



Parliament of
South Australia

REPORT

of the

SELECT COMMITTEE

ON

**ACCESS TO AND INTERACTION WITH THE
SOUTH AUSTRALIAN JUSTICE SYSTEM FOR
PEOPLE WITH DISABILITIES**

Laid on the Table of the Legislative Council and ordered to be printed on 25 July 2013

Second Session, Fifty-second Parliament 2012-13

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1. BACKGROUND

1.1 Appointment of Committee

On 19 October 2011, the Legislative Council passed a resolution, on the motion of Hon Kelly Vincent MLC, for the appointment of a select committee to inquire into and report on access to and interaction with the South Australian justice system for people with disabilities, their families, carers and support networks.

1.2 Membership

Hon Stephen Wade MLC, Chairperson
Hon Ann Bressington MLC
Hon Tammy Franks MLC
Hon Kelly Vincent MLC
Hon Carmel Zollo MLC

Secretary

Ms Leslie Guy

Research Officer

Ms Patti Raftopoulos

1.3 Terms of Reference of Committee

The Select Committee's terms of reference, as agreed by the Legislative Council are as follows:

To inquire into and report on access to and interaction with the South Australian Justice System for people with disabilities, their families, carers and support networks, namely –

- (a) participants' knowledge of their rights;
- (b) availability and use of appropriate services supports;
- (c) dealings with the police;
- (d) the operation of the courts;
- (e) how South Australia compares with other states and countries in terms of access to the justice system for people with disabilities and what measures could be taken to enhance participation in and thereby provide people with disabilities with just and equitable access to our justice system; &
- (f) any other related matter.

1.4 Conduct of Inquiry

The Committee received 31 written submissions from individuals and organisations. A list of written submissions is attached at Appendix A.

Oral evidence was heard from 17 witnesses. A list of those who appeared before the Committee is attached at Appendix B.

The Committee met on eleven occasions to receive oral evidence, to consider written submissions and to deliberate on the Committee's report. The Committee's meetings were held in Adelaide.

2. RECOMMENDATIONS

1. Disability Justice Advocates

That at all key stages of a person's contact with the criminal justice system – from policing to post-imprisonment community corrections – a person with disability should have access to and recognition of one or more independent third parties to act as their Disability Justice Advocate.

The role of the Disability Justice Advocate is to support a person with disability to be aware of and exercise their legal rights.

The person could be a family member, a carer, a disability services case manager, a communications specialist, an independent advocate or a trusted friend. Although they may be a legal practitioner, their role as a Disability Justice Advocate would not be as a legal adviser.

A Disability Justice Advocate would be nominated, whenever possible by the person with a disability, or otherwise arranged and should pursue supported decision making.

While there should be basic prerequisites for a person to be appointed as a Disability Justice Advocate, a pool of suitably trained people should be maintained on a similar basis to the Registered Intermediaries operating in the United Kingdom.

2. Mandatory Reporting

That an appropriate model of mandatory reporting of abuse and neglect be introduced for people working with people with disability.

3. Community Education

That the Legal Services Commission consider how its community legal resources could be presented in ways which are more accessible for people with disability, particularly in easy English.

4. Legal Education

That the University Law Schools, the Law Society, the Bar Association and the Courts Administration Authority provide training within tertiary education courses and continuing professional development which build the skills of the legal profession to understand the needs of people with disability and the needs related to the law.

5. Police Training

That SA Police provide general training and continuing professional development which builds the skills of the police force to understand the needs of people with disability.

6. Alerts

That organisations promoting awareness of disability consider providing appropriate tools to people with disability who can then use these tools to alert people in the justice system that the person has a disability.

The item could be a card, a key ring or a bracelet and could be supported by contact numbers and on-line information.

A list of persons with disability should not be maintained.

7. Expiation Notices

That a review of the impact of expiation notices on people with disability be undertaken to seek ways to protect people who may not have the capacity to plead in any event and to ensure that expiation notices are being used effectively in reducing reoffending in the community.

8. Evidence Act

That amendments to the Evidence Act to increase the opportunity for people with disability to provide admissible evidence, including those currently subject to consultation through the Disability Justice Plan, be brought to the Parliament as soon as possible.

3. EXECUTIVE SUMMARY

3.1 Participant's knowledge of their rights

Submissions to the *Select Committee on Access to and Interaction with the Justice System for People with Disabilities* (hereafter referred to as "the Committee") raised concerns about the structure of South Australia's justice system.

Evidence indicated that people with intellectual and/or cognitive disabilities, in particular, are not provided with relevant and easily understandable information about their rights, both as victims and as offenders. This lack of understanding leaves people with intellectual and/or cognitive disabilities more vulnerable to abuse.

The Committee also heard that, due to communication difficulties, many people with intellectual and cognitive disabilities have problems not only understanding the complex language used in the legal system but also expressing themselves adequately in justice proceedings.

Some evidence suggested that people with intellectual disabilities tend to be overly compliant, easily intimidated and prone to confusion, and tend to be highly susceptible to suggestion, influence and coercion. Their experience of the justice system is often one of fear, anxiety and powerlessness.

Witnesses before the Committee argued for timely access to professional and independent advocacy support during all steps of the process – from police interviews through to appearing in court.

Witnesses also stated that there needs to be community education and training programs aimed specifically towards those with intellectual disability, to assist them to understand their rights. These programs need to use a teaching method that is appropriate to the person's rate and mode of learning and allowing for their capacity to retain information.

3.2 Availability and use of appropriate service supports

Evidence presented to the Committee indicated that having well trained support persons available to assist people with disabilities is critical to their understanding of and interaction with the justice system. Witnesses stated that core procedures within the justice system need to be refined to allow an advocate chosen by the person to provide support at all key stages of the person's interaction with the criminal justice system.

Establishment of an official system for registering and contacting people qualified to facilitate augmentative and alternative communication methods was also raised. These people could help ensure that people with disability are informed of their rights and supported in asserting them. The system would be run either by a specifically created body or under the auspices of an appropriate existing body.

Early intervention crime prevention programs were raised as being critical to reducing victimisation of people with disabilities. Such programs would include appropriate screening of persons who seek employment in the disability sector. Witnesses to the Committee expressed concerns about the current processes for reporting individuals with prior history of abuse, and about transparency and disclosure processes in the current system. Witnesses argued that mandatory reporting be introduced through legislation to ensure vulnerable persons are protected.

Evidence was presented to the Committee regarding the need for lawyers to have specialised training to increase awareness and understanding of disabilities, and thus give people with disability the most effective representation.

3.3 Dealings with police

Witnesses described inadequacies in the interviewing style of police and the level of understanding police have of people with intellectual and/or cognitive disabilities.

A large number of the submissions suggested that all police officers should be provided with training to enable them to better understand the implications of living with an intellectual disability, cognitive impairment and/or a communication disorder.

Witnesses strongly argued for a review of police procedures to ensure that alleged offenders living with disability receive the appropriate support to enable them to understand what is being discussed and the significance of actions, such as signing a record of interview or surrendering the right to silence.

Furthermore, evidence indicated that people living with intellectual disability or cognitive impairment or related circumstances should not be questioned by police without a familiar and trusted person being present. The person with disability should be treated with tact and sensitivity.

It was suggested that information pertaining to victims of crime should be retained by police so that it is available to police officers in the event of future crimes.

3.4 The operation of the courts

Witnesses to the Committee voiced frustration at the lack of awareness and empathy shown by court officials within the court process. Evidence was presented that the courts should explore and develop procedural options for appropriately supporting people living with intellectual disability or cognitive impairment so they can give authentic and reliable testimony. This may include the participation in court of a trusted significant other or interpreter who can contribute to the court's understanding of the person's testimony.

Witnesses consistently expressed the view that, in order to address these issues, large scale reform is required. Reform could include providing juries with briefings and associated reference materials on disability at the commencement of trials, to assist them to understand the individual with disability giving testimony. Furthermore, it was suggested that judges, magistrates, barristers and lawyers should be provided with adequate training in engaging in court with people living with intellectual disability or cognitive impairment or related circumstances. Such training should have an emphasis on assessing and identifying appropriate support to enable the person to fairly engage with the justice system in a manner which upholds their rights.

The Committee heard evidence suggesting that there should be included in statute a clear and specific right for individuals with communication difficulties appearing before a court or tribunal to utilise an alternative communication mode of their choosing.

Other issues raised were in relation to physical access to courts by persons with disabilities, including the lack of appropriate ramps, hearing loops in court rooms, and braille signage.

3.5 How South Australia compares with other states and countries in terms of access

The evidence submitted indicated that South Australia is trailing the other states and other countries such as England and Wales, in terms of providing appropriate and adequate services to people with disabilities to support their access to and interaction with the justice system.

For instance, in New South Wales and the United Kingdom onsite medical staff are able to provide a preliminary assessment of a person with disability's situation as soon as they are in custody.

In New South Wales, s.66F of the *Crimes Act 1900 (NSW)* makes it an offence for a person who is providing care to a person with disability to have sexual contact with the person under their person care, despite consent. New South Wales also have a Mental Health Intervention Team comprised of specially trained police officers who can call on the assistance of case officers and medical officers to assist.

In the United Kingdom registered intermediaries are used in the court system to assess an individual's communication skills, and advise police, lawyers and judges how to best communicate with them.

Witnesses proposed that similar supports were raised by witnesses to be implemented in South Australia.

3.6 Any other related matter

Witnesses described a chronic inadequacy of the prison system, which is not equipped to deal with intellectually disability.

Witnesses expressed the view that urgent review of current South Australian legislation is required to remove or replace content that may be contributing to a view that people living with certain types of disability are deemed unreliable witnesses. It was submitted that legislation needs to be revised to acknowledge that any person living with disability has the potential, with appropriate support where necessary, to give authentic testimony.

The Committee also heard evidence about the progress of the Disability Justice Plan and the supports being put in place to assist people with disabilities, including proposed changes to the *Evidence Act 1929*. The proposed changes seek to improve the way the criminal justice system responds to vulnerable victims and witnesses, to enable guidelines for the taking of evidence from vulnerable victims and witnesses, and put processes in place to ensure that all relevant persons are adequately trained to better understand the needs and rights of people with disability.

CONCLUSION

In summary, evidence was presented to the Committee that people with disability experience all forms of crime. More people with disability, however, are victims of crime than is disclosed by official crime statistics because crime against these people often goes unreported (Commissioner for Victims Rights, submission page 2).

In addition, witnesses consistently expressed the view that appropriately trained people should be available to explain rights to victims, help them to exercise those rights, and when necessary, serve as their representatives in pre and post court proceedings. These include support persons, carers, advocates, police, lawyers, court staff and magistrates/judges (Commissioner for Victims Rights, submission page 6).

4. THE INQUIRY

4.1 TERMS OF REFERENCE (A) – KNOWLEDGE OF RIGHTS

Context

United Nations Convention

Australia has obligations to people with disability at international law.

Those obligations were reinforced by the ratification of the United Nations *Convention on the Rights of Persons with Disabilities* by Australia in July 2008.

The Convention aims to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity’.

The *Convention on the Rights of Persons with Disabilities* states that the parties agree to take all appropriate measures to ensure freedom of expression including: “accepting and facilitating the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” (Communication Rights Australia, submission page 14).

The Convention specifically recognises the rights of persons to equality before the law in Articles 5 & 12. Appropriate steps must be taken to ensure that reasonable accommodations are provided to ensure the equality and non-discrimination of persons with disabilities before the law: Art 5(3) *Convention on the Rights of Persons with Disabilities* (Coalition for Disability Rights, submission page 3).

National Disability Strategy

In early 2011, the Council of Australian Governments (of which the Government of South Australia is a member) endorsed the *National Disability Strategy 2010-2020*. The Strategy is a ten-year framework that commits all Australian governments to implement the goals of the UN Convention by continually improving the lived experience of people with disability.

Strong Voices

In South Australia, the Social Inclusion Board released its report *Strong Voices: a Blueprint to Enhance Life and Claim the Rights of People with Disability in South Australia (2012-2020)*, in October 2011. The report includes thirty-four recommendations on strengthening rights, protection, advocacy and safeguards for people with disability (Improving the criminal justice system for people with disability – AG Discussion Paper for Consultation May 2013, submission page 4).

In response to concerns about the vulnerability of those with disability, the Social Inclusion Board recommended the development of a Disability Justice Plan. Recommendation 19 of the *Strong Voices* report states:

“The safety and protection of people with disability must be recognised as a priority across the criminal justice system. The Government must develop a comprehensive Disability Justice Plan in consultation with people with a lived experience with disability, the Public Advocate, and the Health and Community Services Complaints Commissioner”. The plan must ensure adequate resources are committed to prioritise the investigation and timely prosecution of crimes against people with disability; more effort on prosecution of matters where a person with disability is an alleged victim; and increased support for vulnerable witnesses, particularly children (Improving the criminal justice system for people with disability – AG Discussion Paper for Consultation May 2013, page 4).

Disability Justice Plan

The Disability Justice Plan is being developed by the Attorney-General's Department to safeguard the rights of all people with disability in their interactions with the criminal justice system. The Plan will include proposals to change the *Evidence Act 1929* to improve the way the criminal justice system responds to vulnerable victims and witnesses.

The Attorney-General's Department has established a steering group to coordinate the development of the Plan. The group contains a broad cross-section of members from both justice agencies and broader government agencies. The intention of the Disability Justice Plan is to safeguard the rights of all people with a disability and their interactions with the justice system. It was expressed that, while legislation is important in this area, for it to be successful a range of processes need to be put in place (Transcript 20 Nov 2012, page 45 – Ruth Ambler, Exec Director, Strategic Policy and Organisational Performance, Attorney-General's Department).

Witnesses stated that the plan will address:

- early identification, diversion, and support for people with disability at risk of contact with the justice system (whether they are victims, witnesses, defendants or offenders);
- early intervention and prevention;
- the need for training and education for staff who interact with people with disabilities in the criminal justice system;
- development of more effective responses for people with disabilities with complex needs or heightened vulnerabilities, including the needs of women, children, Aboriginal people, people from culturally and linguistically diverse backgrounds and people with coexisting disorders such as mental illness and substance abuse (Minister for Disabilities, submission page 6);
- development of best practice guidelines for the taking of evidence;
- recommendations for further changes to legislation; and
- improved collection of statistical data by criminal justice agencies.

The Attorney General's Department is engaging in broad community consultation on the Plan, with:

- a series of public meetings in Adelaide, Mount Gambier and Port Augusta;
- online and hardcopy submissions;
- a phone line;
- information in plain English; and
- in limited cases one-to-one meetings.

The Committee was advised that the police and the Director of Public Prosecutions have been engaged to discuss continuous improvement processes, based on evidence in relation to investigative interviewing. Furthermore, it was indicated that the Chief Justice is supportive of training being provided to judicial officers (Transcript 20 Nov 2012, page 45 – Ruth Ambler, Exec Director, Strategic Policy and Organisational Performance, Attorney-General's Department).

The work of the Steering Group will be limited to contacts with the criminal justice system, including people with a disability as victims of crime, and offenders, who may need special assistance when interviewed by police and taken through the court process (Transcript 20 Nov 2012, page 48 – Ruth Ambler, Exec Director, Strategic Policy and Organisational Performance, Attorney-General's Department). Furthermore, it was submitted that the Attorney General's Department will have an ongoing monitoring role (Transcript 20 Nov 2012, page 49 – Ruth Ambler, Exec Director, Strategic Policy and Organisational Performance, Attorney-General's Department).

Next Steps

The Committee trusts that its work is a useful contribution to these ongoing developments and is keen for the evidence provided to it and its own report to contribute to the final form of the Disability Justice Plan.

Understanding of rights, offences, & susceptibility to influence

People with a disability, like every other citizen, have a responsibility to know their rights and to express and assert them. However, the Committee heard that there is a persistent problem in that disability services and the general public do little to help people with disabilities be aware of this responsibility, and to practice and exert their rights consistently. As a result, many people with disability are not aware of their rights and may have limited opportunities to learn how to assert them. Assertion of rights may be a complex and effortful process for people with disabilities, with the result dependent on the perceptions, attitudes and understanding of the individuals and the system in which they are being asserted (agosci inc. submission, page 4).

National and international research indicates that people with cognitive impairment often lack knowledge and understanding of their rights and what constitutes abuse. In particular, they may have limited knowledge about sexuality and sexual rights. They are less likely to understand terms describing types of sexual assault and to know what to do or how to make a report in situations where they may feel compromised (Minister for Disabilities, submission page 1).

An individual may not know when they have been wronged, and even if they do, they might be ashamed or confused. Sexual assault “may be experienced as shameful and, like others, people with disabilities may be deterred from disclosure because of their feelings of shame and stigma associated with the assault” (Murray & Powell 2008, page 5). Victims may be worried that they will not be believed. Perpetrators might threaten victims, or in other ways exert influence over victims. Non-offending family, friends and carers in the victim’s social support network might not believe the victim when they disclose offences. They might not understand the victim, or might hold misconceived ideas about the victims’ disabilities (Commissioner for Victims Rights, submission page 3).

Other evidence provided to the Committee indicated that the vulnerability that individuals with an intellectual disability often experience means that it is difficult for them to understand what others are saying and difficult for them to explain or respond to questions. Information about a person’s rights may not be explained in a way that they can readily understand. A person with intellectual disability is at increased risk of being questioned, charged and convicted for an alleged offence due to a lack of understanding of their rights and or capacity to respond in their own best interests, for instance asserting the right to silence (Independent Advocacy SA, submission page 2).

There was a strong focus in submissions on people with communication disabilities being very likely to have problems understanding the complex language used in the legal system, difficulty expressing themselves adequately due to limited vocabulary and the inability to generate meaningful sentences. It was put to the Committee that it is critical that people with communication disabilities are given every opportunity to understand the investigative and legal processes and are supported to provide accurate information to ensure that their rights are upheld (Speech Pathology Australia, submission page 2).

A 2003 report from the NSW Disability Council noted that “it is widely reported that people with disabilities are over-represented as victims of crime, especially as victims of violence, fraud and sexual assault” (Victim Support Service, submission page 2).

Evidence provided to Committee, indicated that people living with an intellectual or cognitive disability are more likely to be arrested, questioned and detained for minor public order offences. Furthermore, they may experience disadvantage when questioned by police, when reporting a crime against them, or when dealing with the court system because of a lack of understanding regarding what is happening, what is being said, and their rights (Julia Farr, submission page 9).

Evidence was provided to the Committee in relation to a person with an intellectual disability who was assaulted, and initially did not want the case to be investigated. However, later, when the case was reviewed again by SAPOL, when the client was advised about the investigation and about the possibility of charges being made, they wanted the police investigation to go ahead and to have the person who had assaulted them punished for what had happened to them (Transcript 20 Nov 2012, page 39 – Ms Keville, Advocate Guardian, Public Advocate).

Furthermore, witnesses consistently expressed the view that vulnerable individuals with intellectual disabilities are more likely to be compliant when faced with authoritarian processes and more likely to admit to an offence they did not commit (Independent Advocacy SA, submission page 2). Witnesses highlighted that the reason for this is that they are easily intimidated and prone to confusion (Coalition for Disability Rights, submission page 2). This evidence is supported by carers who indicated that “because people with disability want to be liked and accepted as human beings, they often say 'yes, yes, yes,' and they get sent off to gaol which is totally inappropriate, particularly when they have done nothing wrong” (Transcript 5 June 2012, page 4 – Mrs A, a carer).

Witnesses reiterated the fact that all people have a right to silence during questioning by police, and that police should caution a person who is accused of an offence, yet are under no obligation to take special measures to make sure that it is properly understood. For a person living with an intellectual disability or cognitive impairment, any caution may contain language and concepts that are unfamiliar to the person. He or she may not understand that they are lawfully entitled to say nothing. Similarly, a person may not comprehend the implications of signing a written statement and police are under no obligation to ensure that the person understands the statement before he or she signs it (Julia Farr, submission page 13).

Evidence was also put to the Committee that it is not always easy to recognise that a person does not understand, as there are often no obvious characteristics that indicate impaired ability to understand. Furthermore, people living with intellectual disability or cognitive impairment or communication disorders do not routinely identify themselves as having a disability as they usually wish to be seen as ‘normal’ (Julia Farr, submission page 11).

A similar problem was identified where offenders with intellectual disabilities are placed on licences which require compliance with a number of conditions. Licensing assumes that the person has the capacity to meet the conditions, but may fail to recognise potential limitations. Evidence showed that some individuals struggle to plan ahead, confuse dates and times, can’t calculate periods of time or distance and may rely upon others for assistance. If any of these things fail, for instance in relation to reporting, the person is further disadvantaged (Independent Advocacy, submission page 4).

Julia Farr Association recommends that all police officers should be provided with training to enable them to understand the implications of living with an intellectual disability or cognitive impairment and the implications of a communication disorder, and what this means for officer practice during the whole process (Julia Farr, submission page 14).

Community Education

Witnesses provided a strong case that community education for people with disabilities, with a focus on increasing their awareness of their rights both as victims of crime, but also more generally in regards to relevant legislation, would assist people with disabilities to understand their rights (Victim Support Service, submission page 4). Further, it was submitted that consideration should be given to programs to develop self-determination, understanding of rights, self-advocacy and appropriate sex education (including access to vocabulary) in the first instance, in order to reduce vulnerability (agosci inc. submission, page 11).

However, the Committee heard evidence that because people with intellectual disabilities are often less able to learn in groups. Lacking typical learning experiences, their ability to learn in groups may be minimal. Witnesses reported that the majority of supports and services for people who are vulnerable or disadvantaged are very short term. It was submitted that a person with intellectually disability may take longer to absorb and retain information than the average person and therefore any training and education supports should be expected to take longer (IA transcript, page 60). This is supported by a Carer who gave evidence that “people

who have cognitive impairment need time to process information. They can and they do learn, but at a slower pace than many others” (Transcript 5 June 2012, page 10 – Mrs B, a carer).

Legal Services Commission (LSC) staff reported that clients with disability are less aware of their legal rights, either as a consequence of their disability, or due to lack of information being provided by appropriate authorities, or both. The LSC has found it especially difficult to establish links with the hearing impaired community in order to disseminate information about legal rights (LSC, submission page 2).

Submissions raised that it is often important for independent advocates to attend courses along with people who have an intellectual disabilities, so that they can assist interpretation of material presented in the course (IA transcript, page 56). An example was given by Independent Advocacy services in their submission that often parents with disability neglect their young by omission, as they do not have an understanding of how to parent. Evidence was provided that there are currently no supports or services in place aimed at teaching parents with an intellectual disability crucial parenting skills at a slower pace over a longer period of time to assist this learning (IA transcript, page 53). Another example given was that of a woman who was deaf, and who had her child taken away. She was given a court order to attend a parenting class, however because an interpreter was not provided, she was not able to participate in the class (IA transcript, page 55).

Overall evidence revealed that training and awareness programs should be made available for people with disabilities to learn and understand their rights, self-protective behaviours, ways to report and talk about abuse or mistreatment, in a way that is appropriate for their learning style and pace. Witnesses argued that making communication assistants available, as a program implemented by the government, would have a valuable role to play in promoting access to health, social services, advocacy, education, and many other areas (agosci inc. submission, page 10).

4.2 TERMS OF REFERENCE (B) – AVAILABILITY AND USE OF APPROPRIATE SERVICES SUPPORTS

Risk Minimisation

The Committee heard evidence that engagement in criminal activity can be a feature of the transition from school to adulthood if appropriate employment and support services are not available. This is exacerbated if a vulnerable and socially isolated person with a disability engages with other vulnerable and disengaged people. The Coalition for Disability Rights' argues that there is an immediate need to boost support for disability service providers to support clients in early intervention programs (Coalition for Disability Rights, submission page 4).

Early intervention crime prevention is critical to reducing the victimisation of people with disability. Interventions to reduce risk of victimisation such as more thorough screening of people who seek employment in the disability sector are necessary to prevent people with disability becoming victims of crime. This is more effective than attending to their needs as victims (Commissioner for Victims Rights, submission page 5).

Mandatory Reporting

Witnesses argued that mandatory reporting to police of violent offences within disability services and other places such as aged care facilities could improve disclosure and the recording of offences. This would enhance knowledge about crime against people with disability, especially against people with cognitive impairment (Commissioner for Victims Rights, submission page 4).

Minda also has a training program for its staff which teaches them about the importance of reporting. The Committee heard that establishing a good reporting culture takes a lot of effort by all involved, including changing management and educating staff. Disability workers, unlike nurses and other health professionals are not registered, yet the requirement for these people to be of good character and have no prior criminal history is absolutely the same (Transcript 20 Nov 2012, page 36 – Dr Brayley Public Advocate).

An example was given where an individual had been found guilty of indecent assault of boys in his care. He completed his sentence in Victoria and was then transferred to South Australia. The witness explained that the police check showed no prior offence and he was allowed to act as a care worker. Witnesses strongly recommend that new legislation be drafted to include that personnel at all levels of seniority be prosecuted for not revealing a prior criminal history if it is known to them in order to protect vulnerable persons that may come into contact with them (Antoinette Edginton page 83 transcript 24 April 2013). It was stated that if it was known that a person has a criminal history of abuse, and if a police check has been done and the organisation is aware of that, then the organisation is responsible to act to prevent further abuse from occurring (Bressington - Antoinette Edginton page 83 transcript 24 April 2013).

Advocacy and Support

Julia Farr Association has reported that the assessment of support needs of people living with disability seldom occurs in the criminal justice system without a special order. This means there is a risk that there will be people living with disability in the justice system who are not being adequately supported because the circumstance of their disability has not been identified or addressed. Therefore, Julia Farr Association submitted that core procedures within the justice system be refined so there is attention to the possible need for a support worker (or significant, trusted other) familiar to the person to be in attendance at all key stages of the person's connection with the criminal justice system (Julia Farr, submission page 15).

In many cases, people with intellectual disabilities and communication difficulties rely on family members or attendant workers to share information and advocate on their behalf. This may be problematic where a person's rights are being limited or abused by someone who is part of the support network on whom they rely. As some people with disabilities are highly dependent on others for support and assistance in basic matters such as mealtime support and personal care, when called upon to speak out or exercise their rights they may be

reluctant to do so due to perceived vulnerability or the risk of compromising their ongoing care (agosci inc. submission, page 4).

The Committee heard evidence that people with disabilities may be more prone to abuse than the general population given their reliance on carers, and that this abuse can be physical, financial or emotional. They are often dependent on their carers to be able to make a report to police (i.e. to travel to a police station, to use a telephone) and may also be dependent upon others to provide them not only with information about their rights, but also to access appropriate vocabulary to be able to discuss and report abuse (agosci inc. submission, page 5).

This evidence was supported by the Commissioner for Victims Rights who reported that family members who may perform carers' duties may be the perpetrators of crime against people with disability. Carers such as staff in residential care facilities or disability support services are also frequently perpetrators. Perpetrators can be direct care staff as well as peripheral staff (Commissioner for Victims Rights submission page 2).

While the value of independent advocacy services was highlighted, evidence showed that many disability advocacy organisations struggle financially, with limited staff, increasingly complex demands, and an environment of spiraling costs (Coalition for Disability Rights, submission page 5).

Mary Woodward, a British speech pathologist now living in Sydney, indicated in her submission that she had trained with the Ministry of Justice to work as a Registered Intermediary - a special measure available to witnesses who were considered vulnerable due to youth or communication difficulties such as mental health disorders, intellectual disabilities and dementia. The role of Registered Intermediaries is to enable their client to participate more effectively in the investigative and trial process. As an intermediary, it was her role to assess the individual's communication skills and then advise the police, lawyers and judges as to how best to communicate with them. She attended the police interview and trial and facilitated communication between the individual and the justice professionals (Woodward, submission page 1).

Some submissions indicated that staff who are supporting clients in the community often lack training. An example was given where a support worker sitting in on an interview made no attempt to obtain legal advice for their client. Witnesses argued that instances like this indicate that staff across the board need to be trained in the steps they need to take on behalf of the individual (LSC transcript, page 66). However, overall the submissions indicated that people with disability who have used independent third persons feel a greater understanding of their rights, power and accountability (Transcript 20 Nov 2012, page 41 – Dr Brayley Public Advocate).

Having access to independent and professional advocacy and support (or registered intermediary) at all stages of the process as needed would increase the understanding of a person with disability (NDS, submission page 3).

Evidence revealed that supported decision-making (SDM) is one approach available to support people who may need help with decision-making because of a disability such as brain injury, stroke, intellectual disability or any other neurological condition. It reflects an element of the UN Convention on the Rights of Persons with Disabilities that people living with disability should be assisted to make their own decisions wherever possible. The Committee heard that SDM is being piloted in South Australia through collaboration between the Office of the Public Advocate and the Julia Farr group of agencies to assist people living with disability to make decisions and provide testimony throughout the judicial process (Julia Farr, submission page 19).

Communication Assistance

Evidence provided to the Committee showed that people living with disability may require appropriate tailored support in order for them to understand what is being communicated and to respond effectively. The need for support arises across a range of disabilities – communication, sensory and cognitive. This may include having a person present who is familiar with the person's communication style, such as a communication board or providing a hearing loop, or ensuring that questioning occurs in time-limited periods to manage fatigue, etc (Julia Farr, submission page 13).

Similarly, Communication Rights Australia indicated that, when supporting someone to report a crime, appropriate advocacy should include explaining to the individual their rights in a way that they understand, supporting the individual to have the means to communicate and report the incident, and to respond to police during police interviews. Ensuring access to a skilled communication service where required was also raised as important to ensuring the victim understands all of the processes which will occur and the possible outcomes (Communication Rights Australia, submission page 6).

The Committee was advised that multi-modal communication systems used by those with complex communication needs are often complex and highly individual. Specific training or familiarisation is required before their communication partners are able to communicate effectively with a person or interpret their responses (agosci inc. submission, page 5).

Witnesses argued that trained communication assistants should be used in order to ensure that the voice of people with a communication problem can be heard. Police training should give police officers strategies to communicate at a basic level and to identify whether a person may require the support of a trained communication assistant. Early involvement of a trained communication assistant may assist in providing more detailed information to the police while it is fresh in the mind of the person with the communication problem (agosci inc. submission, page 6).

Agosci inc. reported in their submission that to their knowledge, there are no specific services available in South Australia to act as an intermediary for people with complex communication needs to access services. Evidence was heard that those in this situation would typically use a family member or personal attendant (at their own cost) to assist in this process. Witnesses argued that this is particularly problematic where the offender is a relative or carer, and where it may compromise the relationship that person has with the person supporting them. This evidence supports the need for independent communication assistants.

Providing access to independent communication support workers would also provide a valuable tool for police investigations. An example was provided to the Committee where an individual with cerebral palsy and little speech alleged sexual abuse and sought access to the criminal justice system. However, the absence of an independent communication support worker service meant that the individual's first statement to the police was made with their parent providing the communication support. Due to the individual's embarrassment over the subject matter, incomplete evidence was given which then became problematic, requiring further statements to be made and explanations to be given in court. In addition, the accusation was against a carer (Communication Rights Australia, submission page 8).

Witnesses submitted that the ability to access an independent and ongoing communication support worker if required would assist those people unwilling or unable to have people close to them act in this role. Recourse to an independent communication support worker could also enable individuals to engage more fully in seeking justice through methods other than the formal justice system, such as presenting their position directly to lawyers, trustees or others they may have a difference of opinion with (Communication Rights Australia, submission page 18).

The Committee heard that, in South Australia, disability agencies such as Disability Services SA and Novita Children's Services provide the main support to people with complex communication needs. Although these people have access to therapy support through these publicly funded disability agencies, evidence was provided that these services are extremely limited (agosci inc. submission, page 5).

Case Management

In South Australia, individualised case management services are provided through Community and Home Support SA – Disability Services supports clients of disability services to assess, plan, implement, coordinate, monitor and evaluate the options and services required to negotiate criminal proceedings, including interaction with police (Minister for Disabilities, submission page 3).

The Exceptional Needs Unit (ENU) is a South Australia wide program of the Government of South Australia that provides assessment and advice for people with complex needs, including people with disabilities, mental health conditions, and chronic health problems, in contact or at risk of contact with the criminal justice

system (Minister for Disabilities, submission page 1).

The Aboriginal Prisoner and Offender Service provides supported accommodation arrangements for Aboriginal people. The services seek to maintain accommodation services for Aboriginal people who often have complex issues related to drug and alcohol, mental health issues or brain damage (Transcript 26 July 2012, page 28 – Witness Dr Caudrey, Exec Director Disability, Aging and Carers).

The Role of Lawyers

Witnesses provided evidence to the Committee that intellectual disability and mental illness is a significant risk factor to community exclusion, often co-existing with homelessness, crime, domestic violence, family breakdown, drug use and death. These realities underlie much of what the legal profession confronts on a daily basis, yet lawyers are not given any training or assistance in addressing these issues in practice (Michael Hegarty, submission page 21).

An independent legal practitioner indicated that legal practitioners in many instances appear to have no understanding of mental health issues or how to recognise them. Witnesses argued that training needs to be provided to the legal profession to appraise them of the issues and appropriate ways of dealing with people with intellectual disability, as the current legal education does not require the study of human behaviour as a component of a law course (Michael Hegarty, submission page 15).

It was raised that disability awareness should be a component of legal education for lawyers, along with introductory training and continuing education for all criminal justice professionals to address victims' rights and needs, and incorporate involvement from victims or people who work with victims (Commissioner for Victims Rights, submission page 5).

Furthermore, witnesses expressed disappointment with the limited amount of time lawyers often spend with a person they are representing. The Committee heard that lawyers often do not meet with the person until five minutes before going into court. Evidence was presented that when there was an opportunity to get an appointment well in advance of a court matter, this assisted the lawyer to understand the response of a person with an intellectual disability to questioning, and also to assist the person to understand what the lawyer is saying (IA transcript, page 59).

Evidence was given that where a client is deaf and requires an interpreter for the legal interview, the amount of time booked for the appointment should be double the normal time provided, to make provision for interpretation (LSC transcript, page 73).

Overall, the LSC submitted that it has found that many clients present with a series of legal problems which are connected to their disabilities, particularly where a disability has a sudden onset after an accident or illness. Such persons often find that their disability leads to unemployment, and then to debt and housing crises, and increases the risk of criminal activity or antisocial behaviour. In general, the LSC submitted that there is a need for greater education about disabilities for court officers at all levels, legal practitioners and police officers (LSC, submission page 1).

Independent Advocacy reported that lawyers are most often resistant to the involvement of a social advocate, however when they do engage with advocates the outcome is always better for the person and the lawyer is invariably better informed. Independent Advocacy also reported that knowing the person well is essential to serving them well – lawyers and other services don't often take nor have time to get to know vulnerable individuals and the involvement of Independent Advocacy is helpful in these situations (Independent Advocacy SA, submission page 3).

The Coalition for Disability suggests that prosecutors and their instructing solicitors would also benefit from training in how to manage the needs of witnesses who have an intellectual disability or cognitive impairment, in particular, how to conduct a pre-trial conference, especially where the prosecution is considering discontinuing a matter (Coalition for Disability, submission page 11).

The NDS provided evidence to suggest that disability competency training for new and existing legal

practitioners to ensure that services and communication mechanisms are sensitive and responsive to the needs of people with disability in the justice system is required (NDS, submission page 4).

Overall, evidence presented to the Committee indicated that, as compliance laws, legal obligations and rights can be quite complicated, further funding and resources needs to be provided to establish high standard training and information sessions for legal practitioners. This training needs to provide a detailed step-by-step guide to communicating with people who have an intellectual disability or cognitive impairment. Training programs need to involve people with disability and disability service providers to ensure that consistent and accurate information is being provided.

Witnesses argued that the South Australian Government should implement disability competency training to new and existing legal practitioners to ensure that services and communication mechanisms are sensitive and responsive to the needs of people with disability in the justice system (NDS, submission page 4).

The LSC currently has two dedicated senior criminal barristers who represent and defend persons with brain injuries, intellectual impairment or serious mental illnesses against criminal charges. The Minister for Disabilities advised that the LSC solicitor has an excellent understanding of the difficulties people with disability face when confronted with the legal system and the challenges which that system faces in supporting them (Minister for Disabilities, submission page 2).

The LSC currently has a legal adviser allocated to assisting people with disability by providing general legal advice. This officer provides advice on a range of matters to people with disability and their carers, including in circumstances where the person with disability has been the victim or perpetrator of a crime. The Committee heard that in recognition of the difficulties faced by people with disability in the justice system, minor legal assistance is provided by the LSC to clients with disability which is not provided to other clients. Such assistance may involve support in preparation for a self-represented matter, completion of forms and other documents and writing letters. The Child Support Unit of the LSC provides assistance to adult children with disabilities and their carer parent seeking a continuance of income support from the non-custodial parent after the child has turned eighteen, where the parents are divorced or separated (SACOSS, submission page 2).

Reporting

Evidence presented indicated that a range of stakeholders that receive government funding such as SA Police, Courts Administration Authority and the Director of Public Prosecutions, should be required to report on an annual basis on their efforts to improve services to people with disabilities (Victim Support Service, submission page 5).

4.3 TERMS OF REFERENCE (C) – DEALINGS WITH THE POLICE

National and international research shows that criminal procedures, including the interface with the police and the courts, often pose significant difficulties for people with disability, particularly intellectual disability. People may experience difficulties with verbal and written communication, comprehension, and expression which can make the process of understanding proceedings and completing paperwork more difficult (Minister for Disabilities, submission page 3).

Recognising Mental Illness and Disability

Witnesses reported that often police do not realise that a person has a disability.

One witness reported an incident relating to their adult son with an intellectual disability and a schizophrenic disorder. The son was standing in the street in the rain yelling incoherently. It was put to the Committee that if attending police had undertaken mental health training they might have recognized that there was a mental health issue, and could have dealt with the situation more appropriately than by charging the person with an offence. The witnesses expressed that if this person's parents had been contacted they would have been able to explain the situation.

LSC staff in the advice area reported that hearing impaired clients, in particular, have problems dealing with police officers. Police are usually not aware that the person is deaf or may not believe that the person is deaf in spite of official documents such as a driver's licence (SACOSS, submission page 4).

Ms Christina Rainville, Chief Deputy State Attorney at Bennington County, Vermont considered that it was key to have procedures in place to identify children whose disabilities are "invisible". She had found that the interviews of many children are not successful because no one realized that the child has a disability and in need of accommodations in the interview. A child may only be able to provide responses in writing or by hand-signals or gestures.

She said "children on the autism spectrum may be very high-functioning, may excel at school, and may present as "normal" during an interview. But these same children might shut down because of sensory issues that the investigators do not know about, such as a sensitivity to the sounds made by fluorescent lights, or smells coming from the kitchen down the hallway."

For these reasons, Bennington County has modified its practice so that we inquire about a child's disabilities, and learn as much as possible about the disability prior to the interview so that appropriate accommodations can be offered.

The Committee heard consistent evidence that young people entering the criminal justice system in any capacity (as witness, victim or perpetrator) should undertake an initial screening to identify whether a communication disability exists and they should then be provided with the specialist services they require. Furthermore, professionals working with people with a communication disability who come into contact with the justice system should receive communication skills training and education (developed by speech pathologists) (Speech Pathology Australia, submission page 6).

Witnesses presented strong evidence to the Committee suggesting that there is a need for early assessment of people who have psychiatric or intellectual disabilities or brain injuries. If an assessment identifies the person as having a disability when they first come into contact with the criminal justice system, as they enter police custody for example, they can be diverted to a more appropriate place for treatment or support (LSC, submission page 2).

Witnesses argued that better understanding of the communication issues of people with intellectual disability is required. Referrals should be made to experts to assist with communication where need be. Recognising people's limited concentration and recognising that, for some people, their memory of events can be sound soon after an alleged assault would assist police to better interview these people (Transcript 20 Nov 2012, page 34 – Dr Brayley Public Advocate). Providing police with more general training may overcome some of these issues.

The Committee heard evidence from the LSC that the issue of bail conditions for people with intellectual impairment is another area of concern, given the limited ability of people with intellectual disability to comply with bail conditions, either in terms of understanding them or in terms of remembering them. It was heard that the police often do not make allowances for disability when imposing conditions, such as a curfew, which is often difficult for cognitively impaired persons to comply with (LSC transcript, page 65).

Witnesses argued for police to have access to a database which lists persons with a mental illness and contact details of person who assist them. In addition, on a voluntary basis people who experience mental health issues could be encouraged to wear something similar to a medic alert bracelet (Wishart, submission page 1).

The Committee heard that stakeholders such as SA Police, Courts Administration Authority and the Office of the Director of Public Prosecutions should receive further and ongoing training in both generic and specific disability awareness (i.e. communication and interviewing skills, understanding facilitated communication) (Victim Support Service, submission page 5).

Witnesses also highlighted issues with information in relation to victims of crime with an intellectual disability held by police not being retained such that it was available to police officers in the event of future crimes (IA transcript, page 59). An example was given of a woman who had suffered many years of being exploited, abused, and sexually assaulted, but when similar abuse occurred some years later, the police involved earlier were no longer at the division and the previous information had been lost. Witnesses argued that, within the system, there needs to be some way of recording this information, such as a knowledge database pertaining to a victim of crime who also has a cognitive impairment (IA transcript, page 58).

Police Interviews

A range of issues were raised in relation to police interview.

There is concern that police may not understand the impact of living with disability on engagement with justice processes. For example, people living with intellectual disability, cognitive impairment or communication disorders are less able to comprehend information when they are fatigued. A person may need regular breaks in questioning to maintain the person's ability to meet the requirements of police questioning (Julia Farr, submission page 15).

Evidence was presented to the Committee indicating that people with communication disabilities are often difficult to interview. When individuals have difficulty answering questions or retelling events in detail, police may form the view that they are uncooperative, evasive, not truthful and not credible. At the same time, the person's understandable distress and anxiety at being questioned by police can undermine their already impaired communication skills. Witnesses explained that police officers are not trained to identify whether an individual has an intellectual disability, a communication disability or poor oral language competence and reduced literacy. Furthermore, individuals with intellectual disability, communication disability or poor oral language skills can have specific difficulties with memory, suggestibility and acquiescence. Memory difficulties may also cause problems with credibility of an individual's report in interviews as they may have specific difficulties with longer encoding times, understanding and storing information, and recalling and retrieving information about events.

Evidence provided to the Committee indicated that there is no requirement to have someone present when people with intellectual disability are interviewed, whereas with a youth there is an obligation on the police to try to ensure that an adult is present as support. Interviews can go ahead with someone with an intellectual impairment, brain injury or mental illness without a support person present (LSC transcript, p.65).

Witnesses submitted that the way in which questions are asked, the length of questions, how many component parts to the question, the amount of time that has passed between the event and the request to recall it, can all affect how individuals respond. The questioning style used by police can also result in incomplete or inaccurate information being provided by an individual with an intellectual disability (Speech Pathology Australia, submission page 4).

Evidence provided to the Committee also suggested that the interrogation techniques used are often ill-suited to a vulnerable person's level of comprehension. Police often ask closed questions - questions that can only elicit a 'yes' or 'no' answer. A vulnerable person with an intellectual disability is more likely to say yes to a closed question. Open questions offer much greater opportunity to understand what has actually happened and offer the person ways to describe events in their own words. Furthermore, evidence indicated that a vulnerable person may need time to think about a question, to recall information and to give an answer. Where a victim with disability is unable to give accurate information in relation to the chronology or details of events, they may be seen as 'unreliable'. However, the Committee also heard that it is equally common that offences allegedly perpetrated by a person with intellectual disability will be pursued by police and proceed to court in spite of the same limited capacity to give accurate information (Independent Advocacy, submission page 3).

Witnesses strongly argued for training of all police to ask questions that would test someone's cognitive ability if they have a suspicion that someone has an intellectual disability. This extends past asking open-ended questions, as it is often not sufficient to ask 'Do you understand?', as an intellectually impaired person will invariably say 'yes', however on further questioning and asking them to explain to the officer what that means, they may give an answer that indicates their lack of understanding (LSC transcript, page 68).

The setting of an interview might also impact on a person with a disability. For example, a person with an autism-spectrum disorder may experience stress primarily due to the fact that an interview is being conducted in a closed room. The stress may trigger behaviours which could be misinterpreted.

LSC staff in the criminal section reported that persons with mental health problems, intellectual impairment and brain injuries have regular difficulties in dealing with the police. There was a significant amount of evidence put to the Committee to indicate that there is still a culture within policing and society in general, that sees people with intellectual disability as dangerous or unstable (Independent Advocacy, submission page 3). In response to this, Independent Advocacy Services have developed a contact card for vulnerable people to give to police and others when that person needs help. In support of this, the Commissioner for Victims rights reported that a grievance regarding a police response in South Australia arose after officers attended the scene of an alleged rape of a woman with an intellectual disability. The officers did not take statements from other people with intellectual disability present because they would not be able to give evidence (Commissioner for Victims Rights, submission page 3).

Expiation Notices

The Aboriginal Legal Rights Movement ('ALRM') gave evidence that it has a particular concern with expiation notices and the way in which people with intellectual disability and cognitive impairment are unable to access the remedies available under the *Expiation of Offences Act*. Evidence was provided to suggest that if a person is unfit to plead, or mentally incompetent to commit an expiable offence due to intellectual disability, they should not be issued expiation notices. If a person is marginally unfit to plead, and able to admit offences, but at the same time so disabled as to be only to a limited extent morally culpable for their expiable offences, they should also not receive the same punishment under an expiation notice as a person without impairment. It was submitted that their moral culpability and liability to punishment should be reduced for that reason. Despite this, ALRM indicate that the legislation makes no such specific allowance. ALRM's submission included a detailed exposition of and critique of the *Expiation of Offences Act* with recommendations that there be specific provision in legislation to ensure that persons with serious disabilities, or who would qualify as being unfit to plead or who were incapable of committing the offences subject to expiation, ought not to receive expiation notices in the first place (ALRM, page 2 of written submission &, page 75 transcript 24 April 2013).

SACOSS reflects this view reporting that persons with mental health problems, intellectual impairment and brain injuries regularly receive "on the spot" fines from police for minor matters such as loitering and public nuisance offences. As a consequence, many build up a large liability that they are unable to pay (SACOSS, submission page 4). The Hon John Rau MP responded in a letter to SACOSS that he has given thought to the possibility of amending expiation laws so that lower expiation fees would apply to persons dependent on Centrelink benefits, but is currently not persuaded to pursue this.

ALRM stated in its submission that a practical solution to the problem may be for the local Aboriginal Health Service, with the informed consent of the patient, to advise police that it would not be appropriate for that person to receive expiation notices (ALRM page 79 transcript 24 April 2013).

The Committee heard evidence from the LSC that thousands of dollars in on the spot fines for minor offences (such as jaywalking) are still being issued to people, even when it is clear that the person has a cognitive impairment (LSC transcript, page 65).

Training of Police and Others

As outlined above, witnesses expressed the view that people with mental health issues, intellectual impairment or brain injuries have regular difficulties in dealing with the police. Witnesses explained that police are often required to deal with people with mentally health issues, intellectual impairment or brain injuries with limited training and limited medical support (SACOSS, submission page 3).

Witnesses argued that there needs to be more training of police in identifying whether someone has an intellectual impairment. The person with a disability may not want to be seen as having a disability. Often they will go out of their way to not disclose it or indeed to mislead the police when asked if there is an impairment (LSC transcript, page 68). Therefore, it is critical that police are adequately trained and that training is maintained through in-service training and other professional development (Commissioner for Victims Rights, submission page 5).

In addition, the training of the police in appropriate questioning techniques and the development of skilled communication support people was consistently raised in witness submissions (agosci inc. submission, page 7).

In addition to basic training, specialist police services could undertake more extensive training in communication accessibility, and identification of those who may require the support of a communication assistant (agosci inc. submission, page 10).

Evidence suggested that, while generic training for police to develop their understanding and awareness of complex communication would be of benefit, it does not always prepare police or other public officers for the process of interacting with all individuals with a complex communication need and to understand the responses provided (agosci inc. submission, page 5).

Ms Christina Rainville, Chief Deputy State Attorney at Bennington County, Vermont, reviewed a brief on SAPOL practices and training provided by Commissioner Burns. She commented that it “set forth detailed procedures which would be considered ‘state-of-the-art’” and she applauded SAPOL in terms of openness to special practices and techniques when a child is severely disabled.

This advice was consistent with the repeated commendations from parents and public officers for the sensitivity and professionalism of the Sexual Crime Investigation Branch of SA Police.

4.4 TERMS OF REFERENCE (D) – THE OPERATION OF THE COURT

Awareness and Empathy

LSC reported that people with disability are more likely to encounter legal problems, compared with other South Australians. They are over-represented in all categories: namely, accident, injury, consumer, credit, debt, education, employment, family, general crime, government and housing problems. The Committee heard that there was not one category where people with a disability were not at the top of the scale of need.

Evidence suggested that people with disability have a high prevalence of legal problems because they constitute the most socially excluded of all disadvantaged groups. LSC reported that people with disability are generally very willing to take action, but that they have a low resolution rate - they are more willing than the general population to seek advice, but the rate of satisfactory resolution to their problems is lower (LSC transcript, page 64).

Further evidence provided to the Committee showed that court can be a confusing and frightening environment for people living with intellectual disability, cognitive impairment or communication difficulties. A person may need assistance to comprehend the court process, to give instructions to lawyers and to give evidence in court. There is a real need for judges, magistrates and lawyers to be able to recognise when the circumstances of a person's disability indicates they may not have sufficient understanding of court processes or their role in those processes, and to ensure there is provision of appropriate support or diversion (Julia Farr, submission page 16).

Witnesses gave evidence that South Australian courts generally show a high level of awareness in terms of the use of Auslan interpreters and regarding access issues for people with physical or vision impairment. However, LSC staff in the criminal section reported that clients with intellectual impairment, brain injuries and mental illnesses have widely varying experiences of the court process. The Committee heard that a lack of awareness and empathy has been exhibited by some legal practitioners, judicial officers and court staff. Psychiatric illnesses in particular still carry a stigma which can impede access to justice for persons with this type of disability (LSC, submission page 3).

Coalition for Disability Rights reported that people in regional and rural areas often go to court without advocacy support to face magistrates who have little understanding of the issues affecting the presentation in court of people with cognitive impairment or an intellectual disability (Coalition for Disability Rights, submission page 6).

The South Australian Department for Public Prosecutions employs Witness Assistance Officers who liaise with victims and witnesses for the Crown to provide various notifications, information on court procedures, court tours, and assistance with vulnerable witnesses (Speech Pathology Australia, submission page 4).

In South Australia, the Victim Support Service provides information, counseling, support, therapeutic groups, referral, advocacy for law reform and victim's rights, community education and awareness, training of other service providers and a Court Companion Service (Speech Pathology Australia, submission page 2).

Evidence was presented to the Committee that juries could receive awareness briefings and associated reference materials at the commencement of jury trials on the considerations relating to a person living with impaired capacity to understand the judicial process and give testimony. Witnesses argued that judges, magistrates, barristers and lawyers could also be provided with adequate training in engaging in court with people living with intellectual disability or cognitive impairment or related circumstances (Julia Farr, submission page 17).

Evidence was presented to the Committee that civil court cases also present a problem as legal aid is not granted for civil matters due to funding constraints. It is not uncommon for people with mental health issues and those suffering from early stage cognitive disorders (such as Alzheimer's disease) to choose to represent themselves in court. Accordingly, a judge can find him or herself in the difficult position of trying to assess capacity from the bench with limited options for referring the person for medical assistance other than by

ordering a psychiatric report. The resulting report may make treatment recommendations, but those recommendations may not be complied with by the self-represented person (SACOSS, submission page 3).

Before Court

Formal legal proceedings provide another set of challenges to someone with complex communication issues. Witnesses highlighted that even before any formal appearance as part of the process of building a case people suffering a disability must explain themselves to the relevant barristers or solicitors multiple times to ensure that nothing has been missed by the lawyers or by the witness (Communication Rights Australia, submission page 9).

The Committee was presented with evidence that South Australian law enforcement authorities tend to regard people living with a disability as unreliable witnesses who would not cope with cross-examination. Witnesses were concerned that this could significantly undermine a person's right to fair access to justice. Julia Farr Association reported that, in South Australia, there have been several alleged sexual assault cases against young people living with intellectual disability, but that these cases were dropped before going to trial because the persons concerned were assumed to have difficulty communicating what had happened to them and therefore were not seen as reliable witnesses (Julia Farr, submission page 18).

Parents of children with intellectual disability consistently raised in their submissions to the Committee that perpetrators know that children living with intellectual disability or related circumstances are not considered to be credible witnesses, and this makes their children 'easy targets'.

Witnesses expressed concern that the law prosecutes people with an intellectual disability, but where a person with an intellectual disability is the victim of the offence, they are seen as not capable of giving evidence due to their perceived communication variations or intellectual impairment. In an example given to the Committee where a blind woman was being sexually abused, the response from the police was that "no-one would believe her" (Antoinette Edginton, page 82 transcript 24 April 2013).

Women with Disabilities Australia (WWDA) Inc. is the national peak body for women living with disability in Australia. WWDA emphasised in their submission that credibility is a major issue for many women living with disability when reporting acts of domestic violence and seeking protection orders. (Julia Farr, submission page 21)

Giving Evidence

Evidence was presented that people with intellectual disability require regular breaks, particularly during cross-examination, together with recognition by the courts of the need for extra time when people with communication difficulties are giving evidence or being cross-examined (agosci inc. submission, page 10).

One submission indicates that in an indecent assault case against a child with intellectual disability, no expert witnesses were called to explain to the jury the nature of the child's autism and intellectual disability and how those disabilities could affect their reactions. The Committee heard that, in that case, the judge directed that the child's verbal and physical reaction to the defendant as reported by the witness immediately after the alleged incident could not be considered as evidence (Mr and Mrs C, submission page 2).

Further examples were given by witnesses to the Committee indicating that intellectual disability may mean that a child is less likely to embellish what happened. One witness expressed the view that a person with an intellectual disability does not have the ability to lie, they instead express what they have seen, heard or experienced (Antoinette Edginton page 81 transcript 24 April 2013). Evidence was given that, in one case, a child was able to direct a new bus driver on the route, telling him when and where to miss the potholes in the road and the corners to turn on the route the former bus driver would take to a site where alleged abuse took place. The witness expressed the view that "the young man's credibility was there for all to see" (Antoinette Edginton page 83 transcript 24 April 2013).

Witnesses expressed the view that recognition of personal communication alternatives needs to be given when a person is required to give evidence within a legal environment. It was consistently expressed that

because you have a disability, your communication or intellectual impairment should not preclude you from justice.

Witnesses to the Committee provided evidence that in cases where the victim cannot communicate, the definition of what can be used as admissible evidence should be broadened. A wider range of information that could potentially better inform the jury, should be allowed to be presented. For instance, cases involving vulnerable people should be heard in a different type of court, similar to a coronial inquiry, where there are fewer restrictions on what evidence can be investigated and presented (Mr & Mrs C, submission page 3)

Ms Christina Rainville, Chief Deputy State Attorney at Bennington County, Vermont confirmed that in the United States, as in South Australia, victims must be available for cross-examination by the defence at trial. She said that “the goal is to find some method by which we can make the child "available" for cross-examination, and that this sometimes requires creativity and thinking "outside of the box." She recounted a case where flash cards were written jointly by the prosecutor and the defence lawyer, and the collection of cards agreed by the parties to be used in cross-examination.

The Director of Public Prosecutions advised that, in South Australia, it would be possible for a witness to write down their responses to cross-examination questions, but that he had some reservations about the use of flash cards. He advised that expert witnesses can be used for limited purposes. He recalled a case involving a child with an autism spectrum disorder where an expert was called to give evidence to assist the jury in understanding why the child presented in a certain way when they gave evidence.

Consideration should also be given to concessions in the court environment that will alleviate the need for people with communication difficulties to explain information repeatedly. Options such as video recordings, or other means of capturing the message in a way that is acceptable to the courts should be considered.

Furthermore, witnesses highlighted the need for expert consultation and input in regard to the complexity of questions that may be posed to a person with an intellectual disability, as well as the complexity of the responses. In cases where there are confounding factors such as language difficulties, cognitive challenges, or auditory processing problems, strategies to reduce the complexity of questioning should be put in place. Given the time required for people who use Augmentative or Alternative Communication to construct a message, there may be a tendency for them to be asked questions where the answer is only ‘yes or no’, rather than giving them the opportunity to convey their exact thoughts. Questions prepared in advance and a video recording of responses may be a more effective means for testifying and giving evidence.

Litigation Guardians

A litigation guardian is an adult through whom a person under 18 or a person with an intellectual disability can act on behalf of in court. A litigation guardian is liable for the costs of unsuccessful action. The Committee was provided with evidence that the system of appointing litigation guardians for people with disability in all courts presents some problems due to its ad hoc nature as to the identity of the guardian and the fact that the onus is usually on the judicial officer or legal practitioner to decide that a guardian is required to provide legal instructions on behalf of the person with disability. It was also submitted that some people with mental health issues do not accept the appointment of the guardian and continue to provide instructions independently to their lawyers which creates conflict problems (LSC, submission page 4).

Overall, witnesses gave consistent evidence that the experience with litigation guardians is not positive. Litigation guardians tend to be family members, powers of attorney or guardians. While most of the time this is not a problem, in some cases, a litigation guardian may take advantage of the people they are supposed to be looking after. An example was given where the litigation guardian had proven to be abusive towards a person with an intellectual disability in their care (LSC transcript, page 67).

Speech Pathologists and Interpreters

The Committee heard evidence that the criminal justice system is structured on using highly verbal mediated language processes, and that people with communication disabilities are disadvantaged at the outset because they do not have mastery over basic communication skills such as understanding and expressing themselves.

The law, its processes, its representatives use complex language to conduct their business and people with a communication disability cannot successfully communicate with them (Speech Pathology Australia, submission page 3).

Witnesses highlighted that interstate, section 31 of the *Uniform Evidence Act* provides that “A witness who cannot speak adequately may give evidence by any appropriate means” (Communication Rights Australia, page 11). Furthermore, the Victorian *Charter of Human Rights and Responsibilities* is quite clear that defendants in criminal matters are entitled to be “informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands” (Communication Rights Australia, submission page 13).

Witnesses argued that people with intellectual disability may require a speech pathologist or disability worker to explain the impact of their intellectual and communication impairments to the solicitor or legal representative, and prepare supports to assist the individual to understand what is required of them. This may include information on appropriate behaviour in court, legal requirements of giving evidence and responding to questions under oath, understanding the outcomes, and the consequences of not following court instructions (Speech Pathology Australia, submission page 5).

Evidence was put to the Committee that individuals with an intellectual and communication disability often use alternative or augmentative communication devices. However, witnesses explained that there often needs to be a trained person working with the individual to confirm their understanding and responses. An example was given of young offenders with reduced oral language competence and literacy that need questions to be broken down and simplified so that they can better understand what is being asked of them. Often visual aids, symbols or pictures can be used to assist in ensuring that they comprehend what is occurring, together with robust assessment processes conducted by suitably trained speech pathologists. This would enable professionals involved in forensic interviewing of the individual’s ability to understand what is happening, what is considered illegal or against the law, and what their intent may have been as these issues pose significant challenges for the criminal justice system (Speech Pathology Australia, submission page 3).

Examples of support may be where a familiar or trained verbal communicator is required to interpret speech that is difficult for others to understand, piece together key words that are expressed by the person to create a sentence, or follow an alternate access method such as eye gaze, or head pointing to pictures, words or letters. However, witnesses revealed that in many of these situations, the question of authorship of the message may be challenged, especially if the person co-constructing the message has a personal interest in the legal proceedings (agosci inc. submission page 7).

Witnesses presented evidence to the Committee that the use of augmentative communication device systems should be an accepted and acknowledged part of the legal system, just as accessibility requirements for physical disability are accepted and provided for.

Witnesses argued for the provision of a program that allows people to access a communication assistant (or intermediary). For instance, a list of qualified practitioners or professionals to act in this role and be appropriately remunerated for the expertise and skill set they bring to the situation.

The training of police and court personnel was raised to ensure that considerations for people with communication difficulties are integrated into the process from the very initial stages of a case (agosci inc. submission, page 9).

Courts, Boards & Tribunals

In the Family Court, witnesses have found that the disability of one party can be raised as an issue by the opposing party in custody matters. A disability itself should not preclude a parent from obtaining custody as the Court is bound to act in the best interests of the child, not the parents. A parent with disability will be required to show that he or she can care for the child despite his or her disability, usually by producing medical reports. The requirement for medical reports can place an extra financial burden on an applicant with disability and means that he or she has to meet criteria not required of other applicants (LSC, submission page 3 & SACOSS, submission page 4).

The Magistrates' Court Diversion Program is available to offenders with impaired intellectual or mental functioning (whether due to mental illness, intellectual disability, acquired brain injury or a neurological disorder) who have been charged with minor indictable or summary offences to have their court matters adjourned while they undertake an appropriate course of treatment. To be eligible for the program there needs to be a link between the offender's impairment and the offences with which they have been charged.

The Committee heard evidence that this court has clinical officers on staff who can assist the Court in recommending an appropriate program for each individual. The program has been found to be effective in reducing reoffending (LSC, submission page 4). However, witnesses explained that the diversionary program is voluntary and that the Diversion Court at times can be punitive rather than therapeutic.

Witnesses raised concerns regarding Guardianship Board hearings where most applicants are health professionals or family members who have the support of health professionals and involve the presentation of medical evidence from hospital or community health medical case notes. The majority of individuals subject to an application are unaware in advance of the hearing of the nature of the evidence against them, or that they can challenge the evidence. Few bring their own expert evidence due to lack of knowledge or cost. Witnesses highlighted that there is a significant power imbalance between a person with mental health issues or a person with a disability and other applicants and many find the whole process intimidating (President Law Society, submission page 2). On the other hand, the LSC submitted that, while LSC staff do not regularly appear before the Guardianship Board, in their experience they have found that the Board has a high awareness of the issues affecting people with disability and endeavours to ensure a just outcome (LSC, submission page 4).

Physical Accessibility

Witnesses consistently expressed the view that one of the clearest issues in regards to the Courts is the actual physical access to all courts. This relates to not only entering court but also participating in court proceedings as a juror, a witness, or as a vulnerable victim (Victim Support Service, submission page 3).

LSC staff expressed concerns about physical access to South Australia's older court buildings in terms of both entering and exiting the buildings and also in terms of internal access. Evidence was heard that even the more modern Sir Samuel Way Building has an internal fit-out which presents difficulties for clients and legal practitioners with mobility issues (LSC, submission page 4).

Victim Support Service indicated that an audit of the physical layout of all courts would ensure accessibility to allow full participation of people with disabilities (Victim Support Service, page 4).

The Courts Administration Authority provided evidence to the Committee that the Supreme Court of South Australia has a low standard of accessible facilities, and that the judges of the Court have for many years asked the government to address the problem by investing in new Court buildings (CAA, submission page 2).

Evidence was presented to the Committee that the age and condition of the buildings used by the Supreme Court meant that disability access is non-existent or poor in almost all respects. There is no mobility impaired access to courtrooms 1,2,3,4,5, and 11 in the Supreme Court. There are lifts to courtrooms 6,7,8,9, and 12, but only courtroom 12 has mobility access to a witness box. While there are lifts to all of the courtrooms in the Sir Samuel Way Building (where the criminal courtrooms are located) there is no mobility impaired access for jurors in any of the criminal courtrooms in that building. Furthermore there is no mobility impaired access for judges or court staff to any of the courtrooms in either the Supreme Court precinct or the Sir Samuel Way Building (CCA, submission page 1).

Chief Magistrate Elizabeth Bolton advised the Committee that, whilst Magistrate Court buildings themselves frequently have access ramps, court buildings often have internal steps which make it difficult to access witness boxes and the dock. In addition, nearly all Magistrates Courts dock entrances are not large enough to enable wheelchair access. At the Mount Gambier courthouse, in addition, to the fact that there are many steps in the courtroom, people with disability need to have hearings on the ground floor because there are no lifts to the second floor. Most court registries both at Adelaide and in the suburban centres have accessible counters and telephones available (Chief Magistrate, submission page 1).

In addition, the LSC indicated to the Committee that it is conscious that its own head office accommodation no longer complies with current standards of access and suitability for clients and staff with disability. Consequently, it has approached the State Government for funding to either seek new premises or to upgrade its existing building (LSC, submission page 5).

Accessibility for People with Hearing or Vision Impairment

While issues relating to physical access are widely recognized and allowed for, other access needs of people with disability are less accepted and provided for (agosci inc. submission, page 11).

A profoundly deaf man's submission expressed his disappointment in not being able to serve on a jury due to his inability to hear and the lack of appropriate services to allow him to do so (Lockrey email, page 1).

The LSC reported that some hearing impaired people who wear hearing aids have also complained that many courts do not have a hearing loop installed (LSC, submission page 4). It was also noted that many elderly persons who wear hearing aids struggle to hear in the environment they find themselves, particularly in the civil courts where it is a problem (LSC transcript, page 70 & 71).

Witnesses also expressed concern that the age and condition of the Supreme Court buildings and grounds make vision impaired access dangerous. There are heritage listed staircases that do not comply with standards and uneven surfaces, and only a few courtrooms have signage including where accessible toilets and fountains are including signage in Braille (Chief Magistrate, submission page 1).

The Committee notes the announcement of the new court facilities in the 2013-14 Budget and the opportunity it provides to address accessibility issues.

4.5 TERMS OF REFERENCE (E) –

- **How South Australia compares with other states and countries in terms of access to the justice system for people with disabilities; and**
- **What measures could be taken to enhance participation in and thereby provide people with disabilities with just and equitable access to our justice system.**

Similar issues in terms of access to the justice system for people with disability exist across Australian jurisdictions and overseas. However, evidence was presented to the Committee that other states and countries are more advanced than South Australia in terms of addressing the challenges faced by individuals with disability within the criminal justice system. South Australia appears to not be as advanced as other states and countries regarding the issue faced by individuals with a disability within the criminal justice system.

Victoria

Professionals working within the criminal justice system rely on the advice of disability specialists, including speech pathologists when working with an individual who has an intellectual disability. In Victoria the Office of the Public Advocate has an ‘independent third person’ system, and the police involve this person if they are interviewing a young offender with an intellectual disability or communication difficulties (Speech Pathology Australia, submission page 3).

New South Wales

In New South Wales the Intellectual Disability Rights Service (IDRS) runs the Criminal Justice Support Network (CJSN) that provides trained support workers to help people with an intellectual disability participate in police interviews when there is no carer, guardian, friend or relative available. The IDRS has indicated that allowing a support person or carer to be present during questioning assists to facilitate communication between police and people with an intellectual disability (Carers SA, submission page 4).

Witnesses expressed the view that children should always be supported in police interviews and interviews should be undertaken by an experienced therapist, especially where the person or child has an intellectual disability. However, one carer stated in South Australia, when dealing with sexual abuse cases of children with a disability, that police interviewed the children alone without support and separated them from their parents (Carers SA, submission page 2).

Evidence was presented that it is not a crime in South Australia for an employed or volunteer carer to have sexual contact with a person with disability they are supervising or looking after. Conversely, in New South Wales under the *Crimes Act 1900 (NSW)* s.66F, it is an offence to have sexual contact with a person with disability under that person’s care, and consent of the person who has the cognitive impairment is not a defence to a charge (with limited exceptions).

Witnesses suggested to the Committee that consideration should be given to the enactment of a criminal offence (as exists in New South Wales) prohibiting disability staff or carers from engaging in sexual intercourse with a person in their care who has a cognitive impairment. Such an offence might have a deterrent effect (Commissioner for Victims Rights, submission page 4).

It was also reported to the Committee that, in New South Wales, the Mental Health Intervention Team (MHIT) was formed to improve outcomes for both people with disability and police officers. The team is comprised of specially trained police officers who can call on the assistance of case workers and medical officers to assist them with mentally ill and brain injured persons who come within the criminal justice system.

The regular attendance of medical staff at police stations would also be of benefit to people with disability who are arrested. In New South Wales and in the United Kingdom onsite medical staff are able to provide a preliminary assessment of the individual situation of a person with disability as soon as they are in custody. At present, South Australia only provides such a service to the City Watch House on weekends (LSC, submission page 5).

Furthermore, the Committee heard that mechanisms to introduce fair treatment of people with an intellectual disability by the criminal justice system have been introduced in New South Wales. People with an intellectual disability are regarded as vulnerable and can nominate a support person to be with them at police interviews. The New South Wales Police Code of Practice obliges police to attempt to contact someone responsible for the person's welfare and tell them of the arrest. The Code of Practice provides a list of behavioural indicators to assist police to identify if a person has an intellectual disability. Support people can be parents, family, a friend or someone with expertise - the latter equivalent to the Victorian Office of Public Advocates Independent Third Person system (Coalition for Disability, submission page 10).

United Kingdom & Wales

Evidence provided to the Committee indicated that section 29 of the UK *Youth Justice and Criminal Evidence Act (YJCEA) 1999* provides for the examination of a witness to be conducted through an intermediary approved by the courts. This measure assists vulnerable witnesses who need assistance to communicate their best evidence and suffer from a mental disorder within the meaning of the *Mental Health Act 1983*, or otherwise has a significant impairment of intelligence and social functioning, physical disability or physical disorder. The Committee heard that an intermediary is someone who the court approves to communicate to the witness the questions that the court, the defence and the prosecution teams ask, and to communicate the answers that the witness gives in response (Woodward Ministry of Justice submission FAQs, page 1).

The submission from Mary Woodward, a British speech pathologist, indicates that she worked as a Registered Intermediary and trained with the Ministry of Justice. This was a special measure available to witnesses who were considered vulnerable due to youth or communication difficulties such as mental health disorders, intellectual disabilities and dementia, to enable them to participate more effectively in the investigative and trial process. Registered Intermediaries come from a wide background of professional roles and occupations including speech and language therapy, occupational therapy, psychology, social work, teaching and nursing, and bring the skills and experience gained in these roles to their work in this role (Woodward Ministry of Justice, submission page 4). Intermediaries help decision makers by providing critical information about the communication needs and abilities of vulnerable witnesses. They provide practical information about how to achieve the best evidence from the witness, including how to avoid misunderstandings, and directly assist in facilitating the question and answer process. Intermediaries are neutral and their responsibility is to the court and to justice (Woodward Ministry of Justice submission FAQs, page 2).

As an intermediary, Ms Woodward assessed the individual's communication skills and then advised the police, lawyers and judges as to how best to communicate with them. She also attended the police interview and trial and facilitated communication between the individual and the justice professionals. It was noted that this scheme has been successful in the UK and has enabled many more cases to proceed which otherwise would have been dropped due to difficulties obtaining evidence from vulnerable witnesses (Woodward, submission page 1).

Further evidence was heard in relation to other jurisdictions including that in England and Wales the court is obliged to obtain and consider a medical report before imposing custodial sentence on a person living with or who appears to live with mental impairment.

New Zealand

In New Zealand, a court on application by the defence and prosecution or on the courts own initiative, may order an assessment report by a 'health assessor' to assist the court in determining whether the person is fit to stand trial, the type and length of sentence that might be imposed and associated conditions or requirements (Julia Farr, submission page 23).

4.6 TERMS OF REFERENCE (F) – ANY OTHER RELATED MATTER

Prison System

A number of international studies indicate that there is a significant proportion of people within the custodial prison system who have an IQ of less than 70 or have a type of disability (Transcript 26 July 2012, page 26 – Dr Caudrey Exec Director Disability, Aging and Carers).

The Committee heard that a Victorian report states that people with an intellectual disability and cognitive impairments are more likely to be over-represented in the criminal justice system—as victims and offenders. Furthermore, a study of carers in Western Australia found that carers did not think prison was a suitable place for people with intellectual disabilities. Carers felt that prison presented opportunities for people with intellectual disabilities to learn dangerous new behaviours. Carers supported a greater diversity of sentencing options for the people they care for (Carers SA, submission page 4).

Witnesses consistently raised prison as not an appropriate place for people with intellectual disabilities, and that alternative accommodation relevant to their cognitive ability is required.

Independent Advocacy indicated that the prison system is not supportive of vulnerable individuals (Independent Advocacy, submission page 5). Furthermore, the Office of the Public Advocate stated that mainstream prison officers are not equipped to accommodate people with disabilities, and therefore, they have little or no understanding of disabilities or they are unable to link the behaviour a person may exhibit by being incarcerated with the disability they have. Witnesses consistently argued that prison is not an ideal environment for a person with an intellectual disability or for a person with a mental illness, as there are gaps in services and resources available for them (Transcript 20 Nov 2012, page 37 – Ms Keville, Advocate Guardian, Office of the Public Advocate).

The Committee received evidence that if an intellectual person is incarcerated, there is no alternative to James Nash House, therefore people who are intellectually impaired or brain injured are often accommodated with the mentally ill, which is not appropriate (LSC transcript, submission page 65).

Evidence revealed that there is a distinct lack of programs in gaol for, particularly, cognitively impaired people, as the majority of programs in gaol are group based and people with intellectual disability tend not to learn well in a group environment. Witnesses highlighted that a person with cognitive impairment does not necessarily have sufficient cognitive capacity to participate in a group program, to understand it or retain knowledge from it (LSC transcript, page 66).

Legislation

Evidence Act

The Committee was presented with detailed evidence about the proposed amendments to the *Evidence Act 1929* which are currently being progressed by the Attorney-General. The amendments would provide alternative ways of taking evidence from young children and people with cognitive disability (Minister for Disabilities, submission page 6).

Evidence was presented that there are currently two proposals to amend the *Evidence Act 1929*. The *Evidence (Hearsay Rule Exception) Amendment Bill 2011* was introduced into Parliament but lapsed on prorogation and is in the process of being reintroduced. The Bill proposes to repeal and replace section 34CA of the *Evidence Act 1929*. The new section has been designed to remove a barrier to the prosecution and trial of sexual offences allegedly committed against very young children and some intellectually impaired individuals. The section applies to individuals whose inability to fully understand what is happening to them combined with an inability to remember and later describe accurately what they said or did, is likely to make their testimony unacceptable to a court. Section 34CA relaxes the rules in sexual cases by a special exception to the usual hearsay rule to permit the court to admit the evidence from another person, testifying what a young child or intellectually impaired person said to them out of court. The child or intellectually impaired person need not necessarily testify for their initial complaint to be admissible (Hon John Rau, submission page 1 & 2).

The Committee heard that the second wider proposal is to amend the Act to improve the interaction of vulnerable victims and witness with the criminal justice system whilst preserving a defendant's right to a fair trial. It is proposed to provide investigators and prosecutors with alternative ways of taking and presenting evidence from young children and intellectually impaired witnesses and victims in criminal cases involving violent or sexual offences. It will also require police investigating crimes against young children and intellectually impaired people to conduct their interviews in a specialised manner in accordance with a comprehensive code of good practice to be devised. Additionally, an audiovisual record of each interview will be taken for later use in court. There will be provision for children and victims and witnesses with intellectual impairment to be cross-examined in advance of trial. The proposal also extends the priority listing of sexual assault trials where the alleged victim is a child and where the alleged victim has an intellectual impairment (Hon John Rau, submission page 2).

The Committee heard that these changes are designed to avoid vulnerable witnesses having to repeatedly recount the circumstances of the alleged offending. The changes would require police and others who interview young children or intellectually impaired persons to be specially trained and conduct and record these interviews in accordance with prescribed standards. It would involve the video recording of these interviews to be used in court as a comprehensive account in place of the witness having to give 'live' evidence in chief. It would allow courts to hear the evidence of young children and witnesses with intellectual impairment in trials of sexual or violent offences early, at special hearings, in informal surroundings so that witnesses do not have to give evidence before the jury. Instead an audiovisual record of that special hearing will be replayed to the jury. Witnesses explained to the Committee that these wider legislative reforms for vulnerable victims and witnesses are now being coordinated with the development of the Disability Justice Plan (Hon John Rau, submission page 2).

Other Legislation

Evidence was provided to the Committee that a Carers Recognition Act is urgently required to be implemented in the state system, in the courts, at police stations and in remand centres.

Furthermore, it was submitted that anti-grooming laws would further protect vulnerable individuals. (Transcript 5 June 2012, page 7 – Witness Mrs B).

Hon Stephen Wade MLC
Chairperson

25 July 2013

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APPENDIX B – WITNESS LIST

5 June 2012

Rosemary Warmington AM, Chief Executive Officer, Carers SA
Mrs A and Mrs B

Mrs D and Sam Paior

26 July 2102

Dr David Caudrey, Executive Director, Disability, Ageing and Carers, Department of Communities and Social Inclusion.

25 September 2012

Dr John Brayley, Public Advocate, Office of the Public Advocate
Margi Keville, Advocate/Guardian, Office of the Public Advocate

Ruth Ambler, Chair, Disability Justice Plan Steering Group, Attorney-General's Department
Stephen Brock, Senior Policy Officer, Attorney-General's Department

27 February 2013

Fiona Campbell, Co-ordinator, Independent Advocacy
Robyn Byrne, Senior Advocate, Independent Advocacy

Gabrielle Canny, Director, Legal Services Commission of South Australia
Trish Johnson, Barrister, Legal Services Commission of South Australia
Tara Simpson, Legal Officer, Legal Services Commission of South Australia

24 April 2013

Chris Charles, General Counsel, Aboriginal Legal Rights Movement

Antoinette Edginton

Mr and Mrs C