

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

Melbourne — 21 February 2012

Members

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Mr T. Carroll, Executive Officer, Disability Justice Advocacy.

The CHAIR — Welcome. We are a cross-party committee that investigates matters to do with law reform, and we are given references by the Parliament. This is one of three that we are working on at the moment. The process is that we put out advertisements calling for submissions and we contact organisations and interested people individually. We gather information, and then we get people to come in to talk to us. At the end of it all we produce a report, which then goes to Parliament and hopefully some of our recommendations will be picked up in legislation in the future.

Everything said today will be transcribed. You will receive a copy of the transcript and you can read through that. If there are any corrections, let us know. If you could start with your name, who you represent and your professional address, and then launch into what you want to tell us.

Mr CARROLL — Sure. Thanks, Clem. My name is Trevor Carroll. I am the Executive Officer at Disability Justice Advocacy Inc., 86–88 Herbert Street, Northcote, in Victoria.

The CHAIR — Okay.

Overheads shown.

The CHAIR — And that is your son?

Mr CARROLL — My grandson. Does that go in Hansard?

Ms GARRETT — Very cute.

Mr CARROLL — He just turned two last week, and he is learning how to bite.

Ms GARRETT — He looks a bit like you.

Mr CARROLL — That is what everyone tells me.

The CHAIR — Just a preliminary question, do you advocate for people with any sort of disability or do you specialise in a particular disability?

Mr CARROLL — We specialise in one particular type of disability, but we also deal with intellectual disability as well. I will go through that with you as part of the presentation.

The CHAIR — Okay.

Mr CARROLL — Who are we? You can see that we are an incorporated association. We are not for profit. We were established in 1990. DJA is run by a board of management, and our board is made up of people who have high support needs associated with physical disability. We specialise in providing advocacy support for people with physical disabilities. We are funded under the National Disability Advocacy Program by the federal government — the Department of Families, Housing, Community Services and Indigenous Affairs.

Our funding agreement under the National Disability Advocacy Program specifically requires us to comply with the federal Disability Services Act 1986 and the relevant disability and advocacy service standards. Our advocacy also means that we have to comply with any relevant federal, state and local government legislation, policies, rules and procedures — things like, for example, the Victorian Equal Opportunity Act, the Charter of Human Rights and Responsibilities Act, the Victorian Occupational Health and Safety Act, as well as other legislation such as the federal Disability Discrimination Act and so on. We have to comply with all of those, even though we are funded specifically by the federal government, but we practise in Victoria obviously.

Our target group for advocacy is for people with disabilities who are aged between 16 and 65. They have to live in one of the municipalities that are shown on the next slide. They have to have a disability that is permanent or likely to be permanent and have a need for ongoing support services and have reduced capacity for writing, typing and hearing, vision or speaking or learning or mobility without assistance or the need for frequent rests.

That is our intake area. You can see that that is the bay there. We basically cover the metropolitan area right around the bay. We do not go down as far as Geelong, but we cover Wyndham and five of the six major growth areas in Melbourne.

The CHAIR — Are there other groups that cover other areas in Victoria?

Mr CARROLL — Yes, they are funded by FaHCSIA under the National Disability Advocacy Program, but we are the only ones that specialise in physical disability. Here are some stats for you that you might find interesting. For the calendar years 2010 and 2011 we assisted almost 160 clients with individual advocacy support. At any one time around 20 per cent of our clients have an intellectual disability. All of our clients also have a physical disability. As I said before, we specialise in physical disability, but many of our clients have multiple disabilities, particularly when it comes to disabilities such as cerebral palsy, and MS where the intellectual functioning declines with time as part of the disability. As I said, at any one time about 20 per cent of our clients have an intellectual disability, so we are dealing with multiple disabilities, and a large number of our clients who have an intellectual disability also have issues with communication and speech. They often cannot write. That is one of the criteria. Can they write or read? They often cannot write, they cannot read and they cannot advocate for themselves. Some of them cannot speak. We use a range of different strategies for dealing with them from an advocacy point of view.

During those two years — that is, those two calendar years I talked about a moment ago — 39 per cent of our clients with an intellectual disability were victims of sexual assault, physical neglect or financial abuse that resulted in notifications to Victoria Police. Keep in mind that all of these clients had a physical disability as well, and many of them would have had a speech impairment as well. In fact I will show you some case studies shortly that will help highlight that.

In terms of our experience with the justice system, these advocates are two of my colleagues here with me. Their experience with the justice system results largely from clients who have become victims of crime. They contact our service because they have become a victim of crime, or someone will make a referral on their behalf to us. It could be a family member, it could be a support worker, it could be a carer, it could be a neighbour or anybody else. They will make a referral to us, and we, generally speaking, have to try to navigate the justice system, usually at the front line with police officers to begin with; that is where we start. I have some actual case studies here. Here is case study 1, KJ — these are not the real initials, of course. He lives alone, and he was assaulted and robbed outside his home. He made his way inside and collapsed on the floor. There were two days when we had no response to telephone calls from us, so we asked the police to do a welfare check. The two officers went into the house and found him injured and unable to move on the floor as a result of the assault. He told the officers he had been assaulted and robbed. There was no medical support, and no other action was taken by the officers who left him where he was on the floor, and then they called one of our advocates. Our advocate ended up going around to the property and helped him up to the nearest police station and got him to make a police report. Then we took him to the hospital to get medical treatment. The officers were later disciplined by a senior detective because they did not take a report at the time and did not provide any assistance to him. The second case study —

The CHAIR — What was the reason why they did not provide assistance or do a report?

Mr CARROLL — I do not know. I do not know why — one of the officers concerned rang our office and said, ‘We’ve found him; he’s at home and he’s on the floor’, and that was it. It was not until we got around there that we found out that he had actually been injured. His knee was so badly infected that it was smelling. He had been there for two days in the warm weather and his knee was infected.

The CHAIR — The police waited there with him?

Mr CARROLL — No, they did not.

The CHAIR — Okay.

Mr CARROLL — He had a neurological disability as well as an intellectual disability, so he could not feel the knee injury, and his sense of smell was also diminished because of his neurological disability and his intellectual disability, and he was not really aware that he was as badly injured as he was. There is no doubt the officers would have smelled it. He indicated to our advocate that he told them that he had been assaulted and that he was injured and he showed them his knee, and they just left and rang us to come around. We ended up taking him to the nearest police station, where we insisted that a report be taken by the police, and then it was put into, I think, not the armed robbery squad but the robbery squad in the local CID. As a result of ongoing

communication with the detective who was dealing with the issue, we were informed that the two officers were put on report and disciplined for failing to render assistance.

Here is case study 2. SM lives in a community residential unit. Are you familiar with the community residential unit? Yes, okay. Here you see that he has 24-hour worker support and he is also non-verbal. He was rushed to hospital during a night shift with a severely lacerated penis that required surgery. His brother came in and actually gave consent for the surgeons to perform the operation. It was so badly lacerated that if he had not had immediate surgery, like within an hour, he possibly would have lost enough blood to have died. The worker completed an incident report, but it was allegedly substituted by one completed by management — a different incident report was completed — and it was claimed that it was caused by a plastic urine bottle, such as the one on the screen there.

Those of us who have worked in the industry in personal care know that you cannot severely lacerate a penis enough to require surgery using one of those bottles unless there is some mischief involved. We referred the matter to police under the federal disability services standard 12, which is freedom from neglect and abuse. Under our duty of care we made an immediate report to the local police station and we warned them that management had allegedly fabricated an incident report, but the first person the police officer spoke to was the manager of the facility who lodged the incident report, and they took no further action as a result of that conversation.

The CHAIR — So the allegation of the patient was what, that somebody, a staff member had — —

Mr CARROLL — No, the patient was non-verbal, but the worker who was on duty at the time the incident happened with our client was — at the handover the following morning at 7.00 a.m. the new worker who came on wondered where he was and was told, 'I've lodged an incident report that he injured his penis'. The worker did not believe it and made a referral immediately to us. We contacted the hospital and found out that it was true. We obtained a copy of the incident report that was originally lodged by the worker, but the one that was eventually lodged with WorkSafe was a different one which was substituted by management. The police spoke to management and did not take any action about it. The brother, who was his guardian, was reluctant to pursue the matter any further because he was frightened that his brother, who was injured, might be removed from the house. That was the fear and why he decided not to take the matter any further.

Case study 3. SH lives alone and uses an electric wheelchair. Her carer's father, while he was on parole, started a relationship with our client, and she became pregnant. She has an intellectual disability and cerebral palsy and is in an electric wheelchair. There were coercion and threats of violence used by the carer and the father, who was on parole, to have the pregnancy terminated. It was terminated against her will. She was unable to communicate to the doctor that she did not want the pregnancy terminated. There was no independent third person present at the time, and she obviously had a communication impairment.

The police would not intervene in that matter; they would not take any action at all, so she lost her child. As a follow-up to that, we ended up getting professional sexual assault counselling and grief and loss counselling for her. There was nothing else we could do, because the police would not take any action on it. We were pretty surprised about that, because the father was on parole.

Ms GARRETT — Was her disability such that she was incapable of giving consent?

Mr CARROLL — No, she was capable of giving consent. In fact she made it clear to us, as her advocacy agency, through the use of communication aids that she wanted to keep the baby.

Ms GARRETT — But with the sexual relationship, was she capable of consenting to the sexual relationship?

Mr CARROLL — Yes, she was.

Case study 4. TR was forced to dress in an animal costume by her parent and was left alone, locked in the family home, during the day. This young lady was 22 years old and had an intellectual disability; she was also non-verbal. Police would not intervene. We were called because one of the neighbours had had experience with our service before, and she saw this young lady at the window in the animal costume. It was not that particular one, but it was one similar to the one on the overhead. She was dressed in an animal costume and was trying to

get out through a little bathroom window with a gap in it, but she could not fit. The neighbour called us. We asked the police to go around to do a welfare check, and they would not go. We ended up going around ourselves. We could not get into the house at the time because it was double deadlocked from the inside so she could not get out. We had to wait until the mother came home, then we rang the national abuse and neglect hotline, which is part of our charter.

Case study 5. TH noted that there was a post on her cousin's Facebook page that suggested she might be being neglected by her husband and not being fed her evening meals. The cousin who was on Facebook was in a wheelchair and her husband was her carer. TH was the one who made the referral to us. She was concerned about her cousin's welfare because of the post on Facebook about her not being fed her meals by her husband.

We informed the police and asked them to immediately go around to do a welfare check, but when they got there no-one was home and they left a card for someone to call them back. That immediately put our client at risk, because the only one who was able to retrieve that card was the husband. His wife was in a wheelchair and was incapable of accessing the front door on her own. We were devastated at that lack of sensitivity and that lack of thought on the part of the police doing the welfare check that they would leave a business card asking to be called back. That would have immediately raised an alarm with the husband if there was any truth to that. We tried to follow up, but no further action was taken. They never interviewed that husband.

This is another case study. LR lives alone. Her taxi driver helped her inside and then asked for sex. When she refused, he committed an indecent act. The incident was reported to the police, but no charges were laid because she had invited him in. He wheeled her in — because of her wheelchair he had to help her in — but no charges were laid because according to the police having him wheel her in was an invitation to come in. Because the indecent act happened within her home and not in a public place, the police decided not to lay any charges. Our advocate arranged for sexual assault counselling through CASA to support this victim. LR also has cerebral palsy.

The last case study. JT requires help with daily personal hygiene and showering in her own home. Her regular carer was sick, so a casual worker went to help her in the shower. She suffered third-degree burns and was rushed to hospital. No incident report was lodged by the worker. We informed the police, but they declined to investigate it because they said it was a WorkSafe matter. The advocate of DJA lodged an incident report with WorkSafe, and we lost control of the case after that because we do not know whether WorkSafe investigated that themselves and took action or whether they referred it to the police as well. The point I am trying to make is that this was another example of where our advocates informed the police about an alleged incident, and they took no action — and this is a common theme that we find.

One thing I would like to point out to the committee is that the Victorian Disability Act 2006, section 38, requires public sector bodies such as Victoria Police to develop, implement and report annually on a disability action plan. The section of the act that it relates to says:

38. Disability Action Plans

(1) A public sector body —

such as Victoria Police —

must ensure that a Disability Action Plan is prepared for the purpose of —

- (a) reducing barriers to persons with a disability accessing goods, services and facilities;
- (b) reducing barriers to persons with a disability obtaining and maintaining employment;
- (c) promoting inclusion and participation in the community of persons with a disability;
- (d) achieving tangible changes in attitudes and practices which discriminate against persons with a disability.

That is the relevant section of the act — section 38. We have taken action on this at Disability Justice Advocacy, because it is now six years since the act was introduced and Victoria Police still does not have a disability action plan. They are required under that act to produce a plan and report annually to Parliament on that, and they have not done it. This has been a major ongoing concern to us at DJA because of some of the

sample case studies that I have given you and the attitude that we find when we make notifications on behalf of our clients.

Here is a time line of some of the liaison we have had with Victoria Police over our concerns. On 3 March last year we wrote to Ken Lay, the then deputy commissioner of police, regarding a request for information about disability awareness training for police. I am pretty sure you would have got a copy of that.

Ms GARRETT — Yes, we have looked at these. That is fine; we have read them.

Mr CARROLL — We never got a response at all from Commissioner Lay, except to say that he received our letter. So on 2 June — a few months later — we wrote to the Honourable Peter Ryan, the MP and Minister for Police and Emergency Services, asking him to intervene so we could get a satisfactory answer. You have got a copy of that too, I am sure.

Ms GARRETT — Yes we do.

Mr CARROLL — As a consequence of that, we met on 27 July. Some staff members of DJA and some board members met with representatives from Victoria Police to discuss the issues raised in the letter. The meeting was not very satisfactory from our point of view because the items in the letter were not addressed at that meeting, and there were some quite high level officers there. I can provide you with their names if you want them. There were some quite high level officers of Victoria Police, and their answers were most unsatisfactory. We invited them to come along to our annual general meeting, where our members would be present and where many of our clients and their carers would be, on 21 September 2011.

They made a presentation to us, which I will show you briefly when I have finished here. As a result of that presentation our members were still unhappy, so on 19 October we wrote to Eva Perez, Manager of the Mental Health Strategy Project in Victoria Police, with a proposal for the establishment of a Disability Reference Group within Victoria Police. The main reason we did that was because at the presentation at our annual general meeting Victoria Police officers indicated that they generally had a top-down model of dealing with disability issues. Someone at the top would decide what was the best way to deal with people with disabilities, and it would get filtered down to the rank and file at the coalface — the officers. We found that that was the direct opposite to what was expected within the disability community.

There is a catchcry within the disability sector that says, ‘Nothing about us without us’. That catchcry is pretty significant, because there are a number of organisations that you can see from that letter we wrote to Eva Perez which actually do have disability reference groups and advisory groups to provide input into the development of policies and procedures and so on. Victoria Police does not use that model. They have not used it and they have never used it, but they did agree to accept this particular submission from us. We have not yet received a response to that. We have asked twice since 19 October for a response and we have not had a response to it yet, so we do not know whether Victoria Police is actually going to consider the response, whether it has been considered or whether any action will be taken. We do not know that yet.

Unfortunately that is reflective of the way many of our clients see their interaction with front-line police when they become victims of crime. There is a lack of response. As you can see, it has taken us over six months or so to try to get an adequate response from Victoria Police about our concerns that were raised in the original letter to former Deputy Commissioner Lay, and they have still not been adequately addressed. At DJA we are not convinced that the training that is required for police officers to deal with people with intellectual disabilities and/or speech impairments is adequate. In fact our experience would suggest that it is not, because we would not get as many referrals as we do from the disability community, particularly those with intellectual disabilities, if the police were doing what the senior staff within Victoria Police say they should be doing.

Ms GARRETT — Are there reasons for that approach? Is it fear or confusion?

Mr CARROLL — I think it is lack of training.

Ms GARRETT — I understand it is lack of training, but it stems from just not knowing how to deal with it. So is it not dealing with it — is that your experience?

Mr CARROLL — There are several different areas to it. The first one is that in some instances the police officers who are called decide not to investigate. When they look at a client who is non-verbal, who uses communication aids and who has an intellectual disability, if they cannot take a statement, they will not be able to assess that.

Ms GARRETT — So they are worried about getting the appropriate evidence with which to proceed.

Mr CARROLL — They just do not bother because they are not going to be able to get the evidence. Our experience is that, generally speaking, they do not call an independent third person to support them either. We often find out about this after the incident has happened and the police have been involved, and by then of course the action has already been taken and the decision has been made not to follow through with it.

Ms GARRETT — So one key thing you would see or recommend would be that, upon attendance at a complaint or alleged crime, an independent third person be immediately engaged.

Mr CARROLL — They should be immediately called, absolutely. That is an absolutely rock-solid recommendation.

The second one is that there should be not just initial training in disability awareness at the Victoria Police recruitment level but ongoing professional development of police officers in disability awareness training. It has come to our attention that that part of the training at the academy is supposed to be addressed and relate specifically to disability awareness, and there is supposed to be someone with a disability or someone from the sector who comes out and talks to the police recruits about what it is like to have a disability and what sort of issues to look for. It is our experience that that is ad hoc and that not all officers receive that training, and we have been unable to get any evidence whatsoever in all of the communication and face-to-face meetings with Victoria Police to suggest that there is any commitment to ongoing professional development once and if they receive training at the academy. That is a real concern for us.

The CHAIR — So even if that training were adequate, it would not replace the independent third person?

Mr CARROLL — No, because disability awareness training should be specifically targeted at the rights of people with disabilities — the types of disabilities under the Disability Act 2006 which police might have to respond to. That is basic training that you would get at the academy, but it is not consistent. That is the point I am trying to make. There should be ongoing, specific training in relation to professional development once police pass the recruit stage. The very first time they come into contact with someone with a disability there should be something like a professional development plan that they implement to learn from what has happened in relation to the particular incident so that it can be followed through. Our experience is that a person with an intellectual disability and in particular a speech impairment — if they cannot speak, it is a double disadvantage — generally does not receive the services, and their human rights are not readily upheld by Victoria Police. That is particularly disappointing.

I guess in the disability sector and in the advocacy sector within Victoria, which we represent, there is quite some concern about the fact that it is now six years on and there is still no Disability Action Plan. The Disability Action Plan, were it in place, would give the police force and the whole of Victoria Police direction about how to deal with people with disabilities in terms of policies, procedures and tools. At the moment there is in place a range of ad hoc provisions that do not appear to be as effective as they should be if there was an overall umbrella plan called the Disability Action Plan, and that is surprising.

We have had several excuses from Victoria Police about why there is not one. One of the excuses is, ‘Oh, we’re a big organisation and it takes a long time for a bureaucracy to get something done’. There are other bureaucracies in Victoria that have disability action plans, and they have had them in place within 12 months of the act. The second excuse we have had is, ‘We want to get it right before we release it’. However, that begs the question: how can you get it right if you do not consult with the people who are affected by it? If you do not have a reference before a committee of people with disabilities to give you some sort of input into what should be in the plan and how you should word it, the type of terminology to use and the sorts of issues that should be dealt with in the disability action plan — if you do not consult at the grassroots with the people who are going to be affected by the plan — then it is going to take time. You are going to be having this top-down model, which is our criticism of Victoria Police at the moment in relation to disability access and the Act in particular.

The CHAIR — Trevor, just so you are aware, we have less than 10 minutes to go.

Mr CARROLL — Okay. So you have the seven points. I do not need to go over those; you have those in the letter. They are the things we are particularly concerned about.

Just as an appendix, the Office of the Public Advocate revealed in 2011 that it had helped 272 disabled or mentally ill people make allegations of abuse to the police sexual abuse unit, which is double the number of cases recorded 10 years ago. Eighty-six cases involved the abuse of people with cognitive disabilities or mental illness in state-run facilities and a third of those involved allegations of sexual assault, but very few resulted in police intervention. Only one case involved the prosecution and jailing of the perpetrator. The report that the Office of the Public Advocate made actually mirrors out the experience at DJA.

We do not specifically always deal with clients who are residents of state-run facilities. Many of our clients live in their own homes. Some of them live with families in rented accommodation or in public housing, and some of them live in state-run facilities and other facilities run privately by organisations like Scope, Yooralla, Melbourne Citymission and so on.

I would like to show you just quickly the presentation that Victoria Police made to our AGM. This was made on 21 September. Keep in mind that this is in the absence of an overarching disability action plan, as required under the act. Police see people with disabilities every day as victims, witnesses, suspects and people who need help; that includes mental illness — all these different types of disabilities here are the ones that are listed under the Disability Act 2006, and that is what they mean by disability.

This was particularly upsetting to the members and the clients, their carers and their family members who were at the annual general meeting. The first statement, ‘Police are not doctors’, has an implication that people with disabilities are sick and require a doctor in order to be able to diagnose whether or not they actually have a disability. Our members and other people with disabilities found that quite offensive during the presentation. As I said, they are not doctors, so they do not necessarily recognise disability; they do not have that capacity. That begs the question of their training and the disability awareness and the need for an action plan. They say they look at what a person says or does, but if a person cannot move their arms because they have cerebral palsy and they cannot speak because they have a speech impairment and cannot communicate at all except with their eyes, how can they use that? We come across this too many times, where we have a client with those particular characteristics and the police say, ‘It’s too hard; we haven’t had any training. We are just not going to investigate it’, so the perpetrator gets away. They recognise disability by checking their records, but police records do not contain any notification about a person’s disability status. There is nothing recorded on the LEAP database that we are aware of that identifies whether someone has a disability or not, so I do not know how that would work. They ring other services, but what other services? We have not been given a list; we do not know what services the police ring.

They approach disability from a human rights perspective. They provide support through the Victoria Police manual, independent third persons, and video and audio-recorded evidence. I have actually participated in the video and audiorecording of evidence in a sexual assault case. The client was non-verbal, unable to use their arms and legs, and the video was being recorded. No charges were laid against the perpetrator because it was impossible for police to put that person on the stand and get them to give evidence based on the communication impairments that they had. We could do it because we are trained in that, but police are not trained.

In 2006 the police said they had made disability a priority, and they reviewed how they did things. They asked people what they could do better. In April 2007 they produced a strategy to give police better information, to work closely with other services and to train police well. I will give some examples. Police can record information on how to help a person on their computer, they can help a person access other services and they learn a lot more about disability. There are serious omissions in this about taking disability seriously. Victoria Police believes disability is an important part of the human rights charter, the victims charter and all of those things. We certainly would agree with that; however, the disability action plan referred to at the bottom is seriously lacking — there is not one of course, as you know. Secondly, the Victorian Equal Opportunity Act makes it clear that people with disabilities have particular rights under the law, and that is not even mentioned there. Nor is the federal Disability Discrimination Act, which comes under the provision of goods and services for people with disabilities, under which the police force has to operate. The issue of human rights is dealt with at the human rights charter level, according to Victoria Police, which is not enforceable. However, through the

complaints mechanism and the conciliation process Victoria Police does find itself the subject of complaints in the Victorian Equal Opportunity Commission and the federal Human Rights Commission, and it is not mentioned there. That was a serious omission that also offended many of our members from a human rights perspective.

The CHAIR — Trevor, we will have to wind it up.

Mr CARROLL — That is the last slide.

The CHAIR — That is the last one, okay.

Ms GARRETT — I thought that was extremely helpful, thank you. So your main issues in the presentation are around how your clients are butting up against the justice system in a very significant way at the first port of call when police are coming to investigate allegations regarding unlawful conduct.

Mr CARROLL — They would see it as not getting justice, Jane, yes.

Ms GARRETT — That has been very helpful. Thank you.

The CHAIR — I think it is pretty well covered with your presentation. It was really good, thank you.

Mr CARROLL — The seven points in the letter to Ken Lay summarise very clearly the points that we find are issues to do with our client base and people with intellectual disabilities and speech impairments.

The CHAIR — So your main concern is police training.

Mr CARROLL — It is about more than just police training, it is also about police attitudes. It is not just about the initial training; it is the ongoing professional development that is required, because training in disability should not start and end at the recruit stage. Every officer should have a professional development plan of which disability training is a part. To have an independent third person is fine to provide assistance and support, but if police choose not to call an independent third person or decide it is too hard because the client cannot speak or they have an intellectual disability or whatever, then justice is not done. Our advocacy agency gets a lot of work because police do not do their job.

The CHAIR — Thank you very much for that.

Mr CARROLL — It was a pleasure.

Committee adjourned.