliament, which may or may not suggest changes to legislation to assist any issues that arise through the course of doing these hearings.

Thank you very much for your contribution, it's very important, and we learn a lot from having people actually come in and talk us through their submissions. As far as the proceedings go, we record everything so everything will be recorded, you will get a transcript in a week or two, which you can check that that's accurate. Anything you say here is covered by parliamentary privilege but not outside the room. I understand there's been some interest from the local media so just be aware that there is no parliamentary privilege outside the room.

We're fairly informal; we'll get you to talk us through your submission and we'll fire questions at you as they arise. If you could start for the transcript with your name, your professional address and who you represent?

Mr STEEL — My name is Roger Steel, I work at 140 Langtree Avenue, I'm the Co-coordinator of Disability Services with Mallee Accommodation and Support Program.

The CHAIR — Do you want to take us through your submissions?

Mr STEEL — I have a couple of scenarios with various clients. We have a young couple, 24 and 31 year old, both with an intellectual disability who had their baby placed in care at birth. I accompanied them to the court hearing, we informed the court that we were there, we informed the Child Protection workers we were there.

The CHAIR — Sorry to interrupt you. Just before you go into your example, could you just explain to us a bit about your organisation and what it does?

Mr STEEL — We're a multi-skilled organisation ranging from aged care, to disabilities, to youth, to families and anybody in distress. Off the top of my head, we have about six sections, with a workforce of around about 80, which includes casuals.

The CHAIR — Who are you funded by?

Mr STEEL — State and federal governments.

The CHAIR — So it's not just intellectually disabled people?

Mr STEEL — No.

The CHAIR — What proportion of people that come through your organisation would have an intellectual disability?

Mr STEEL — Probably about 10 per cent.

The CHAIR — I'll let you get back into your example. Thank you.

Mr STEEL — While we were waiting in court, which was approximately half an hour, the next thing we know is that the court case was over, the Child Protection workers came out and said it was over, she was placed on a 12 month guardianship. The courts and the DHS workers knew we were there and yet this couple did not get the opportunity to go to the actual court itself, or attend the court hearing, which was very devastating for them, and it makes it very difficult for us to explain in their terms exactly what went on and what's happening.

At the case plan meeting they were informed that the department would be applying for a Permanent Care Order and the access would be changed from twice a week to four to six times a year. Their understanding of that is that they would see the baby more, not less. In other words, what I'm saying is that the explanations that the courts and the DHS have put forward in this case are too far above their understanding. Do you want me to go on?

The CHAIR — Yes.

Mr STEEL — In case number two it's a 36 year old Aboriginal female, well-known to police, she has an ABI, an intellectual disability, and is illiterate. She's in a relationship with another female, in which there are a lot of disputes. She calls the police, she gets arrested simply because she cannot understand why the police won't do what she wants them to do, which is to remove her partner, so she gets upset, she gets frustrated, she abuses the police, the police take her away.

Mrs PETROVICH — Has she got a specific IVO on her partner?

Mr STEEL — Yes, but there's a tendency for it to be ignored mainly because of the understanding: what does it exactly mean, because we've made up? The IVO says that she cannot go within 10 metres of the person, or 100 metres of her house, but she has no idea how far 10 metres is or 100 metres is but they give her a piece of paper saying this is what you have to do. At her Community Treatment Order, she agreed to the order because she thought it would take her off the State Trustees.

Where I'm getting with these is that we go to these hearings, we go to the court cases, but it is not in a language or at a level that these people can understand, which then when we try and explain it to them, when we try and break it down so they do understand, it's not the same to them because we haven't got the authority, they have. They understand authority, which we don't possess, nor do we use, but that's not what they said.

This brings me onto the next one which will explain it. It's a 23 year old female with an intellectual disability; she was arrested with two males for stealing a car and petrol.

When she was bailed she was told that she could not associate with the males, nor could they come to her house. When I discussed it with her she was going to go and see them because the police said they couldn't come to her, they didn't say that she couldn't go to them. So it wasn't specific enough.

Mrs PETROVICH — Through you, Chair. In that last case, are they taking into account people with broad spectrum cognitive issues?

Mr STEEL — No. Even in the interview, and I was present at the interview as an independent third party, it's all very formal.

Mrs PETROVICH — When you were sitting outside the court with that first couple, did those people have legal representation in the court, were they actually informed — —

Mr STEEL — No. The second hearing they were but the first one, no.

Mrs PETROVICH — So they had no representation?

Mr STEEL — No.

Mr CARBINES — Mr Steel, when you were talking about the first scenario that you talked about, when the arrangements are made so that the matter is then being dealt with without the parties being present at the hearing, do you find that that's an example that happens regularly?

Mr STEEL — I wouldn't say regularly but it's not rare. Not rare.

Mr CARBINES — I suppose my thinking then is does that mean the courts aren't perhaps exposing themselves, if you like, to getting more familiar with having to deal with these sorts of individuals or these sorts of cases?

Mr STEEL — Yes.

Mr CARBINES — What do you think is motivating dealing with them in that way?

Mr STEEL — The courts, as far as I can see, are very busy and they want to move through the cases. Especially with a Child Protection Order, it's not compulsory to attend so if you're the parent or the respondent you don't have to attend. All the courts will do is call it once; if you're not there they will continue with the hearing.

Mr CARBINES — In this instance they were present?

Mr STEEL — They were present, yes. To be quite honest, I blame DHS for it because they were well aware because they had dealt with these people before. In fact, they dealt with them right through from removing the baby.

Mr CARBINES — So their motivation perhaps is, from your observations, the courts wanting to move through their lists?

Mr STEEL — Yes.

Mr CARBINES — And Child Protection maybe getting a sense themselves of what the outcome will be.

Mr STEEL — Well, they know what the outcome will be. I actually support the outcome, but that's beside the point.

Mr CARBINES — Because you've got the parties you have a lesser understanding perhaps and you're left with having to try and give them some peace of mind or understanding of what's happening.

Mr STEEL — Understanding of what is going on because that is their right, everybody's right. When we talk about equality in society for these people, no, it's not always equal.

The CHAIR — Are there other agencies in Mildura or the area that assist people with intellectual disabilities?

Mr STEEL — Yes, there are; there's quite a number.

The CHAIR — What's the process then if somebody with an intellectual disability is going to court, do they have contacts with agencies who can assist them? If it's not you is it some other agency, and if they turn up without any assistance does the court get in touch with one of the agencies who can get someone in to help them?

Mr STEEL — Probably to give you a scenario on that one is IVOs, which you were talking about Donna. For some reason a person with an intellectual disability they seem to get them very easily, and that could be with someone swearing across the street. They do all that themselves with the help of the court, very rarely will they come to us and say they want to take out an IVO on somebody.

We have two couples at the moment, all of them intellectually disabled, and they've got intervention orders on one another because that one swore at me, or that one comes too close to my house, or it's a petty argument. But the big problem with those is that they don't understand that they're actual legal documents and they can be fined, they can go to jail if they break them. No, we're friends now, we've made up.

Mr CARBINES — Where are they getting an understanding that that's an avenue open to them where there would be a lot of people in the community more generally who wouldn't be thinking in that way, would they?

Mr STEEL — Because it's a very close-knit community. With the intellectually disabled, it's like most minority groups, it's a very close-knit community and it very quickly gets around. The same as where you can get a particular service from somewhere, all of a sudden everybody knows about it, and this type of thing.

Mrs PETROVICH — Through you, Chair. Roger, do you think the sort of cases that you're talking about there's a greater prevalence in places like Mildura for these sorts of communication or process issues, do you think Mildura is any different than anywhere else?

Mr STEEL — No, I don't think so.

The CHAIR — How does your organisation promote your services in the community? Do you think that people with intellectual disabilities know you exist?

Mr STEEL — Yes. A lot of that is through word of mouth through things like the special developmental school where the kids go to school, with other agencies, DHS, disability services who refer most of the clients to us.

The CHAIR — Is there a problem with people being aware that they have an intellectual disability and that they need assistance with these things, or are there some people who try to go it alone in denial of their — —

Mr STEEL — There's quite a number of people with disabilities out there who can't get what they call packages, which is funding from the government, so they don't receive services except for token services. They might have a letter that they can't understand, or they can't read, that they will bring in. Or someone might want help with filling out their bank book for a withdrawal and things like this. But there's a lot of people out there that should be serviced that aren't because there's no funding for it.

The CHAIR — I accept that, but my question was in relation to people who aren't accessing services because there may be a factor of their disability that they don't recognise that they have a disability?

Mr STEEL — In my experience, very few of them actually deny that they have a disability. Most of ours are adults that have grown up through the system in some way or another, and they have to be assessed to get a DSP anyway, a disability support pension, which is usually through Centrelink, so they're well aware. To what extent they've got a disability they're not aware and a lot of them try and achieve much higher standards than what they're capable of, which is good for them. Most of them are aware they've got a disability.

Mrs PETROVICH — You talked about the issue of police arriving to a domestic dispute and not being aware of circumstances and conditions of IVOs. Do you think that that is part of where the process falls down, is it starting right at the grass roots and then continues on through the court system?

Mr STEEL — Yes, I think it is. We have a very large police force up here, and you can't expect all policemen, or policewomen for that matter, to know that so-and-so has an intellectual disability because physically not all people show that they have a disability. But the majority of them in our experience is once you start talking to them you realise that there is something wrong, you know, that they can't communicate to the extent that they want to, consequently they get frustrated, the police get frustrated, the swearing starts, and all the rest of it, and it just escalates.

Mrs PETROVICH — So with a little more time and perhaps a little more training — and we all understand the pressures that Victoria Police are under and they do a great job, I'm not being critical of them.

Mr STEEL — No, I'm not being critical of the police.

Mrs PETROVICH — So a little more training, perhaps a little bit more time spent talking to people — and that's not always easy either, I know some of these are highly charged situations — would that assist?

Mr STEEL — It would, because another scenario I've got here is a 36 year old male with an ABI, he's continually being pulled up for drunkenness because of his gait, because of the way he walks, which is part of his ABI. There's another one that is an alcoholic, admittedly, and he gets picked up, he gets an on-the-spot fine of \$400-odd, or whatever it is, and it doesn't concern him because the State Trustees pay it; he doesn't understand that it's his money that's actually paying it. Where the sense is in fining a person with an ABI — —

Mrs PETROVICH — So is he actually drunk and disorderly when he's being fined?

Mr STEEL — Well, he could be staggering, yes.

Mrs PETROVICH — But this is exacerbated by his condition as well.

Mr STEEL — Yes. But it's not a case of him publicly brawling or fighting or anything, no.

The CHAIR — Are you aware of techniques that people may use to let police know that they have an intellectual disability, for example the person who walks like he's drunk, does anybody have a bit of paper to hand to the police to explain the situation or a card that identifies them? If not, do you think that's a good idea?

Mr STEEL — Yeah, it's quite a good idea because we have a couple of clients that have the same problem of actually getting into a licensed premise because of the way they are, and they're not drunk. But, yes, if we can get them to hang onto it and not lose it.

The CHAIR — So you're not aware of anybody that does that to try and get over the issue?

Mr STEEL — No.

Mr CARBINES — Through you, Chair. What are your observations around perhaps where there are sometimes injustices or the rights of people with intellectual disability not being addressed, are they then telling you what they think the issues are that they want addressed or would you say that you've just got some observations on how you can assist? For example, with the case in relation to the child protection matter, do you get an observation there: well, they weren't really able to participate in the actual court case?

Mr STEEL — Do I talk to DHS about it?

Mr CARBINES — Yes.

Mr STEEL — Yes, quite often.

Mr CARBINES — Or does the client suggest to you longer term what sort of things they want done?

Mr STEEL — No, the client wouldn't. They will get upset and say: why weren't we in there? But that would be the extent of it.

Mr CARBINES — What do you think are some of the aspects on how you might address how we should look to address these issues?

Mr STEEL — We're back to what Donna said in regards to education of these various agencies, police forces, in their training because there's more people coming out into the community that have a disability, and whether it's an ABI or whether it's an intellectual disability is irrelevant, it's the fact that they're out there and we're trying to encourage them to live independently, like the Act says, and they're running into all these problems.

Mrs PETROVICH — Through you, Chair. Roger, obviously your organisation assists these people by going to court with them, but are there other independent persons that will do that and is there enough legal aid services in this area?

Mr STEEL — Yes, there are. I will probably say again then you've got the legal profession that doesn't come down to their level because they're talking to the courts. I suppose you all know the difference between a VCAT hearing and a court hearing. If there were more VCAT hearings, they would understand a lot more, but because of the formality of the justice system I don't know whether they can or not. The VCAT hearings, they're not a problem to go to because they have a tendency to come down to their level and make sure that they understand what's happening and what they're talking about and what's going to happen.

The CHAIR — Just following on from that comment, do you think that the magistrates and in the higher courts training is required for people who preside over those courts?

Mr STEEL — I think they've got the skills but whether they can recognise it at that particular time to say: hang on, we've got to come down to their level because they're not understanding. Or whether, as I say, they're busy because I know how busy the courts are, you're always rushing through. But VCAT find the time and VCAT do it very well.

The CHAIR — When you're here at a hearing at court with a client who has an intellectual disability, do you have an opportunity to speak directly to the judge or the magistrate?

Mr STEEL — No, we're only there as a support person.

The CHAIR — What would happen if you think that this person isn't understanding what's going on, you're saying there's really no opportunity there for you to actually step in and say: can you bring it down a notch?

Mr STEEL — No, there isn't. Whereas at VCAT there is, or DHS hearings you just intervene anyway.

The CHAIR — In those circumstances, do they generally have a duty solicitor appearing on their behalf?

Mr STEEL — They do, yes.

The CHAIR — The attitude then would be, I suppose, a tap on the shoulder of the duty solicitor if there was clearly something going on?

Mr STEEL — Probably because of their lack of experience with people with disabilities on a regular basis, they don't really understand. There's one or two that do but the majority of them, no.

The CHAIR — So there's perhaps a need for some training for Legal Aid duty solicitors?

Mr STEEL — Yes, but I think if it came through from the courts, the courts would recognise it and instruct the solicitor or the duty solicitor: hang on, we've got someone here with a disability, we've got to slow it down, we've got to present it in a way that they can understand. We have to produce all our documents in easy to read, easy to understand formats — whether that's photos, whether it's pictures, whether it's writing, we have to under the Act. But the courts don't, the police don't, DHS don't.

Mr CARBINES — Chair. So just on that, it's probably getting to the point around education being one aspect, but do you think there might be a need to also look at whether it's through some sort of regulation or have something that's a little more formal than just educating people in some of those sectors about how they deal with people with disabilities as opposed to having some formal structures that you must meet?

Mr STEEL — I think so.

Mr CARBINES — Is that something that we might need to consider, the education aspect, which is important?

Mr STEEL — Well, they've recognised that with the Children's Court.

Mr CARBINES — There's a bare minimum standard that needs to be met when the courts or others are dealing with cases involving these people.

Mr STEEL — I think so. Because they've recognised it with the Children's Court, with the Koori Court, with VCAT.

Mr CARBINES — So there are examples that could be drawn on but also in your agency, in your dealings, what government or what legislation expects is the standard that you have to meet in your dealings as an agency on how you might try and reflect that in how the courts or others — —

Mr STEEL — I think they do that with the Koori community, with their Koori courts, so they do know how to do it and they do recognise that there's a problem there with the Kooris in that we need a special court for them, for their understanding, for their rights, for their privileges, etcetera. If the government is going to have all these

people with disabilities live independently and have rights, etcetera, they've got to continue that right through and not stop it, for argument's sake, at the courts or at DHS.

Mrs PETROVICH — Chair. It was obvious from the scenarios that you presented to us, Roger, that there was a complete gap between what had occurred at the court and those people who lived wondering, probably forever I think, about the great mystery of what had just occurred to them. Is there some way that we could suggest perhaps a written finding that could be explained to them by an independent third person on the day that they are still floundering to understand what's occurred, would that assist?

Mr STEEL — It would because I think all of them, especially with dealing with anybody in authority — and we could be talking about DHS, the police, the courts — they need an independent third party. We do a lot of it but, as I explained to you earlier, they've got the authority, we're just the workers. Whereas an independent third party comes in and lays it exactly on the line and if they've got any questions, okay, we can go back to the courts, we can go back to DHS, etcetera, and not us because they know that we're going out there to fight for them, but an independent third party has more clout probably with them than what we do, if that makes any sense to you.

The CHAIR — Any further questions? Thank you very much for your contribution; it's been very helpful.

Mr STEEL — Thank you for listening to me.

Witness withdrew.