

This summary provides an overview of the intermediary scheme in Aotearoa New Zealand in 2024. It may not capture all the differences in intermediary work across Aotearoa, neither does it offer a critique of intermediary schemes' compliance with the UN Convention on the Rights of Persons with Disabilities ([UN Convention on the Rights of Persons with Disabilities](#)). This summary was created for [The Access to Justice Knowledge Hub](#)

Aotearoa New Zealand

A Spanish translation of the following summary is provided in a separate pdf.

English

The intermediary in the justice system

Intermediaries are known as Communication Assistants (CAs) in New Zealand. CAs have mostly been utilized in justice contexts where their role is to assist the court with defendants, witnesses and complainants during criminal proceedings. CAs have also been appointed for parties in non-criminal matters. The Ministry of Justice's Communication Assistance webpage¹ and Communication Assistance Quality Framework² (which was established in July 2021) gives detailed information about the role.

Other forms of support within New Zealand's justice system include:

1. Independent Nominated Person (INP) - If a young person is under 18-years-old and in custody, they can have an independent nominated person (INP) with them while they are being questioned. This person is an adult (a parent or any other independent adult, 20 years and older) who is there to support the young person while they are being interviewed by the police.
2. Witnesses can have a support person with them whilst they give evidence.
3. Victim Support – this service facilitates the court familiarization visits and assists with all court movements including bringing the witness to the Audio-Visual Link room³.

It must be noted that Communication Assistants are considered a different role from expert witnesses. The MOJ's Quality Framework provides this description: *'CAs are specialists in assessing a participant's communication abilities and identifying strategies and tools to improve their ability to understand what is happening and be understood when answering questions. CAs use their specialist skill to facilitate communication between the court and the participant by using tools such as simple plain language questions and visual aids.'* CAs write up assessment findings and recommendations for the court, but their work is **not** considered evidence in the case. Expert Witnesses provide information and evidence about

¹ [Communication Assistance](#)

² [Communication Assistance Quality Framework](#)

³ [Court Services for Victims](#)

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whether someone is fit to plea/fit to stand trial and may use the information provided by the Communication Assistant to do so, but the Communication Assistant does not comment or determine a person's fitness to plead. In some cases, Expert Witnesses with expertise in speech-language therapy or other relevant specialties might be engaged if the case requires specific evidence about a person's speech, language and communication but this is rare.

There are two agencies⁴ currently contracted to provide CA services to the Ministry of Justice. Currently, all CAs are Speech-Language Therapists, all of whom are registered members with the New Zealand Speech-Language Therapists Association.

Identification of persons in need of communication assistance relies on stakeholders such as judges, lawyers, police and social workers identifying communication issues and the need for a referral⁵. Some training has been provided to justice stakeholders by CAs. On a few occasions, family members or the persons themselves have reached out for this service and information has been provided to them about the process and who they need to contact. Referrals for communication assistance in court processes are submitted to the registrar for approval by Judiciary. The CA referral form reflects the CA quality framework which encourages stakeholders to observe communication (comprehension, expression, behavioral, sensory, literacy) "flags". Information from any formal diagnosis may be included in referral information but is not a requirement.

The law

Communication Assistants are engaged under provisions in s80 and s81 of The Evidence Act 2006⁶ for defendants and for witnesses. The law considers that CAs are needed to enable defendants to understand the proceedings and to support defendants, witnesses and complainants in giving evidence.

Exceptions to this provision are that the defendant '*can sufficiently understand the proceeding*', or if the defendant chooses to give evidence, that s/he can '*sufficiently understand questions put orally and can adequately respond to them.*' Similarly, if the court considers that a witness can sufficiently understand questions put orally and can adequately respond to them, communication assistants' appointment or attendance may be waived. The judge may direct what kind of communication assistance will be provided.

The law does not say anything about who can or cannot be an intermediary, but guidance has been provided within the MOJ's Quality Framework in section 2.1.

⁴ [Talking Trouble](#) and [Moretalk](#)

⁵ Information about eligibility for the MOJ CA service [Applying for communication assistance](#)

⁶ [Evidence Act](#)

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The Communication Assistant's role

Communication Assistants work with defendants, witnesses and complainants, usually when the proceedings involve the court. They mostly work within the criminal jurisdiction, but they have also been appointed for Family Court, civil and mental health courts and within appeals and tribunals.

CAs have also been engaged in some justice-related settings where the Evidence Act 2006 does not apply, such as Family Group Conferences in the Care and Protection and Youth Justice processes (usually for children/youth but sometimes to assist adults). Sometimes they are engaged in Probation pre-sentencing assessments and at the Parole Board.

In some cases, CAs have provided support during the police interview, but they are usually brought in after the Evidential Video Interview (EVI) (equivalent of Achieving Best Evidence⁷ in England and Wales). In New Zealand, complainant/witness interviews are undertaken by Specialist Child Witness Interviewers who are Police and/or Oranga Tamariki – Ministry for Children staff who undertake a five-day specialist training course to deliver the specific research-based protocol used for interviews with children. These interviewers occasionally also undertake interviews with adults who may require an adapted communication approach.⁸

The role of Communication Assistants is neutral and impartial. As described, referrals come through the Court Registrars. Communication Assistants do not accept contracts from the Defense Counsel or the Crown directly except in very rare circumstances.

To begin, the CA is to ensure the person understands why the CA is coming to meet them and what the purpose of their role is. The CA lets the person know the judge has asked them to come and that they will be writing a report for the court.

Then the CA undertakes an assessment to determine speech, language and communication needs that may impact on the person's participation within the specific legal tasks that will be involved. Functional communication ability is assessed using different materials and tasks depending on the age, interests, nature of the person's difficulties and the communication demands involved in the forthcoming legal processes. Sometimes aspects of formalised tests are used, but generally to gain qualitative information not normative information. The CA may sometimes access previous assessment information from other professionals if available. The CA gathers the views of the participants themselves about their communication issues and including what helps/hinders communication. The CA also assesses the effectiveness of strategies and accommodations within the justice context that aim to improve communication with that person faces e.g., listening to evidence and understanding it, understanding questions in cross-examination, giving their own version of events in taking of instruction, or whatever is relevant.

⁷ [Best Evidence in Criminal Proceedings](#)

⁸ [Specialist child interviewing](#)

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Report writing is an important part of the Communication Assistant's job. In their report, the CA explains the sources of information that have been used to inform the recommendations, whether this has come from the person themselves, others known to them, or from the assessment tasks and interactions the CA has undertaken with the person. The recommendations provided are highly functional and detailed, setting out what the various stakeholders might do to enable effective communication within the relevant legal setting.

The reports are generally 8-20 pages long and are typically formal in style. The CAs sometimes try to include a 'Communication Passport'⁹ which they try to co-write with the individual, so their voice and views are included in the report, or an Easy Read summary to ensure participant access.

The CA report goes to the court, which decides whether to release it or not. It is typically released to counsel for the prosecution and counsel for the defence in a criminal matter. Sometimes it is released to others e.g., for a defendant it might be released to Probation services if they are involved. The Communication Passport / Easy Read summary may be released to others involved e.g., social workers, the participant and their family etc., it does not include information about the court or the reason for the referral to CA services.

Communication Assistants participate in a Ground Rules Hearing¹⁰ to determine what recommendations will be agreed on. This is a very frequent proceeding, nearly always for Judge-alone or Jury trials. There isn't always a Ground Rules Hearing if CAs are assisting in call overs or pre-trial hearings, or for Youth Court, but sometimes there are professionals' meetings which are not always as formal as a Ground Rules Hearing. Following discussion of the CA's recommendations, the CA assists in proceedings as needed. Input from the CA may take place in the preparation phase before any hearing or trial, as well as during it.

CAs check the communication environment is set up appropriately (e.g. hearing loops, amplification, seating, adaptations to address sensory needs etc.). Preparation includes ensuring that all people involved understand the person's communication needs and how they may need to adapt their communication style and the language used. The CA liaises with counsel about planned questions to edit sequence and structure including vocabulary and grammar to ensure the questions are likely to be understood. The CA may assist counsel to consider how information might be explained to a defendant. They might ensure a defendant can express their views clearly when instructing their counsel, and can comprehend information about any decisions relating to their case.

When working with witnesses or complainants, the CA supports a familiarization visit to court and endeavors to support counsel with the preparation of questions so they are

⁹ A Communication Passport is a document that helps the person share key information about themselves on their communication needs.

¹⁰ A Ground Rules Hearing is an optional final call-over confirming arrangements for trial, including the directions provided by the Communication Assistant. Definition obtained and abridged from [Pre-trial case management No. 13](#)

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designed specifically for the language most likely to be understood by the person. The CA monitors communication during cross-examination and only assists to provide advice if communication breaks down. The communication assistants never answer for the person and follow the recommendations agreed upon in the Ground Rules Hearing. Examples of strategies used include planning with counsel and the judge before a hearing precisely what visual communication tools may be used in questioning and then assisting as required, taking a "communication break" for a discussion with the legal professionals (counsel and judge) about how questions might be re-worded for a witness if they are not comprehending. Special care is taken to not introduce any element or communication strategy that may be leading. Should a person's speech be unintelligible or if the person uses alternative and augmentative communication, agreed processes for CA interpretation need to be discussed prior (at GRH) to ensure flow of and accuracy of evidence.

When working with defendants, the CA's role is to assist before and throughout the proceedings to ensure that the defendant can instruct their counsel effectively and can understand the evidence being presented by others, often by making concepts and information accessible by providing a running translation that can include drawing/writing/typing/whispering/requesting breaks to review information etc. CAs may also be required post-trial to attend pre-sentencing assessments and the sentencing hearing itself. CAs in New Zealand working with defendants are usually involved from the start to the end of the trial to assist attention, concentration, comprehension and engagement and not just during the act of giving evidence, working with both sides so everybody understands that communication assistants are neutral and impartial.

These are some examples of accommodations provided:

- a. Seating/timing of session/breaks
- b. What the CA might do in the legal context – before, during, after court
- c. What the other professionals need to do to communicate in a manner that is likely to enable participation by the person – the lawyers/judge/anyone else
- d. What the person themselves needs to do.

If all efforts and assessments of the person's needs and strategies have been tested and the communication assistant concludes that their assistance is not likely to be effective, the communication assistant reflects this in their report and may not be required to assist in court.

Both agencies engaged by the Ministry of Justice attempt to match an appropriate CA in terms of skills, experience, location and their availability. In some cases, the agency appoints two CAs with different areas of expertise to conduct the assessment or to cover time-consuming cases or to provide learning opportunities for newer CAs. Matching criteria include age, gender, culture and language background. In New Zealand, due the country's history including breaches of Te Tiriti o Waitangi, colonisation and racism, practitioners must know how to work alongside Māori in culturally safe and affirming ways to ensure they do no further harm. Training for CAs includes a focus on developing cultural knowledge and

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practice. Future developments in the CA service involve actively recruiting CAs who are Māori and growing the CA workforce's knowledge and skills.

Coworking and collaborative approach

Over the development of CA roles in NZ, the importance of a supportive and collaborative approach has been prioritized. Providing adequate supervision and support has been very important as well as ensuring that the processes to introduce suitable SLTs to the role and provide them with sufficient training has been essential. To do so, CAs conduct peer reviews of all reports and provide phone and in-person support during assessments and trials. Teamwork is essential, and those in leadership roles have wanted to avoid a model in which individual practitioners work in isolation. Experienced CAs also continue to co-work cases and discuss the recommendations. Self-reflection and presentations are required at peer professional development sessions.

The training

All current NZ-based CAs are Speech-Language Therapists, and most have more than 10 years (and often more) experience. The legislation does not specify a specific profession to be engaged as a CA, however the CA Quality Framework outlines suggested professions all of whom must have expertise in assessment and improvement of people's communication.

The CA training framework combines observation, mentoring and co-working of cases alongside completion of both MOJ-authored and agency-authored online modules and face-to-face training, this is then strengthened with participation in group training and case discussions. The training continues as CAs undertake casework, with new material introduced as they extend the settings they work within. CAs are expected to be active learners and reflective practitioners throughout all their engagement in the role. During the recruitment stage, the agencies ensure that applicants understand the potential stressors and that they make an informed decision on their own suitability to this role. There is special emphasis on the neutrality and impartiality of the role, as well as the issues around scheduling, traveling, complexity and the ability to stay calm and manage highly complex and stressful situations. Excellent oral and written skills and high-level clinical reasoning skills are required and the CAs need to be able to adapt quickly to the demanding and fast-paced, unfamiliar legal setting. A highly professional, team approach with a focus on functional communication and an ability to adapt communication and think creatively is needed. CAs must be able to communicate effectively and quickly develop effective relationships with the people they assist and the legal professionals involved.

Before embarking on CA training, police and reference checks are done. Applicants are also encouraged to spend time observing communication assistance and other justice processes.

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Funding

In New Zealand, communication assistance is funded by the agency who has contracted the work e.g., the Ministry of Justice, police etc. Many processes are now established but there are still new protocols being worked out for novel situations that arise.

Pressing issues and future perspectives

The development of the Communication Assistance roles has taken place against a backdrop of other innovation relating to communication accessibility and raising awareness of communication issues. A wide range of training has taken place for stakeholders e.g., for police, lawyers, judges, prison staff, youth justice social workers, family group conference coordinators and bail support workers to adapt communication in their work. There have been a range of projects exploring accessibility within forms and documentation e.g., accessibility within bail condition forms. The fact that communication assistants assist prosecution witnesses/complainants and defendants gives them a well-rounded perspective of the criminal justice system, which is useful for the trainings and when consulted by other stakeholders.

The responsibility for having communication accessible processes and addressing individuals' needs has been placed on everyone's shoulders in New Zealand, not just the Communication Assistants. In November 2020, the judicially led transformation approach called Te Ao Marama¹¹ was launched which aims to improve the participation of all stakeholders in legal processes and involves a range of initiatives. This involves consideration of the communication and language used in court processes as well as other initiatives that focus specially on access to justice. Often, the personnel involved in legal processes are already equipped with some level of at least awareness and skill in spotting language and communication needs and responding to them.

For the future, the CA community hopes to grow their collaboration with police to assist in relevant police interviews and establish an official scheme for that context recognized by all parties involved, which includes the necessary training, accreditation and complaints processes.

Recruiting and sometimes retaining appropriate workforce with relevant expertise is challenging, as suitable candidates may already have jobs and cannot undertake communication assistance roles when the work is sporadic, inflexible, often at short notice and rescheduled frequently.

The psychological, physical and professional safety of the contexts in which communication assistants work was also identified as an important issue, and the team is constantly reviewing how to be aware of the boundaries of their role and how their work may be tested in legal appeals.

¹¹ [Te Ao Marama/](#)

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Communication Assistants have received more attention due to the media's attention of some cases, e.g., the case of Teina Pora who spent 20 years in prison wrongfully convicted and who had Fetal Alcohol Spectrum Disorder and who clearly did not understand questions in the police interviews that were shown in the media. These types of themes have recently also been covered in the Chief Science Advisor to Justice's reports¹² and the media.

Real life examples

- a. A CA assisted a defendant in a jury trial. This involved assisting counsel to take instruction pre-trial as well as during the trial. The person presented with cognitive and language difficulties which they had had since childhood, and some mental health difficulties. The trial also involved a complainant with an intellectual disability who was assisted by a different CA. The CA assisted both counsel with the preparation of questions, and monitored and assisted during questioning.
- b. The CA assisted a young person in Youth Justice processes. The CA was also appointed to assist in Family Group Conferences which are part of Youth Justice processes in NZ (this part of the role was funded by Oranga Tamariki, not the Court).
- c. The CA was appointed to assist a child of 6 years-old when they were being cross-examined in a trial. The child had typically developing language skills.
- d. The CA was asked to assess an adult defendant who had had a very severe stroke. The CA concluded that the person was unable to reliably respond to strategies that enabled more effective communication due to their very significant language difficulties, and informed the court that the potential strategies and accommodation that a CA could implement would likely not be effective for legal processes. The person then participated in fitness assessment processes undertaken by expert assessors.

This short article¹³ by a NZ judge explains how CAs have been used in sexual violence court cases.

¹² [Criminal justice](#)

¹³ [The value of communication assistants in sexual violence courts](#)