

# INTRODUCING AN INTERMEDIARY SCHEME IN THE ACT

## WHAT'S THE ISSUE?

A key theme of the Royal Commission's work on trial procedures is the recognition that vulnerable people need special consideration and attention to ensure their voices are heard. That consideration and attention is not properly part of an effort to prosecute or defend, as it should be focused on the vulnerable person, rather than adversarial. There are numerous models internationally for a role in the Court process that is impartial, and in England and Wales that role is called an intermediary.

An intermediary is someone who can help with communication when victims, witnesses and people accused of a crime are engaging with the justice system both pre-trial and throughout the process. They are independent, and do not prosecute nor defend the case. Their role is to ensure that the needs and vulnerabilities of a witness are clearly communicated to the Court, and taken into account at every step during the course of a trial. Witnesses who may benefit from the support of an intermediary could include children and people with a disability.

The role of the intermediary does involve significant changes to the way that people accused may put on a defence. In practice, it would mean much more detail about the questions a person accused of a sexual offence will have to be disclosed before they are asked. Details of the case an accused person plans to put before a jury would be disclosed to a greater degree than at present.

## WHAT'S THE CURRENT LAW IN THE ACT?

Victims Support ACT, the Director of Public Prosecutions, and ACT Policing all have support services available for victims and witnesses to help in preparing for court cases and with staying informed. Intermediaries differ from victims and witness support programs available currently in the ACT because they would be directly involved in the investigation of complaints and the conduct of a trial.

## WHAT'S THE POSITION IN OTHER JURISDICTIONS?

The Royal Commission drew heavily in its recommendations on the experiences of England and Wales in operating their system of registered intermediaries. Since 2008, professionals with expertise in assisting vulnerable witnesses have been engaged as intermediaries there. Intermediaries are registered, and can be called on by police to assist when an investigation into a sexual offence begins. They assist vulnerable witnesses throughout the criminal justice process.

The intermediary can intervene in court proceedings where a communication breakdown with a vulnerable person is likely, including by suggesting issues with questions going to a witness. In England and Wales, intermediaries are available to all people under 18 and to adults with communication disorders.

There are Australian experiences and pilots to draw on in considering an intermediary scheme as there are with ground rules hearings. A three-year pilot scheme providing for the prerecording of evidence and witness intermediaries for child complainants started in Newcastle and Sydney on 31 March 2016 under the administration of Victims Services (Department of Justice).

In the first 12 months of the pilot, 762 complainants and witnesses participated, with most receiving assistance during police interviews and testimony for the court. Almost 60 court evidence hearings were pre-recorded.

A process evaluation was recently conducted which showed strong support for the pilot and no significant barriers to implementation were identified.<sup>1</sup>

<sup>1</sup> *Judy Cashmore, Ilan Katz, Rita Shackel and Kylie Valentine, 2017, Evaluation of the Child Sexual Offence Evidence Pilot: Process Evaluation report, Social Policy Research Centre, UNSW Australia*  
[http://www.victimsservices.justice.nsw.gov.au/Documents/CSOEP\\_process-evaluation\\_report\\_final.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/CSOEP_process-evaluation_report_final.pdf)

In addition to the NSW pilot scheme, South Australia and Western Australia both have schemes to assist with communication. The Western Australian scheme is available only to children and there is no limitation on who can perform intermediary tasks or what type of proceedings they may assist in. The South Australian intermediaries are approved volunteers who can be appointed by the Minister or the court, while the NSW intermediaries are paid professionals managed by NSW Victims Services.

## WHAT THE ROYAL COMMISSION RECOMMENDS

The Royal Commission has recommended that state and territory governments establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales<sup>2</sup> and identified the following important features of the scheme:

- Intermediaries should have relevant professional qualifications to assist in communicating with vulnerable witnesses.
- Intermediaries should be provided with training in their role and understand that their duty is to assist the court to communicate with the witness and to be impartial.
- Intermediaries should be available at both the police interview stage and trial stage.
- Intermediaries should be able to provide recommendations to police and the court on how best to communicate with the witness and be able to intervene in an interview or examination where they observe a communication breakdown.<sup>3</sup>

## WHAT THE ACT GOVERNMENT NEEDS TO CONSIDER

Should an intermediary scheme be introduced in the ACT?

## SEND US YOUR FEEDBACK

Help the ACT Government consider the questions above by sending your feedback to:

▷ Email: [JACSLPP@act.gov.au](mailto:JACSLPP@act.gov.au) (with the subject “**Criminal justice reform**”)

▷ Post:

**Child sexual abuse reform options – Submissions**

Legislation, Policy & Programs

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Submissions must be received by close of business on **27 April 2018**. All submissions and comments will be treated as public, and may be published, unless the author indicates that it is to be treated as confidential. All requests for the submission to be treated confidentially will be respected and dealt with in accordance with any applicable laws, including freedom of information legislation.

<sup>2</sup> Recommendation 59, Royal Commission, Criminal Justice Report.

<sup>3</sup> Recommendation 59, Royal Commission, Criminal Justice Report.



**Justice and Community  
Safety Directorate**

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