

**Australian Lawyers Alliance**

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Christina Ricci  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

By email: [cristina.ricci@humanrights.gov.au](mailto:cristina.ricci@humanrights.gov.au)

Dear Ms Ricci,

**Access to justice in the criminal justice system for people with disability – Issues  
Paper April 2013**

I write in respect of the above Issues Paper.

The Australian Lawyers Alliance (ALA) has concerns about this issue.

In South Australia the local Attorney General, John Rau, has also launched a disability justice plan which incorporates coverage of this issue. The South Australian Committee of the Australian Lawyers Alliance is taking part in that discussion.

Some of our members have experience acting for people who have difficulty communicating. This has occurred in the criminal field and also in civil litigation.

Recently in South Australia there a criminal case was dismissed where it was alleged that a bus driver committed criminal offences in respect of several persons with significant impairment in terms of being able to communicate. In that case the prosecuting authorities thought that prospects of conviction were not reasonably possible.

As can be imagined, this caused great concern for a large number of people in the community particularly those involved in the disability sector.

In ALA's view these are areas where further thought and work needs to be given as to how equality can be achieved for people who suffer from these impediments, particularly in relation to the giving of evidence which is a critical issue.

ALA is also of the view that whatever is constructed needs to be balanced against the cornerstones of our justice system, the presumption of innocence, the right to a fair trial and the onus of the burden of proof. In our view it is a matter of training those prosecuting how best to elicit evidence in circumstances that are not commonly encountered and which in the past have probably been detrimental to the prosecution proceeding.

It is difficult to quantify the barriers of justice as a controversial case, quite often the decision is made and that is the end of it and records of that are probably not that easy to ascertain.

We are reporting to the Attorney General of South Australia and will provide you with the documents we create which deal with the very same issues that you have identified in your issues paper.

To briefly summarise ALA's position:

1. It is certain that much more resources need to be spent on the issue of training those who are involved in the prosecutions of certain matters. Likewise those with brain injuries or mental impairment will require intensive support from support workers.
2. Undoubtedly the most difficult area will be the challenging of evidence which may affect the credibility of those giving it. ALA(SA) is still considering how best to answer that in the course of the South Australian enquiry. There is a suggestion about changes to the rules of evidence.

We are uncertain as to the next step in your issues paper but would like very much the opportunity of reporting to you further of the position in South Australia, for your consideration. Please let us know if you would like to receive it as it will be after the deadline that you set for your issues paper's response. I look forward to hearing from you.

Yours faithfully,



Geraldine Collins  
National President  
Australian Lawyers Alliance