

This summary provides an overview of the intermediary schemes in Australia in 2024. It may not capture all the differences in intermediary work across Australia, 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](#)

Australia

The Intermediary in the Justice System

Australia is made up of six states and two territories, each with their own justice system. Each state or territory has their own stand-alone criminal justice system and intermediary program. The most established intermediary programs can be found in New South Wales (NSW), Queensland, Victoria, Tasmania and the Australian Capital Territory (ACT). These jurisdictions have similar intermediary programs with some differences in eligibility criteria and in service provision which is guided by the legislation and policy that is specific to each state or territory.

Across Australia, one of the key drivers behind the establishment of intermediary schemes was The Royal Commission into Institutional Responses to Child Sexual Abuse as one of its many recommendations was the use of intermediaries. In Victoria, another key driver was the 2016 report of the Victorian Law Reform Commission, [Victims of Crime in the Criminal Trial Process - Victorian Law Reform Commission](#) (recommendation 30 and 31). The Tasmania Law Reform Institute also produced a report entitled [Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania?](#) which recommended the introduction of a witness intermediary scheme. Other champions for the development of intermediary schemes within Australia have included politicians, attorney generals, senior police and judges.

Some Australian states and territories refer to professionals who help enable more equal access to justice by helping children and adults with communication needs participate during evidence-giving as *witness intermediaries*. Other states (Queensland and Victoria), refer to these professionals as *intermediaries*. For the purposes of this summary, the term intermediary will be used to refer to both intermediaries and witness intermediaries.

Intermediaries are trained professionals with specialist skills in communication. They are not family members of the witness or people known to the witness. The intermediary role is defined in legislation at the court stage (see section below). However, intermediaries are also used at the investigation stage (with police) under a policy arrangement which differs between each jurisdiction.

Currently, in most states, intermediaries only work in the criminal jurisdiction particularly in sexual offence and homicide related matters. Also, in most states, intermediaries only assist witnesses and complainants. However, some states (mainly the ACT) work with suspects or defendants. In the ACT, intermediaries are sometimes involved in civil proceedings if requested by the Court. As can be expected, there are similarities and differences around who can refer for intermediary assistance across the states. For example, in NSW and Queensland referrals only come from Court (via Court order) or the Police. Whereas the intermediary scheme in the ACT also receives referrals from legal professionals (primarily Legal Aid ACT) who require assistance for engagements with clients who have

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communication issues or difficulties. The possibility of working with suspects or defendants is currently under review in Tasmania.

Intermediaries are regularly used in criminal courts within New South Wales, Queensland, Victoria, Tasmania and the Australian Capital Territory. Other states, such as South Australia and Western Australia have the capacity to use intermediaries but to date, they are rarely, if ever used.

The Law

The legislation in each state or territory differs in the level of detail about who can be assisted, under what circumstances and how the intermediary scheme operates.

Intermediaries in Australia assist with communication at the investigative stage (Police interview) and in court. The role of an intermediary in the police interview is not governed by legislation. An example of the role as defined in legislation can be found in the Tasmanian Act which states:

Evidence (Children and Special Witnesses) Act 2001 - s7H

Functions of witness intermediary

- (1) The functions of a witness intermediary, in respect of a witness, are to –
 - (a) assess the witness's communication and other related needs and to prepare and provide an assessment report about those communication and other related needs, as required under section 7I; and
 - (b) provide recommendations during a specified proceeding to the judge, and any lawyer appearing in the proceeding, as to adjustments to be made in the proceeding to enable the most effective communication with the witness; and
 - (c) otherwise provide assistance during a specified proceeding to the judge, and any lawyer appearing in the proceeding, in relation to communication with the witness; and
 - (d) perform any other function that a judge in a specified proceeding considers is in the interests of justice.
- (2) A witness intermediary must act impartially in performing the witness intermediary's functions under this Part.

The intermediaries' role

Each Australian jurisdiction has their own Procedural Guidance Manual (or variation) which guides intermediary practice, outlines scheme parameters and the code of conduct intermediaries must abide by in the provision of their services. To support transparency of

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the intermediary role and processes, some states, such as the ACT, make this information publicly available so stakeholders can access it.

The intermediary role is strictly impartial.

Intermediaries are usually involved prior to and during the police interview. Once the police interview is conducted, their role ceases. At a later date, the Court may request an intermediary assessment report which can trigger the involvement of an intermediary during the court hearing. The intermediary assists the person during evidence-giving and then their role ceases.

The process:

Intermediaries are engaged at the discretion of Police or Court. When a referral from Police or Court has been received, the programme administrators for that state consider the expertise needed to assist that particular witness (e.g. child, person with mental health problems, Autistic person) and assign an intermediary with that expertise. The intermediary can then accept or decline the referral. Intermediaries must decline to provide assistance in situations where there is a conflict of interest, or some improper behaviour has occurred.

Once intermediaries have been engaged, they perform a communication assessment and then provide advice to police, lawyers and the court on the best way to communicate with the witness. This ensures witnesses can give their best evidence and reduces the risk of retraumatising the witness. (There are some differences across states regarding whether intermediaries refer to diagnosis and/or access any other external information to inform their report. For example, intermediaries in ACT, New South Wales, Tasmania, Queensland and Victoria do not access medical reports or any other external information (including other health professionals) to inform their report. This helps to reinforce the distinction between intermediaries and expert witnesses. The NSW intermediary scheme discourages intermediaries from referring to diagnosis in reports to ensure they do not impact the Sexual Assault Communications Privilege that exists in NSW.)

In the police interview, intermediaries most often perform a rapid communication assessment and provide their findings verbally to the police. They will then work with police to assist with communication during the police interview.

At the court stage, intermediaries perform a communication assessment, write a report for the court outlining the needs of the witness and providing recommendations on accommodations that will assist the witness's communication in court. They subsequently attend the ground rules hearings where the court considers the intermediaries' recommendations and makes directions about how the proceeding will be conducted. Then, the intermediary sits with the witness while the witness gives evidence. The intermediary can intervene if a communication issue arises due to the non-adherence to a direction made by the judicial officer at the ground rules hearing. Intermediaries also work directly with parties to assist with phrasing of questions and other accommodations for the witness.

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It is important to note, expert witnesses are different to witness intermediaries. Expert witnesses are specialists in a subject and provide an expert opinion on an aspect of a case. Their opinion forms part of the evidence. In the human services field, an expert witness may be drawn from professions such as medical practitioners, psychiatrists, and psychologists. They may give evidence on topics such as the nature of physical injuries, the state of mind of a defendant and various other topics.

Intermediaries are not expert witnesses; their recommendations do not form part of the evidence. Intermediaries provide guidance to the court on how to best communicate with a witness, and it is the judicial officer who decides whether to accept the recommendations and makes directions or orders about the giving of evidence. Intermediaries are only as involved in proceedings as the judicial officer allows.

The court appoints witness intermediaries. A party (defence or prosecution) retains an expert witness.

Other supports:

Each state provides support for witnesses and victims though there may be slight variation in the types of support offered across the nation e.g.

- Victims Assist Queensland, Protect all children today (PACT) and Victim Liaison Officers in Queensland
- Victim Support Service in the ACT
- Witness assistance officers in New South Wales [Witness assistance officers in New South Wales](#).
- The Child and Youth Witness Service (for children) [Child and Youth Witness Service | victimsocrime.vic.gov.au](#) and the Victims and Witness Assistance Service [How we can support you - Office of Public Prosecutions \(opp.vic.gov.au\)](#) in Victoria.
- Witness Assistance Service Tasmania [Witness Assistance Service Tasmania](#)

Training

Each jurisdiction is responsible for developing and running its own intermediary training. In most states, the training is designed and delivered within that jurisdiction's relevant government department. The ACT Program is a bit different, as it sits with the ACT Human Rights Commission which is an independent statutory body, however, it designs and delivers training in the same manner as the other jurisdictions.

Each state has its own criteria for acceptance onto its intermediary training programme. For example, some states have requirements regarding relevant degrees (e.g. health profession degree) whereas others accept applications from a wider range of professionals. Some states stipulate a minimum of 3-5 years' work experience whereas others have no

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minimum. Most states are particularly interested in applicants who have worked in areas relating to trauma, complex mental health needs, children and complex communication needs. In all states, applicants must be members of relevant professional organisation.

The training is heavily competency-based and builds the trainees knowledge of the role of the intermediary as well as how to work within the criminal justice system. The assessment process is rigorous, and only trainees who successfully complete the training are appointed as witness intermediaries. Trainees must pass all elements of assessment to become an intermediary.

To ensure high quality practice, programme administrators in each state continue to monitor intermediary work in each of their jurisdictions.

Funding:

Australia's witness intermediary schemes are government funded. Funding was available to help set up the various schemes and remains available to implement them. Intermediaries may be employed or contracted; it varies from state to state.

Pressing issues & future perspectives:

- Keeping up with demand.
- Changing practices within the criminal justice system.
- New legal settings intermediaries may become involved in e.g. tribunal hearings, family court, coronial hearings.
- Extension of intermediary assistance to defendants.
- Availability of intermediaries.
- The role of intermediaries is becoming better understood and police, judicial officers and lawyers are changing their practice to better support the communication needs of witnesses.

Useful links about each intermediary scheme and relevant legislation:

ACT

[Act Intermediary Program](#)

[Intermediaries](#)

Chapter 1A of the *Evidence (Miscellaneous Provisions) Act 1991* and associated regulations
[Evidence Act 1991 ACT](#)

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NSW

Schedule 2, Part 29 of the *Criminal Procedure Act 1986* [Criminal Procedure Act 1986](#)

Queensland

[Intermediary scheme](#)

Amendments to the *Evidence Act 1977*, included in the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019*.

South Australia

Evidence Act 1929 [Evidence Act 1929 Complex communication needs](#)

Tasmania:

[Witness intermediary scheme](#)

Evidence (Children And Special Witnesses) Act 2021 [View - Tasmanian Legislation Online](#)

Victoria

[Intermediary programme](#)

Sections 389A – 389K of the *Criminal Procedure Act 2009* [Criminal Procedure Act 2009](#)