

Submission:

ATTORNEY-GENERAL'S DEPARTMENT

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DISABILITY JUSTICE PLAN



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Introduction

Communication Rights Australia and Disability Discrimination Legal Service are partner organisations who together work towards the elimination of discrimination against people with disabilities and the realisation of their human rights.

Will Communication Rights Australia is the only specialist advocacy organisation working in partnership with people who have little or no speech within Australia. For over 30 years we have been working to make services more accessible.

The Disability Discrimination Legal Service is a Victorian service, however has a keen interest in law reform in other states which can then be used as a model for Victoria. The Disability Discrimination Legal Service considers that South Australia will be a leader in ensuring justice systems are accessible to people with disabilities in Australia upon implementation of this initiative.

It is with some celebration that we received your *Draft Disability Justice Plan* and *'Supporting Vulnerable Witnesses in the giving of evidence'* documents.

An independent Communication Support Worker training program was an initiative of Communication Rights, established nearly 6 years ago. The service grew out of an unmet need within our community and has since been utilised by individuals wanting to access the Police, Tribunals and Courts.

Both organisations had input into the Australian Human Rights Commission 'Equal before the Law' report.

Executive Summary

The South Australian Government is to be congratulated for its bold initiative in supporting people with disabilities to give evidence. This initiative makes significant steps in the progress to provide the necessary environment to enable equal access to justice for the people we represent.

The initiative, which involves a combination of law reform, training and ethical principles, will provide practical and ethical guidance to greatly improve the quality of life for people with disabilities in South Australia through creating an accessible justice system.

We note the document lacks a certain 'practical experience' which can only be developed over years of supporting clients who are vulnerable in the Justice system. We hope that our experience will assist in the completion of your final documents.

'Supporting vulnerable witnesses in the giving of evidence' Document

It is our view that the document requires more authority simply being a guideline. Without stronger direction from the Attorney General's Department its implementation may be sporadic and random. If there is stronger authority behind the document it will provide the leverage for all levels of the justice system to be encouraged to protect the rights of vulnerable clients. In our experience Police have been reluctant to take action when a person cannot speak for numerous reasons, including the validation of their communication.

'Make an Assessment of the needs of the Person' does not provide an understanding as to who makes this assessment and what their training may be to do so. While it may be the case that an assessment of a person's needs may be fairly straightforward in some cases, in others, it will not be so. If an error is made at this initial stage, it has implications for the support offered to an individual to continue with the process at hand.

For example, an *"indicator"* in the documents for intellectual disability discusses the trait of *"inappropriate social distance"*. Autism Spectrum Disorder may or may not be accompanied by an intellectual disability, but being a social and communication disorder, may be confused with only a mild intellectual disability by some, and in and of itself requires communication expertise for the purposes of interview.

Under *"Interview"* on p9, you may consider adding to the four dot points at the top of the page, 'spelling the word letter by letter'.

Careful thought needs to be given about the "team" of people made available to police in order to assist in such an assessment. While a Speech Pathologist would be recommended for the assessment and support of people with complex

communication needs, this may not be the appropriate choice when dealing with a person with Autism Spectrum Disorder, or a Deaf person whose first language is sign language.

In addition, not all Speech Pathologists have alternative and augmentative communication skills. Only a small number of Speech Pathologists specialise in this area. Whoever is chosen to provide the support outlined in your proposal needs to have experience and understanding of the different methods of communication used by people with disabilities, different varieties of communication methods and different cognitive and physical disabilities. Even with this level of expertise, the professional may need to spend time with the individual to learn their communication idiosyncrasies in order that the service is genuinely responsive to their needs. As is most accurately pointed out in the draft report – people with disabilities are not a homogenous group and this is even more so for people with complex communication needs.

Communication Support needs to focus upon ethics, human rights values and the key competencies necessary for the worker to appropriately respond to the individual's needs. The training program provided by Communication Rights was developed with the Auslan interpreter model in mind – anticipating the same expectations in professional conduct.

A qualified Speech Pathologist to perform the role of Communication Support Worker will not always be necessary. Communication Rights has utilised speech pathologists in court appearances for our clients only at the early stages when there was the potential distraction from Defence lawyers challenging this new role. The cost of a Speech Pathologist performing this role would be unnecessarily high. Supporting an individual who uses an alternative method of communication is lengthy. Persons have previously supported an individual to give evidence in Court over 7 days – letter by letter. This role needs to comprise at least two and ideally four independent Communication Support Workers, with regular changeovers, to ensure concentration remains sharp. This is similar to the requirements for Auslan interpreters. It can also be made easier if those involved in the process - interviews, tribunals or courts are cognisant of the role of the independent Communication Support Worker prior to the commencement of their involvement. This will avoid confusion.

It is also necessary, in our view, to have an independent advocate supporting the individual throughout the process, with the specific objective of ensuring the system remains barrier free. Impediments to interview, pre-trial appearances and court appearances can be subtle and missed by general advocates. The ideal process is to have both a specialist advocate whose role is to protect the rights of the individual throughout the process, and an independent Communication Support Worker whose role is only to facilitate communication.

When there is a question as to the independence of the Communication Support Worker (for example where a client uses facilitated communication and there is concern as to the accuracy of the response) it is recommended that the interviewer speaks to the person with complex communication needs on their own, and then brings in the Communication Support Worker to verify that intentional communication is occurring.

Draft Disability Justice Plan

It is submitted that overall, this is an excellent document. It is only hoped that it will be replicated across Australia.

It is important to recognise that a Justice Plan is only as strong as the commitment of resources allows it to be. The implementation of the Plan will be expensive and require an already stressed system to slow down to ensure that extra supports are put in place to protect the rights of victims/perpetrators. An understanding across government of this issue is important.

People with complex communication needs/speech difficulties are one of the most marginalised and vulnerable groups within the community. Research shows that perpetrators identify vulnerable people to attack as they see them as easy prey. We have had many clients reporting abuse from family members, general public and carers but the individual is too disempowered to take action. Even when people are supported to make a complaint police are loath to act and in many cases the individuals are placed back into the home with the perpetrator. Accessible accommodation is not readily available for people with high supports to be placed during investigations.

Therefore, in order to 'promote, protect and ensure the full and equal enjoyment of all human rights' the Attorney General's Department are encouraged to liaise with government disability services in order to ensure that in particular victims of crime with disabilities are able to receive sufficient general support when accessing the justice system. Such collaboration will ensure that the excellent work by the Attorney General's Department is able to be accessed by people with disabilities who are experiencing significant general hardship and require substantial assistance in accessing police, tribunal and court systems.

We suggest under *Priority Actions*, in keeping with 1.4 which is to further investigate mandatory notification as part of the ongoing review of the *Disability Services Act* that it is recognised that children with disabilities in schools are facing similar risks of abuse, which while being emotional and physical rather than sexual, should nonetheless be regarded with the utmost seriousness. While the focus on Disability

Services is natural, the issue of children with disabilities being restrained and secluded requires as much if not more focus due to their age and vulnerability.

In relation to 2.5, we are unsure as to whether “mental disability” includes Autism Spectrum Disorder. If it does not, while the Act is subject to legislative change, it would be appropriate to ensure that it does cover people with Autism Spectrum Disorder.

In relation to 4.8, we fully support the disability awareness training proposed to all staff in criminal justice agencies, and recommend that it includes the judiciary.