**Submission – Access to Justice**

**Deaf Society of New South Wales**

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**Contact**

Sharon Everson

Chief Executive Officer

Deaf Society of New South Wales

[severson@deafsociety.com](mailto:severson@deafsociety.com)

ph. (02) 8833 3600

fax. (02) 8833 3699

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# Background

The Deaf Society of NSW was established in 1913 and is a company limited by guarantee. We are a not-for-profit, bi-lingual, bi-cultural, community-centred organisation which exists to achieve equity for deaf people. Our services include employment services, Auslan interpreting, education and training, independent living skills, advocacy, community development and community services. Our vision is Equity for Deaf People. We work in partnership with the Deaf Community to enhance the quality of life of deaf people, strengthen the community and advocate for changes that will ensure fundamental rights and freedoms.

As a disability service organisation, the Deaf Society of NSW assists people to access the justice system, and our staff have witnessed a number of significant systemic barriers that exist for deaf, deafblind, and hard of hearing people accessing justice. These experiences, along with our advocacy and policy work, inform the issues and recommendations we raise in this submission.

We agree with the Australian Human Rights Commission’s concerns, as outlined in its Issues Paper (April 2013), that many people with disability who need communication supports or who have complex and multiple support needs are not having their rights protected, and are not being treated equally, in the criminal justice system. We further agree with the five key barriers outlined by the Commission in its Issues Paper.

In this submission, we refer to the Deaf Community as both a disability group (because members of the community have their rights protected under the UNCRPD), and a CALD group (because the community has a unique language, Auslan, and a unique set of cultural practices and values which are quite different to the practices and values of the wider community). Hard of hearing people are those with a hearing loss who use a spoken language as their main means of face-to-face communication and who do not identify with the Deaf Community. Deafblind people have both hearing and vision loss, and may communicate in English or Auslan or both, using adapted visual, auditory, and/or tactile modes.

In this submission, we refer to both Auslan interpreters and deaf (relay) interpreters. Auslan interpreters interpret between spoken English and standard Auslan. Deaf (relay) interpreters are deaf people skilled in conveying information to deaf people with special communication needs. Special communication needs are usually present when a deaf person is not fluent in Auslan, usually because they had poor education and lack of access to Auslan in early childhood, but sometimes also when they are a recent migrant and are fluent in the signed language of another country.

# Executive Summary

Deaf, hard of hearing and deafblind people come to the justice system from a position of entrenched disadvantage that is created by wider systemic issues. This position of entrenched disadvantage makes deaf, hard of hearing and deafblind people vulnerable to abuses within the justice system.

Our concerns about access to justice for deaf, deafblind and hard of hearing people can be summarised in four main areas: access in police settings, access in court settings, access in correctional facilities, and access to legal services. In **police** settings, our concerns are that a lack of training and resources leads to the unfair treatment of deaf people by police and inequitable access in police interviews. In **court** settings, we are concerned that the access needs of deaf and hard of hearing people are poorly understood or simply not taken into account in some cases. This has the potential to lead to serious miscarriages of justice. In **correctional** **facilities**, poor access leads to disproportionate punishment and a failure of the system to achieve any rehabilitative outcomes in the case of the deaf person. In access to **legal services** more broadly there are constant battles to secure funding so that deaf people can have access to discussions with their legal representatives before, during and after court hearings.

We are also concerned at the possible end of funding for **deaf-specific support services** for people in contact with the justice system. If this comes about, access to justice will worsen for deaf, hard of hearing and deafblind people.

All of these specific problems stem from two underlying problems: a lack of understanding of the communication needs of deaf people, and a lack of resources to ensure that those needs are met. Our recommendations therefore focus on these two areas where improvements will lead to better outcomes.

# Entrenched Systemic Disadvantage

In all of areas of the justice system, deaf, hard of hearing and deafblind people are in a position of systemic disadvantage stemming from factors outside the justice system. This systemic disadvantage, however, makes deaf people very vulnerable to abuses within the justice system. Systemic disadvantage arises from:

* Poor language skills. Most deaf people (around 95%) are born to hearing parents, and many do not acquire Auslan early in life. This has life-long effects on their language skills, making it difficult for them to understand information, even when it is signed to them by an Auslan interpreter.
* Poor understanding of institutional processes. Many deaf people have experienced inaccessible education because of policies of enforced use of speech rather than sign in school settings. This leaves many deaf people with little understanding of the world, including of legal institutions and processes.
* Poor literacy skills. Poor education has given rise to very low levels of English literacy within the Deaf Community.
* Poor awareness of human rights. Poor education also leaves most deaf people quite unaware of their rights in relation to access. They are unlikely to request support because they may not know it is available.
* Feelings of shame. It is usual for a deaf person who does not understand something to pretend that they do. This is a natural human response when one is in a position of embarrassment.
* Economic disadvantage. Deaf people are more likely than average to be unemployed or underemployed, and consequently have (on average) fewer financial resources.
* Family alienation. Due to poor communication with family members, it is often the case that deaf people experience poor relationships with immediate and extended family. This means that they are less likely to have good family support available in times of crisis.
* Prevalence of “myths” in the wider community about deaf people and their communication needs, e.g. “lip-reading is accurate and reliable”, “all deaf people can all lip-read”, “deaf people can all understand real-time captioning”, “all deaf people are fluent in sign language”. These assumptions are all false, but they dictate the treatment of deaf people in the justice system and elsewhere.

These systemic factors leave deaf people extremely vulnerable to abuses within all sections of the justice system.

# Police Settings

In police settings we have anecdotal evidence through our own work with deaf people of several areas requiring improvement.

Firstly, police need to be better trained in deaf and deafblind communication and behaviour at the point of arrest. When a deaf person has their hands handcuffed behind their back, it means that they are unable to communicate. Being unable to use one’s hands to sign is the equivalent of being gagged. The response of a deaf person who is simply trying to communicate can be understood as resisting arrest. Similarly, if a deaf or hard of hearing person fails to obey instructions, their behaviour can be misinterpreted as resisting arrest or even showing aggression. However, they cannot reasonably be expected to obey instructions which they cannot hear.

Similarly, deafblind people have specific communication needs and should be apprised of the reason for their arrest, just as with as any other person arrested.

***Case Study: David\****

*David is a deafblind person who was arrested at a residential property. The police officer making the arrest did not allow anyone at the property to convey to him any information about what was happening. With no information about what was going on, it would have been quite reasonable for the deafblind person to assume that he was the victim of an assault and kidnapping, rather than the subject of an arrest.*

*\*name and details changed to protect privacy*

*Recommendation 1*

*We recommend that police protocols and training for interacting with deaf, hard of hearing and deafblind people be reviewed and improved, including at the point of arrest.*

Lack of resources also leads to poor access in police settings. We know of a case of a deaf man held in a cell for 18 hours after arrest in a regional centre following a minor offence because it took that long for an interpreter to arrive.

*Recommendation 2*

*We recommend that police officers receive adequate training in the communication needs of deaf, hard of hearing and deafblind people. A full day of training would be advisable.*

*Recommendation 3*

*We recommend that a deaf-specific role be established within the NSW Police with a mandate to improve deaf awareness, review protocol, and conduct community liaison.*

The other resourcing problem is a lack of sufficiently qualified and experienced interpreters in police interviews. We know of cases where interviews have gone ahead with NAATI paraprofessional interpreters (formerly Level 2). NAATI professional interpreters (formerly Level 3) should be the minimum for police interviews, and interpreters should ideally also have practicum or team interpreting experience in legal settings before they interpret alone in those settings. As with any profession, there are also some interpreters who hold qualifications but do not perform to the highest standard. As the Community Relations Commission is not a deaf sector organisation and does not have close connections to the deaf community, they have little opportunity to evaluate the quality of their Auslan interpreters other than through NAATI accreditation.

*Recommendation 4*

*We recommend that the Community Relations Commission put in place a system for evaluating the quality of Auslan interpreters whom they employ.*

*Recommendation 5*

*That the Community Relations Commission introduce a policy of only booking NAATI professional (formerly Level 3) Auslan interpreters for all police work as well as court work.*

***Case Study: Shelly\****

*Shelly is a young woman living in a regional town. A male neighbor exposed himself to her while she was in her backyard, and later that day exposed himself to another female neighbor. Both women believed that this was deliberate on his part. The two neighbours discussed it, but Shelly was not able to understand the conversation fully.*

*Shelly decided not to go to the police because she would need an Auslan interpreter. From previous experience, she thought it unlikely that one would be provided. She talked with a family member who encouraged her to go to the police, but she did not think an Auslan interpreter would be provided so she approached a local advocacy service instead.*

*The neighbor eventually moved, and Shelly feels safe again.*

*In this particular regional centre, it appears that police need to get approval for expenditure for anything over $99 which makes it difficult for them to get Auslan interpreters approved.*

*Shelly was denied several basic rights during this situation. She did not have the access required to approach the police to report the problem. She also had to rely on family members for support, and therefore did not have the privacy in dealing with the situation which one would normally take for granted.*

*\*name and details changed to protect privacy*

# Court Settings

Court settings are where we have seen the most serious effects of poor access for deaf, hard of hearing and deafblind people.

Courts generally fail to conduct a proper assessment of the communication needs of deaf, hard of hearing and deafblind people. This leads to:

* Failure to book interpreters.
* Very late booking of interpreters, leading to availability problems and postponement of hearings.
* Failure to book deaf (relay) interpreters where these are needed.
* Booking of interpreters who are not sufficiently skilled or experienced in court work.

*Recommendation 6*

*We recommend that the offer of a meeting with a case manager from the Deaf Society be made mandatory standard practice for all deaf, hard of hearing and deafblind people appearing in court. The case manager would then be able to conduct a proper communication assessment and make recommendations to the court so that the appropriate communication needs can be met, including appropriate interpreters being booked.*

Even when interpreters and deaf (relay) interpreters are booked, poor access can still remain because of a lack of understanding for systemic disadvantage in deaf people’s lives. Poor education, poor literacy, and poor understanding of systems and processes are the norm for deaf people. Even when an interpreter is provided, it is not a “level playing field”. Court hearings may therefore require longer time periods to allow for explanations of the process or of what is expected.

The lack of recognition for cultural and language differences can lead to problems when evidence is being presented in the courtroom, for example in examination-in-chief and cross-examination. Auslan does not, for example, use irony in the same way as English, making it very difficult to interpret ironic questions during cross-examination. Auslan is also highly visually descriptive, meaning that additional time may be required by an interpreter in order to convey the full nuance of a signed passage from a witness or a question in examination or cross-examination. An example of a question that may need further detail or understanding of the context is “Did you assault the man?”; depending on the context of the ‘assault’, there are different signs for ‘assault’. These challenges of crossing between languages and cultures are not always well understood.

*Recommendation 7*

*We recommend that each court conducts a tailored deaf awareness training session for judicial officers so that they are equipped to give appropriate direction to participants during hearings and especially during cross-examination.*

Further problems can inadvertently be introduced by the practice of refusing to take client preferences into account when booking interpreters for legal settings. For any other setting, it is common practice to ask the deaf client which interpreters they prefer. This ensures that the deaf person can nominate the interpreter whom they understand best, and whom they trust to understand and convey their signing accurately. This ensures a good match of signing styles. Older signers, for example, use extensive fingerspelling and older signs, which can be difficult for some less-experienced interpreters to understand. The practice of taking preferences into account is viewed with (in our view) unnecessary suspicion by the Community Relations Commission. It is of course understood that interpreters are servants of the court, but they can be much more effective in this role if their signing style is well-matched with that of the deaf person.

*Recommendation 8*

*We recommend that the Community Relations Commission develops a more appropriate policy in consultation with deaf people about taking preferred interpreters into account for court bookings.*

On a practical level, it would be sensible to ensure that cases with deaf clients and interpreters be scheduled early on court lists. Interpreters are paid by the hour; if they are booked at the beginning of the day and the case with the deaf client is, for example, heard at the end of the day, it is an inefficient use of resources for the interpreter to simply sit and read a book in the lobby of a court all day, whilst waiting for the matter to be called.

*Recommendation 9*

*We recommend that cases with interpreters booked be given priority in court lists where this is feasible.*

# Correctional Facilities

Access in correctional facilities is typically very poor. A lack of contact with other signers for deaf people in correctional facilities should be understood as a type of solitary confinement. This is not sufficiently recognised and leads to disproportionate punishment.

Other aspects of access in correctional facilities are also very poor according to anecdotal evidence. For example, batteries for hearing aids are not generally allowed because the batteries themselves are considered to pose a threat. Lack of access to training or rehabilitation programs, and even simple things like captioned television, mean that for deaf, hard of hearing and deafblind people, their skills and abilities during a period of detention are likely to decline rather than improve. This nullifies any possibility of rehabilitative outcomes for this group while in detention.

There also appears to be a lack of deaf-specific roles in the correctional justice system. As far as we know, there are no deaf-specific roles for parole officers or front-line correctional facility staff, and this means that deaf people in the system are often not understood or given appropriate access.

*Recommendation 10*

*We recommend that deaf-specific roles be established within the correctional justice system with a particular remit to ensure equitable access for deaf, hard of hearing and deafblind people.*

# Legal Services

Access to legal services from solicitors and barristers is hampered by lack of resources and widespread awareness of the need to, for example, book Auslan interpreters for deaf clients. If a deaf client is granted legal aid, the solicitor is able to, with approval by Legal Aid, to have the costs of Auslan interpreting reimbursed. There is, however, a widespread lack of awareness of this policy and the onus is on the individual solicitor to be proactive about making these applications.

Private solicitors in some cases refuse provision or bill the client for provision of Auslan interpreting, although this is often likely to be in contravention of disability discrimination legislation.

*Recommendation 11*

*That a review of the Legal Aid processes for interpreting provision be conducted, and that the funding of interpreters for private legal appointments becomes standard in support packages for deaf people through DisabilityCare Australia.*

# Deaf-Specific Support Services

The Deaf Society of NSW provides a culturally safe and linguistically appropriate service which facilitates access to the justice system. We provide a Walk In service to assist people understand legal documents, and a case management service to support people through police and court matters. Our work primarily consists of ensuring that appropriate interpreting and communication support is provided, and that other professionals are educated about the needs of deaf, hard of hearing and deafblind people.

This service is funded by ADHC until 2015. There is no guarantee that this service will continue after this point, as the trend seems to be towards rolling all support services into DisabilityCare. Although we are in favour of individualised supports for everyday needs, it is important that deaf-specific services continue to be available for deaf people facing crisis situations, especially when they are in contact with the justice system. This kind of access remains the responsibility of the NSW Government under the UNCRPD.

There particularly needs to be recognition that support, information, advocacy and referral services for deaf people need to be culturally specific, not generalist. **That is, they need to be delivered in Auslan by deaf staff.** If all such services are rolled over into DisabilityCare (or Ability Links, the local area coordination program which sits alongside DisabilityCare), there may be no deaf-friendly support services, and access to justice for deaf, hard of hearing and deafblind people will worsen rather than improve, leading to the need for costly, late interventions.

*Recommendation 12*

*We recommend that the AHRC make a representation to NSW Government to ensure that deaf-specific support services continue to be available during and after the transition to DisabilityCare.*

***Case Study:******Melanie\****

*Melanie is a young deaf woman recently separated from her partner who later began stalking her, causing her to feel unsafe. She attended a Legal Aid appointment with an Auslan interpreter, but the information was fast-paced, unfamiliar and complex and she left the appointment without being able to file an AVO successfully. Some weeks later she found out that she was the subject of an AVO herself, taken out by her ex-partner, although she was in fact the one who was being threatened. She approached the Deaf Society for assistance and had a deaf Community Worker attend a Legal Aid appointment with her. The Community Worker was able to re-explain information in a way that was clear to Melanie and ensure that her AVO could be filed successfully. The AVO against Melanie was also lifted.*

*Without a deaf-specific service, Melanie would have continued to be at risk of violence from her estranged partner, and would have continued to suffer the injustice of an AVO which her behaviour had not actually warranted. This could in turn have led to long-term physical health, mental health or housing problems.*

*\*name and details changed to protect privacy*

# Summary of Recommendations

In order to remedy the inequities outlined above, we make the following recommendations.

In relation to police settings:

1. That police protocols and training for interacting with deaf, hard of hearing and deafblind people be reviewed and improved, including at the point of arrest.
2. That police officers receive adequate training in the communication needs of deaf, hard of hearing and deafblind people. A full day of training would be advisable.
3. That a deaf-specific role be established within the NSW Police with a mandate to improve deaf awareness, review protocol, and conduct community liaison.
4. That the Community Relations Commission put in place a system for evaluating the quality of Auslan interpreters whom they employ.
5. That the Community Relations Commission introduce a policy of only booking NAATI professional (formerly Level 3) Auslan interpreters for all police work as well as court work.

In relation to court settings:

1. That the offer of a meeting with a case manager from the Deaf Society be made mandatory standard practice for all deaf, hard of hearing and deafblind people appearing in court. The case manager would then be able to conduct a proper communication assessment and make recommendations to the court so that the appropriate communication needs can be met, including appropriate interpreters being booked.
2. That each court conducts a tailored deaf awareness training session for judicial officers so that they are equipped to give appropriate direction to counsel during hearings and especially during cross-examination.
3. That the Community Relations Commission develops a more appropriate policy in consultation with deaf people about taking preferred interpreters into account when making court bookings.
4. That cases with interpreters booked be given priority in court lists where this is feasible.

In relation to correctional facilities:

1. That deaf-specific roles be established within the correctional justice system with a particular remit to ensure equitable access for deaf, hard of hearing and deafblind people.

In relation to legal services:

1. That a review of the Legal Aid processes for interpreting provision be conducted, and that the funding of interpreters for private legal appointments becomes standard in support packages for deaf people through DisabilityCare Australia.

In relation to deaf-specific support services:

1. That the AHRC make a representation to the NSW Government to ensure that deaf-specific support services continue to be available during and after the transition to DisabilityCare.