



Australian Law Reform Commission
PO Box 12953
George Street
QLD 4003

13 November 2018

To whom it may concern

Re: Speech Pathology Australia's comment on the Australian Law Reform Commission's consultation regarding the Review of the Family Law System Discussion Paper

Thank you for the opportunity to provide feedback on the Commission's consultation regarding the Review of the Family Law System Discussion Paper.

Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing more than 8500 members. Speech pathologists are university trained allied health professionals with expertise in the assessment and treatment of communication and swallowing difficulties. Communication difficulties can include problems with speaking, hearing, understanding, reading, writing, social skills, and using voice. Communication difficulties can arise from a range of conditions and may be present from birth (e.g., Foetal Alcohol Spectrum Disorder, Autism Spectrum Disorder), emerge during early childhood (e.g., Developmental Language Disorder), during adult years from an injury or development of disease (e.g., traumatic brain injury, alcohol or drug related brain injury), or be present in the elderly (e.g., Alzheimer's disease, Parkinson's disease).

The Australian Bureau of Statistics's 2015 Survey of Disability, Ageing and Carers (SDAC), estimated that 1.2 million Australians had 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 all.¹ As is recognised in your Discussion Paper, even typically-developing children also have communication needs in line with their age and developmental level, which can make them particularly vulnerable when participating in legal procedures involving complex language.

Communication difficulties can impact on all aspects of daily living, learning, working and social inclusion, preventing the person from participating fully in society, including creating a barrier to accessing the civil justice system. People with communication difficulties are likely to have problems understanding the complex language used in the legal system, and may experience difficulty expressing themselves adequately due to limited vocabulary and/or the inability to generate meaningful sentences. Studies consistently show that people with communication difficulties have significant difficulties navigating civil legal processes, including family courts.²

The main issues we would like to highlight for consideration by the Committee are primarily the role of communication intermediaries in the civil justice system, but also the need for all information relating to the legal and family court processes to be accessible, by this we mean available in more simplified versions (e.g. Plain English and Easy English), as well as training for legal professionals in the recognition and management of communication needs.

It is likely that many individuals/families involved in the civil justice system (including family courts) will have a history of issues such as mental health issues, trauma, socio-economic disadvantage etc.,

¹ Australian Bureau of Statistics (2017) Australians living with communication disability, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main%20Features872015?open=document&tabname=Summary&prodno=4430.0&issue=2015&num=&view>

² [http://www.lawfoundation.net.au/ljf/site/articleIDs/2EDD47C8AEB2BB36CA25756F0018AFE0/\\$file/JI10_Cognitive_impairment.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/2EDD47C8AEB2BB36CA25756F0018AFE0/$file/JI10_Cognitive_impairment.pdf)





which are known to be associated with communication difficulties, but these communication needs are rarely recognised or supported. Speech pathologists' specific training in the assessment and management of individuals' communication difficulties, means they are well-placed to support individuals with communication difficulties specifically in the role of communication intermediary.

A communication intermediary's role is to assist with the communication between an individual with communication needs and the police/courts in order to enable them to participate more fully in the legal process. This requires the communication intermediary to complete an assessment of the individual's communication strengths and weaknesses, provide advice and recommendations to the legal professionals, support legal professionals in ensuring an individual's understanding of their rights and legal processes, and then intervene in 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 influence the line of questioning.

While we note that an Advocate role is proposed and described in Proposal 7-8 and 7-9 of the discussion paper, it is unclear as to whether this advocate would be independent and impartial and also there is no mention of such assistance being provided to adults. The need for impartiality is paramount as there can be problems and risks around the autonomy of the message for a person with communication difficulties when supported by someone they know. Familiar communication partners can deliberately or unwittingly contribute their own messages, based on an assumption that they know what the person is expressing, or that they intuitively know what the person wants and/or needs. Indeed people with communication difficulties are vulnerable to being actively and intentionally directed and exploited by family members and others who are in a caring role. While this occurs in the minority of instances, it is a possibility which needs to be acknowledged, and addressed in system based strategies and responses.

For these reasons, we would argue that the role of a communication intermediary for both children and adults who have communication difficulties would be better suited than an 'Advocate' role. Indeed the Law Council of Australia Justice Project Final Report's also recommends the use of communication intermediaries:

'State and territory governments should support the expansion and evaluation of communication intermediary schemes across Australian jurisdictions, involving appropriately qualified, trained and remunerated communication intermediaries who provide impartial and independent advice to the judicial system regarding the person's communication needs.' Recommendation 4.4³

In addition to our recommendation for the use of communication intermediaries, we would also recommend training for legal professionals in the recognition and management of communication needs, and finally it would also be beneficial to simplify legal documents to ensure the provision of information that is accessible to all.

If Speech Pathology Australia can assist in any other way or provide additional information, please contact Mary Woodward (National Advisor, Justice and Mental Health) on mwoodward@speechpathologyaustralia.org.au

Yours faithfully,



Gaenor Dixon,
National President

³ <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20-%20Final%20Report%20v1%20full.pdf>

