Contributions to the ALRC issues paper

Reference – Easy English Version

***Question 1***

*How should the law decide if you are able to make your own decisions?*

***Question 2***

*How can the law work out when*

* you can make a decision about something*

*or*

* a person needs to make a decision for you about something?*

***Question 3***

*How can the law make sure that a person who makes decisions for you*

* respects you*

* talks to you about decisions*

* makes a decision you would want?*

Question 1, 2 & 3 –

* Current tests to determine the person’s capacity to make decisions are not “deaf friendly” and also, at times, take a while to organise due to the supply and demand issue, the willingness to use and/or the lack of respect for the right to have access to Auslan interpreters.
* There are some concerns on how some individuals within the organisations who have the power to assess individuals’ capacity to make decisions actually manage the process. Examples are:
  + family members “interpret” for the client
  + allowing family members sit in a meeting (uninvited) when a professional is supporting the deaf client and the deaf client is unable to say the ‘truth’ and the representative of the organisation (who had organised the meeting) did not ask the family to leave.
  + a carer controlling the client’s access to community for fear of losing control over the client despite the fact that the client initially did indicate interest in specified community activities and the organisation who controls the client’s finances listens to the carer more than the specialised professional.
  + Not taking the time to emphasise with client that their best interests would be protected.
* Many deaf clients are socially/geographically isolated so rely heavily on those who are constantly part of their lives and/or are conditioned in their lifetime to let hearing people make the decisions for them even when the client privately does not agree to the decisions but feels obligated to accept.

There are a number of challenges faced by individuals who are Deaf / Hard of Hearing and their ability to make legal decisions is questioned:

* Access to information in a mode that they understand, i.e. information presented in Auslan, access to interpreters. How can someone’s ability be determined if the information isn’t presented in an accessible manner?
* Assumption by some that Deafness also determines some form of cognitive impairment, therefore individuals are not presented information or given the chance to have a say
* The ability to engage an appropriate advocate to ensure that the person understands and has their wishes represented appropriately.

Examples are:

* As part of a clients parole conditions, the court wants to include medical treatment as part of the order. The client, 40+ years, has been informed about it, from the psychologist but they are not sure that the client truly understands the possible side effects and health implications. The client has been interviewed twice.

An organisation who can advocate for client in making decisions on their behalf was contacted to determine if they could assist in supporting the client in relation to this decision. The client can make day to day decisions, independently but doesn’t appear to fully understand the implications of this. If this organisation cannot support this client in terms of medical decisions, it doesn’t appear that there are any appropriate options.

* Client has a standard procedure, and experiences complications that result in additional surgery and a hospital stay. Client does have a financial guardian appointed, but no one as medical power of attorney.

Who consents to the additional treatment?

How is informed consent obtained?

***Question 4***

*Do you need someone to help you make decisions? Who?*

There are a number of clients that need assistance to make decisions in some areas of their life. Medical care / treatment would be one of the main areas, particularly involving complex matters (when communication support isn’t provided and the person does not have capacity to provide informed consent) and for emergency procedures.

***Question 5***

*Does a guardian or nominee make decisions for you?*

Depends on the true altruism of decision making and how well they know the person.

***Question 6***

*How can the law make sure the people who make decisions for people with a disability do not abuse them?*

* To perhaps have a ruling in “shared monitoring” between specialist service providers and guardian/nominee with the client to ensure that abuse is not happening and that clear reporting is in place with an impartial organisation that has experience in disability. Examples:
  + The representative of the organisation who had the power to make decisions for clients had recommended the family member (who had been controlling the communication process) to be responsible for the elderly client’s life decisions despite reservations by others and there was no proper follow up plan put in place by the organisation after that to ensure all is above board.
  + A client (18 years old) of Vicdeaf requested that their case manager be listed as a nominee with a government agency. Relevant paperwork completed and submitted. Two months later, nominee status cancelled. Client’s mother had ‘persuaded’ their ‘adult child’ to return nominee status to mother. Immediately after this, mother obtained a substantial loan in her son’s name. The government agency had been informed as to why the client initially sought the new case manager to be nominee. Mother was receiving son’s payment direct to her bank account and providing him with an ‘allowance’, but it seems that this factor was not taken into account.
* Requiring government agencies to engage the appropriate specialised service when making decisions. Example:
  + placing a profoundly deaf child in community residential unit staffed by people with no knowledge of child’s communication (visual/signed/gestural). All people involved in the care of these minors do not engage interpreters when liaising with the child and the child is often the victim of “carers” frustration. This holds also true for adults in these situations.

***Question 7***

*Will you use the NDIS?*

*What is the most important thing the NDIS can do to help you?*

Currently, there is a lot of work needed to make the NDIS more “deaf friendly” and “deaf aware” as there has been various concerns relating to this.

NDIS is, perhaps, going overboard with the “independence” angle as appears to not be considering prospective clients as individuals with a right to bring their support worker (case manager or trusted person).

Deaf individuals had given up on the “intake” process as the information is not provided in an accessible format and also no sufficient explanations for some questions that may seem invasive/non-relevant for some clients.

***Question 8***

*Do you have an NDIS nominee?*

*If you do, are you happy with how you got your nominee?*

***Question 9***

*Have you been treated unfairly because of your disability?*

When meeting with individual planners, it is questionable if Deaf / Hard of Hearing people are being treated fairly if they are not able to bring their nominated support person/equipment and/or Auslan interpreters. An example:

* A case manager who has the required communication skills and a rapport with the client had been excluded from the meetings. You would hope that if a client is already effectively engaged with another service, that the NDIS would look to support the individual and look at how it can support the relationships that have already been established. Even at the basic level where the current case manager at least knows the client and their preferred method of communication.

Deaf/hard of hearing people encounter unfair treatment in all realms of societal engagement due to their deafness, they are either not provided the necessary and appropriate tools to facilitate their communication or their requests for such are ignored.

***Question 10***

*Did you make a complaint to someone about being treated unfairly?*

*Tell us more.*

Complaints are made to relevant organisations in the first instance and then often referred on to relevant organisations, little is to be gained by this as our disability discrimination laws are toothless.

***Question 11***

*Is it hard to get work?*

Deaf/hard of hearing individuals are at a distinct disadvantage within the confines of the labour market. Employers generally focus on the adjustments that could be made as a negative and costly process and the connotations that deaf people also have some cognitive impairment appear to be still worryingly abundant.

In a regional setting, there are limited Disability Employment Services and the majority have staff with no or limited signing knowledge or Deaf awareness training. So the ability to access support and incentive options for employers is limited.

***Question 12***

*Are you treated fairly and equally at work?*

***Question 13***

*What changes would help you be treated fairly and equally at work?*

***Question 14***

*Have you been on a jury?*

*If you have, what help did you get?*

***Question 15***

*What would help a person with a disability be part of a jury?*

Deaf professional - provide Auslan Interpreters or other devices of a choice for a deaf or Hard of hearing juror.

See the following link for information regarding what is believed to be the first Deaf person to complete the juror process in Australia (Drisana Levitzke-Gray), http://www.deafservicesqld.org.au/news/media-release-jury-summons-wa-association-deaf

***Question 16***

*Do you vote?*

*If you vote, is it hard or easy to vote?*

*Do you get help to vote?*

Deaf professional - from personal experience last year, when I stated I was deaf upon enrolment, the lady immediately assumed I didn’t know how to vote so proceeded to show me how. I responded in a very annoyed manner that I do know how and to just give me the papers so I can vote. Although the person may have meant well, it was as if she assumed that since I have a ‘disability’, I need additional help.

***Question 17***

*If you do not vote, what stops you voting?*

As a case manager, I contacted the Victorian Electoral Commission regarding a client who had recently turned 18 and their ability to understand the voting process etc.

I was advised not to encourage the person to register. The client did not register to vote.

If it was easier to understand how governments work and the process was appropriately supported, then it would be easier for Deaf /hard of hearing people to exercise their right to vote.

***Question 18***

*Have you had problems getting a fair go with*

* police*

*or*

* in court?*

*Tell us more.*

**POLICE**

* Having an Independent Third Person (ITP) attend a police interview with a deaf client. ITP had no empathy to the Deaf client, was actually patronising.
* Using children as interpreters when police making home visits to adults they know are deaf
* Police leaving a calling card with only a voice number listed – no fax / email or SMS details provided.
* Police being reluctant to setup an interview time (to take client statement) as an interpreter is required.
* Interview, with interpreter present, recorded BUT the interpreter was not on the recording. Without the interpreter being recorded too, there is no way to understand why the client answered in a certain way, when there is no visual of the way the questions were interpreted.
* Police giving Deaf clients an audio tape of their interview, or a video recording – without the interpreter being shown on the recording.
* Because client has appeared to understand what is being asked (nodding) police have assumed the client has understood questions etc and proceeded with interview– without an interpreter or real time captioning.
* Using family members to interpret even when the family members have been a victim in the same crime perpetrated against the deaf client
* Deaf peoples understanding of written English when the register of language used is much higher and contains legal wording. Deaf person therefore having no idea of what is required of them.
* Deaf clients being ‘encouraged’ to sign statements without Auslan interpreters present at the meeting.
* Victoria Police refusing to pay for the services of an interpreter.
* Deaf person hand cuffed when becoming overly animated in their signing (trying to communicate) or if they have ‘touched’ a police officer (trying to get officers attention, for example).
* A deaf person asked a Police officer for an Auslan Interpreter to report a crime or make a formal police statement. The Police had refused to book an Auslan Interpreter. The victim’s rights were ignored and thus not able to report the crime or make a formal police statement. All police officers need Deaf Awareness training and to know how to book an Auslan interpreter with no questions asked to the client about the need to have an Auslan interpreter. This is to be made a law and to be written in the Police Policy and Guidelines in all states of Australia. .

**COURT**

*The complexity of the rules of court and court forms produces a significant barrier to litigants…….* (Access to Justice & Legal Needs. A project to identify legal needs, pathways and barriers for disadvantaged people in NSW)

* ‘Magistrates in fact encourage relatives of deaf people to interpret when making a victim statement as the deaf person has confidence in their relative’s interpreting ability’ – as advised by a Senior Sargeant at a metropolitan police station.
* Interpreters not being provided, family members (who were not fluent language users) translating a few words.
* Deaf individuals not understanding proceedings and only become aware or the outcome AFTER court.
* Clients being told to attend court at 9.30, but interpreters not booked until 10am.
* Interpreters did not match the clients signing register. The court was not aware that the client was not just Deaf, but had other needs.
* There is no evidence of legal documents being translated into plain English or interpreted into Auslan (DVD).

\*note, a funding application was made prior to this issues paper to have court information

sheets interpreted, unfortunately the application was unsuccessful.

* Support workers, of the court, have no Deaf / Hard of Hearing Awareness training so they cannot support the client during the court hearing.
* Announcing the Deaf person’s name over the court intercom system when there is no interpreter present.
* Court ordered a client to participate in a drink driving course, yet the court and the course provider would NOT provide an interpreter. Other colleagues have had Deaf clients with the same requirements, and the client has attended without an interpreter – benefiting nothing from the program. It is apparent that the courts view is, that the client has to attend.
* No consideration of the additional time that is required to interpret questions and to ensure that the individual has understood.

All legal sectors should provide Auslan Interpreters to Deaf and Hard of Hearing people when requested for an interpreter.  Some of the clients will require more time when meeting with a lawyer for the first time.  Some Clients who are deaf of hard of hearing may have an additional disability that may need more time to ensure the client’s needs are met and respected.

***Question 19***

*Did you feel the police and the court believed you?*

***Question 20***

*What would help people with a disability get a fair go in court?*

* For lawyers to pay for Auslan interpreters when meeting before court date (and not charge it to client), for duty lawyers to be aware that deaf clients like to “tell a story” and to not say things like “you’re wasting time” in a cross manner and to be more aware that English and Auslan are two distinct languages especially when working through an interpreter. Court sometimes makes inappropriate decisions when the deaf community is a small yet vital for clients!
* Legal Aid, I believe, will pay for interpreters but is not consistent in what it will fund. Examples:
  + not providing an interpreter when the ruling was handed down
  + no interpreters provided for a follow up appointment with Deaf client post sentencing to ensure they understood charges and processes.
* The court needs to ensure that for any matters relating to sentencing, an interpreter or captioning (whatever the individuals preferred method of communication) is provided.This includes reviews of sentence, meeting with the parole board etc.

***Question 21***

*Do you do your own banking?*

*If you get help, how do they help you?*

***Question 22***

*Have you had problems with a bank?*

*Tell us more.*

Question 21 & 22 – banks often do not provide interpreters –it is hoped that one day, they will follow one particular bank’s example that has a policy in providing interpreters for customers.

Rural Deaf / hard of hearing people rely on the goodwill of local branch staff to give appropriate support to them with all their banking and insurance enquires. For some individuals all they appear to be informed of is that they have insurance and when the payments are due.

***Question 23***

*Do you have to talk to Centrelink?*

*Does someone help you talk to Centrelink?*

***Question 24***

*Do you have problems with getting*

* your payments*

* information from Centrelink?*

*Tell us more.*

Centrelink more often do not provide interpreters than they do. I was told two years ago that it was because the appointments is usually short therefore does not justify the money spent and that they can write notes. The queue and waiting system is not “deaf friendly” – probably varies from different Centrelink offices. Communication access a major concern.

Centrelink need to provide a variety of communication needs to deaf and hard of hearing or hearing people who are illiterate. They could provide Auslan version DVDs for any correspondences and they will require Centrelink officers to assist them to fill out the forms when needed.

Centrelink needs to make their decisions about the DSP based on the factual information, case in point, two individuals with exactly the same hearing loss communicating with the world through the same means, living equidistant from support, the same age (both 18 ) and undergoing education at the same school and one is granted the DSP the other is not. During further discussions with Centrelink the ignorance and negative attitude of the staff member was further highlighted when he referred to the deaf person as “deaf and dumb”.

***Question 25***

*Is it hard to get health services?*

***Question 26***

*Does a person help you make decisions about your health?*

***Question 27***

*Have you had problems with doctors or nurses listening to what you want?*

*Tell us more.*

Question 25 & 27 –

* It is not a matter of difficulty in getting access to health services; it is more of the system expecting people to fit into their categories which creates a whole set of other issues. Hospitals, especially emergency departments, are not reliable in organising interpreters. Deaf professional - I have had a personal experience from a medical receptionist stating they would not put me through to the doctor simply because an NRS call takes longer than a “normal” phone call and when asked for email or mobile contact, this was also refused. I have heard of a friend who had to have double appointments based on the fact that he lip reads and it takes longer. Making double appointments is harder than single appointments and he had to pay extra. (this was resolved but the fact that it did happen may mean it could happen elsewhere).
* It is difficult to access appropriate medical interaction when the view of disability is seen as an imperfection. Doctors and Nurses have been known to make recommendations to deaf people for cochlear implant surgery when they are not there for advice on such matters, for example during an orthopaedic appointment. There have also been numerous situations when the preferred method of communication has been ignored by the medical professional even in the presence of a qualified interpreter, statements such as “I can communicate with her just fine. I don’t need you”. This shows no respect for the deaf person and puts them in an even more vulnerable position.

***Question 28***

*Have restrictive practices been used on you?*

*Tell us more.*

***Question 29***

*What should the rules be for using restrictive practices?*

Question 28 & 29 –

* I could add that police putting handcuffs on a deaf person while being expected to talk/listen could be seen as a restrictive practice? Police would need to consider other options that allow a deaf/hard of hearing person’s ability to use their arms/ hands for communication purposes upon arrest.

***Question 30***

*Does the law make it hard for people with a disability to*

* have a relationship*

* get married?*

*Does the law make it hard for people with a disability to have children?*

It’s not the law that makes it hard but more of how information is disseminated and accessed; especially in the area of sex, sexuality and legal rights.

***Question 31***

*Tell us more about how to make the law better for people with a disability.*

Make MORE information in Auslan videos and to make all legal rules easy to read and make sure that there are accompanying pictures.

Immigration and Citizenship –

They need to provide Auslan interpreters to communicate and Deaf Awareness Training (DAT) to understand Deaf peoples’ needs. See below for example:

* + Deaf professional – my client was an asylum seeker. He had told me that he did tell the staff that he was Deaf and couldn’t read when in the Refugee camp. Staff told him along the lines of “Who cares? Everyone is the same”. He had asked for help with communication. Staff refused. When staff had ordered for everyone to go to the hall, he missed out as he couldn’t hear. Staff member/s appeared angry at him. He had to watch everyone and follow them which had him stressed in not knowing what to expect. This treatment occurred for the full duration of his time at the refugee camp.

**BIGGEST BARRIERS**

* Lack of accessible information, including notes and formal letters – they need to be translated into simple English. A number of Deaf people require an interpreter to translate (Auslan) what is written on paper so they actually understand what is said.
* Lack of ‘deaf awareness’.
* Poor use of significant persons / agencies, such as specialised case managers and interpreters.
* Non collaborative approach – inability to accommodate and work with outside agencies.
* Isolation and lack of communication or provision of information.
* Assumption that all Deaf people can lip-read or that anyone can ‘interpret’.
* Lack of clarity regarding policies on booking interpreters (police).