

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

Mr A. Carbines
Ms J. Garrett
Mr C. Newton-Brown

Mr R. Northe
Mrs D. Petrovich

Chair: Mr C. Newton-Brown
Deputy Chair: Ms J. Garrett

Staff

Executive Officer: Dr V. Koops
Research Officer: Ms V. Shivanandan

Witness

Ms J. Ashford, Chief Executive Officer, Communication Rights Australia.

The CHAIR — This is a committee set up by Parliament to investigate issues to do with law reform, and this is one of three references we have. Basically we put out calls to the community to make submissions to us and come in and give evidence, and at the end of it all we prepare a report which then goes to Parliament. Then hopefully some of the things we recommend get picked up in the form of new legislation to fix some of the issues we have come across in the course of the inquiry.

Ms ASHFORD — Can you tell me if that report, prior to going to Parliament, is going to be distributed?

The CHAIR — You will get your evidence beforehand, but no-one will see it before the final report is presented to Parliament.

Ms ASHFORD — I thought we could assist in making extra comments — but no.

The CHAIR — That is what you are here for today: to make your comments. If there are any corrections required once you get the transcript, let us know so we can make corrections. Everything you say here is covered by parliamentary privilege but not outside the room. For the purpose of the transcript, start with your name, professional address and who you represent, then talk us through your submission.

Ms ASHFORD — My name is Jan Ashford, and I represent Communication Rights Australia. We are an advocacy information group for people who have little or no speech, and we are based in Moorabbin. Have I ticked all the boxes?

The CHAIR — Yes.

Ms ASHFORD — Good. You have our submission in front of you and have probably read it. I do not know if you know much about the lives of people with little or no speech. I would like to raise a couple of key issues for you. In many of these situations I would like you to go away with three or four key points that will then potentially appear in the final document.

Just to give you some background, people with little or no speech are one of the most marginalised and vulnerable groups in the community. You may have experienced sitting at a meeting and losing your voice, and the ability to speak up and get heard is gone. This is the same except a lot worse. This has been the experience of many people for a number of years. They are isolated, they are in CRUs and they have been institutionalised.

The CHAIR — Is a lack of speech necessarily a result of intellectual disability?

Ms ASHFORD — It is a key point. The means to communicate is not necessarily capacity to communicate. We saw that in South Australia just recently with their review of the Evidence Act. We have been working over there as well, talking about the fact that it is about giving individuals the means to communicate, the means they feel most comfortable in communicating and the supports that are required. We would probably get a justice or legal issue about individual advocates once a month. We know Scope is getting an increasing number of reports. We see that as a plus, but we know that it is only scratching the surface of the number of people.

The CHAIR — Jan, I will ask the question again. The people who cannot communicate orally — are the reasons behind that always to do with intellectual disability?

Ms ASHFORD — No. It can be intellectual disability. It can be processing. It can be a range of different reasons. It can be intellectual disability — there is a proportion of it.

The CHAIR — Can it be a physical problem as well — that you do not have the capacity to make sounds?

Ms ASHFORD — That is right.

The CHAIR — What proportion of the people you represent would have an intellectual disability as the cause of their lack of speech?

Ms ASHFORD — We do not actually classify people that way. We are a human rights organisation, so our objective is that a person comes to us if their rights are being infringed and the main reason for that infringement is the person's inability to communicate their message across. One of those might be intellectual disability. I suppose, just thinking across the cases we have at the moment, that it would be probably 50 per cent

with intellectual disability, but unfortunately, because those people do not have speech, they are also forgotten in access to justice as well. Just because they do not have the means to communicate does not mean they should be forgotten in this context as well in regard to access to justice.

The CHAIR — Yes, although our terms of reference are specific to intellectual disabilities. Without downplaying other causes of a lack of communication, we will not be able to go off on that tangent in the course of this inquiry.

Ms ASHFORD — Except that unless a person has a means of communicating, you do not necessarily know if they have an intellectual disability.

The CHAIR — Yes.

Ms GARRETT — But either way, if you say about 50 per cent have an intellectual disability with communication problems, it is an added layer to access.

Ms ASHFORD — Yes, it is a second disadvantage.

Ms GARRETT — It complicates butting up against the justice system and is a second disadvantage.

Ms ASHFORD — I am just thinking of a number of case studies we have had recently. One of the biggest problems, before even getting to the justice system, is the ability to find someone to support you to go to court, because our key workers within CRUs — and I have heard Kevin say quite a bit about support staff — may not want to acknowledge that incidents of abuse, neglect, financial disadvantage and things are happening in their workplace by their work colleagues.

Ms GARRETT — The majority of case examples here, if not all, relate to civil issues. Is that what you mainly deal with? You have issues at VCAT or the Magistrates Court et cetera.

Ms ASHFORD — We have all issues.

Ms GARRETT — But you would also have criminal issues?

Ms ASHFORD — Yes. We have recently had an individual go right through the justice system using an alphabet board looking at a Perspex board. He communicated letter by letter. The Office of Public Prosecutions helped to support him through that. His witness statement was given over seven days, letter by letter. It was a challenge to the court system.

Ms GARRETT — Would you find that there is more support in the criminal sphere given what is required for a brief of evidence, the OPP to be involved and people to be charged rather than in the civil system?

Ms ASHFORD — No, I do not think it is good anywhere for people with little or no speech. When we go along to report a crime the police do not seem to have a clear idea of what the Evidence Act says about acceptability in regard to the means of communicating. Sometimes when advocates are collecting the information to support the person to go to the police they are very fearful of contaminating evidence and things. When we get to the police we try to step away from the system and get an independent communication support worker in to support the individual to go through the process. I think that is the key thing missing at the moment in the system: the fact that there is no independent communication support recognition throughout the justice system for people with communication and speech difficulties.

For the deaf, you have deaf interpreters. You would have the third party, but they do not get involved. What happens for a person with an intellectual disability who has a communication or speech difficulty, to enable them to participate in the process without someone? With our cases in the past, we have had to arrange high-level speech pathologists to support people through the criminal justice system, but you are paying top dollar for that. I think it is about \$130 an hour to support them. It is not necessary, but there is no system where the person can just go to obtain that independent communication support for their evidence at the police station and things like that. There is no recognised best practice around it either. There is a lot of work that needs to be done.

That is a safeguard that needs to be acknowledged, that needs to be placed into the system, with some guidelines and structures around when a person comes to give evidence. If they are using an alphabet board or symbols, how much support can they be given through that process? They have got to be trained people, because it is so easy to contaminate evidence, and that is the last thing we want to do. Our experience with the police when we have gone along has varied from station to station. In the case I was referring to just before, we had to continually chase up the police and report to the senior because it was just too hard to gather information.

I guess it is about educating the police and the justice system, and it is about the confirmation of the ratifying of the Convention on the Rights of Persons with Disabilities around the use of AAC as a means to communicate. Australia is a signatory of it, and I guess we have our Victorian Charter of rights and responsibilities, and that is in that as well, but it is not happening.

Is there any — —

Ms GARRETT — No, I think it has been very clear and the proposals are clear.

Mr NORTHE — Can you elaborate a little bit more on the Evidence Act of South Australia you have referred to and the comparison between South Australia and Victoria with regard to that?

Ms ASHFORD — You may or may not be aware that there have been some recent cases around the Evidence Act and it is being reviewed. We were called in to talk about it. We are aware that there is some confusion, but we have not had the capacity to unpack the Evidence Act. We get legal students to come and support us to go through those things, but in South Australia they are in the process of reviewing it because of abuse of people with little or no speech who have intellectual disabilities. It happened back in the 1980s and it has recently again happened. They are actually going through that process now, and we will put a submission in. We are working with Kelly Vincent over there, who is a member of Parliament as well.

The CHAIR — On the issue of people with a disability having contact with the police, is there any merit in the idea of having some sort of identification card or information that you can give to a policeman to show that you cannot speak and that is why you are not speaking?

Ms ASHFORD — A lot of our people have communication boards, but it is also about knowing how to use it and the limitations of those boards. The OPP wanted to introduce a whole lot of new phrases, symbols and things, but unless a person understands what that means and can use it and conceptually understand it, then you have got to be careful how you use it or you are going to be misleading.

The CHAIR — So do most people with this sort of disability carry a communication board with them?

Ms ASHFORD — They will maybe have an alphabet board sitting on their tray, and it might say, ‘Just talk to me normally. I have a communication or speech difficulty as a result of cerebral palsy’ — or intellectual disability, acquired brain injury, stroke or whatever. They have transport cards as well that say, ‘I have a communication disability. I want to get off at Moorabbin. Can you ensure I get there?’.

The CHAIR — Is that something that they would make up themselves?

Ms ASHFORD — Their speech therapist or their key worker would. The trouble is that you are actually dealing with someone quite stressed and it is a traumatic situation. They may not necessarily think about pulling out their communication card when there are police. The trouble is that most of our people will actually go with an advocate to the police because they know they are not accessible; the police system or the justice system is not accessible to them because of their communication. There needs to be that in-between person.

I was listening to Kevin talking about the role of advocates. We are looking for money for a justice advocate or a legal advocate. We are talking to the Legal Services Board and the Law Institute of Victoria to fund that position, because the number is increasing. It is quite a complex area. We need to ensure that we have clear guidelines for our advocates so that we do not contaminate evidence and we are within the Evidence Act when we come across police who are less keen, because it is too hard to follow up. We need to be able to have that information ready for them.

The CHAIR — Would the best solution be to increase the availability of advocates rather than putting resources into every individual police person being able to communicate with somebody in this way?

Ms ASHFORD — They have already been trained. A lot of police get training around it of maybe an hour at the academy. The Department of Justice does a bit of training in this area, but it is filtering down and having the skill on the ground there and then and being able to tap into the community. Because we are working with it every day, we have the skills. If you do not see someone for a month, two months or three months, you lose the skill.

The CHAIR — That is why it would seem to me that rather than working towards a situation where every policeman in the state can communicate as you would hope they would be able to, the resources might be better put into making sure that the person who has the disability has access to somebody who can assist them.

Ms ASHFORD — They need a means to communicate and an independent communication support worker so they can participate in the justice system, whether they are the victim or the perpetrator. That is the key thing that I would like to leave you with today.

The CHAIR — Thank you very much. That was very helpful.

Ms ASHFORD — Thank you.

Witness withdrew.