9 September 2015

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**Judicial awareness of individual requirements of persons with disabilities before the Court**

General disability awareness and the requirement for adjustments need to be either provided through judicial training and/or summarised in writing.

In order to successfully address a person’s needs, Judges, and Registry staff must first find out from the person themselves if they actually do need assistance to access the Court, and if they do, what type of assistance they require. The Court should respect any reasonable request for adjustment, and seek further clarification if they are inclined not to do so.

The Court must be made aware that not all disabilities are visible, nor do all people with disabilities require the same accommodations to be put in place. The best person to inform the Court of the extent (or type) of their particular needs and/or requirements is the individual themselves. They are the ones with the unique insight as to how best to accommodate their needs.

It is recommended that Court staff have access to generic information about specific disabilities, perhaps collated in a reference guide in order that they can educate themselves about the relevant disability prior to Court appearances.

**Adjustments for persons who have disabilities but are otherwise competent witnesses**

1. **Communication Disabilities**
2. **Deafness/hearing impairment**

Members of the Deaf Community who rely on Auslan to communicate, should be provided with an accredited Auslan Interpreter.

People who are hard of hearing may require any or all of the adjustments below:

* hearing loop installed in the courtroom;
* the provision of an oral interpreter;
* live captioning.

The Court and those at the bar table must be made aware that with all of the above adjustments there will often be a time lag for the information to be received, and therefore responded to.

It should be recognised that due to linguistic and cultural reasons, particularly for those who rely on Auslan, that a word for word translation of the spoken word often does not occur.

It may be that for a person who has very little formal language, that an International Sign Language Interpreter may be required, or a Deaf Relay Interpreter may be required in addition to an Auslan interpreter.

The Court also needs to take into account that a deaf person cannot be expected to comprehend and respond to written information in the same manner as a person who is not deaf. For instance, the usual time frame within which parties are directed to comply with may disadvantage a deaf person if they will not be provided with the necessary allowance.

1. **Complex Communication Needs**

People who have complex communication needs may rely on a wide variety of technical and non-technical devices to communicate.

Many of those people may require a Communication Support Person who should be provided in a manner similar to that of an Auslan Interpreter, that is, through a recognised agency and having some formal qualification and experience.

It should be recognised by the Court that court procedures may be lengthened considerably due to communication needs. It should also be recognised that the fact of having complex communication needs in and of itself does not equate to having any intellectual disability.

Given the rules of evidence and the judges’ exercise of discretion in the conduct of proceedings, the court needs a greater understanding of the role of a Communication Support Person and in due course should develop appropriate Practice Directions.

1. **Autism Spectrum Disorders**

The Court needs to recognise that rigid reliance on specific language, for example in cross examination or examination in chief, some people with an Autism Spectrum Disorder may have a tendency to answer “yes” to most questions, and therefore may need to be asked questions in a variety of ways to ensure consistency between a person’s understanding of the question and their answer, as otherwise the answer cannot be relied upon or that a lawyer’s manner of questioning may be objected upon.

It would be the job of the legal representative of the person with a disability to ensure that such linguistic idiosyncrasies were known to the Court immediately.

1. **Language Disorders**

It may be necessary that the Court inform itself through a person’s Speech Pathologist as to how the language disorder will affect the communication.

Receptive - A person with a receptive language disorder will have difficulty processing the spoken word and understanding it. Adjustments may need to be made, such as sentences repeated, sentences repeated in a different way, sentences being isolated in order that each sentence can be absorbed before the next sentence is spoken.

Expressive - A person with an expressive language disorder may have difficulties expressing themselves both cognitively and literally. A person’s literal speech may be very difficult to understand, requiring repetition and breaking down of concepts. Some people may require a Communication Support Worker to assist them.

Other people with an expressive language disorder may have speech that is understandable, but may have difficulty expressing their thoughts into words. Advice should be sought from the person themselves, and if necessary their Speech Pathologist as to what accommodations need to be made in order that the Court is receiving the message.

1. **Cognitive Disabilities**

It should be recognised that cognitive disabilities can affect individuals in a range of ways.

A person with an intellectual disability may have no difficulty understanding most concepts provided plain English is used.

It should not be assumed that because a person has a cognitive disability, that they are unable to give truthful and honest evidence.

Traditional court processes can rely rigidly on specific language being used, and it is the nature of lawyers that much of their language is often inaccessible to the general public. Such use of language to many people with disabilities will be exclusionary and inaccessible. It will be proper, if that is the case, for the person with a disability’s legal representative to protect their client by advocating vigorously to ensure that language is not a barrier which could contribute to a miscarriage of justice.

For example a person with a cognitive disability may feel uncomfortable saying that they don’t understand what is being said to them, particularly when feeling under pressure. It may be required for the Court, with the assistance of the relevant legal representatives, to come to an agreement about how the Court is going to be able to assure themselves that the person with a disability is going to not only access the language being used, but feel comfortable to articulate barriers and misunderstandings as they arise, even if in the middle of giving evidence.

**Autism Spectrum Disorder**

Autism Spectrum Disorder, has a communication component and a social component. The communication component is partially addressed above under “Communication Difficulties”. However the social component can present some more challenges to ensure the Court is accessible.

Some people with Autism Spectrum Disorder may feel so overwhelmed by the court, that they may need to engage in self stimulatory behaviour or “stimming” in order to get through the experience. Therefore the Court may need to accept some behaviours that may be foreign to it, such as a person tapping, humming, engaging in repetitive movements, needing to lie down and so on. These behaviours should not be seen as an indication of intellectual disability, which is not to say that some people with Autism Spectrum Disorder may not have an intellectual disability.

People with Autism Spectrum Disorder may not be able to easily meet the eye gaze of another person and instead look around the room. This should not be seen as behaviour which is an indication of guilt or avoidance.

1. **Psychological/Social Disabilities/Mental Illness**

It is important that the Court recognise that such disabilities do not inherently involve any sort of intellectual disability. However the effect of such disabilities on the person may be profound, particularly in times of stress, which may include involvement in the criminal justice system.

Appearances in court for people with psychosocial disabilities may require a different internal framework/structure (such as the court to be cleared, a person to give evidence in a different room).

It may be necessary for the Court to involve itself more than usual in the manner in which the person with a disability is being addressed. For example hostile or sarcastic cross examination may result in a person with a psychosocial disability to become very unwell. Not only is this to be avoided in the best interests of the individual, but it will do nothing to facilitate court processes and most probably result in adjournment.

1. **Physical Disabilities**

In addition to court buildings and rooms being accessible, it is important that the witness box be accessible, and if not, an alternative place in the Court for a witness to give evidence thought about in advance.

1. **Contact with Registry and Customer Service Staff**

Administrative staff may perceive a person with a disability as being difficult or unable to understand court or administrative processes. Disability Liaison Officers may need to be readily accessible to a person with a disability so that any misunderstanding can be resolved at the earliest opportunity.