



## SUBMISSION TO:

Victorian Equal Opportunity and Human Rights Commission

Experiences of people with disability reporting a crime

PREPARED BY:

SPEECH PATHOLOGY AUSTRALIA

September 2013



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Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing over 5500 members. Speech pathologists are university educated professionals with specific knowledge and expertise in all areas of speech, language, communication and swallowing, including disorders of speech, language, literacy and numeracy, as well as difficulties with eating and drinking.

Speech pathologists work with children, adolescents and adults with communication disabilities and special needs in the public and private sectors, health, disability, mental health and the juvenile and criminal justice systems. As such, the profession believes it is well placed to provide meaningful input regarding the questions posed in this consultation. This input is based on feedback from our members who work with clients with a communication disability (and their parents, carers or community workers).

Not all of the consultation questions are relevant to us, therefore we have chosen to only answer selected questions, numbered as per the consultation paper.

**1. Tell us about your organization and its role in disability and/or responding to the needs of victims of crime?**

As the peak body representing speech pathologists in Australia, our vision includes to increase recognition of communication disability and the impact of communication disability on societal participation- including in relation to criminal justice.

We believe that one of the greatest barriers that people with a disability face in seeking access to justice, whether as a witness, victim or defendant, is their ability to communicate<sup>1</sup>. Over one million Australians have a communication disability, ranging from a subtle deficit that impacts on someone's ability to understand what others say, to a complex disability that affects all aspects of spoken communication and results in the need to use a communication aid or device.

Communication disability may result from an intellectual disability, or may have another underlying cause such as an acquired neurological or physical deficit. For over 40% of people with severe communication disabilities, the underlying impairment is unknown.<sup>2</sup> Communication disabilities may not be obvious, and are often interpreted to be behavioural issues (e.g., non-compliance), poor intelligence, mental health, or learning difficulties.

People with communication disabilities may have difficulty:

- expressing themselves either verbally, in writing or through non-verbal communication;
- understanding verbal or written communication, interpreting body language and facial expressions;
- relating to other people in socially acceptable and appropriate ways;
- remembering information and paying attention.

All of the above are important to the processes of the justice system, whether the person is initially reporting a crime to police, making a formal statement, providing testimony in court, or simply interacting with police, court officials and lawyers.

People with severe communication disability may communicate via a communication aid or device either alone or in combination with speech, known as augmentative and alternative communication, or AAC. AAC may encompass anything from a simple picture symbol choice board through to a complex speech-generating device. For people who use AAC, their ability to understand verbal information may be compromised, or only their ability to produce communication, or (more frequently) both.

We would also like to emphasise that people with moderate or mild communication disability may also face significant barriers when seeking access to justice.<sup>1</sup> This includes people with language disorders that affect their understanding and/or use of spoken language. This group of people may not be considered to have a disability by many, as their difficulties are often subtle, and they are likely to have no other form of 'visible' disability (for example, physical limitations). Nevertheless, they can be significantly disadvantaged when accessing justice (e.g., reporting a crime), because their communication disability compromises their ability to tell a story or event in a logical and sequential manner, and may also impact on their comprehension of instructions or questions. People with language disorders are likely to difficulty understanding the complex language used in the legal system and

difficulty expressing themselves adequately. Their ability to provide meaningful testimony, to tell their story, or to respond to questioning is reduced.<sup>3</sup>

All people with communication disability, no matter how severe, may also have reduced attention and listening skills, reduced memory, difficulties interpreting and using non-verbal aspects of language (e.g. body language, tone of voice), and deficits in social communication skills, such as being able to consider another person's perspective, or understand emotions.

SPA would like to encourage VHREOC to consider the needs of all people with communication disability – whether mild, moderate or severe- as part of this review. Further discussion about the impact of communication disability is provided below.

## **11. Do you think people with disabilities are treated fairly by police?**

SPA believe that people with communication disabilities are disproportionately disadvantaged when it comes to interacting with police. This disadvantage is seen in two ways:

1. In understanding their rights and responsibilities
2. In providing statements and testimony that lead to the prosecution of justice in their case.

### *Understanding rights and responsibilities*

People reporting a crime are required to understand a great deal of complex information, including about their rights and about the procedures and processes that will be undertaken in prosecuting the crime. For people with communication disabilities, there is strong potential that this information may not be fully understood, particularly if it is not provided in a manner that is suitable to their communication needs. For example, for a person who has poor comprehension or memory difficulties, information provided verbally may not be retained, while a person who has weak literacy skills may struggle to understand written information.

Research with youth offenders in Milton Keynes (UK) has demonstrated that young people with communication disabilities have difficulty understanding words that may be commonly thrown around in the justice system, including “victim” “breach” “guilty” “liable” or “remorse” or “conditional”.<sup>4</sup> This makes them vulnerable to misinterpreting questions or information provided to them, potentially providing misinformation when reporting a crime, and reducing the likelihood that the crime will be successfully prosecuted.

### *Responding to questions, telling their story*

People with a communication disability are likely to be difficult to interview or obtain testimony from.<sup>1</sup> They may not understand verbally given instructions or information, and may therefore appear to be non-compliant, or worse, lying. In addition to poor understanding, they may have problems recalling or retrieving memories- therefore, instructions (or part of) can be forgotten, and their accounts of events may be sparse. Factors that can affect an interviewee's response include the way questions are asked, the length of the questions, how many component parts the question has, and the amount of time that has passed between the event and the request to recall it. There is also the potential that poor understanding of police questions, or confusion over the meaning of words may lead to the person inadvertently providing inaccurate information.

Their ability to verbalise their story in a clear, comprehensive and meaningful way may also be compromised because of a reduced vocabulary, limited ability to sequence information and keep on topic, and poor understanding of the listener's perspective. The questioning style used by police or other persons involved in the justice system, including lawyers and court officers can also result in incomplete and/ or inaccurate information being provided by an individual with a communication disability.<sup>1</sup> If questions are abstract (e.g., asking about qualities such as honesty or reliability), leading, are repeated or require a specific response, then individuals with may provide answers that they think are 'expected' rather than the facts. Individuals with communication difficulty may have difficulty following and understanding the question, and may provide a fragmented and illogical recount of an event in a statement to police or in a court situation.

The net result is that individuals with communication disability may provide a fragmented and illogical recount of an event in a statement to police or in a court situation. Police may form the view that when individuals have difficulty answering questions reliably or retelling events in detail, that they are uncooperative, evasive, or not truthful. Distress and anxiety at not being able to explain their story well can create a vicious cycle, further reducing their ability to understand and respond appropriately to questions, and potentially providing answers that they think are 'expected' rather than the facts. There is the potential that their answers may be inaccurate to the question asked, for example because they misunderstood the question, or because they are recounting events out of sequence. This can harm the prosecution of the case.

People with communication disabilities are also likely to have problems with literacy, and their ability to access written information may be severely compromised. People with poor literacy skills and additional communication problems are extremely disadvantaged within the justice system and need extra support for example, additional time for exploratory interviews and confirmation of statements.

**13. What do you think police need to know when they attend an incident where the victim of the crime has a particular disability?**

Police need to be trained to recognise disability in all forms, not just disability that is immediately obvious, such as physical problems. People with disability may have subtle impairments, such as communication, memory or cognition, which may impede their ability to understand and provide information clearly and accurately. They also need to recognise that limitations may affect people in different ways, for example people with severe communication impairments who use AAC systems (such as a speech generating device) may or may not also have problems comprehending information.

We believe it is crucial that police are trained to recognise the impact of communication disability on the process of questioning and taking of statements. This includes not only the possibility that questions may not be understood or that the person may be unable to clearly describe or recount their story, but also that memory- which can be verbally mediated- may be affected, such that they may appear to contradict themselves or inaccurately recount events.

SPA also believe that there should be greater access to speech pathologists by police in situations where someone reporting a crime is suspected of having a communication disability of any kind. A speech pathology evaluation would greatly support identification of the specific impairments that the person has (e.g., whether their comprehension of information is affected and to what extent, whether their ability to verbally provide information is reduced, memory involvement, etc), and assist police to determine appropriate strategies for taking of accurate and informative statements, in order to pursue the case.

One avenue for this is to include speech pathologists within the existing Witness Assistance Service. Within this service, speech pathologists could be linked up with witnesses, providing evaluation of their needs and support to police as per above, but also working alongside social workers in providing information to witnesses about the prosecution process and other arrangements, ensuring that people with communication disability are able to access and understand this information.

We also believe that there should be consideration given to the provision of a Registered Communication Intermediary for some victims of crime who have communication disability. This person (ideally a qualified speech pathologist with specific training) would be a neutral participant who is there to facilitate communication between the witness and other persons (police, lawyers, judges), and to explain questions or answers to the witness as needed. Registered Intermediary services have been used in UK courts for several years, predominantly employing speech pathologists. They are required to be trained and registered, and must abide by strict codes of ethics and practice, and professional development. More information can be found at: <http://www.soca.gov.uk/about-soca/specialist-operations-centre/witness-intermediary-team>.

**14. What would improve the likelihood of people with disabilities reporting crimes against the person to police?**

We believe that the factors that would support people with communication disabilities to report crimes include:

1. Accessible information regarding their rights and information regarding the processes of the criminal justice system from reporting a crime to being interviewed as a witness or defendant. One accessible form of written information is that of Easy English, The Easy English style includes short sentences using simple words, a clear visual layout ( e.g. less words on the page and more white space) and key concepts represented by pictures ( see <http://www.scopevic.org.au/index.php/site/resources/easyenglishstyleguide>). Any information can be translated into Easy English and should be consumer tested to ensure optimal usability and readability. NSW Police has recently contracted Scope (Victoria) to complete their victims' rights fact sheets in Easy English. As part of this project extensive consumer testing was completed. Several consumers with limited functional literacy skills and dual disability diagnoses were consulted. The consumers provided feedback that they would never choose to read the original versions of the fact sheets. All consumers stated that the Easy English versions were easier to read and understand, and this was largely due to the format.

2. The availability of pictorial resources to aid both comprehension and expression in all police stations.
3. Formal acceptance of communication using non spoken forms such as pictures or drawings, or augmentative communication devices when giving statements, and giving evidence in court.
4. Training of police, lawyers and other staff involved in the justice system to enable them to a) identify communication problems; b) respond to these- for example, with simplified questioning styles.
5. As noted above, access to speech pathologist assessment and advice, support for witnesses through the Witness Assistance Service and where necessary, Communication Intermediary support to ensure that people with a communication disability are able to provide their testimony to police (and in court).
6. As the likelihood of being required to provide testimony in court, including cross examination, may influence on whether or not someone reports a crime, we believe it is relevant to consider laws and processes in court that could impact on people with communication disability. Specifically,
  - a. Communication disability should be referenced specifically as part of the definition of 'vulnerable witness', so that people with communication disability are protected from questions or sequences of questions that are misleading or confusing. The definition of vulnerable witness should include reference to:
    - i. people who cannot communicate using speech, and those who have difficulty understanding or using speech to communicate, including those who use or require an AAC device or method to communicate;
    - ii. people who have difficulty understanding or using language to an extent that compromises their ability to reliably tell their own story or understand questions or instructions;
    - iii. Assessment by a speech pathologist should be the criteria used to determine if someone is a vulnerable witness in relation to their communication disability. Provision of a Registered Communication Intermediary should be considered for vulnerable witnesses with communication disabilities.
  - b. Additional special conditions may also be relevant, for example, extra time for reading written information, provision of visual resources to aid comprehension, the option of giving testimony (including cross examination) as soon as possible after the event as people with communication disabilities may also have memory problems.

## References

1. Snow, P., Powell, M. B., Sanger, D. D. (2012) Oral Language Competence, Young Speakers, and the Law. *Language, Speech and Hearing Services in Schools*, 43, 496-506
2. Bloomberg, K. and H. Johnson (1990). "A statewide demographic survey of people with severe communication disabilities." *Augmentative and Alternative Communication* 6(1): 50-60.
3. Snow, P. C., & Powell, M. B. (2005). What's the story? An exploration of narrative language abilities in male juvenile offenders. *Psychology, Crime and Law*, 11(3), 239–253.
4. Lanz, R. (2009). Speech and language therapy within the Milton Keynes YOT, a four month project. Unpublished report cited in [http://www.rcslt.org/about/docs/rcslt\\_justice\\_evidence\\_dossier\\_final](http://www.rcslt.org/about/docs/rcslt_justice_evidence_dossier_final)