



To: Select Committee on Disability Access to the Justice System

Thank you for the opportunity to participate in this inquiry. AGOSCI Inc. is pleased to see a focus on this issue within South Australia. We look forward to being part of any ongoing developments.

It is AGOSCI's position that in order to achieve equal rights and respect for people with disabilities (specifically people with complex communication needs) reforms such as those this inquiry hopes to achieve are essential.

This submission addresses the following points specifically posed by your committee:

- Participants' knowledge of their rights;
- Availability and use of appropriate services and supports
- Dealings with police
- The operation of the courts
- 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; and
- Any other related matter.

This submission has been prepared by Janelle Sampson – SA AGOSCI State Representative with input from AGOSCI membership across Australia and in particular South Australia.

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Submission on behalf of AGOSCI Inc. to the Select Committee on Disability Access to the Justice System

About AGOSCI

AGOSCI is a group representing people with complex communication needs, as well as those who live, know or work with people with complex communication needs.

Established in 1981, AGOSCI aims to lobby for the rights of people with complex communication needs, increase public awareness of complex communication needs, and to provide relevant educational and professional development events across Australia.

Key Areas of Interest for AGOSCI are:

- Augmentative and Alternative Communication
- Sign and gesture systems
- Mealtime assistance/dysphagia
- Saliva control
- Voice output communication aids
- Consumer's stories
- Research
- Problem-solving in severe communication impairment

Specific focus of this submission

The AGOSCI membership do not necessarily have strength in the knowledge of the legal system in South Australia, but AGOSCI is one of the major organisations in Australia able to represent the needs of people with complex communication needs (CCN – see definition in Appendix 1). AGOSCI membership includes individuals experiencing complex communication needs, family and community members, teachers, speech pathologists and other professionals.

This submission has the specific intent to represent people with CCN and their families within the context of this inquiry. The expertise drawn from our membership includes first-hand accounts of the challenges that face people with CCN and their families, as well as solutions, strategies, experience and research evidence to inform the best way to support their participation in society in general. Some members have had first-hand involvement in the legal system, and other contributions are based on knowledge of the many individual ways people with CCN communicate, and the best methods to support them to do this. For the purpose of this submission, AGOSCI have also received input from Barbara Collier (Executive Director, Augmentative Communication Community Partnerships Canada) who



has done significant work in this area in Canada, and has contributed immensely to this area of discussion internationally (<http://www.access-to-justice.org/>).

In a demographic study by Perry et al., (2004), an estimated 0.2% of Victorians are living with a disability and complex communication needs. Based on population figures from the end of 2010 (ABS website - SA Population = 1,650,400), this is equal to approximately 3,300 South Australians.

Speech Pathology Australia estimates that 14% of Australians have some form of communication disability (*not necessarily defined as a complex communication need*). This would equate to 231 056 South Australians. The large discrepancy between these figures is an indication of the difficulty defining and identifying those who have CCN as a subset of the larger group with communication difficulty of some kind. It also suggests that there are a large group who may benefit from recognition of the barriers they face and the provision of additional supports (i.e. to understand the complex language of the legal system and of the court) A complex communication need may mean that a person:

- is able to use speech as their main form of communication but is difficult to understand and requires interpretation by another person
- is able to use speech but their expressive language is limited due to cognitive or language delay or disorder
- is only able to use some speech and uses some form of augmentative and alternative communication (AAC) to support this
- is unable to use speech and uses AAC as their main form of communication
- has difficulty understanding spoken language and requires accommodations to support comprehension.

An AAC system refers to a multi modal system of AAC tools that a person may choose to use dependent on the situation, communication partner and requirements of the conversation. This may include gesture, body language, sign language, vocalisations, picture or word boards and speech generating devices. Many people with disabilities use alternate forms of access to select items on an AAC system (eg. Scanning, head pointer, eye gaze, etc). This adds to the time required to generate a message and may require a support person.

Executive Summary

Access to justice is a fundamental right for most Australians, however as this committee has identified, this is not the case for people with communication difficulties. Immediate and long term changes to the system need to be implemented to ensure that this situation does not continue. This submission addresses the following points in particular:

- Immediate steps should be taken to make available experienced individuals who are able to support people with CCN in their dealings with both the police and the courts. (This is an interim step to reduce the increased risk associated with people who are not considered competent to testify).



- A comprehensive and accessible program and training course should be created whereby registered communication assistants are available to support a person with complex communication needs within the justice system (and the greater public service as a whole).
- Police and court personnel should receive generic training and awareness with regard to complex communication needs and AAC, and specialist services should also receive more comprehensive training.
- Specific accommodations should be made for people with CCN who are making appearances in court. These are listed in the body of the report.
- Resource should also be made available to ensure that programs related to self-advocacy, self-protective behaviours and understanding of rights are available across the lifespan of people with disabilities with the aim to prevent issues of abuse from occurring in the first place.

Many of the barriers people who have CCN face in general society and on a daily basis are also prevalent within the police and court system. These include barriers related to policy, practice, knowledge, skills and attitude (Beukelman & Mirenda, 2005) which are caused by the person's environment, not the person themselves. It is important that the justice system consider all possible options to reduce these barriers and to create a system that is accessible to all members of our society.

Participants knowledge of their rights

People with a disability, just like every other citizen, have a responsibility to know their rights and to communicate what they want. There is an inherent problem, however , in that disability services and the general public do little across the lifespan of individuals with disabilities (particularly those with CCN) to help them become aware of this responsibility, and to practice and exert these rights regularly. As a result, many are not aware of their rights and may have limited opportunities to learn how to assert them. Assertion of their rights may be a complex and effortful process, with the result dependent on the perceptions, attitudes and understanding of the individuals and the system in which they are being asserted.

In many cases, people with CCN may be reliant on families or attendant workers to share information and/or advocate on their behalf. This may at times 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.

Because 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. In addition, for people with CCN, the time requirement to express themselves (especially given that they may be reliant on communication partner willing to take the time to stop and listen as they prepare their message) may mean that opportunities to report problems or self-advocate are not always available.



Availability and use of appropriate service supports

In SA, disability agencies such as Disability Services and Novita Children's Services provide the main support to people with CCN in SA. Although people with CCN in SA have access to therapy support through these publically funded disability agencies, services are extremely limited and the model of service delivery provided has been predominantly aimed at assessment, prescription and sometimes ongoing use of a communication system by an individual. To date, agencies that provide support to South Australians with regard to access to the legal system, interactions with the police or support for victims of crime have not recognised the specific access and participation barriers faced by people with CCN. These agencies have not sought information or strategies to help address these barriers, nor have the disability agencies themselves sought to become involved in other public services in a systematic way to ensure communication accessibility. This has meant that though people with CCN are 'in theory' able to use these services, many in fact they have not had the opportunity or have been unsuccessful in doing so. There is a major unmet need in the area of communication accessibility within both government and privately run businesses and services within South Australia. This is also the case for the police and justice system as specific to this inquiry.

To our knowledge, there are no specific services available in SA to act as an intermediary for people with CCN to access services. It is presumed that those in this situation would typically use a family member or personal attendant (at their own cost) to assist in this process. This is particularly problematic within the context of this inquiry given that many times the issue may be related to someone known to the person with CCN, or may compromise the relationship that person has with the person supporting them. People with disabilities may be more prone to abuse than the general population given their reliance on carers. This abuse can be physical, financial and/or emotional. They are often dependent on their carers to be able to make a report to police (ie: to travel to a police station, to use a telephone, to have their AAC system available). They may also be dependent upon others to provide them not only with the knowledge of their rights but to access and knowledge of appropriate vocabulary to be able to discuss and report infringements.

Dealings with the police

The multi-modal communication system used by those with CCN are often complex and highly individual, meaning that specific training or familiarisation is required by their communication partners before being able to communicate effectively with a person or interpret their responses. Supporting the communication and participation of people with CCN is a specialist and challenging area. Even experienced practitioners in this field require familiarisation with the person and their system to be able to do this. While generic training for police to develop their understanding and awareness of complex communication is of huge benefit and is definitely needed, it cannot in any way prepare them or other public servants for the process of interacting with all individuals with a CCN. Even police officers with specific training in disability could not be considered competent to elicit and understand the responses of many people with CCN. Without an understanding of how to use



appropriate communication supports, the person with CCN may be presented with a series of 'yes/no' questions to answer. This not only compromises the elicitation of their spontaneous communication, it also makes the process of responding more problematic for them as it mandates the use of more complex language structures and requires better receptive language and auditory memory ability. In order to ensure that the voice of people with CCN can truly be heard, the use of trained communication assistants is paramount. The communication assistants of course also need to be given the opportunity to familiarise themselves with the person and their communication modes prior to the police interview or court attendance.

Training provided to police should give them strategies to use to communicate at a basic level with people who have CCN, and to identify those who may require the support of a trained communication assistant, so that this can occur as early as possible in the process of the investigation. The early involvement of a trained communication assistant can help to provide more detailed information to the police while it is fresh in the mind of the person with CCN.

An additional consideration is for training of police and associated personnel with regard to dealings with those who may have CCN and are suspected of having committed a crime. A recent case in Western Australia highlights the disastrous possibility that a person may be wrongly convicted but unable to be fairly tried given their communication difficulties. (See details in appendix 3).

There are many strategies now available to help people who have difficulty understanding or expressing themselves, to understand what they are being asked, understand the possible outcomes and consequences of the process that they are involved in and convey information about their actions as well as their preferences and choices, without the autonomy or 'authorship' of their communication being put in question.

The operation of the courts

First and foremost, it needs to be documented that people who use alternate forms of communication should have the same rights as the wider population in being able to give evidence within a court proceeding. The use of AAC systems should be an accepted and acknowledged part of the legal system; just as accessibility requirements for physical disability are provided and accepted.

There are however, many other aspects of the legal system and court process that are likely to be problematic for most people with complex communication needs. In particular, the following areas pose significant challenges to successful participation for someone with CCN.

Authorship:

A major stumbling block is perception of authorship. In many cases, people with CCN are required to co-construct their message with the support of others.



Examples of this 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
- put together words spelled out on an alphabet display
- follow an alternate access method such as eye gaze, or head pointing to pictures, words or letters

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 stake in the legal proceedings. It is important to consider the process by which this can be achieved in order to allow people with CCN to participate in the legal system. The use of communication assistants again seems the most appropriate means by which to achieve this.

Time:

The use of AAC to construct a message takes considerably more time than verbal communication. According to Higginbotham et al (2006), the normal rate of oral speech is 150 words/minutes and the majority of AAC systems results in 5-20 words wpm. The fastest utterance based system can produce 60 words per minute. Any accommodations that aim to increase the participation of people with CCN in dealings with police and within the court process will need to allow for and consider additional time requirements.

Repetition of Information

Consideration should be given to accommodations that will alleviate the need for people with CCN to explain information numerous times. The time and effort involved in compiling a message using AAC is considerable, and repetition of this process that is not essential should be avoided. Options such as video recordings, or other means of capturing the message in a way that is acceptable to the courts should be considered.

Complexity of Questioning

There should also be expert consultation and input in regard to the complexity of questions that may be posed to a person, and also the complexity of the responses expected from them. 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 in place.

Intimidation and time pressures

Given the time required for people who use AAC to put together 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. Answering questions posed by another person is not equal to giving your own specific message. Questions prepared in advance and a video recording of responses may be a more



appropriate means for testifying and giving evidence. It would also alleviate the time pressure and possibly the anxiety of the situation felt by the person using AAC which could make them feel like they need to limit their messages so as not to take up too much time.

Availability of relevant vocabulary:

Availability and access to vocabulary to enable full and spontaneous communication is always an issue underlying provision of AAC. Unless a person is able to spell or to otherwise create words to convey meaning, people who use AAC are reliant on those in their environment to choose, help them learn and provide the vocabulary they can use to express themselves. Consequently they may not have access to or an understanding of the vocabulary they may find they need in situations where they are involved in the legal system (and other civil systems in our society). While it is important that the vocabulary that is required to enable a person to express themselves efficiently and explicitly is provided, it is also critical that consideration is given to how this can be done in a way that will reduce the possibility or likelihood that the veracity of their communication can be challenged. Training of the police and the development of skilled communication support people is required.

How South Australia compares with other states and countries in terms of access to the justice system for people with disabilities

To our knowledge, very similar issues exist across Australia for people with disabilities in terms of access to the justice system. For people with CCN, the major issues relate to:

- Reduced expectation of competency that people with CCN are able to give evidence on their own behalf, and that the message that they are communicating is their own.
- Limited acceptance of alternate forms of communication as 'legal' or accepted modalities with which to give evidence.
- Limited awareness, skills, and knowledge by police and court personnel as to the most appropriate way to communicate with people with CCN
- The increased risk of harm and abuse to this population of our society because perpetrators know that their evidence will not be accepted in court.

In relation to other countries, both the United States and Canada are currently undertaking review and research in this area, and their practices are consistent with the general model used in the United Kingdom. This system uses an intermediary service so that people with CCN have access to trained people who act as 'interpreters' of their communication within the justice service. In Canada, reform has been lead through the organisation Augmentative Communication Community Partnerships Canada (ACCPC) and its Director Barbara Collier and in the USA, Bev Frantz of Temple University has provided leadership. In Canada the terminology used is 'communication assistants' and Temple University has a 'revoicing' service with similar aims. The basic premise of all programs is that generic training for police and court personnel is not sufficient to meet the individualised and specialised needs



of people with CCN. Extensive experience and specific training is required to best ensure that their voices are heard within the justice system.

What measures could be taken to enhance participation in and thereby provide people with disabilities with just and equitable access to our justice system

It is our recommendation that the approach to enhance participation the justice system should be a multi-pronged approach:

1. First and foremost, a program that allows people to access a communication assistant (or intermediary) is paramount, with the following considerations:
 - An interim option should be set up until a more comprehensive program is created. A list of qualified practitioners/professionals to act in this role should be developed to provide a quick response to this problem. We cannot put people with CCN in the vulnerable position of not being able to give evidence on their own behalf while the process and logistics of a more comprehensive program are being organised. This should be an initial and immediate step.
 - The communication assistant program should include a training course, registration, peer or supervisory support, and a clear job description. It should have its own organisational structure so that it is accessible to those who need to use it. An ad hoc program where the person themselves is required to find a suitable communication assistant and organise for their involvement would just add to the stress, frustration and anxiety of the user, and would create a risk that the communication support person would not have the required competencies to provide support in an appropriate and reliable manner.
 - Communication assistants should be appropriately renumerated for the expertise and skill set they bring to the situation.
 - The communication assistant training program could be best supported as a course-work component of various university training programs such as Speech Pathology, Disability Studies; or Social Work. Within their degree, students could take on this course as an additional qualification; however the training module could also be available as an additional post graduate course (assuming appropriate background skills).
2. Training of all police and court personnel should be conducted to ensure that considerations for people with CCN are integrated into the process from the very initial stages of a case. Basic training in communication accessibility is important to ensure that people with CCN are treated in an equitable way to those in the wider population whether they be the accused, a victim or a witness. This cannot be



provided without there being a process to ensure those who are involved with people with CCN have a general understanding of CCN and basic forms of AAC.

3. In addition to basic training as above, specialist police services could undertake more extensive training in communication accessibility, and identification of those who may require the support of a communication assistant.
4. A general review of the communication accessibility of the entire police and court system would be beneficial with follow-up recommendations.
5. An access officer (or more appropriately, a committee) should be appointed within the Justice System to address and maintain all aspects of accessibility for people with disabilities, including communication access. The strength of a committee over a single person is that a range of accessibility considerations can be addressed by people with the appropriate and required level of expert knowledge, rather than a narrow focus on one accessibility area which may result from having only one person involved.
6. The law should specifically state that use of augmentative and alternative communication methods are an acceptable form of communication within the justice system. This may require a proviso that (following explanation by the communication assistant of the person's communication modalities), the judge (or relevant delegate) is satisfied that messages provided are genuinely generated by the AAC user themselves.
7. 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, etc.
8. The communication assistant program should also be adopted and used within other government departments and become a service that operates across all sectors. Communication assistants would have a valuable role to play in promoting access to health, social services, advocacy, education, and many other areas.

Other specific considerations to facilitate communicative participation for people with CCN include the following:

- The need for regular breaks, particularly during cross-examination, and particularly for people who may become physically exhausted in stressful situations
- Recognition that people with CCN may use strategies to reduce the physical demand on them when expressing themselves i.e. allowing words to be completed by their communication support person, using Partner Assisted Scanning.
- Recognition by the courts of the need for extra time when people with CCN are giving evidence or being cross-examined. The experience of some of our



members is that cases can go several days longer than legal professionals predict because of the extra time required for communication.

- The need for all members of the court to address the person with the disability directly
- Training programs for police or specialist police services may include the provision and use of simple AAC tools and strategies that would at least act as a general support in the first place. Once a communication assistant is involved, the communication method that is individualised to the person would then be used.

Other related matters

- **This needs to happen quickly!** The current situation is that people with CCN are much more vulnerable given their presumed inability to provide evidence or testify in court. We cannot let this continue. There is urgency in the resolution of this matter, and interim measures should be put in place e.g. a register of qualified people with experience supporting the communication of the people with CCN who can be contracted to provide support until a more robust program for communication assistants is created.
- In recent media reports and public forum discussions people with CCN but no intellectual disability and people with severe or profound intellectual disability are often discussed within the same media report as though their issues and needs are the same. Clearly everyone, regardless of disability, has a right to justice and to support from the justice system when required. However, it will be important to develop a clear understanding of the differing abilities and needs of people who use AAC in order for people to claim their right to be heard.
- Currently in Canada, Barbara Collier is working on a feasibility study to establish communication intermediaries (assistants) within legal and justice services across Canada. This report is due in June / July and will include the barriers and accommodations required within not just the criminal system but also the police contexts and legal contexts (legal capacity; power of attorney, mediation etc. etc.). The inquiry should consider this information as soon as it is available.
- It is extremely important to give consideration to human supports as a valid form of access. Physical access such as a ramp is typically an acceptable accommodation for someone with a disability, but supports to address other aspects of disability are less so. Education and awareness as to the reasons for human support (such as partner assisted scanning of a communication book or interpreting speech that is difficult to understand) are essential to reforms in this area.
- In addition to changes and accommodations within the Justice system, it is also important to try to address the problems of abuse and mistreatment of people with disabilities on a broader level and from an early age. Consideration should be given



to programs that aim 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 people's vulnerability. Development of vocabulary, literacy, and independent access also need to occur. These types of programs should include modules that target aspects specific to someone who is not able to use speech as their primary form of communication. Similar programs are run in the United States with positive outcomes.(For example, the Augmentative Communication and Empowerment Supports, or "ACES," is a program developed in 1990 at the Institute on Disabilities at Temple University by Diane N. Bryen, PhD to provide adult users of communication technology (speech generating devices or "SGD") with the skills to communicate effectively and to use their voices for self-advocacy.) (<http://disabilities.temple.edu/programs/aac/aces/>).





APPENDIX 1

Definitions of Complex Communication Needs (CCN) and Augmentative and Alternative Communication (AAC)

Complex communication needs is the internationally preferred term to describe having limited or no functional speech. Some people have complex communication needs associated with a wide range of physical, sensory and environmental causes which restrict/limit their ability to participate independently in society. (Balandin, 2002).

People with CCN include those with Cerebral Palsy, Autism, Stroke, Intellectual Disability, sensory impairments and degenerative conditions such as Motor Neurone Disease.

People who have CCN and their communication partners may use **augmentative or alternative communication** (AAC) strategies and techniques to support their communication either temporarily or permanently. AAC may be used as an *alternative* to oral speech, or to *augment* oral speech and/or to support expressive and/or receptive language.

The individual may fit into one of the following categories:

1. Individuals who do not use oral speech and use AAC "predominantly" to support expressive and/or receptive language.
2. Individuals who use oral speech and *may* use AAC to support their receptive and/or expressive language.





APPENDIX 2

Reference List

- ACCPC websites (Barbara Collier):
 - <http://www.access-to-justice.org/>
 - <http://www.accpc.ca/ca-aboutthe-project.htm>
- Australian Bureau of Statistics website.
<http://www.abs.gov.au/ausstats/abs@.nsf/Products/1345.4~Jun+2011~Main+Features~Demography?OpenDocument>
- Balandin, S. (2002). Message from the president. ISAAC Bulletin, 67, 2.
- Beukelman, D. R. & Mirenda, P. (2005). *Augmentative and Alternative Communication: Management of Severe Communication Disorders in Children and Adults*. Paul H. Brookes
- Perry, A., Reilly, S., Cotton, S., Bloomberg, K., & Johnson, H. (2004). A demographic survey of people who have a disability and complex communication needs in Victoria, Australia. Asia Pacific Journal of Speech, Language and Hearing, 9, 259–271.
- Shane, H., Higginbotham, J., Russell, S. & Caves, K. (March, 2006). Accessing AAC: Past, present, and future. Paper presented at CSUN's 21st Annual International Technology and Persons with Disabilities Conference. Los Angeles, CA. Cited in Blackstone, S. (2006). Augmentative Communication News, 18(1).
- Speech Pathology Australia. Factsheet: Who has a communication disability?
http://www.speechpathologyaustralia.org.au/library/1.2_Who_has_a_Communication_Disability.pdf



APPENDIX 3

News article describing court case in Western Australia

Marlon Noble won't be truly free until his name is cleared, supporters say... <http://www.perthnow.com.au/news/western-australia/marlon-noble-won-t-be-truly-free-until-his-name-is-cleared-supporters-say-1.111111>

Perth Now

Western Australia

Marlon Noble won't be truly free until his name is cleared, supporters say

- by Angie Raphael
- From: AAP
- January 09, 2012 12:30PM
- 31 comments

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WRONGLY JAILED: Marlon Noble is released after being imprisoned for 10 years without conviction.
Source: PerthNow

A MENTALLY disabled man who was imprisoned in Western Australia for 10 years without conviction and finally released at the weekend will only be truly free when his name is cleared, his supporters say.

Marlon Noble was 19 when he was arrested in December 2001 for allegedly sexually assaulting two minors in Carnarvon, 900km north of Perth.

He has always denied the charges.

Psychiatrists assessed him in 2003 as being mentally unfit to stand trial and he was detained under the Criminal Law (Mentally Impaired Defendants) Act.

Mr Noble was released from Greenough Regional Prison on Sunday and told reporters he wanted to get on with his life.