

10/02/2020

## Response to Standing Committee on Justice and Community Safety on the

Advocacy for Inclusion (AFI) is a national systemic body representing people with disabilities in the ACT. AFI undertakes systemic advocacy and provides expert policy advice on issues affecting people with disabilities through our individual advocacy clients and membership base in the ACT.

AFI would like to thank the Justice and Community Safety Standing Committee for the opportunity to contribute to a response to the *Inquiry in the form of an evaluation of current ACT Policing arrangements*. It is not the place of AFI to determine the adequacy and reliability of the Purchase Agreement between ACT Government and the Commonwealth Government, only that there is no concerning content in either that affect the community sector in which AFI operates. Instead, this submission is in response to the opportunities provided under the 2017 policing arrangement for the AFP workforce to access community policing training and experiences and the resources and infrastructure provided for relevance and growth of policing services in the ACT.

We look forward to ACT Policing transitioning to a new policing model that will provide a proactive and community-centric policing service. In relevance, we are also optimistic of ACT Policing contributing to Canberra as a restorative city to improve responses to vulnerable members of the community, including people with disability and mental illness.

### The Barriers in Communication

AFI has a collaborative working relationship with ACT Police and works to raise awareness of disability, create resources under the ACT Disability Justice Strategy to foster understanding between individuals and police, and is committed to delivering ongoing training. AFI has been advocating for people with cognitive disability during their interactions with ACT Police and can say positively, that there are improvements in the way police interact and communication. There are occasions where they do not. Case studies in our submission will demonstrate both.

We continue to find that police, lawyers, and court staff do not have specific skills for working with people with disabilities, despite the best of intentions. Their focus is on applying their specialist area of expertise, and this is as it should be. Just like many other members of the community, assumptions are made that people with disabilities are unable to be engaged, to make a credible statement, or give evidence, even with supports.<sup>1</sup>

#### Case Study

A client with Cerebral Palsy has been summoned to attend court on the premise of 'intoxicated' behaviour. He had been arrested and detained at the ACT Police Watch House overnight.

Police had perceived the client had been 'intoxicated, unsteady on his feet and slurring his words'. The client tried to explain he had a disability but was told he was 'full of shit' by officers in attendance.

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<sup>1</sup>See Appendix Case Study, *Police Investigation*.

### Case Study

A client with autism and an intellectual disability had admitted to his advocate of stealing credit and debit cards to fund his living. He discussed with his advocate of admitting his guilt to police and facing consequences. His advocate advised that was his decision to make while also pre-engaging with police of the intentions of the client.

The police involved deployed a dispatch car to the client's house where they had a conversation with the client on his motivations to steal, discussed how and when he would repay the money, the consequences of his action and the ongoing process. Due to the client's disability and willingness to cooperate with police, charges were not pressed.

The police responded well to the involvement of the advocate, offering to provide further supports if available. The client has a strong circle of supports through his guardian, advocate, support persons and services.

It is an ongoing case example but provides insight to how well a response can be if police are aware and take disability in consideration.

Under the current Disability Justice Strategy, AFI and ADACAS have been commissioned to create training materials that will assist in improving training for police officers to interact better and 'spot' cognitive disability as well as intermediary approaches to interviewing, gathering evidence and better preparing for court and justice processes.

In our experience, past and current police processes, including meetings with legal representatives, have lacked the time that is required to ensure full participation by a person with significant cognitive or communication barriers. When people with disabilities do access legal representation, lawyers are ill-equipped to respond to their individual needs; for example, allowing the client time to process information, or communicating in ways that support their comprehension and involvement. People with disabilities may need:

*"more time to understand and answer questions or... a support person to explain things to them and ensure that they are not overwhelmed by the stress of a new and confronting situation (like a court or police station)"<sup>2</sup>*

For example, police often prefer to speak with family members instead of directly to the person with disability about their case, resulting in people with disabilities not being directly represented or heard, and as such their rights are discarded.

### Case Study

Zafir is a young man in his mid-twenties. He attends a day centre for a few hours three days a week and requires support to do most things throughout the day. Zafir does not use much verbal communication, but he can express himself using vocal sounds and hand gestures, and occasionally some words.

AFI's advocate had been informed that day centre staff had reported a serious incident of physical violence against Zafir by the senior support worker at the day centre. The senior support worker had been an employee at the day centre for 17 years. The CEO had already contacted the police, who advised her to contact Zafir's legal guardian or advocate to support him to make a police report.

The advocate worked closely with Zafir and his mother, who is his legal guardian, throughout the police investigation. Zafir became visibly distressed at the police station when his mother was being interviewed, indicating he had some understanding that they were discussing the worker's violence against him.

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<sup>2</sup> Fogarty, B. (2010) 'Improving legal representation for people with intellectual disability', *Precedent* 96.

### Case Study – cont.

Although Zafir could not explicitly articulate his personal wishes in terms of pursuing the case at that time, Zafir's mother was determined to follow this through for him and for other people with disabilities who might be supported by the worker in the future.

Despite the two support workers willing to come forward as witnesses, the police decided not to charge the worker and instead give him a warning. The police said that the reason they would not charge the worker was because there was not enough evidence; Zafir was not a reliable witness because of his cognitive and communication impairments, and he could not make a statement in conventional formats. They noted that the worker expressed significant remorse and suggested that the process would be too stressful for Zafir and his family.

It is deeply concerning that the worker was not held to account through a court hearing. The worker could be working for another agency with other people with disabilities, and Zafir might come across him again in the future in another service setting. In the ACT, support workers are required to undergo a working with vulnerable people clearance. The warning issued by police should be detected by this screening process, and AFI alerted the Office of Regulatory Services responsible for administering working with vulnerable people clearances of the danger posed by this worker. However, it is possible that he could be granted a clearance and allowed to continue work with people with disabilities.

Despite clear patterns of racial and disability abuse and assaults by the worker, the police did not appreciate the danger the worker poses to other people with disabilities, who he might go on to work with in other workplaces, and therefore the importance of charging the worker and having him go through a court hearing.

The case study is an example of failure to support Zafir through a police process. The lack of responsiveness to disability and disability specific contexts seems to have played a major part. For Zafir, his non-conventional communication needs were totally overlooked in his interactions with police. It was also assumed that it would be too stressful for him to go through the court process because of his disability, yet disability appropriate supports were not offered.

Current justice processes, including meetings with legal representatives, lack the time that is required to ensure full participation by a person with significant cognitive or communication barriers. The *ability to communicate* verbally and physically has been a barrier for people with intellectual or speech impediments to be able to communicate with police, judicial administration and lawyers of their case.<sup>3</sup>

In the recent Royal Commission into Child Sexual Abuse in Institutional Settings, the below recommendations are an example of best practice to improve the response of the justice system in the ACT.

*Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles:*

*a. Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability.*

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<sup>3</sup> Susan Hayes, 'A Review of Non-custodial Interventions with Offenders with Intellectual Disabilities' (2005) 17 *Current Issues in Criminal Justice* 69, 71. M Henshaw and S Thomas, 'Police Encounters with People with Intellectual Disability: Prevalence, characteristics and challenges' (2011) *Journal of Intellectual Disability Research* 1.

- b. Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability.*
- c. Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview.*
- d. Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.<sup>4</sup>*

The advocacy cases and stories that our clients have experienced indicate that people with disabilities are unbelievably, too hard to speak to or denied support they need to provide a statement as a victim of crime. The cases in which we have been involved in have shown that it is imperative that all possible effect need to be made to prevent people with high intellectual/cognitive disabilities or those in need of communication assistance to give evidence on multiple occasions. Such processes lead to lengthy delays and duplications, increasing the trauma experienced by the victim.

### **The Benefit of Pre-Recording**

AFI refers to the recent Royal Commission into Child Sexual Abuse in Institutional Settings recommendation<sup>5</sup> in response to barriers faced by people with disabilities in the justice process. Despite the report recommendations being directed to reporting of child sexual abuse, the recommendations should be adopted to the Charter as an example of best practice ensure that Australian Federation Police and ACT Police are responsive to and inclusive of all people with disability.

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- a. Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability.*
- b. Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability.*
- c. Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview.*
- d. Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication*

<sup>4</sup> Recommendation 15 of the Royal Commission into Institutional Response to Child Sexual Abuse, *Criminal Justice Report*, August 2017, Executive Summary and Parts I-II, page 30.

<sup>5</sup> Ibid

*supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.*

The advocacy cases and stories that our clients have experienced indicate that people with disabilities are unbelievably hard to speak to or denied the support they need to provide a statement as a victim of crime. The advocacy cases in which we have been involved in have shown that it is imperative to support people with high intellectual/cognitive disabilities or those in need of communication assistance to give evidence on multiple occasions. Such processes lead to lengthy delays and duplications, increasing the trauma experienced by the victim.

The only time a person should be asked to clarify or expand their evidence should be granted when necessary to the investigation to avoid multiple recounting of events, which is both traumatic and challenging for an individual with intellectual/cognitive or communicative difficulty. The effect of pre-recording should be thoroughly explored in relation to other proposed reforms where people with disabilities are included in the justice processes, assessing how these different changes might improve processes for all victims with or without disabilities.

Pre-recording of evidence<sup>6</sup> should be allowed on one occasion when deciding possible option of reforms for victims of crime. For a person with disability, this can be implemented with the assistance of a support worker or trusted individual *chosen by* the person to be used in legal proceedings at different evidence occasions and at different time. The only time a person should be asked to clarify or expand their evidence should be granted when necessary to the investigation to avoid multiple recounting of events, which is both traumatic and difficult for an individual with intellectual/cognitive or communicative difficulty.

In addition, the effect of pre-recording should be thoroughly explored in relation to other proposed reforms where people with disabilities are included in the justice processes, assessing how these different changes might improve processes for all victims with or without disabilities.

## **Police and Mental Health**

Police are often the first responders to people experiencing mental health crises or acute symptoms. While police do not provide direct mental health services, they are an essential part of the broader service system response for people living with mental illness. Too often, police are not just the first response, but the only response.

AFI strongly support the direction in which ACT Police and AFP officers and staff are taking an innovative stance on tackling mental health. We commend mental health professionals on being part of the justice process within stations to support officers when dealing with people with mental illness in the community.

Some of the issues which arise for clients from police responses to mental health crises include the criminalisation of mental illness, overrepresentation of people with disability and mental illness in the criminal justice system, escalations of situations, assault against police, and injury and fatality for people with mental illness.<sup>7</sup> A police response to a non-criminal event also raises issues of dignity of the person involved.<sup>8</sup>

### **Case Study**

Peter has autism and mental health diagnosis. He was at his local shopping centre playing Pokémon Go. He had earlier sent his mother another text message with reference to suicide which he admits doing when he wants attention. His mother then contacted the police who later saw him leaving the shopping centre.

<sup>6</sup> As recommended in Advocacy for Inclusion (2018) *Response to the Charter of Rights for Victims of Crime Options Paper*, p.3

<sup>7</sup> Office of Police Integrity, Victoria, *Policing People Who Appear To Be Mentally Ill*, Parliamentary paper, session 2010-12, no. 190 p. 15.

<sup>8</sup> Mental Health Council of Australia, *Not For Service: Experiences of Injustice and Despair in Mental Health Care in Australia*, First Report, 30 March 2006, Commonwealth of Australia 2006, Canberra, 2005.

### **Case Study – cont.**

When Peter saw the police, he took off his glasses so they would not recognise him. Peter advised that the police then approached him asking if he was Peter which he denied as he was worried what they would do as he had previous negative experiences with them. After some back and forth communication including Peter asking them to leave him alone as he isn't doing anything wrong, there was an altercation and the police proceeded to handcuff Peter and put him in their vehicle to take to the hospital out of concern for his mental health.

Peter arrived at the hospital very heightened and was put into a secure facility where he apparently waited hours to see someone from mental health. This case is ongoing.

### **Case Study**

Sally has an intellectual disability and mental health which includes self-harming and high anxiety. After a brief relationship over Facebook after meeting at an employment agency, Sally decided to end the relationship as she was not feeling comfortable. Alex, who Sally had been texting, started sending her threatening and disturbing messages which impacted greatly on her mental health. With support, Sally was able to take out an interim protection order, however the threatening text messages continued.

With further support, Sally went to the police station to provide a statement. The police officer attending to Sally's report of Alex breaching the order and who had completed the required training to take statements from vulnerable people, proceeded to tell Sally that there is not much they can do as Alex also has a disability before explaining what support could be offered to her.

Upon hearing the first part of what the police officer said, Sally became highly anxious and proceeded to run out of the interview room into the police station where she was surrounded by other police officers with one officer distinctly putting his hand on his firearm.

The support person attending with Sally was able to defuse the situation and supported Sally to return to the interview room and finish the interview which included further discussions of what support could be provided and what measures could be put in place to ensure she is feeling safe.

A positive outcome to the case study was the police officer called the AFI advocate directly to acknowledge that his reaction was immediate and impulsive. In addition, he thanked the support person for defusing the situation and stated that if she hadn't been there to support Sally, the situation would have been 'much worse'.

A positive outcome to the case study was the police officer called the AFI advocate directly to acknowledge that his reaction was immediate and impulsive. In addition, he thanked the support person for defusing the situation and stated that if she hadn't been there to support Sally, the situation would have been 'much worse'.

**Recommendation: Future policing agreements to include a prioritised response to mental health and disability in line with commitments to improving and increasing community presence in the ACT.**

### **Training and Accessible Materials**

The scope and detail of future support to the broader community should be accessible to people with disabilities and mental illness to communicate with police. In the past, AFI has created and released a Police Wallet card<sup>1</sup> for the benefit of both the person with disability to communicate



with police or to seek assistance. AFI has developed, in conjunction with ACT Police, a Police Wallet Card in Easy English format as a resource for people with disabilities to interact positively with police when approached. On the flipside, there is information for police of contacting advocacy organisations to assist in communicating with the individual or providing support. The Wallet Card has been highly regarded as a positive resource and is available from AFI in batches upon request.

Victoria Police and Western Australia (WA) Police Force have included accessible information on their websites for people with disabilities to engage with police, including their commitments to their State Disability Inclusion Plans. Victoria Police have extended their accessibility by including Easy English and Plain English resources explaining the role of police, and the different community focuses they undertake, including prevention of crime and domestic violence in the community.<sup>9</sup> This is something that ACT Police would benefit in also communicating in line with the *Human Rights Act 2004*.

We support the Disability Justice Plan implementation of South Australia, "provide appropriate training to staff and practitioners in the criminal justice system in disability awareness and this is what AFI aims to educate. Where practicable, any training of disability responses to future and current police officers and staff should involve people with lived experience of disability in its development and/or delivery"<sup>10</sup> from the cadet training and ongoing through a policing career. This is a critical component that can be implemented into the ACT model.

**Recommendation: Training to be mandatory as a cadet subject and ongoing throughout police career with refreshers over time. Training must be provided from a leading advocacy organisation, as they are frontline in circumstances between police and individuals and are best placed to provide comprehensive training and resources.**

## Conclusion

AFI is optimistic and open to changes made through the evaluation of current ACT Policing arrangements. As a leading advocacy organisation, we will continue to be a source of support for people with disabilities and mental illness in the community, with training and raising awareness to change and better police interaction in our community.

In our experience, people with disabilities who have not previously reported crimes against them, a well-connected and integrated quality, safeguarding and oversight mechanism is necessary and important as people with disabilities encounter ACT Government run or funded disability support and services, with multiple ways to report violence against them and seeking appropriate levels of support – if they are knowledgeable that such a pathway exists.

It is vital that any evaluation to ACT Policing is to ensure that information shared with the community is widely accessible, inclusive of and approachable to people with disability, and that they are well connected to ensure they have a range of options available to assist them through the police process.

**We would like to thank the Standing Committee for the opportunity to provide feedback on the evaluation and welcomes any further consultation on this topic.**

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<sup>9</sup> Victoria Police, *Accessibility* via <https://www.police.vic.gov.au/accessibility-1>

<sup>10</sup> South Australia Disability Justice Plan 2014-2017 *Support vulnerable victims and witnesses in the giving of evidence: priority areas*, p.9