

**Speech Pathology Australia's Submission to
the Royal Commission into Violence, Abuse, Neglect and Exploitation of
People with Disability – Criminal Justice System**

20 March 2020



Disability Royal Commission
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Dear Commissioners

Speech Pathology Australia welcomes the opportunity to provide comment to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's key area of inquiry regarding the criminal justice system. Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing over 10,000 members. Speech pathologists are university-trained allied health professionals with expertise in the diagnosis, assessment, and treatment of speech, language and communication disabilities, and swallowing disorders.

Communication and swallowing difficulties can arise from a range of conditions that may be present from birth (e.g. Down Syndrome or Autism Spectrum Disorder), emerge during early childhood (e.g. stuttering, severe speech sound disorder), or during adult years (e.g., traumatic brain injury, stroke and head/neck cancers, neurodegenerative disorders such as motor neurone disease) or be present in the elderly (e.g. dementia, Alzheimer's disease, Parkinson's disease).

The impact of communication and swallowing difficulties can be considerable, negatively affecting an individual's academic achievement, employment opportunities, mental health, social participation, ability to develop relationships, and overall quality of life. Individuals with unmet speech, language and communication needs (SLCN) are more likely to experience life-long problems including increased risk of social, emotional or behavioural difficulties, mental health problems, relationship difficulties, poorer educational and vocational outcomes, and contact with the justice system as both victims and offenders.ⁱ Furthermore, the very nature of communication disability affects an individual's ability to voice their concerns, to self-advocate, and to disclose/report harm done to them by another. As such, Speech Pathology Australia strongly supports any reform and/or safeguarding that protects people with communication and swallowing difficulties and ensures complaints processes are accessible and responsive.

As to the focus of this key area of inquiry, we concur with the Commission's definition of 'neglect' as *'depriving a person with disability of the basic necessities of life such as food, drink, shelter, access, mobility, clothing, education, medical care and treatment'*; we have long argued that a lack of access to required services is neglect. We also concur with the Commission's working definition of violence and abuse in prisons and forensic mental health facilities as including *'assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis'*. We also consider that denying an individual's basic human right to communicate is a form of abuse.

There are three overarching areas where speech pathologists have a role to play in supporting people with communication disability and their interaction with the justice system whether as victims, accused people or witnesses. Firstly, by providing direct intervention at an individual level through therapy sessions, secondly, by acting in the role of communication intermediary to assist with the communication

between an individual with SLCN and the police/courts, and thirdly, by providing consultancy and training to professionals throughout the whole justice system including the police, judiciary, lawyers, and correctional and forensic mental health facility staff. The training of staff will help them to better recognise, understand and support communication disabilities, the potential for related behaviour of concern and how best to respond and engage specialist professional services when required.

We have structured our feedback in response to relevant questions raised in the issues paper and include, where appropriate, examples provided by our members working in the justice sector. We preface our remarks and recommendations with background information on communication disabilities and swallowing disorders and the role of speech pathologists.

We hope the Commission finds our feedback and recommendations useful. If we can be of any further assistance or if you require additional information please contact Ms Gail Mulcair, Chief Executive Officer, on 03 9642 4899, or by email at gmulcair@speechpathologyaustralia.org.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tim Kittel', written in a cursive style.

Tim Kittel
National President

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Speech Pathology Australia's Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability – the Criminal Justice System

Speech Pathology Australia welcomes the opportunity to provide comment to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's key area of inquiry into the criminal justice system. We have structured our feedback in response to relevant questions raised in the issues paper and include, where appropriate, examples provided by our members working in the justice sector. We preface our remarks and recommendations with background information on communication disabilities and swallowing disorders and the role of speech pathologists.

About Speech Pathology Australia

Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing over 10,000 members. Speech pathology is a self-regulated health profession through Certified Practising Speech Pathologist (CPSP) membership of Speech Pathology Australia.

The CPSP credential is recognised as a requirement for approved provider status under a range of funding programs including Medicare, some Commonwealth aged care funding such as the Commonwealth Home Support Programme (CHSP), Department of Veteran Affairs (DVA) funding, the National Disability Insurance Scheme (NDIS) and all private health insurance providers.

As the national body regulating the quality and safety of speech pathology practice in Australia, Speech Pathology Australia manages the formal complaints process for the profession and can, if necessary, place sanctions on practice for any member who is demonstrated to contravene the Association's Code of Ethics.

About speech, language and communication needs (SLCN)

Individuals with speech, language and communication needs (SLCN) have difficulties communicating effectively with other people without support or interventions. The terms 'speech', 'language' and 'communication' are often used interchangeably, but they refer to different skills, all of which are required to have successful interactions with other people in various domains of everyday life:

- Speech requires the ability to pronounce sounds in words accurately and clearly, in a way that can be understood by other people. It also includes speaking fluently, without stumbling or stuttering, and speaking at an appropriate rate, pitch, volume and intonation to add meaning and expression to the words.
- Language refers to both receptive language or comprehension (i.e. understanding what people say) and expressive language (i.e. combining appropriate words into sentences to exchange information and express thoughts, feelings, and ideas and to build conversations). Verbal language may be oral (spoken) or written (reading and writing).
- Communication refers to how we talk with other people, for example modifying how we talk depending on the situation and navigating often complex and unpredictable social interactions. It includes unwritten rules of social communication, such as taking turns or staying on topic in conversations, as well as nonverbal communication, for example the understanding and use of eye contact, gestures and facial expressions. Successful communication also requires the ability to consider another person's perspective and intentions, and to understand the wider social and environmental context.

The Australian Bureau of Statistics's 2015 Survey of Disability, Ageing and Carers (SDAC), estimated that 1.2 million Australians have some level of communication disability, ranging from those who function without difficulty in communicating every day but who use a communication aid, to those who cannot understand or be understood at allⁱⁱ. Speech, language and communication needs can affect people of any age and can arise from a range of conditions. Difficulties may be present from birth (e.g. in the case of fetal alcohol spectrum disorder, intellectual disability, or autism spectrum disorder), become apparent during childhood or early adolescence (e.g. severe speech sound disorder, developmental language disorder, or early onset mental illness), late adolescence/adulthood (e.g. from brain injury, stroke, progressive neurological conditions or late-onset mental illness), old age (e.g. from dementia, or Parkinson's disease), or be caused by alcohol or other drug abuse. People with speech, language and communication needs, which may or may not be associated with other physical or cognitive disabilities, frequently require interventions and supports from multiple areas of public service, including health, disability and education sectors and mental health services.

Swallowing disorders

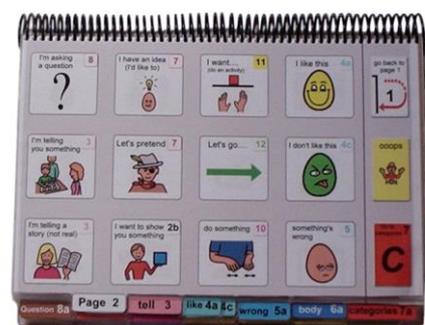
Swallowing disorders, known as dysphagia, are problems with eating and drinking that can result in life-threatening choking episodes, contribute to aspiration pneumonia (food or fluid entering the lungs and causing infection) and compromise nutrition and hydration.

Common causes of dysphagia are related to medical, cognitive, or physical conditions such as poor dentition, neurological diseases, stroke, cerebral palsy, acquired brain injury, head and neck trauma, airway malformations, intellectual disability, dementia, and mental illness, including as a side effect of medications commonly used to treat mental illness as well as the natural processes of ageing. There is a growing body of evidence suggesting that use of crack and/or cocaine can lead to self-reported symptoms of dysphagia, particularly the sensation of food being "stuck in the throat", the need for increased effort to swallow, or pain while swallowing.ⁱⁱⁱ Dysphagia may also present as a somatisation symptom for survivors of sexual abuse.^{iv}

People with Complex Communication Needs

Many people with disability have Complex Communication Needs (CCN); these are defined as difficulties with understanding or the expression of communication, which occur as a result of, or in association with, other sensory, cognitive or physical impairments. Individuals with CCN may have little or no speech or have unintelligible speech. Many of these people benefit from the provision of additional or alternative methods of communication such as aids and devices.

Additional or alternative methods of communication, termed Augmentative and Alternative Communication (AAC) methods include symbol and text-based boards, electronic tablets and Apps, and access supports such as mounting and switches.



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.

The impact of unidentified and/or unmet speech, language, and communication needs

Oral and written communication skills underpin the majority of our interactions with other people and the world around us. Speech, language and communication needs are often considered to be a 'hidden' disability, and when not recognised and treated, can negatively affect an individual's educational engagement and academic achievement, employment opportunities, mental health, social participation, ability to develop relationships, and overall quality of life. It is known, for example, that unmet speech, language and communication needs can contribute to specific psychological and behavioural consequences e.g. irritability and aggression (in part due to frustration and/or a limited repertoire of appropriate behavioural responses), limited attention, concentration and/or self-regulation, reduced responsiveness/lack of spontaneity, increased risk of anxiety or depression and self-harm, reduced self-esteem and reduced quality of life.^v

Young children entering school with oral communication difficulties are more likely than their typically-developing peers to struggle to acquire literacy skills, which in turn negatively impacts the development of more complex oral language and academic skills.^{vi} This has the potential to start a cycle which can increase the likelihood of behavioural difficulties, disengagement from school, and engagement in anti-social behaviour, a well-documented trajectory termed the school-to-prison pipeline.^{vii} In addition to contributing to poorer educational outcomes, speech, language and communication needs are also associated with reduced employment opportunities and restricted choice of career prospects, increased social stress and peer relationship problems, social miscommunications and misinterpretations, and difficulties establishing positive peer, professional, and romantic relationships (due to the underlying need for complex communication skills such as conflict resolution, problem-solving, and empathy) resulting in social isolation and subsequent risk of participation in antisocial peer groups.^{viii}

People with SLCN and/or swallowing disorders and the justice system

Individuals with unmet SLCN are more likely to experience life-long problems including increased risk of social, emotional or behavioural difficulties, mental health problems, relationship difficulties, poorer educational and vocational outcomes, and contact with the justice system as both victims and offenders.^{ix}

Furthermore, unrecognised or unsupported speech, language and communication needs often have negative consequences for both people's ability to access and engage with the justice system; and for those working in the criminal justice system to be able to respond appropriately to individuals' needs. Unmet SLCN have implications for accessing the justice system in that it can impact on participation in investigative interviews, witness competency, fitness to plead / stand trial, relationships with legal counsel, understanding of legal concepts and constitutional rights, ability to discuss issues related to safety and risk, perception of reliability of the testimony. It also has implications on an individual's ability to participate in verbally-mediated interventions, and post release employment prospects,^x as people with unrecognised speech, language and communication needs are likely to struggle to access treatment and rehabilitation programs which are typically delivered verbally,^{xi} which has further consequences for recidivism.

Offending behaviour

Research in Australia and internationally has consistently identified the high prevalence of previously undiagnosed language difficulties in offending populations.^{xii} It is common for these difficulties to be

masked, with people often presenting instead with avoidant or difficult-to-manage behaviours, contributing to the under-identification of speech, language and communication needs among offenders.

In a Victorian study, approximately 50 per cent of young people in custody without other known developmental difficulties were found to have an oral language impairment, and there was a significant association between the severity of offending behaviour and the severity of language impairment.^{xiii} Several other neurodevelopmental disorders with associated speech, language and communication needs, such as attention deficit hyperactivity disorder (ADHD), Autism Spectrum Disorder and fetal alcohol spectrum disorder (FASD) are overrepresented in the justice system.^{xiv}

Abuse and victimisation

In a report by the Victorian Ombudsman it was identified that, at that time, many people in prison (particularly women) had histories of various forms of abuse. They also noted that there were high rates of intellectual disability and acquired brain injury in both male and female prison populations.^{xv} Further research looking at women with language disorder and retrospective reported sexual crime, showed that among those who reported sexual victimization by age 18, overall severity were greater in the language disorder cohort than in the control group.^{xvi} It is also known that a childhood history of complex trauma, which is also associated with communication difficulties^{xvii} is a risk factor for mental illness, violent offending and subsequent incarceration.

By the very nature of their disability, people with communication disability are at increased risk of violence, abuse, neglect and exploitation, due to their reduced ability to communicate, reduced understanding of language, reduced sense of autonomy, and increased experience of being reliant on others, for personal care and their communication expression and understanding. People with physical and intellectual disability often also have complex communication needs and are often more reliant on others for basic physical care so become accustomed to people touching them as part of providing activities of daily care such as changing continence products. This can lead to them perceiving what is in fact sexual abuse as something that is just an acceptable part of their daily care.

Complex and challenging behaviour

People with SLCN are more likely to exhibit challenging behaviours as well as emotional and social difficulties.^{xviii} People who have difficulty with comprehension of verbal instructions or the communication of their concerns to others in a socially acceptable manner, are more likely to exhibit challenging behaviour leading to offending behaviour.^{xix} Both males and females with poor receptive language are more likely to be physically aggressive, and females with poor expressive language are more likely to show higher levels of relational aggression, i.e. causing harm to others by damaging their relationships or social status.^{xx} Children with language disorders are twice as likely to demonstrate externalising problem behaviours.^{xxi}

Given this link between SLCN, often in combination with other comorbidities, and the potential for challenging behaviour, it is important for those working in the justice sector to be able to make the connection between behaviour of concern and communication in order to respond appropriately. It is essential therefore for speech pathologists to contribute their expertise regarding the assessment and management of SLCN within multidisciplinary treatment approaches targeting the management of challenging behaviour.

People with complex communication needs and the justice system

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.

Dealing with the police

The multi-modal communication systems used by those with CCN are often complex and highly individual, meaning that specific training or familiarisation is required by 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 basic generic training for police to develop their understanding and awareness of complex communication is of huge benefit and is needed, it cannot prepare them, or other public servants, for the process of interacting with or interviewing 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 requires 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, trained communication intermediaries who are given the opportunity to familiarise themselves with the person and their communication modes prior to the police interview and provide support throughout the interview and in court, if required, is paramount.

The operation of the courts

People who use alternate forms of communication must have the same rights as the wider population in being able to give evidence within a court proceeding. The use of AAC systems therefore 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 and prove challenging for most people with complex communication needs. For example:

- *Availability of relevant vocabulary*

Availability and access to vocabulary to enable full and spontaneous communication is always an underlying issue with AAC. Unless a user can spell or otherwise create words to convey meaning, people who use AAC are reliant on those in their environment to provide the vocabulary they can use to express themselves. Consequently, they often would not have access to, or an understanding of the vocabulary

needed to participate fully in the legal system. While it is important that the necessary vocabulary required to enable a person to express themselves efficiently and explicitly is provided, it is also critical to consider how this can be done in a way that will reduce the possibility that the veracity of their communication can be challenged. Training of the police and the development of skilled communication support people is required.

- *Authorship*

Perception of authorship is particularly problematic as, in many cases, people with CCN are required to co-construct their message with the support of others to:

- interpret speech that is difficult for others to understand
- piece together key words that are said 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 independent communication intermediaries again seems the most appropriate means by which to achieve this.

- *Time and the need for repetition*

The use of AAC to construct a message takes considerably more time than verbal communication so any strategies 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. It is also prudent to 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 any repetition 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 regarding the complexity of questions that may be posed to a person with CCN, as well as 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 due to 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 the same as being able to give 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 as these would alleviate the time pressure and any anxiety 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.

People with swallowing disorders and the justice system

As is the case with SLCN, many conditions associated with dysphagia are over-represented in the adult custodial population. For example, the Victorian Prisoner Health Survey^{xxii} identified considerably higher rates of poor dentition, hearing difficulties, brain injuries, mental illness, substance use, chronic respiratory diseases, and recent hospitalisation than would be expected in the general population. It is therefore anticipated that adults in custodial settings will experience swallowing difficulties at the same rate (or even higher than, given common complex physical and mental health needs of people in custody) than the general population, particularly as the prison population ages.^{xxiii}

The role of speech pathology in custodial settings

“It is very rare that you find something which is capable of making a really significant contribution, particularly to successful rehabilitation, and when you do find it you want to go for it. I have to admit that in all the years I have been looking at prisons and the treatment of offenders, I have never found anything so capable of doing so much for so many people at so little cost as the work that speech and language therapists carry out.”^{xxiv}

As specialists in diagnosing, assessing and treating speech, language, communication and swallowing problems, it is a speech pathologist’s role to provide both direct intervention^{xxv&xxvi} (one-to-one or small group therapy) and education/consultation services (e.g. professional development and capacity-building of other staff). Speech pathologists also play a role in the assessment and remediation of literacy difficulties, which are often experienced by those with underlying speech or oral language difficulties and can therefore complement the role of educators working in the correctional facilities/youth justice centres.

Speech pathologists are now being employed to act in a variety of roles, within the justice system, including as expert witnesses; providing education to legal professionals in recognition of communication impairment; suggesting strategies to assist the client to provide a complete and meaningful narrative; assessing communication impairment prior to interview and trial; and (subject to legislative provision) supporting communication during questioning.

Speech pathology provision in custodial (and community justice) settings may involve both direct and indirect input, and typically encompasses three tiers of intervention, including, but not limited to:

Tier 1: *Universal Interventions* - including targeting whole populations, attempting to prevent and minimise the impact of speech, language and communication needs or swallowing difficulties, as well as general environmental modification and staff/carer capacity building which will benefit all those in the justice setting, such as:

- contributing to the intake screening assessments of all detainees to ensure their oral and written communication skills, and swallowing abilities, are considered, and associated risks are recognised and mitigated;
- education to those in the individual’s environment (including custodial officers, educational and vocational staff, and other allied health professionals) regarding the short and long-term psychological, behavioural and social impacts of speech, language and communication needs or swallowing disorders and ways that these difficulties may be managed more effectively;
- assisting with the development and design of resources to inform and educate key stakeholders regarding the impact of speech, language and communication needs on people’s behaviour and involvement in the justice system;
- ensuring that all staff within the prison system use appropriate types and levels of language in their interactions, instructions and/or intervention programs, including the support for more pro-active strategies of managing behaviour to reduce the number of aggressive incidents, and the implementation of more effective verbal de-escalation and debriefing should a challenging situation arise;

- ensuring that forms and documents are suitably adapted to reflect the profile of communication needs in this population, including developing simple visual resources to assist comprehension of rules and procedures.

Tier 2: *Targeted Interventions* - seeking to address the difficulties, reduce risk factors, and increase protective factors in populations particularly at risk of speech, language and communication needs, and includes:

- the provision of group therapy, including (where turnover of prisoners is rapid), short-term workshops focused on skill development in areas such as verbal conflict resolution, social skills, literacy skills, communication for employment opportunities, and parent-child communication;
- joint-working with other clinicians to interpret and scaffold other interventions (including offence-specific programs) to enable people with communication difficulties to participate effectively in all aspects of their rehabilitation;
- joint-working with other clinicians to support the safe meal-time management of individuals with, or at risk of, swallowing difficulties.

Tier 3: *Specialist Interventions* - aiming to address the specific difficulties of individuals who show additional needs that are not met by universal or targeted interventions, for example:

- further assessment of the speech, language and communication needs, literacy, and/or swallowing skills of those in the justice system to profile their communication/swallowing strengths and weaknesses and identify any clinically diagnosable communication or swallowing disorders;
- providing individual speech pathology interventions in custodial settings to improve functional communication (including literacy) and swallowing of the individual;
- implementing multi-modal communication strategies such as augmentative and alternative communication systems (AAC) e.g. communication books, boards or speech generating devices;
- making tailored suggestions regarding an individual's behavioural or psychological management, including involvement in transition planning for the person when they leave custody, highlighting services they will require to support their oral and written language development, as well as assisting the person's understanding and active participation in their transition planning and delivery.

Communication intermediaries

A communication intermediary's role is to assist with the communication between an individual with communication needs (whether a complainant, witness or suspect/defendant) and the police/courts in order to enable them to participate more fully in the justice process. This requires the communication intermediary to complete an assessment of the individual's communication strengths and weaknesses, provide advice and recommendations to the police/courts, and then intervene in the questioning as necessary to ensure the individual can understand the questions being asked and express themselves effectively. The role should be impartial and is not intended to offer emotional support to the individual or change the line of questioning.

There are significant consequences for the justice process, and for the individuals involved, if a witness is found not competent to give evidence, or if the accused is found not fit to plead or stand trial. In some cases, the issues preventing their full participation in the processes may be able to be overcome if their communication difficulties are appropriately recognised and supported. We therefore strongly encourage consideration of the use of a communication intermediary in the determination of fitness to plead/stand trial and witness competence.

The role of communication intermediary demands expertise in communication (both assessing and managing communication difficulties) and carries considerable responsibility in enabling the participation of a vulnerable individual in a complex legal process, and as such this expertise should be properly

recognised, respected, and remunerated. Speech pathologists are, by the nature of their training and clinical experience, in a good position to act in the role of a communication intermediary.

The benefit of a communication intermediary is not restricted to the criminal justice system. Consideration should be given to the use of a communication intermediary when people with communication difficulties are required to participate in any legal process, such as matters of family, civil, immigration or industrial law.

Speech Pathology Australia's feedback regarding relevant questions as per the issues paper

Question 1: What experiences related to violence, abuse, neglect or exploitation have you, a family member with disability, or someone with disability you support, had in the criminal justice system?

As we highlighted above, inadequate, or non-existent access to specialist services, such as speech pathology, is a form of neglect. The lack of access to speech pathology services is not only problematic when direct therapy may be required for an individual with a communication disability but without appropriate support it can also affect people's ability to access and navigate the justice sector as a whole. For example, a Speech Pathology Australia member based in NSW reports how they have worked *'with adolescents and adults in (non-forensic) in-patient mental health settings who had been victims of crime and whose cases didn't proceed through full investigation and trial procedures because of barriers – e.g. being deemed to be unable to complete a police interview or give further evidence because of their mental health difficulties and/or communication needs - to them accessing the justice system.'*

The Association would also highlight the case of Marlon Noble, a 29 year old Western Australian who spent 10 years in jail without trial due to his intellectual disability putting him in the "too hard" basket.^{xxvii} This is an extreme and distressing example of system failure and the potential consequences to an individual of not being to access and participate in the justice system by being denied access to the support they need.

As to examples of abuse, the same Speech Pathology Australia member, based in NSW, has *'witnessed, while working in custodial and forensic mental health settings, the chemical and physical restraints of adolescents and adults after they presented with what was considered challenging behaviour, some of which was undoubtedly related to their mental state, disability, and unmet communication needs.'*

Question 2:

A. What do you think causes violence, abuse, neglect and exploitation of people with disability in the criminal justice system? What can be done to stop this from happening?

We would contend that the overarching causes of neglect and abuse within the criminal justice system for people with communication disability are related to a lack of awareness of SLCN and swallowing disorders and a lack of resourcing to support and overcome this need.

Causes of neglect within the justice system – lack of access to support

Being able to effectively navigate the criminal justice system – whether as a complainant, witness, suspect/defendant or a participant of a rehabilitation program – every stage/process is heavily reliant on the ability to communicate effectively. For example, witnesses with SLCN are particularly vulnerable to some of the challenging requirements of investigative interviewing and providing evidence during a trial. These requirements might include providing a detailed narrative account of events, responding to a

variety of question types, comprehending legal procedures and vocabulary, attending for an extended period of time in an unfamiliar environment, and recalling events after some delay.

For people with CCN these challenges are even more pronounced as their capacity to access and participate in the legal process is reliant on the provision of appropriate support and therefore a need to understand and establish if the individual:

- 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 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, including the use of Key Word Signing (the use of AusLan signs in parallel with spoken language, with only the main meaning carrying words being signed).

With regard to those in custody with a swallowing disorder, neglect, through a lack of, or no access to support services, is primarily due to staff working in correctional facilities not being trained to understand or identify swallowing disorders. On the rare occasion that someone is identified as experiencing swallowing difficulties, they are usually referred to external hospital services for assessment at great expense and time/workforce impact.

What can be done

Early identification of SLCN and the provision of appropriate support such as speech pathology is essential to ensure access and effective participation in the justice processes. The role of the speech pathologist may be to help improve an individual's communication skills or to act as a communication intermediary.

For those individual's with CCN this may mean using a range of support strategies 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 compromised.

For SLCN to be identified at first contact with the justice system, the ability for the police to be able recognise and respond to such need is essential and therefore upskilling is required - see for example Scope's Communication Access program with Victoria Police.^{xxviii} Training provided to police should not only give them strategies to communicate at a basic level with people who have CCN, but also to help them identify those who may require the support of a trained communication intermediary, so that this can be provided as early as possible in the process of the investigation. The early involvement of a trained communication intermediary when required, can help to provide more detailed information to the police while it is fresh in the mind of the person with CCN.

As to supporting individuals with swallowing disorders, speech pathologists have a critical role to play in training correctional facility staff to understand the potential impact of a swallowing disorder and help them to be able to identify when an individual is displaying swallowing difficulties. Once identified, however the ability to access specialised services, such as speech pathologists, is essential. A speech

pathologist can then assess the individual's swallowing support requirements, develop a mealtime management plan, and work with caterers who often are not aware of how to modify food texture appropriately.

Causes of abuse within the justice system

People with communication difficulties are more likely to be the victims of abuse and victimisation.^{xxix} This occurs for several reasons including, that they can be considered an 'easy' target as are less likely to make a complaint.^{xxx} Indeed the increased risk of harm and abuse to people with CCN is because perpetrators know that their evidence will not be accepted in court.

Another cause of abuse is that there can be specific psychological and behavioural consequences of communication difficulties, e.g. irritability and aggression (due to frustration resulting from communication difficulties and/or a limited repertoire of appropriate behavioural responses), limited attention/concentration/self-regulation, reduced responsiveness/lack of spontaneity, increased risk of anxiety or depression, and increased risk of self-harm, social stress and peer relationship problems, all factors that may contribute to an individual exhibiting challenging behaviour,^{xxxi} which in turn may lead to seclusion or restraint in prisons or forensic mental health facilities. This response is more likely if staff are not trained to identify and respond effectively to an individual's communication needs or recognise the potential link between this need and the behaviour.

What can be done

Firstly, ensure access to speech pathology services to help identify, assess and support those individuals with SLCN to develop their verbal expression or use AAC (e.g. communication books, boards or speech generating devices) if required. Secondly, ensure those working throughout the justice sector are trained and upskilled - by speech pathologists - to raise awareness and enhance their ability to recognise and manage challenging behaviour that is a result of communication difficulties, including using more effective de-escalation skills. A speech pathologist can assist in identifying any SLCN that may be contributing to an individual's challenging behaviour, and any environmental factors that may be impacting negatively on their communication and using this information to inform the implementation of strategies to help the individual to develop more prosocial communicative behaviours and those in their environment to respond more effectively to them.

It is critical therefore that the potential connection between challenging behaviour and communication issues is understood in order to inform management decisions and response strategies to prevent seclusion and/or restraint. To do this effectively it will require capacity-building of the justice and forensic mental health workforces, so all staff are aware of, and better able to recognise this link. For example, the first approach to encouraging an individual to calm down when they are becoming agitated is usually to talk with them, but this is not always done with enough awareness or understanding of any communication difficulties that an individual may be experiencing. This is particularly relevant when an individual is in a heightened state of arousal, and the impact of staff's own (mis)communication skills has the potential to either escalate or de-escalate a situation. As such, an individual's communication skills/needs, and the use of communication by those in their environment, should be an essential consideration when developing policies and guidelines relating to the prevention of, and/or response to, challenging behaviour. Once a communication need has been established, staff need to be able to easily access specialist services, such as speech pathology, so the individual in question can have their communication needs supported more effectively and mitigate similar behaviour in future.

B. In particular, what changes would help people with disability avoid the criminal justice system in the first place?

It is essential to understand the link between unrecognised, undiagnosed and untreated communication difficulties (which may or may not be associated with other disabilities) and its impact on an individual's literacy skills, disengagement in school, and engagement in challenging/offending behaviour. There is a substantial body of evidence^{xxxii} demonstrating a strong association, with complex, multifactorial links, between speech, language and communication needs (SLCN) and contact with the criminal justice system. This research demonstrates a high prevalence of language disorders in both youth and adult custodial populations. Research also shows a correlation between the severity of offending behaviour and the severity of language impairment,^{xxxiii}

Identifying and supporting the speech, language and communication needs of individuals at risk of, or in contact with, the justice system is vital for the prevention or amelioration of social and behavioural difficulties (including offending behaviour), and to enable people to participate fully in social, educational and vocational activities known to reduce the risk of initial, or further contact, with the justice system.

Access to speech pathology to identify and support any SLCN should therefore be considered essential to help people with communication disability avoid the criminal justice system in the first place. Speech pathologists play a vital role in the identification and management of SLCN whether at a population health promotion/prevention level, through early intervention for those identified as having/being at increased risk of speech, language and communication needs (e.g. those with a history of adverse childhood experiences) and within schools, and at an individual level. Ensuring timely access to speech pathology assessment and services may result in risk factors for entry to the school-to-prison pipeline being mitigated, through improved educational and vocational engagement and outcomes and a reduced risk of initial contact with the justice system. It is also critical to ensure that individuals who require AAC supports to understand what is occurring and what is required of them, and to co-construct their autonomous messages, are provided with ongoing one to one support from an appropriately trained communication intermediary as required.

In addition to considering strategies that will help individuals avoid contact with the justice system in the first place it is also equally prudent to consider strategies to reduce recidivism. For example, if speech, language and communication needs are not identified and supported for those in the system, individuals may not be able to participate fully in verbally-mediated physical and medical assessments, and discussions regarding their future employment, housing, and other social needs. Indeed, it has been suggested that decreased verbal ability is one of the factors that may contribute to engagement in persistent offending behaviour, therefore the inclusion of speech pathology provision in rehabilitative programs which may reduce recidivism should be considered.^{xxxiv}

Question 3:

A. What do you think prevents people with disability who have experienced violence, abuse, neglect, or exploitation from getting protection or justice from the police or the courts?

We reiterate how unrecognised or unsupported SLCN have negative consequences both for an individual's ability to access and participate in the justice system and for the ability of those working in the criminal justice system to be able to identify and respond appropriately to those individuals' needs.

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.

Question 4:

A. What supports do people with disability need to participate in the criminal justice system on an equal footing as others without disability?

As we highlighted in our background information, it is critical that people with communication difficulties are given every opportunity to understand the investigative and court processes and are supported to provide accurate information to ensure their rights are upheld. People who use alternate forms of communication must have the same rights as the wider population in being able to give evidence within a court proceeding. The use of AAC systems therefore should be an accepted and acknowledged part of the legal system; just as accessibility requirements for physical disability are provided and accepted.

Speech pathologists add a unique clinical skill set to multidisciplinary teams, contributing information regarding an individual's communicative capacity and functioning to other members of staff, and ensuring that information given to people with, or likely to have, SLCN is as accessible and meaningful as possible, as well as conducting direct assessments and therapy when necessary.

One measure that could support people with communication disability to access and participate in the criminal justice system effectively is to expand the provision of, and eligibility for, communication intermediary services, including support from speech pathologists to co-construct messages for people who use AAC. Intermediary schemes are now in operation in NSW, Victoria and the ACT, however there are currently limitations (different in each jurisdiction) on the role in the legal process, the types of offences, geographical locations, and the ages and disabilities eligible to receive support. Ideally, intermediaries would be available in the same way to anyone who has SLCN that may impede their participation in the justice system, regardless of their age or geographical location, whether they are a complainant, witness or the accused, and in relation to any offense,

Another measure to assist people to be able to access the justice system, is to ensure all documentation and information is communication accessible. It is essential that everyone is able to understand the required forms, documents and legal procedures. We therefore strongly recommended that the speech pathology profession is consulted regarding the review of legal procedures and documents in order to ensure that they are communication accessible and can be understood by people with communication difficulties.

Finally, once in custodial or community justice settings, behavioural problems and criminogenic factors are an understandable focus of many programs, but without due consideration of the role of impaired receptive and expressive language skills (including literacy), such interventions are likely to achieve only limited success. People with unrecognised SLCN are likely to struggle to access treatment and rehabilitation programs which are typically delivered verbally. Therefore, access to speech pathology services to help identify and assess any SLCN is essential to ensure these individuals are supported appropriately to be able to participate and potentially benefit from such programs.

B. When would these supports be needed to assist people with disability who are:

(i) victims of crime

(ii) witnesses required to give evidence

(iii) accused or suspected of criminal offences

(iv) convicted of criminal offences or

(v) jurors?

These supports are necessary throughout the criminal justice process, from the first report or police caution, to ensure that people with SLCN, including those with CCN understand their rights, can participate in interviews, instruct lawyers, understand what is happening in court (for a juror or the accused, that would mean for the whole trial including legal arguments/concepts and other people's evidence), bail/parole conditions, sentencing, time in custody (or in community justice settings), and post-release processes. They are also necessary to ensure witness competence or fitness to plead/stand at trial hearings.

C. What are some examples of good supports? How have these supports worked to keep people with disability out of the criminal justice system or safe within the system?

- Currently there are intermediary schemes in NSW, Victoria and the ACT. Despite evaluations of such schemes e.g. the NSW program, proving positive,^{xxxv} no jurisdiction yet provides intermediaries for all people with disability regardless of their age, diagnosis, location, or whether they are the complainant/witness/accused. This would be the ideal scenario to ensure everyone with SLCN is fully supported to participate in any criminal justice matter. See also Communications Disabilities Access Canada's website for details of how they provide education, resources and maintain a communication intermediary database which lists qualified Speech-Language Pathologists who work as a Communication Intermediary in police, legal and justice situations in Canada.^{xxxvi}
- Evidence indicates that young adults who have their developmental language disorder identified and treated (through intensive speech pathology intervention in childhood and attendance at language units in schools) are at reduced risk of future contact with the police than their age-matched peers, suggesting that early speech pathology intervention may have distal outcomes in relation to offending.^{xxxvii} Improving communication can also help people develop crucial negotiation and conflict resolution skills, which in turn can reduce the likelihood of them engaging in further offending behaviour.^{xxxviii}
- We are also encouraged to learn of an emerging practice in the Children's Court in Western Australia whereby a magistrate now routinely asks for Fetal Alcohol Spectrum Disorder (FASD) assessments, including specifically speech pathology assessment, prior to sentencing to understand if there are any SLCN to be considered.
- For those individuals already in the justice/correctional system, identifying and supporting their speech, language and communication needs can increase engagement/participation in verbally-mediated criminogenic programs and restorative justice practices, and, given the benefits of good communication in the maintenance of positive social networks and education/employment, may reduce future recidivism. There are now speech pathologists employed in several youth justice facilities, such as in QLD and SA, however this is not yet consistent across all youth justice services, or within adult correctional or forensic mental health settings, across Australia.

Question 5: How does violence, abuse, neglect or exploitation in the criminal justice system vary for particular groups of people with disability? For example, how does a person's gender, race, age, cultural or sexual identity, or geographic location (metropolitan, regional, remote) impact on their experiences of violence, abuse, neglect and exploitation?

As a particular group of people, those with communication disability experience neglect through a lack of timely and consistent access to support services such as speech pathology and intermediary services which in turn affects their ability to access and participate effectively in the justice system. Access to speech pathology services varies significantly according to an individual's age, diagnosis and geographical location.

As to those with SLCN experiencing abuse within the system, they are at risk of the unnecessary use of seclusion and/or restraints - as they are more likely to display challenging behaviour as a result of their disability - due to a lack of awareness, recognition and understanding by the justice system workforce of the link between communication disability and such behaviour.

Question 6:

B. A high proportion of young people in detention are First Nations people with disability or with an undiagnosed disability. How can they be better supported to access justice when they are in the system? What should be done to help them transition out of the criminal justice system?

In Indigenous Sentencing Courts, there is a strong emphasis on communication between the judicial officer, the offender, and other relevant parties. Communicating directly with the judicial officer, the defendants, Elders, and other community members allows offenders to gain a better understanding of the context of their offending.^{xxxix} It is in this application that speech pathology assessment, intervention and education could enhance the Indigenous Sentencing Court process by identifying barriers to effective communication and providing strategies to overcome communication breakdown. Although there is no legislative provision for it at present, and it is not yet common practice in Australian jurisdictions, it would be ideal for potential SLCN of people engaging in Indigenous court practices to be recognised and supported in order to enable their full participation. This would require collaboration between speech pathologists and those with knowledge of the individual's home language as well as with court professionals.

Question 7:

A. What barriers are there to effectively identify, disclose and report instances of violence, abuse, neglect or exploitation in the criminal justice system?

It is essential that the complaints system is robust and independent as well as accessible to people with communication needs. The very nature of a communication disability affects an individual's ability to voice their concerns, to self-advocate, and to disclose/report harm done to them by another. It is imperative therefore that the ability to initiate communication is supported to ensure all people with communication disabilities are able to make complaints, report abuse and be listened to. As such, Speech Pathology Australia strongly recommends the development and implementation of accessible and responsive complaints processes to more effectively support people with communication difficulties to participate in complaints and report abuse.

Robust internal complaints processes are also required to ensure that protections are in place as people can be reluctant to complain if they fear repercussions or being labelled as 'difficult'.

Question 8:

A. What barriers are there to adequately investigate violence, abuse, neglect or exploitation in the criminal justice system?

B. What is being done or should be done to encourage effective investigation and reporting of violence, abuse, neglect or exploitation in the criminal justice system when it occurs?

In addition to the points raised above in our response to Question 7, there is also a need for better training / capacity-building of all people involved in investigations to help them identify and ensure supports are provided to anyone with SLCN. This training needs to be comprehensive and practical and not the short 'awareness raising' sessions that are currently being requested by some police forces and judicial colleges.

To ensure an effective and adequate investigative process, if SLCN is identified then communication intermediaries need to be provided in every case, regardless of an individual's age, diagnosis, location, or whether they are the complainant/witness/accused.

Recommendations

Speech Pathology Australia requests that the Commission consider the following recommendations, the aim of which is to reduce or eliminate the risks of people in the criminal justice system experiencing violence, abuse, neglect and exploitation which are associated with speech, language and communication needs, by ensuring:

1. that the Commission recommends the need to recognise and address, through the inclusion of speech pathology services, the extremely high rates of speech, language and communication needs in youth and adult prison populations, and the vital role speech pathologists play in the identification and management of these needs.
2. those with complex communication needs are fully supported to access and participate fully and appropriately with the justice system
3. the use of Augmentative and Alternative Communication (AAC) systems is an accepted and acknowledged part of the legal system
4. access to speech pathology services for assessment and supports for swallowing difficulties
5. access to speech pathology screening for people who exhibit behaviours of concern to identify any additional communication supports that may enable them to more appropriately express themselves or understand and anticipate the environment around them.
6. systems are identified, funded and put in place to support people with communication disabilities to make complaints, report abuse and be listened to.
7. that the complaints system is robust and independent as well as accessible to people with communication needs.
8. robust internal complaints processes to ensure that protections are in place so people can make complaints without fearing repercussions or being labelled as difficult.
9. those working within the criminal justice system receive training by speech pathologists so they can:
 - better understand and identify communication and swallowing disabilities
 - appreciate the extra time required for someone using an AAC device to communicate their concerns/wishes
 - more easily identify if behaviour of concern is potentially related to frustration of not being able to communicate effectively
 - know when to request specialist services (i.e. a speech pathologist and/or communication intermediary).

If Speech Pathology Australia can assist the Royal Commission in any other way or provide additional information please contact Ms Gail Mulcair, Chief Executive Officer on 03 9642 4899, or by email gmulcair@speechpathologyaustralia.org.au

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