



PROCEDURAL GUIDANCE MANUAL (PGM)

INTERMEDIARY PROGRAM
ACT HUMAN RIGHTS COMMISSION

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Further copies may be accessed online at: <https://hrc.act.gov.au/>

Any questions or feedback may be directed to the Intermediary Program Team at: intermediaryprogram@act.gov.au

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Introduction

On 15 June 2018 the Chief Minister and Attorney-General released the ACT Government Response to the four reports issued by the Royal Commission into Institutional Responses to Child Sexual Abuse ('the Royal Commission'). You can read more regarding the reports and the ACT Government's Response here: <https://www.act.gov.au/childabuseroyalcommission/documents>

One of the Royal Commission's findings was that vulnerable witnesses such as children in sexual abuse cases face extraordinarily significant communication barriers when giving evidence. One of the Royal Commission's recommendations was that states and territories establish intermediary schemes able to assist vulnerable witnesses' communication of their evidence. In response to this recommendation, the ACT Government allocated funding in its 2019-20 budget to establish an Intermediary Program within the ACT Human Rights Commission.

The Intermediary Program facilitates the provision of the services by accredited intermediaries to relevant criminal justice system stakeholders in the ACT, in accordance with relevant provisions of the *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT). This Procedural Guidance Manual is a reference guide for ACT intermediaries regarding key aspects of their role, including professional conduct they must adhere to. The manual will be regularly updated to ensure its currency and accuracy, and feedback from stakeholders to continually improve the manual is encouraged.

The Intermediary Program's overarching objective is to provide skilled intermediaries to the criminal justice system so vulnerable witnesses (primarily children) communicate their best evidence at police interview and trial, thereby reducing vulnerable witnesses' trauma and assisting justice processes.

Intermediaries are officers of the court who have undertaken rigorous training in order to become accredited in the ACT. Intermediaries effectively facilitate communication between witnesses and police and during the trial process.

Intermediaries' specialist advice to police and at trial stage contributes to a reduction in vulnerable witnesses' trauma and improves access to justice by directly and practically assisting police officers and counsel (under judicial officer oversight) regarding communication approaches that will improve the eliciting of evidence.

Intermediaries do not engage on the issue of whether the evidence elicited assists the witnesses' case, or otherwise. As impartial officers of the court subject to laws governing their conduct, intermediaries are prohibited in engaging regarding the content of elicited evidence. Intermediaries do not discuss case merits and are not informed of case outcomes, as such information is not relevant to their role.

The introduction of intermediaries into the ACT justice system, in accordance with the recommendations of the Royal Commission, follows intermediaries' effective introduction in multiple Australian jurisdictions, the United Kingdom and elsewhere around the world.

Terminology

Throughout this Procedural Guidance Manual, there are frequent references to:

Intermediary Program Team ('IPT') – the team within the ACT Human Rights Commission facilitating program implementation. The IPT centrally manages case referrals regarding both police and court matters and is the first point of contact for stakeholders and intermediaries with issues arising during their engagement in the program.

Witness – for the purposes of the Procedural Guidance Manual, references to a witness may refer to witnesses falling in a range of differing categories. For example, references to witness may include both the complainant and/or other witnesses in a police and/or court matter. A defendant may also be referred to as a witness as the context requires.

A *Glossary* is also provided to assist intermediaries' understanding of terms used in the justice system: see **Appendix 1** of this Program Guidance Manual.

Governance

The Intermediary Program is implemented and monitored by the Intermediary Program Team (IPT) within the ACT Human Rights Commission. The IPT's implementation is overseen by the Victims of Crime Commissioner. A high-level monitoring group, referred to as the Implementation and Monitoring Group (IMG), convenes regularly to receive and analyse program information. The IMG advises on issues arising during implementation and is made up of senior representatives of law and justice stakeholder organisations.

Code of Conduct for Intermediaries

Intermediaries must strictly abide by the following Code of Conduct. The Code of Conduct applies, without exception, to the intermediaries operating under the *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT).

1. An intermediary must, at all times, abide by the law.
2. An intermediary must act in accordance with the latest version of the Procedural Guidance Manual (PGM).
3. An intermediary has an overriding duty as an officer of the court, to assist impartially. An intermediary's paramount duty is to the court, and not to any other stakeholder engaged in the case or court proceeding.
4. An intermediary is not to present themselves as an advocate, witness or expert witness.
5. An intermediary must conduct themselves in a professional and courteous manner at all times.
6. An intermediary must, at all times, respect case and witness confidentiality. An intermediary should clearly articulate, as required, the limitations upon their role imposed by their strict obligation to maintain confidentiality (see further the section of this manual '*Information Sharing and Confidentiality*').
7. An intermediary must not use information obtained in their role for personal or alternative professional purposes.
8. If an intermediary intends to present or publish regarding their role as an intermediary, in a formal or an informal environment, the intermediary must obtain prior written permission from the IPT.
9. An intermediary must not discuss evidence with the witness or any other person. If a witness, or person associated with them, discloses evidence during a communication assessment or otherwise, the intermediary must inform the police officer in charge of the case (or their delegate). Immediately after attempting to inform the police, the intermediary must inform the IPT of the incident.
10. The intermediary must at all times accurately reflect their qualifications and professional experience.
11. An intermediary must maintain such qualifications, training, experience or skills as prescribed by law to perform the role of the intermediary.
12. An intermediary must have sufficient relevant insurance including professional indemnity insurance for the entire period they are engaged as an intermediary.
13. An intermediary should not accept, or continue to undertake, a referral to act as an intermediary that is not within their skillset and expertise. In such instances the intermediary must promptly notify the IPT so the referral can be allocated to a suitable intermediary.
14. An intermediary must meet the minimum Continued Professional Development (CPD) requirements relevant to the role of an intermediary as outlined in the IPT document '*Intermediaries' Continued Professional Development Requirements*'.
15. An intermediary must only accept a request for their intermediary services through the IPT. Requests may not be accepted from any other entities.
16. An intermediary must never be alone with a witness. If this occurs the intermediary must immediately inform the Intermediary Program Team.
17. At police interview, an intermediary provides communication advice to the interviewing officer and abides by police processes and the law governing intermediaries.

18. At court, an intermediary is an Officer of the Court and must provide communication advice in accordance with the presiding judicial officer's directions the law governing intermediaries.
19. An intermediary must not, at any time, provide opinions regarding the reliability or credibility of any witness, or regarding the content of their evidence.
20. An intermediary must make genuine attempts to meet the needs of the court, including being available for attendance at court, as the court requires. If the intermediary is unable to meet the needs of the court, the intermediary must immediately inform the IPT.
21. Prior to engaging as an intermediary with a witness, an intermediary must ensure that appropriate informed consent is obtained. If informed consent is not obtained the intermediary must immediately inform the IPT.
22. An intermediary must inform the IPT of any real or perceived conflicts of interest relating to witnesses or stakeholders arising while undertaking their role, as outlined in the '*Conflicts of Interest*' section of this manual.
23. An intermediary must immediately alert the IPT to: i) any criminal conduct they engage in; ii) any police enquiry or investigation whatsoever being conducted in relation to them in their personal or professional capacity; iv) any current court proceedings or orders occurring in relation to them in their personal or professional capacity; v) any activity, enquiry or investigation in relation to the status of the intermediary's National Police Check status or Working with Vulnerable People status.
24. Regarding personal or professional social media accounts, intermediaries should never publish information regarding the Intermediary Program, or any work undertaken in association with it. Intermediaries must be mindful, at all times, of their professional role as Officers of the Court.
25. An intermediary must be available for face-to-face contact with witnesses on a minimum number of twelve (12) days over each twelve (12) month period.

If an intermediary requires clarification or direction regarding any aspect of the Code of Conduct, or the application of it, they must promptly contact the IPT for guidance.

The ACT Criminal Justice System

The Australian Capital Territory (ACT) has three courts which deal with a range of criminal matters, depending on seriousness of the matter. They are the:

- Children's Court;
- Magistrates Court; and
- Supreme Court.

In Australia, the criminal justice system is adversarial, which means there are two or more parties presenting their version of the events to the court. In the ACT, court proceedings are presided over by either a Magistrate or a Judge depending on the stage and severity of the matter before the court. More serious matters are generally heard at Supreme Court level. These include homicide and more serious sexual offence charges. Some sexual offence matters are heard at the Magistrates and Children's Courts.

Intermediaries will primarily assist in Supreme Court matters. A brief overview of the different ACT courts that intermediaries may hear of in the course of their work is provided below.

The Children's Court

The Children's Court has jurisdiction to hear criminal cases against children (people under 12 years of age) and young people (people 12 years and above who have not turned 18 years of age) under the *Children and Young People Act 2008*.

In criminal matters, the young person's age at the time of the alleged offence will largely determine whether the Children's Court has jurisdiction to hear the matter. Where a person is under 18 at the time of committing the offence and first appears in court aged between 18 years and 18 years and 6 months, the Children's Court deals with the matter until the court finds the person guilty of the offence. If the Court finds the person guilty, the court sentences them as an adult.

If the person is older, the matter is referred to the Magistrates Court.

In the Children's Court, the accused is referred to as the "young person" and the names of the children charged with offences before the court are protected by non-publication orders and cannot be made public.

Depending on certain circumstances including the nature of the offence, a young person may have a right to choose to have the case heard by the Supreme Court.

The Magistrates Court

The Magistrates Court is a court that deals with most of the criminal law matters and small civil law matters in the Australian Capital Territory. The Magistrates Court is established under the *Magistrates Court Act 1930 (ACT)*. The functioning of the Magistrates Court is overseen by a Chief Magistrate, six Magistrates and two Special Magistrates.

The Magistrates Court oversees the following types of matters:

- (i) criminal offences which carry a maximum term of imprisonment of two years or less, or for Commonwealth offences one year or less;
- (ii) certain civil cases that are between \$25,000 and \$250,000 in value;
- (iii) matters where a complainant is seeking a family violence order, a personal protection order and/or a workplace protection order.

Matters heard at the Magistrates Court are overseen by a Magistrate. The Magistrate may make a determination, in a 'committal proceeding', as to whether a matter remains at the Magistrates Court or whether there is sufficient evidence to require the accused to face trial at the Supreme Court, which is a superior court.

The Supreme Court

The Supreme Court is established as a superior court of record by the *Seat of Government Supreme Court Act 1933 (Cth)*.

Once committal proceedings are completed in the Magistrates or Children's Courts a person may be committed to the Supreme Court for a trial or to be sentenced.

If the case is sent to the Supreme Court, the Registrar of the court will need to conduct a 'directions hearing' to identify a suitable date for the indictment and the case to be formally filed with the Supreme Court.

If the accused pleads guilty at this time, a date for sentencing is set by the court.

If the accused pleads not guilty, the matter will enter a pre-trial stage.

During this stage the court may list the case for one or more subsequent hearings to ensure that any pre-trial issues are resolved, and the case is ready to proceed to trial.

If the accused pleads not guilty, they may be offered the choice to have a 'judge-only' trial or to have their matter heard before a jury. Note that if the matter relates to sexual offences or homicide, the matter *must* be tried by a jury.

The Supreme Court also deals with civil cases where the amount is more than \$250,000.

The Supreme Court consists of the Chief Justice, a number of resident Judges, a resident Associate Judge, Additional Judges (Federal Court Judges who have an additional appointment to the ACT Supreme Court) and Acting Judges (Judges who have short term appointments).

Intermediaries' Professional Obligations

Intermediaries are required to meet and maintain several essential requirements to undertake the intermediary role:

- A professional qualification in Speech Pathology, Social Work, Psychology or Occupational Therapy or another relevant qualification that has been approved by the Administrator of the IPT;
- A National Criminal History Check and Working with Vulnerable People Check;
- Registration with their professional association (where applicable or unless otherwise agreed with the IPT);
- Insurance(s) relevant and suitable to their role as intermediaries;
- Regular professional supervision or a capacity to attend professional supervision provided by the Intermediary Program Team;
- Compliance with Intermediary Program continued professional development (CPD) requirements of 14 hours annually – this will include specific training and debriefing; approved online training and approved reading material, as well as approved professional education through the individual's professional association directly relevant to the intermediary role;
- Ability to continuously maintain records, confidentially, as required by the intermediary role (including their case notes, court reports, communications with police, the courts and suchlike);
- Ability to comply with the Intermediaries' Code of Conduct.

A current driver's licence is not a mandatory requirement but note intermediaries must travel to various ACT locations such as police stations, and intermediaries will not typically be reimbursed for travel using alternative means (see the section of this manual '*Rates of Remuneration*').

Intermediaries on the ACT Intermediary Panel must have the ability to independently prepare appropriate, legally compliant invoices for submission to the IPT in the Human Rights Commission for intermediary work undertaken by them.

In-House Intermediaries and Panel Intermediaries

For the purposes of implementing the Intermediary Program in the ACT, there will be two (2) employed in-house intermediaries embedded within the Human Rights Commission's IPT, plus a panel of up to twenty (20) intermediaries, each able to be contacted with a referral to undertake intermediary work on individual cases as required.

Both categories of intermediaries will have completed the accreditation processes required to become intermediaries and will abide by the requirements outlined in this Procedural Guidance Manual.

The in-house intermediaries are full time employees of the ACT Human Rights Commission and will be available Monday to Friday between 8AM and 6PM to attend to referrals from police, the DPP, Defence, Court (and others as directed by the Court). All referrals are made via the IPT.

Members of the panel of intermediaries are individually contracted service providers and the details of engagement is contained in individual correspondence with each intermediary. Panel intermediaries are typically contacted with case referrals in instances where in-house intermediaries are unavailable or do not have the relevant area(s) of expertise required by the case.

Panel intermediaries are paid at an hourly rate (see the summary contained in '*Rates of Remuneration*' below and information provided by the IPT). Further details regarding remuneration processes are provided to panel intermediaries prior to engagement. Note that the number of referrals each panel intermediary receives is dependent on a range of factors, including external factors such as referral frequency, individual witness's communication needs and other requirements.

Rates of Remuneration Summary (Panel Intermediaries – January 2020)

Item	Cost (excl. GST)
Hourly rate	\$160.00
Court Report production	\$550.00
Travel per hour (first hour unpaid, paid hourly after that if approved by IPT)	\$50.00

Data Privacy and Record-Keeping

Intermediaries must act in accordance with ACT and national privacy laws as well as proper practices advised by their own professional body, where applicable. The *Information Privacy Act 2014 (ACT)* (Information Privacy Act) regulates how ACT public sector agencies handle individuals' personal information. It includes a set of Territory Privacy Principles (TPPs) which cover the collection, storage, use and disclosure of personal information.

Information Sharing and Confidentiality

As Officers of the Court, intermediaries must treat witness-related information received verbally or in writing with utmost confidentiality in accordance with the law,

the intermediaries' Code of Conduct and the detailed training received in the intermediary accreditation course. As a guiding principle, intermediaries understand that outside of a court room presided over by a judicial officer, intermediaries should only discuss details of their engagement with a witness, or a court matter, with members of the IPT. Failure to strictly comply with confidentiality requirements places intermediaries at risk of divulging information or opinion that will compromise aspects of legal proceedings, with significant legal consequences.

Intermediaries must also maintain their impartiality in strict accordance with the law and the intermediaries' Code of Conduct and their training. As circumstances require, intermediaries should be confident expressing to stakeholders their strict legal obligation to remain impartial and maintain confidentiality.

Intermediaries often receive requests for information from criminal justice stakeholders and others. If an intermediary is uncertain regarding a request for information received, for example regarding a referred witness, they must promptly refer to the IPT for advice and guidance. This is particularly important when the request for information relates to the content of Communication Assessment Reports intermediaries are required to write for court purposes. The content of Communication Assessment Reports is very carefully prescribed and the distribution of the reports is managed by the IPT in accordance with the law. Only appropriate communication advice and recommendations are included Communication Assessment Reports, which are quality assessed by the IPT.

If an intermediary is concerned regarding any aspect of confidentiality or impartiality while undertaking their role, the intermediary must immediately inform the IPT. An example of such a circumstance arising may be where a child feels rapport with the intermediary and attempts to discuss their case with an intermediary or make a disclosure to the intermediary. Another example is where an intermediary is concerned regarding the wellbeing of a stakeholder in a case. The intermediary Code of Conduct outlines strict professional obligations applicable to intermediaries in these instances. Impartiality and confidentiality obligations are not able to be compromised. The intermediary is able to contact the IPT to be guided in such instances.

Insurance Obligations

Panel intermediaries are required to obtain and maintain adequate and appropriate insurances covering their intermediary work. The details of insurance cover obtained must be supplied to the IPT prior to commencement in the role.

As self-employed, independent practitioners it is the individual responsibility of each intermediary to ensure that they obtain and maintain adequate and appropriate insurance coverage. Intermediaries who are allied health professionals may be guided by their professional body regarding appropriate insurances. If the intermediary has queries in relation to their insurance obligations, they should contact the IPT.

Criminal Record(s), National Police Checks and Working with Vulnerable People Check

All intermediaries must provide evidence of a current National Police Check and evidence of current Working with Vulnerable People eligibility to the IPT before commencing work as an intermediary.

All intermediaries are expected to maintain current versions of these checks for the duration engagement with the Intermediary Program. If there are any enquiries, investigations or changes related to the status of these checks, the intermediary must immediately advise the IPT in accordance with the Code of Conduct.

If intermediaries have questions or concerns regarding historical criminal records, investigations or engagements in criminal or civil legal proceedings the IPT is able to discuss the matter with the intermediary.

Curriculum Vitae (CV)

Intermediaries must provide the IPT with a copy of their current CV prior to commencing their intermediary role and should advise the IPT of any updates to their qualifications or work experience. Copies of intermediaries' CVs will be held securely by the IPT and will only be shared with the court and/or the Implementation and Monitoring Group (IMG) if formally requested to do so. Intermediaries will be advised if a copy of their CV is requested by any stakeholder.

Registration with Professional Associations

Intermediaries must provide the IPT with evidence of their current registration with their professional association (where applicable). Details of professional registration will be held securely by the IPT and will only be shared with the court and/or the Implementation and Monitoring Group (IMG) if formally requested to do so.

Contact details

Intermediaries must advise the IPT of any changes or updates to their telephone number/s, residential address and email address as soon as possible after changes occur. This is particularly important in cases where intermediaries are actively working on cases, which often requires that the IPT communicate with the intermediary on short notice.

Complaints and Feedback Process

All complaints arising in the course of intermediary work should be made to the IPT for review and response. Please refer to the '*Complaints Handling Guidelines*' for more information.

Should any feedback or complaint regarding an aspect of the Intermediary Program of an individual intermediary become known to an intermediary, the intermediary must inform the IPT as soon as possible.

If the IPT receive feedback regarding the performance of an intermediary, a member of the team will endeavour to promptly contact the intermediary in question to discuss the feedback.

Conflicts of Interest

The intermediary must immediately notify the IPT if the intermediary is or becomes:

- a relative, kin, friend or acquaintance of the witness;
- engaged with the witness's family or engaged with the witness's broader networks (social, religious, educational, professional or otherwise);
- engaged in a matter where the witness the intermediary assesses has previously been a defendant witness the intermediary assesses (and vice versa);

- professionally engaged in assisting the witness other than as an intermediary, whether in a paid or unpaid capacity, or has been so engaged in the past;
- party to, or a potential witness in, any proceedings in which the witness may somehow be involved;
- inappropriately informed of any matter regarding a witness, or a witnesses' matter; or
- aware of any other perceived, potential or actual conflict of interest arising.

If any of the above occur, the intermediary must not accept or continue the relevant referral allocation. The intermediary must immediately contact the IPT, for IPT consideration and resolution of the issue.

Safety and Wellbeing

The IPT is committed to working responsibly alongside intermediaries and other stakeholders (including police and court staff) to assist the safety of intermediaries in the course of their work. As intermediaries work at various locations such as police stations and courts, the IPT does not have control over safety and wellbeing at locations intermediaries work. It should be noted that such locations have existing security arrangements in place, and that intermediaries are never expected to place themselves at risk.

If an intermediary has concerns about their personal safety and wellbeing whilst undertaking, or as a consequence of undertaking, their intermediary role, they should alert the IPT at the first available opportunity for guidance where possible (for example regarding support services that may be accessible).

Additionally, if an intermediary has concerns as to the wellbeing or safety of an intermediary peer, the intermediary should alert the IPT at the first available opportunity.

Relevantly, intermediaries' continued Professional Development (discussed below) will include content on 'Safety and Wellbeing', and 'Trauma-informed Practice and Self Care' (also discussed below in this manual).

Continued Professional Development

Intermediary work is technically complex and demanding.

Intermediaries must adhere to the Continued Professional Development (CPD) requirements of the program as directed by the IPT, to ensure their skills are maintained and developed.

Each intermediary must undertake no less than 14 hours per year of CPD specific to their role as an intermediary. CPD provided by professional bodies (where applicable) may, or may not, constitute intermediary specific CPD. Whether intermediaries' professional bodies' CPD offerings may be counted towards intermediary CPD requirements should be discussed with the IPT on a case-by-case basis.

To facilitate the accumulation of the CPD hours required of intermediaries, the IPT will provide opportunities for intermediaries to undertake activities such as attendance at a Clinical and Professional Debrief Sessions, and various information sessions and presentations which the IPT specifically provides as CPD activities. Intermediaries are strongly urged to engage in these activities wherever possible. Aside from providing free educational opportunities, engaging with intermediary

peers will be a benefit allowing the ACT intermediary professional cohort to engage and share their learnings with each other.

Intermediaries must maintain a clear, easily accessible record of all their CPD activities, including the precise time spent engaging in CPD and the specific CPD events attended throughout each calendar year (ie. between 1 January – 31 December each year).

From time to time throughout the year, intermediaries will be requested to submit their CPD log to the IPT for review. Failure to submit a CPD log when required may result in suspension or removal from intermediary duties.

In the event an intermediary becomes accredited part-way through a calendar year, the intermediary will be required to complete CPD requirements on a pro-rata basis. The CPD hours required will be communicated to the intermediary by the IPT at the time of the intermediary's accreditation. Once the subsequent calendar year commences, that intermediary will be required to engage and complete the full 14 hours of CPD during that calendar year.

Trauma-Informed Practice and Self Care

In order to fulfil their communication role, intermediaries must demonstrate professional understanding of, and professional responsiveness to, the impacts of trauma. Their engagement must be guided by their knowledge of the importance of witnesses' psychological safety. Intermediaries' trauma-informed practice must be culturally and socially sensitive, in accordance IPT expectations communicated during training and CPD. Intermediaries conduct themselves so as to genuinely respect and support the particular communication considerations of:

- children and young people;
- Aboriginal and Torres Strait Islander people and their communities;
- culturally and linguistically diverse people and their communities;
- lesbian, gay, bisexual, transsexual, queer and intersex people and their communities;
- people living with disability; and
- people living with health conditions, including mental health conditions.

In instances where intermediaries would like assistance or guidance analysing complex issues presented, including intersectional issues, they should not hesitate to contact the IPT. The IPT actively collects resources and maintains networks with individuals and within communities to assist the provision of educated, sensitive professional engagement by all IPT staff.

It is also imperative that intermediaries prioritise their own emotional and physical health and wellbeing and actively and consistently practice appropriate self-care. Some of these were discussed during the intermediary training and accreditation process and CPD provided by the IPT will also address self-care and related topics. Prioritising self-care will assist towards achievement of professional and personal health and assist intermediaries' capacity to effectively and ongoingly undertake their intermediary role.

Support Services in the Criminal Justice System

Intermediaries may not provide support services but should be aware that witnesses will have access to support in the ACT. Within the Human Rights Commission,

Victim Support ACT provides a range of clinical and non-clinical services to individuals who have experienced certain crimes in the ACT. The multidisciplinary Health Professional Officer Team at Victim Support includes social workers, counsellors and psychologists which individuals are referred to as cases require. Victim Support also contracts a panel of service providers, comprising of mental health practitioners and other relevant providers.

The Court Companion Program also forms part of Victim Support ACT and provides court companions (trained volunteers) who can assist individual victims of crime by attending court with them and being present before, during and after evidence is given, during court familiarisation and are also provide information about the court process.

The ACT Financial Assistance Scheme within Victim Support ACT provides financial support to assist victims of crime, subject to scheme criteria, to assist recovery from acts of violence and acknowledge their suffering.

Additional support services for individuals affected by crime may be found listed on the ACT Supreme Court [website](#).

Intermediaries and Ground Rules Hearings in ACT legislation

ACT intermediaries have received detailed training regarding the legislation creating their role, and the full scope of their role in police and court contexts. The following is an outline of detailed information conveyed during intermediary training. Intermediaries should not hesitate to contact the IPT with questions they have in relation to the legislation applicable to their work.

The *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT) amends the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) and the *Evidence (Miscellaneous Provisions) Regulation 2009* (ACT).

The *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT) amendments effectively introduces intermediaries in the ACT, allowing them to assist in relation to communication by certain witnesses who have communication difficulties. The law also introduces ground rules hearings in the ACT.

- Chapter 1A of the *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT) relates to ground rules hearings.
- Chapter 1B outlines the role of an intermediary and how they may be engaged in proceedings.

The following outlines specific sections of the legislation most relevant to the intermediary's role, including the sections relevant to ground rules hearings. Note however, all intermediaries should become familiar with all relevant provisions of the *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT). The Act may be accessed [here](#).

Chapter 1A – Ground Rules Hearings

4AA Definitions

Ground rules hearing means a hearing for a witness in a criminal proceeding, where the court —

- (a) considers the communication, support or other needs of the witness; and
- (b) decides how the proceeding must be conducted to fairly and effectively meet those needs.

4AD Ground rules hearings — who must attend

- (1) The following people must attend a ground rules hearing for a witness in a criminal proceeding:
 - (a) the DPP;
 - (b) the lawyer representing the accused person or, if the accused person is not represented by a lawyer in the proceeding, the accused person;
 - (c) any intermediary appointed for the witness.
- (2) The witness is not required to attend a ground rules hearing.
- (3) If an intermediary is appointed for the witness, the court may make an order that the witness not attend a ground rules hearing.

4AF Ground rules hearings — directions

- (1) At a ground rules hearing for a witness in a criminal proceeding, the court may make any direction the court considers is in the interests of justice, including any of the following:
 - (a) a direction about how a witness may be questioned;
 - (b) a direction about how long a witness may be questioned;
 - (c) a direction about the questions that may or may not be asked of a witness;
 - (d) if there is more than 1 accused — a direction about the allocation among the accused of the topics about which a witness may be asked;
 - (e) a direction about the use of models, plans, body maps or other aids to help communicate a question or an answer;
 - (f) a direction about the use of a support animal by the witness;
 - (g) a direction that if a party intends to give evidence that contradicts or challenges the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.
- (2) If an intermediary's report has been given to the court under section 4AE, the court must consider the matters mentioned in the report in making the direction.

Chapter 1B – Witness Intermediaries – criminal proceedings

4AG Definitions (Clauses 1 and 2)

intermediary means a person —

- (a) on the intermediaries panel; or
- (b) on a panel (however described) with functions substantially corresponding to the functions of the intermediaries panel, in the Commonwealth, a State, the United Kingdom or New Zealand.

intermediaries administrator means the person prescribed by regulations as the intermediaries administrator

The intermediaries administrator is the Victims of Crime Commissioner.

4AH Panel of witness intermediaries

The intermediaries administrator must establish and maintain a panel of people (the ***intermediaries panel***) who have —

- (a) either —
 - (i) a tertiary qualification in psychology, social work, speech pathology or occupational therapy;
 - (ii) or other qualifications, training, experience or skills prescribed by regulation; or
- (b) qualifications, training, experience or skills suitable to exercise the functions mentioned in section 4AI.

Role of a witness intermediary

4AI Functions of witness intermediaries

- (1) The functions of an intermediary appointed for a witness are to —
 - (a) prepare and provide reports about the witness's communication needs as required; and
 - (b) at a hearing —
 - (i) communicate to the witness questions put to the witness, to the extent necessary for the witness to understand the questions; and
 - (ii) communicate to the person putting questions to the witness, the witness's answers to the questions, to the extent necessary for the person to understand the answers; and
 - (iii) otherwise assist the court, and any lawyer appearing in the proceeding, to communicate with the witness.

- (2) An intermediary appointed for a witness is an officer of the court and must act impartially when assisting communication with the witness.

Appointment of a witness intermediary

A witness intermediary may be appointed at the discretion of the court in several ways, which are outlined at **4AJ, 4AK and 4AL** of the Act.

4AJ Appointment of witness intermediary – generally

- (1) A court may appoint an intermediary in a criminal proceeding for a witness with a communication difficulty —
 - (a) on its own initiative; or
 - (b) on the application of —
 - (i) the DPP; or
 - (ii) the witness; or
 - (iii) the accused person.
- (2) A court must not appoint an intermediary for a witness under this section if satisfied that the witness —
 - (a) is aware of their right to make an application for an intermediary to be appointed; and
 - (b) is able to, and wishes to, give evidence without the assistance of an intermediary.

4AK Appointment of witness intermediary — prescribed witnesses

- (1) A court must appoint an intermediary in a criminal proceeding for a witness prescribed by regulation.
- (2) However, the court need not appoint an intermediary for a witness under this section if —
 - (a) there is no-one available who —
 - (i) meets the needs of the witness; and
 - (ii) satisfies the requirements in section 4AL; or
 - (b) it is not in the interests of justice to appoint an intermediary.
- (3) Also, the court must not appoint an intermediary for a witness under this section if satisfied that the witness —
 - (a) is aware of their right to an intermediary; and
 - (b) is able to, and wishes to, give evidence without the assistance of an intermediary.

4AL Appointment of witness intermediary — suitability of the intermediary for the witness etc

- (1) A court may appoint an intermediary for a witness in a criminal proceeding only if —
 - (a) the intermediaries administrator is satisfied the intermediary has qualifications, training, experience or skills suitable for the witness; and
 - (b) if the intermediary is a designated person — the court is satisfied —
 - (i) there is no other suitable intermediary reasonably available; and
 - (ii) the appointment is in the interests of justice.
- (2) In making a decision under subsection (1), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) In this section:

designated person, in relation to a criminal proceeding, means a person who is

- (a) a relative, friend or acquaintance of the witness or the accused person; or
- (b) a person who has assisted the witness (other than as an intermediary) or the accused person in a professional capacity; or
- (c) a party or potential witness in the proceeding.

4AM Witness to give evidence in presence of intermediary

- (1) If a court appoints an intermediary for a witness in a criminal proceeding, the witness must give their evidence in the presence of the intermediary.
- (2) Evidence of a witness given in the presence of an intermediary must be given in circumstances in which —
 - (a) the court and any lawyer appearing in the proceeding are able to —
 - (i) see and hear the witness giving evidence; and
 - (ii) communicate with the intermediary; and
 - (b) the jury (if any) is able to see and hear the witness giving evidence, including any assistance given by the intermediary.
- (3) If the proceeding is a trial by jury, the court must tell the jury that —
 - (a) a witness giving evidence in the presence of an intermediary is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the intermediary is present.
- (4) An order that the court be closed to the public does not stop an intermediary for a witness being in court while the witness gives evidence.

The role of the intermediary

As stated in the above legislation extracts, the functions of the intermediary are to:

- communicate to the witness questions put to the witness, to the extent necessary for the witness to understand the questions; and
- communicate to the person putting questions to the witness, the witness's answers to the questions, to the extent necessary for the person to understand the answers; and
- otherwise assist the court, and any lawyer appearing in the proceeding, to communicate with the witness.

An intermediary is an officer of the court who must always act impartially when assisting communication with the witness.

Intermediaries are not expert witnesses. The intermediary cannot, for instance, give an opinion regarding the accuracy of a witness's recall of facts given in their evidence.

The intermediary cannot comment on whether a witness is competent to give their evidence.

The intermediary impartially advises regarding effective communication with the witness, in accordance with the provisions of the legislation.

The Intermediary Program expects the police and court to regularly request intermediary assistance regarding communicating with child complainants in sexual assault matters and child witnesses in violent offences occasioning death, as the law envisages. Police and courts may also request intermediary assistance with other categories of witness.

Intermediaries should note, however, the legislation states the court is not required to appoint a witness intermediary, *if the court is satisfied that the witness:*

- is aware of their right to make an application for an intermediary to be appointed; and
- is able to, and wishes to, give evidence without the assistance of an intermediary.

Note also, the appointment of an intermediary is not a matter which may be merely 'agreed between parties'. The court decides whether an intermediary is required and, if so, will make an appropriate direction regarding the intermediary's involvement in the case.

Finally, intermediaries should note that the court may also direct other measures it determines necessary, such as the option of the witness being assisted by a support person, providing pre-recorded evidence, or providing their evidence via a remote TV link. These are matters ultimately decided by the court.

It is not the intermediary's role to provide support to a complainant or witness. Support persons perform that role. The intermediary's role is to advise on how to achieve clear communication so that the witness can provide their best possible evidence.

The intermediary's duty is to the court. The intermediary must not interfere, in any way, with police or court processes or procedures, as the intermediary will be at risk of contravening the legal scope of their role. Intermediaries who *misrepresent* communications may be at risk of criminal penalties.

The intermediary's role is tightly prescribed for good reason. Adherence to the law ensures intermediaries in the ACT properly perform their vital role ensuring that witnesses, police, counsel and courts have been advised on how to effectively communicate with witnesses. By strictly adhering to their role, intermediaries facilitate witnesses' effective communication of their information within the criminal justice system.

Multiple evaluations, both Australian and international, demonstrate that effective intermediaries significantly improve vulnerable witnesses' engagement in the criminal justice system. Evidence shows all justice system stakeholders' representatives are able to identify benefits that result from intermediaries' proper engagement in criminal justice processes.

Courtroom Etiquette and Dress Code

The intermediary is an officer of the court, and as such, it is important they comply with courtroom etiquette and protocols.

The court is a formal environment. Intermediaries attending court for any reason relating to a referral should ensure they comply with the following:

Court Processes for intermediaries

- Ensure objects you carry, for example in your bag, will be considered safe and will not be removed during court security screening.
- Ensure all electronic devices (e.g. phones) are turned off both in the courtroom and in remote witness suites.
- Do not eat or drink (except water) inside the courtroom.
- Remove sunglasses and/or hats when inside the courtroom.
- When you initially enter the courtroom, let the Court Officer present know you are present, and that you are the intermediary for the matter.
- If you enter the courtroom while the Judge or Magistrate are present, you will need to bow your head as you enter.
- Stand when the Judge or Magistrate enters and leaves a courtroom (court staff direct when this occurs). Remain standing until court staff indicate otherwise.
- If you leave the courtroom while the Judge or Magistrate are present, you will need to bow your head again before exiting the courtroom.
- Keep your intermediary accreditation badge with you at all times.
- Keep silent within the courtroom unless you are requested to engage in proceedings.

- Remain seated in the public sitting area of the courtroom until you are called forward to engage in proceedings, for example to engage in the ground rules hearing. Respectfully ask where you should be seated.
- Judges and Magistrates should be addressed as 'Your Honour'.
- Refer to lawyers as 'Counsel'.
- Refer to the witness by their first name, unless instructed otherwise.
- Be conscious of your behaviour in the court vicinity as complainants, witnesses, jurors and potential jurors, counsel, judicial officers and family members may be present.
- Be aware others in the courtroom may see documentation and notes unless they are kept in a discrete file or folder.
- Do not discuss any aspect of the content of evidence given, at any point.
- Do not discuss the witnesses' performance giving evidence at any point, with the witness or any other party.
- Note that even when the court is vacated, recording equipment may remain on.
- Note that parties' lawyer, family members, or other interested persons such as journalists may be in your vicinity inside and outside of the court, including in waiting areas, at cafes and in bathrooms.
- Note many matters may be protected by a non-publication order (confer with the IPT should you wish to clarify approaches in such cases, including to ground rules hearings).
- Maintain obvious professionalism and impartiality when communicating with all parties, such as lawyers in the case, whether inside or outside of the courtroom.
- If you spend time with counsel on one side of the matter, for example introducing yourself to them, be sure to actively attempt to do the same with respect to the other counsel.
- At no time should the intermediary be in direct contact with a Judge or Magistrate unless the Judge or Magistrate invites it.
- Outside of the course of proceedings, communications with judicial officers or others engaged in the proceedings should be promptly communicated to the IPT. Note that intermediaries should not initiate any such communication.
- Do not be left alone with a witness at any time.

Dress Requirements

Due to the formality of court processes and other factors including the possible need to appear via video link, intermediaries must wear neat, conservative attire that is not excessively colourful or bright. Whether the matter is a jury trial or pre-recorded hearing, it is important intermediaries are conscious not to distract with their choice of attire. By way of specific example, bright, shiny textiles or accessories may be distracting when on CCTV.

The following are some general points to assist intermediaries to meet dress requirements for courts:

- professional attire such as collared shirts with a plain blazer are ideal;
- ensure shirts have sleeves (i.e. avoid sleeveless shirts, thin straps etc);
- avoid tops with distracting colours or patterns;
- tops with slogans / printed words are not permitted;
- ensure clothing is not tattered or stained;

- hair and/or facial hair should be neat and tidy;
- bags and other items that are not relevant to proceedings should remain out of view of the camera when in CCTV room (i.e. not behind the intermediary and witness in view of the camera).

Witness Competence

It is not the intermediary's role to comment, advise or give evidence regarding the competency of a witness to give evidence.

The question of competence is decided in accordance with section 13 of the *Evidence Act 2011* (ACT), without any intermediary input on the issue of competency.

Competency is a matter for the court.

As a general principle, every person is presumed competent to give evidence, however the *Evidence Act 2011* (ACT) Part 2.1 states that a person is not competent to give evidence about a fact if, for any reason including a mental, intellectual or physical disability:

- a) the person does not have the capacity to understand a question about the fact; or
- b) the person does not have the capacity to give an answer that can be understood to a question about the fact;

and that incapacity cannot be overcome.

Intermediaries should note that where there are concerns regarding the competency of a witness to give evidence, the court may seek information from an appropriately qualified person to help it determine if a witness is competent.

The intermediary is not to engage on the issue of the competency of a witness to give evidence, even if requested to do so.

In the unusual situation where an intermediary is asked to engage on the issue, the intermediary should refer to their tightly prescribed role to advise on the witness's communication. This may include, for example, assisting the court and counsel to ask questions they themselves formulate in order to ascertain whether a witness is a competent witness.

Intermediaries may contact the IPT at any time to discuss this issue further.

Intermediary Procedural Steps in the Australian Capital Territory

The following section provides step-by-step guidance on procedural aspects of the role of the intermediary. Procedures may vary depending upon case circumstances.

Should intermediaries wish to clarify any issues regarding procedures they must follow, they should contact the IPT.

Note that an intermediary may be referred a case at the 'police stage' to undertake an assessment in relation to a planned evidence-in-chief interview (which is typically a recorded interview police conduct with the witness).

An intermediary may also be referred a case at 'court stage' (which will typically be a court case involving a child complainant in sexual offence case or a case where a child is a witness to a serious violent offence involving the death of a person).

Often, an intermediary will engage on the same case during both the police stage, and subsequently during the court stage, if the case proceeds to court.

The procedural steps for police and court stage differ. The explanation of the procedural steps at each stage have been separated following, to assist clarity.

Police Evidence-In-Chief Interview (Police audio and video recorded interview)

The following section has been developed using procedural guidance received from the police's Sexual Assault and Child Abuse Team (SACAT) in the ACT.

Intermediaries will regularly work with SACAT officers at their offices in Winchester Station, Belconnen and elsewhere as required.

1. Matters are reported to police stations that involve:
 - a) the alleged sexual assault of a child or young person; or
 - b) an alleged violent offence involving the death of a person where a child or young person is a witness.
2. If the alleged offence involves a death or the alleged sexual assault of a child aged 12 years or younger, the matter is typically referred to the Sexual Assault and Child Abuse Team (SACAT).
3. If the matter involves the alleged sexual assault of a child or young person aged over 13 years but under 18 years, the matter will typically be referred to a Sergeant (Criminal Investigations Officer) who will determine whether the matter meets the relevant SACAT thresholds. If it does, SACAT progresses the matter.
4. If the matter does not meet internally determined thresholds, it is usually progressed at Police Patrol Level or Crime Team Level, as determined by police.
5. For cases progressed by SACAT, relevant information is gathered by the police officer to assist enquiries, and where it is deemed necessary, to prepare for an evidence-in-chief interview. The police officer may collect information from the parent/guardian, Child and Youth Protection Services (CYPS) or any other source deemed necessary.
6. If circumstances allow, the police officer may conduct a "meet and greet" session to inform the witness (and where relevant their parent/guardian) of aspects of police and criminal justice system processes and of resources available within the criminal justice system. The "meet and greet" session may assist witnesses to decide whether they wish to proceed to an evidence-in-chief interview. The intermediary may be invited to attend the "meet and greet", simply to introduce themselves and explain the nature of their role. (Police guide the intermediary's involvement at "meet and greet" stage.
7. The police officer will inform the witness and/or parent/guardian of the potential involvement of an intermediary to assist communication during the police evidence-in-chief interview. (Note - intermediaries are allocated to the case via the IPT as discussed below.)
8. The police officer will obtain informed consent to have an intermediary involved in their matter.
9. Informed consent is obtained from the witness, or where necessary, their parent/guardian. (Note - if the officer does not obtain informed consent, the intermediary is able to obtain informed consent before commencing their assessment.)
10. In cases where the police officer establishes that the parent and/or guardian is potentially not protective, the police officer may decide *not* to obtain their informed consent. In these instances the intermediary should follow the police

officer's lead, make notes of the officer's decision and inform the IPT immediately.

11. In cases where, because of safety concerns, immediate police response is required, police may proceed to rapidly conduct evidence-in-chief interview without obtaining informed consent and at a location other than the police station. The interview may occur at a hospital, school or other location. The police officer may *waive* the need to obtain informed consent. The intermediary should follow the police officer's lead, make notes of the officer's decision and inform the IPT immediately.
12. In all circumstances where police proceed to an evidence-in-chief interview or take a written statement, and require an intermediary's assistance to do so, relevant police officers will involve the intermediary by completing an Intermediary Police Referral for submission to the IPT.
13. The Police Intermediary Police Referral form includes relevant details of the witness, any known communication considerations and/or challenges, the date/time and location of the proposed police interview and whether informed consent has been obtained.
14. The Police Referral form is emailed to the IPT.
15. The IPT will determine whether an in-house intermediary is able to accept the referral.
16. If appropriate, the referral will be allocated to the in-house witness intermediary.
17. If allocation to an in-house intermediary does not occur, the IPT will proceed to match the case to an intermediary on the intermediary panel and will rapidly investigate whether the appropriate panel intermediary is available to receive the referral.
18. The intermediary who is allocated the referral will be provided with relevant referral details, including the police officer's contact information, date/time and location of the proposed evidence-in-chief interview, the details of the witness and any known communication needs.
19. Once the referral has occurred, the intermediary and police officer may be in contact as required, for example to prepare for the evidence-in-chief interview.
20. The police officer may supply the intermediary with information. Information supplied will be limited to that necessary to assist the intermediary with their intermediary role. For example, information to assist the intermediary's assessment undertaken prior to the evidence-in-chief interview. Note - the police officer will diligently avoid providing information that may relate to the evidence the witness may give, and the intermediary will not request such information.
21. The intermediary's assessment undertaken prior to the evidence-in-chief interview will ideally take place one day prior to the evidence-in-chief interview (i.e. ideally the assessment and the interview will occur on separate days). However, due to the time sensitive nature of many police matters, the intermediary's assessment will very often occur on the same day, immediately prior to the evidence-in-chief interview.
22. The intermediary's assessment undertaken prior to the evidence-in-chief interview is often referred to as the pre-evidence-in-chief assessment (or 'P-EIC' assessment). The pre-evidence-in-chief assessment of children should take place in a child-friendly room whenever possible. Note this is usually a different room from the evidence-in-chief interview suite. If the evidence-in-chief interview is undertaken at a hospital, school or other venue where a child-friendly room is

unavailable, the police officer and intermediary may discuss the best location for the pre-evidence-in-chief assessment to occur.

23. On the day of the pre-evidence-in-chief assessment, the intermediary will first meet with the police officer to confirm arrangements and intended assessment approach. The intermediary is then introduced to the witness and their protective parent/guardian (where relevant). Meeting the witness in this way may assist building rapport. It is also an opportunity for the intermediary to obtain informed consent if necessary and appropriate.
24. When obtained, the signed informed consent form must be retained by the intermediary for provision to the IPT after completion of the police interview.
25. Once initial steps are completed, the intermediary, police officer/s, witness and support person (where applicable) will go to a suitable room to conduct the pre-evidence-in-chief assessment.
26. The police officer should be present throughout the pre-evidence-in-chief assessment. This ensures the intermediary is never left alone with the witness. It also assists the police officer to build rapport prior to commencing the evidence-in-chief interview.
27. The approach to and content of the pre-evidence-in-chief assessment will vary from case to case, as it is tailored to the particular communication needs of the witness. For example, very young children may respond to toys and games assisting assessment of vocabulary, auditory processing capacity and/or their ability to follow instructions. Older children require alternative communication assessment techniques.
28. Police officers do not typically record the intermediary's pre-evidence-in-chief assessment.
29. Intermediaries may make notes during their pre-evidence-in-chief assessment.
30. An appropriate pre-evidence-in-chief assessment can take as long as 30 minutes, dependent upon the communication needs of the witness being assessed.
31. After completion of the intermediary's pre-evidence-in-chief assessment, the intermediary will provide a verbal debrief to the police officer regarding their assessment of the witness's communication considerations. This discussion typically includes reaching agreement on how the intermediary may alert the police officer when the intermediary observes communication issues during the interview, (for example that for communication purposes a witness would benefit from a short break).
32. If required, the intermediary may prepare notes for the police officer regarding the witness's communication issues, based upon on the intermediary's pre-evidence-in-chief assessment.
33. The debrief and notes the intermediary provides to the police officer prior to the evidence-in-chief interview may include a range of tailored recommendations covering such issues as: suitable interview room set up, toys and aids that may assist stress reduction and therefore communication effectiveness, frequency of interview breaks, developmentally appropriate sentence construction and other communication advice (specific to culture, disability or other communication relevant matters within the intermediary's realm of expertise or experience).
34. The debrief includes agreement on how the intermediary will operate during the evidence-in-chief interview. For example, how the police officer wishes the intermediary to indicate an issue, such as with a raised hand or other cue.

35. During the evidence-in-chief interview, the witness, police officer and intermediary will be together in the interview room. There may also be a support person in the interview room. The police officer decides who is present.
36. The intermediary is present only to advise on communication, in accordance with the police officer's instructions. The intermediary is never to engage on issues relating to interview content, questions or answers. The intermediary is not concerned in any way with the any aspect of the evidence. The intermediary is not a 'second interviewer' in any sense. At no stage does an intermediary ask a question that relates to evidence. The intermediary only advises on facilitating the act of communication.
37. If the intermediary is required to provide advice during the course of the evidence-in-chief interview, typically an intermediary will communicate to the police officer that a break is advised allowing a discussion to occur with the police officer outside of the room and away from the witness. Such breaks are typically requested only if pre-agreed with the police officer. (Note - intermediaries should be cautious not to interrupt the process of free-flowing communication during interview).
38. At the completion of the police evidence-in-chief interview, the intermediary should thank the police officer and ensure the intermediary's notes and aids are collected prior to departure.
39. Intermediaries inform the IPT they have completed their referral, debrief with IPT members if required, return a copy of the informed consent form to the IPT for record keeping purposes and produce their invoice for submission to the IPT.

Court Proceedings (preparation, Ground Rules Hearing and Cross-Examination)

1. In accordance with ACT law, only the court can appoint an intermediary in court proceedings. Often a lawyer will request the court make the appointment.
2. Where an intermediary has been appointed by the court, the requesting agency or individual submits their Intermediary Referral Form for an intermediary to the IPT at the ACT Human Rights Commission.
3. The request for an intermediary should include all relevant information required by the referral form. Depending on their age, this may include details of a parent/guardian. Other details required include the matter name, matter reference number, anticipated date of pre-recorded hearing or trial, date of the ground rules hearing set by the court and relevant communication issues identified.
4. The referral form should also include details of relevant lawyers, for example: the DPP prosecutor and defence lawyer where relevant.
5. The witness's verbal consent provided to their lawyer is sufficient for initial engagement of an intermediary. The intermediary will obtain signed consent from the witness at the time the intermediary's communication assessment occurs.
6. Upon receipt of the referral, the IPT will allocate an intermediary with requisite expertise according to witness needs outlined in the referral form.
7. If an intermediary was utilised by police during evidence-in-chief interview, efforts will be made to engage that same intermediary for the court stage. Where utilising the same intermediary is not possible, an alternative intermediary with requisite skills and experience will be allocated.

8. The IPT will arrange a time and location for the intermediary to undertake a communication assessment with the witness (engaging with their parent/guardian where applicable). The IPT will also engage with the police officer with carriage of the matter.
9. The communication assessment with the witness takes between 45 – 90 minutes, and may take place at a police station, SACAT office, court or any other suitable venue that is private and comfortable (and child-friendly where applicable).
10. The communication assessment informs the recommendations the intermediary will make in their communication assessment report (which is often referred to as the 'Court Report'). The recommendations in the communication assessment report are critically important and are presented to the court at the ground rules hearing.
11. The communication assessment of the witness does *not* include discussion or reference to the alleged offence.
12. The communication assessment of the witness does *not* include discussion of evidence, witness competence or the court proceedings.
13. The communication assessment focuses upon the witness's communication alone, for the purposes of drafting the communication assessment report. To assist production of the communication assessment report the intermediary will usually be required to either view the recorded evidence-in-chief, or review the witness's statement provided to police, to analyse communication.
14. Viewing the evidence-in-chief or statement may be arranged by the IPT or where necessary between the intermediary and police officer either prior to, or after, the communication assessment occurs.
15. The intermediary is an officer of the court, and their role requires they are not alone with the witness at any time, ensuring the witnesses' perception of the intermediary's strict impartiality and maintenance of the communication assessment role.
16. Once the intermediary completes their communication assessment, they must produce a thorough communication assessment report including recommendations. The IPT reviews the report for quality and compliance purposes and it is then submitted to the Court Registry, who distributes it to:
 - the Judge or Magistrate's Associate (whichever is applicable)
 - the DPP prosecutor
 - the Defence barrister
 - any other relevant entity, as determined by the court.
17. The communication assessment report is based on the findings of the intermediary's communication assessment process. It is solely focused upon communication. The report is *not* a diagnostic report and does not typically reference medical documentation (etc.) that could, or could not, be relevant to proceedings.
18. If considerable time passes between the undertaking of the communication assessment and the matter being heard at court, the intermediary may need to conduct another assessment and provide an addendum to their report. For example, if a child's age or developmental stage changes significantly due to the course of time passing. Whether an additional intermediary communication assessment is necessary is determined on a case-by-case basis.
19. A court familiarisation visit is held prior to a witness attending cross-examination. The DPP Witness Assistance Officer typically facilitates this process, referred to

- by some as “proofing”. “Proofing” may also be used to refer to the witness viewing their evidence-in-chief prior to attending court. The intermediary is not typically involved in any type of “proofing” as it is not relevant to their communication facilitation role. Should the intermediary have questions regarding this or any related issue, they should contact the IPT for guidance.
20. Prior to the cross-examination of the witness a ground rules hearing is scheduled by the court.
 21. The judicial officer determines who will attend the ground rules hearing. Typically, the intermediary, Defence barrister and DPP prosecutor attend. The ground rules hearing provides the forum for the judicial officer to determine the ‘rules’ regarding communicating with the witness under examination.
 22. The intermediary must bring a hard copy of their court assessment report to the ground rules hearing.
 23. During the ground rules hearing, after deliberation including of questions by counsel and verbal information provided by the intermediary to the court, the judicial officer may direct the parties to follow some, or all, of the recommendations outlined in the intermediary’s communication assessment report. If the judicial officer makes directions these must be followed by the intermediary and lawyers. The intermediary should carefully note down the judicial officer’s directions. The directions will form the basis of any intermediary involvement in the court proceedings going forward.
 24. Importantly, the judicial officer may indicate, at the ground rules hearing, the intermediary’s method of intervening during court proceedings. The judicial officer may choose to indicate where the intermediary will be seated during proceedings, for example if they are to be located in the remote witness room during cross-examination. The intermediary may be seated next to the witness to allow them to properly monitor the witness’s communication and directly related issues such as anxiety.
 25. At the ground rules hearing, the judicial officer may direct the lawyers to seek advice from the intermediary to assist constructing their questions for the witness (this commonly occurs in other jurisdictions). The intermediary is to advise on communication of questions as directed. This includes reviewing and advising on lists of questions provided, maintaining utmost confidentiality throughout, in accordance with intermediary training and legal requirements upon intermediaries as officers of the court. (Note – intermediaries do *not* comment on evidence or question content. Intermediaries advise on communication of questions to assist eliciting of best evidence.)
 26. The intermediary may provide communication advice to counsel in person or via email and the intermediary must make themselves equally available to all parties’ lawyers in accordance with their legal obligations regarding impartiality.
 27. The intermediary attends the pre-recorded hearing or trial at the court scheduled date to actively facilitate communication in accordance with the directions made at the ground rules hearing. The intermediary should ensure their awareness of the precise location they are to attend, for example the court, remote witness suite or whichever location the witness is instructed to give evidence from.
 28. The intermediary must bring a hard copy of their court assessment report.
 29. If the matter is being heard before a jury, the judicial officer may inform the jury of the role of the intermediary and that greater or less weight should not be attributed to the evidence of the witness due to the intermediary’s presence.

30. The intermediary may take an oath or affirmation at the court's direction, and prior to the cross-examination of the witness commencing.
31. During cross-examination of the witness, the intermediary may only intervene if there are strong grounds to do so in accordance with the directions arising from the ground rules hearing or if there is a breakdown in communication. An example would be if there is a breakdown in communication between the lawyer and the witness, or alternatively if a lawyer does not abide by the directions made by the judicial officer during the ground rules hearing and communication is affected as a result.
32. At all times the intermediary must follow the instructions of the judicial officer.
33. An intermediary may be asked by the judicial officer to convey a communication by the witness, for example if the judicial officer is uncertain as to what has been stated by the witness. The intermediary must follow the judicial officer's direction. If the intermediary is uncertain as to what has been stated by the witness, the intermediary must inform the court of their uncertainty. The intermediary may not ever 'speculate or guess'.
34. The intermediary may be required by the judicial officer to read out answers written down by witnesses who are unable to speak clearly. The intermediary must follow the judicial officer's direction. The intermediary must read what is written verbatim. The intermediary may not ever 'speculate or guess'.
35. Throughout the court proceedings, the intermediary must never be left alone with the witness. This includes during in-room or longer breaks ordered by the judicial officer or during any other break in proceedings.
36. At the completion of the intermediary's involvement in proceedings the judicial officer may indicate the intermediary's role is concluded.
37. The intermediary informs the IPT they have completed their referral, debriefs with IPT members if required, returns a copy any documentation required for record keeping purposes and produces their invoice for submission to the IPT.
38. Intermediaries are not informed of court proceeding outcomes.

Flowchart for Referrals

Please see **Appendix 3** of this Program Guidance Manual for flowcharts depicting the police and court stage referral pathways.

Acceptance of Referrals

If an in-house intermediary is not available for a referral, a panel intermediary will be contacted by the IPT to assist at a police interview or at court.

If an intermediary receives a request directly from a party other than the IPT, they must immediately refer the party making the request to the IPT.

An intermediary is matched according to the referral information received from the requesting agency. This process is completed using information relating to the areas of expertise and professional background of the panel intermediaries. If the referral is for a police interview, the IPT will also need to consider the urgency of the referral and the distance of the intermediary from the police interview location.

Once a referral is matched, the IPT will:

- **for a police interview:** confirm the time and location of the police interview and provide this information to the intermediary;

- **for a court matter:** confirm details of the witness and arrange for a communication assessment to take place. Note the intermediary will also need to be available for relevant court dates.

If an intermediary becomes unavailable at any point for reasons beyond their control, they must notify the IPT as soon as possible to allow for the matter to be reallocated. Similarly, if an intermediary attends a referral and realises they do not have the requisite skills/expertise, they should notify the IPT immediately to arrange reallocation.

Intermediary Communication Assessments

Communication assessments are critically important in assessing the communication needs of the witness. More information regarding the communication assessment process is provided following. The IPT is also able to guide intermediaries during the assessment process.

The communication assessment is based on the intermediary's observations and conclusions. The purpose of assessments is to determine communication needs in the contexts of police interview and trial.

The communication assessment is not a diagnostic assessment and as such full clinical tests are not appropriate and will not be performed.

If the communication assessment is for a police interview, it is important the intermediary and police officer discuss topics the intermediary should avoid during their assessment i.e. general topics related to the evidence. For example, if alleged perpetration occurred at a cinema, the intermediary should simply be informed to avoid the topic of cinemas when undertaking the communication assessment.

A communication assessment is the intermediary's opportunity to assess the witness's ability to:

- describe – this may include describing furniture in the room, a toy the witness has, an outfit the witness is wearing;
- speak in narrative – this will provide insight into the witness's ability to develop a narrative and whether they can navigate detail;
- comprehend sequence – this may include using story cards that the witness is asked to put in appropriate order;
- understand chronology and time – this will assist with determining the witness's capacity to talk about times and/or orders;
- comprehend tagged questions – the intermediary may ask tagged questions (e.g. 'my shirt is red, isn't it?') to see if the witness understands tagged question sentence structures;
- comprehend leading questions – if the intermediary asks leading questions in certain manners the witness' ability to comprehend them and respond accurately may be assessable;
- understand idioms and jargon – the intermediary may see what the witness's understanding is of common English language idioms like 'break the ice' or 'time raced by', and whether the witness will indicate when they cannot follow language;
- concentration span – assessing concentration span assists to advise regarding whether breaks will assist communication.

Each intermediary will have their own assessment approaches and tools they utilise for communication assessments, dependent on their areas of expertise, experience and the communication needs and age of the witnesses.

Pre Evidence-in-Chief (P-EIC) Assessment (Police Referral)

As noted above regarding intermediary processes when working with police, the P-EIC assessment of a witness will generally take 20 – 30 minutes, however, the duration may be shorter or longer depending on the communication needs specific to that referral.

Depending on the urgency of the police referral, the assessment may take place on a separate day to the evidence-in-chief or on the same day immediately prior.

The time taken undertaking the intermediary's P-EIC assessment must not impact upon the ability of police to undertake their investigative interview.

The P-EIC assessment is an opportunity for the intermediary to build rapport and gather basic information as to the communication needs of the witness. The way in which an intermediary assesses these needs will depend on several factors including the professional background of the intermediary and the presentation of the witness.

It is not necessary for the P-EIC assessment to be lengthy, as there will be an opportunity for the intermediary to undertake a lengthier communication assessment should the matter proceed to court.

At the completion of the P-EIC assessment, it is imperative the interviewing police officer and intermediary debrief about the findings of the intermediary's assessment. This debrief may include (but is not limited to):

- recommendations as to the way questions may be asked;
- language to avoid; and
- appropriate ways the intermediary can intervene if communication fails.

The intermediary is *not* a second interviewer. Intermediaries follow the instructions of the interviewing police officer.

Communication Assessment Report (Court Referrals)

If a court matter requires an intermediary, the IPT is responsible for allocating the matter to an intermediary with relevant expertise and/or experience.

The intermediary is responsible for undertaking a communication assessment and developing a communication assessment report. This report includes a list of recommendations the judicial officer may deliberate at the ground rules hearing, for the purpose of the judicial officer making directions regarding communications with the witness during court proceedings.

A template for intermediaries to use when compiling Communication Assessment Reports is included at **Appendix 2** in this Program Guidance Manual.

The communication assessment of the witness upon which the communication assessment report is based occurs at an appropriate neutral, comfortable location (such as the Children's Court witness suites or police station) and a responsible third party (such as a police officer) will be present with the intermediary to ensure impartiality is maintained throughout the assessment. The intermediary is never alone with the witness.

Generally, a communication assessment of a witness will take between 45 – 60 minutes. However, for referrals where the witness has complex communication issues, a communication assessment may take up to 90 minutes duration.

Depending on timeframes, typically the intermediary will have the opportunity to view the witness's recorded evidence-in-chief or view the written statement. This is a normal step in the communication assessment process.

At the completion of the communication assessment, having completed viewing the police interview/written statement, the intermediary prepares a thorough communication assessment report for court purposes.

Note - the intermediary does not access additional material, documentation or talk with persons familiar with the witness for the purposes of preparing the intermediary's communication assessment report.

If, at any time, the intermediary feels they require further information regarding communication process, they should contact the IPT for guidance.

The Advocate's Gateway

The Advocate's Gateway is an internationally recognised and judicially endorsed source of research-informed best practice guidance on advocacy and case management when a complainant or witness is vulnerable.

Vulnerabilities and resultant communication challenges relating to childhood development, mental disorders or disabilities, physical disorders or disabilities, learning disabilities, effects of trauma and suchlike are expounded upon for intermediaries in The Advocate's Gateway 'Toolkits'.

See www.theadvocatesgateway.org/

Intermediaries should become familiar with The Advocate's Gateway 'Toolkits' and various practice guides on questioning vulnerable witnesses, including:

Toolkit 1 Ground rules hearings and the fair treatment of vulnerable people in court.

Toolkit 2 General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs.

Toolkit 6 Planning to question a child or young person.

Toolkit 14 Using communication aides in the criminal justice system.

On occasions when time permits, the intermediary may also refer the interviewing police officer or counsel to one or more of the toolkits, where relevant.

Aboriginal and Torres Strait Islander Witnesses

Intermediaries should familiarise themselves with the ACT Human Rights Commission's Cultural Safety Charter - Ngatti Yeddung - developed to assist ability to engage and meet the needs of Aboriginal and Torres Strait Islander people and communities. A copy of the charter can be accessed [here](#).

Intermediaries are expected to perform their role with cultural competence and to seek guidance to do so whenever they require assistance. Intermediaries should note the *Human Rights Act 2004* (ACT) which makes specific references regarding the rights of Aboriginal and Torres Strait Islander peoples to maintain, control,

protect and develop their cultural heritage, language, knowledge and kinship ties. The *Human Rights Act 2004* (ACT) can be accessed [here](#).

It is important that intermediaries make recommendations to police and courts as required by individual witness's needs, including with consideration of the communication needs of individual Aboriginal and Torres Strait Islander witnesses. Intermediaries have received training in this regard and the IPT maintains resources regarding specific communication considerations, recognising the importance of historic and cultural factors in communication assessments.

Some Aboriginal and Torres Strait Islander witnesses may require an interpreter to assist them to participate in police interviews or provide evidence. Under the direction of the IPT, intermediaries may be required to meet with interpreters prior to conducting assessments with witnesses.

Culturally and Linguistically Diverse Witnesses

Intermediaries should note the *Human Rights Act 2004* (ACT) includes specific provisions regarding upholding the human rights of people from ethnic, religious or linguistic minorities, for example in relation to enjoying their culture, practicing their chosen religion and using their language. Intermediaries have received training in this regard and the IPT maintains resources regarding communication considerations applying to such witnesses.

It is important that intermediaries plan appropriately and make appropriate communication recommendations as required for effective communication by witnesses with culturally and linguistically diverse backgrounds, noting language and other issues which may influence rapport building and communication styles.

Culturally and linguistically diverse witnesses may require an interpreter to assist them to participate in police interview or provide evidence. Under the direction of the IPT, intermediaries may be required to meet with interpreters prior to conducting assessments with witnesses.

Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI+) Witnesses

Intermediaries should note the *Human Rights Act 2004* (ACT) entitles all people to equal protection of the law without discrimination on account of sex, sexual orientation, birth or other status.

It is important that intermediaries plan appropriately and make suitable recommendations regarding communication as is required in respect of LGBTQI+ witnesses given issues faced that may (particularly for some cohorts such as children) impact their effective communication.

If intermediaries wish to discuss the communication issues or legal obligations raised above, please contact the IPT for guidance.

Appendix 1: Glossary of Terms

Accused	A person who has been charged with a crime. May also be known as the defendant.
Actus Reus	A guilty act. Every crime must be considered in two parts - the physical act of the crime (<i>actus reus</i>) and the mental intent to do the crime (<i>mens rea</i>).
Adjourn	Court is to be resumed at a later date/time.
Admissible evidence	Refers to evidence that may be considered by a trial judge or jury.
Affidavit	A written statement of evidence made under oath or affirmation, given in the place of or to supplement verbal evidence.
Affirmation (taken by juror, witness, interpreter, intermediary.)	Non-religious declaration made instead of taking an Oath (see <i>Oath</i> defined below), an alternative to an Oath.
Appeal	An application to a higher court to review a decision of a lower court or tribunal.
Appellate Court/Jurisdiction	Superior court or jurisdiction which hears matters including appeals or which has jurisdiction to hear matters not heard in a lower court.
Applicant	A person or body making an application.
Application	A request made to a court, for example, an 'application for bail' or an 'application for an adjournment'.
Arraign/Arraignment	At court, the reading of the charges to the accused in a criminal matter and the recording of the accused's plea.
Beyond reasonable doubt	The standard of proof required in criminal cases.
Burden of proof	The obligation to prove what is alleged. In a criminal trial the burden of proof is upon the prosecution to prove the elements of the alleged offence.
Charge/s	Offences alleged by police in writing served on the accused and then filed at court to commence criminal proceedings; also may require an indictment to superior courts (for example the ACT Supreme Court).
Charge (to jury)	Directions given to the jury by the trial judge regarding the law to be applied to the facts in the case.
Circumstantial	Evidence which does not directly prove a case, but from which an inference may be drawn.
Committal proceeding	A hearing where a magistrate will hear evidence and decide whether a properly instructed jury would convict the accused. If an accused is committed, the matter will then be listed before the superior court.
Contested mention	The listing of a matter before a judicial officer, regarding a contested matter between the parties, to attempt to resolve the matter and/or identify the matters in dispute.
Counsel	A barrister or solicitor advocate representing a party in court and/or providing advice to parties.
Court of Appeal	A Court of Appeal hears appeals in civil matters and against criminal decisions made by juries, and rulings and sentences in criminal cases made by judges in the Supreme Court jurisdiction.

Cross-examination	After a witness has given evidence in response to questions asked by counsel for the party who has called the witness, counsel for the other party has the right to question (cross-examine) the witness.
Custodial/non-custodial	A custodial sentence is one served in prison or in a youth justice/residential centre, whereas a non-custodial sentence is one served in the community.
Deposition/s	A transcript of the evidence given by witnesses at a committal hearing including statements tendered.
Directions hearing	A pre-trial hearing before a judicial officer where orders are made to assist the parties to prepare a case for trial.
De novo	A de novo hearing is one that is heard over again from the beginning ('freshly') and the court is not confined to the evidence or materials that were presented in the original hearing.
Evidence-in-chief	Evidence elicited by counsel for the party calling the witness.
Exhibit	Any item tendered in court as part of the evidence in a case.
Finding of fact	A determination by a judicial officer with respect to the facts of a case.
Ground Rules Hearing	Ground Rules Hearings are attended by the intermediary and counsel, overseen by a judicial officer who makes directions regarding communication with a vulnerable witnesses, based on the report and explanation provided to the court by the intermediary.
Hand up brief	The hand up brief contains details of all the evidence the prosecution proposes to lead against the accused, such as witness statements and exhibits.
In camera	A reference to a court hearing where only those persons authorised by the court are present.
Indictable offence	An offence which can be heard before a judge and jury.
Indictment	Document produced by the Director of Public Prosecutions setting out the charges against an accused.
Prevention order	An order made by a court to protect people who have experienced violent, threatening or abusive behaviour.
Legal practitioner	A person admitted to practice as a barrister or solicitor in a Federal, State or Territory court.
Mens rea	A state of mind required to commit a particular crime. A knowledge of the wrongfulness of an act.
Mention	A criminal proceeding is 'mentioned' when it is listed before the court. There may be multiple mentions in a matter.
Minimum term (non-parole)	The term of imprisonment, which must be served before being eligible for parole (see also <i>Parole</i>).
Non-parole period	The term of imprisonment, which must be served before being eligible for parole.
Non-publication order	A court order preventing publication of certain information about a particular case.
Oath (taken by juror, witness, interpreter, intermediary.)	A solemn promise made by a person before his/her God that he/she will say what is the truth or will do what he/she promises to do.
Director of Public Prosecutions (DPP)	Government agency responsible for the prosecution of criminal matters before the court.

Parole	The release of a prisoner or detainee from custody after the completion of a minimum period of imprisonment or detention.
Perjury	A legislated offence whereby a person (such as an intermediary) makes a false or misleading statement in the course of making sworn statement before the court.
Perjury (Aggravated)	A legislated offence whereby a person (such as an intermediary) makes a false or misleading statement in the course of making a sworn statement before the court (for example, an intermediary assists a witness to communicate evidence in a legal proceeding with the intention of procuring someone else's conviction for, or acquittal of, an offence).
Plea	The requirement that an accused person answer the charges made against him/her.
Police interview	Police questioning of a person in relation to an alleged crime.
Police Prosecutors	Police Prosecutors conduct legal research and present cases on behalf of ACT Police and victims in the Magistrates, Children's and Coroners Courts.
To plead	To answer the charges, for example to plead 'guilty' or 'not guilty'.
For plea	Having pleaded guilty or been found guilty by jury verdict, the hearing of submissions prior to sentencing.
Relevant evidence	The evidence that is relevant in a court proceeding. Relevant evidence, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding.
Remand	An order that the defendant be kept in custody.
Remote witness	Witness who gives evidence to the court from a location away from the court room (for example in Remote Witness Suites). The remote witness may be in another room in the court building or another place.
Respondent	The person responding to an appeal.
Retrial	A second or further trial on the same issues as previously considered at trial.
SACAT (Sexual Assault & Child Abuse Team)	<p>The Sexual Assault and Child Abuse Teams (SACAT) are primarily responsible for investigating:</p> <ul style="list-style-type: none"> • all sexual assaults involving penetration (by any means) or cunnilingus, committed in a manner which suggests the incident is a single event; • sexual assaults committed in circumstances which suggest a serial offender; • child abuse, sexual or serious physical offences committed on a child or young person; • all sexual offences committed on a child or young person that relate to incest or paedophilia; • historical sexual offences that require the commitment of resources for a lengthy period; • offences relating to internet crime, in particular child pornography and grooming offences.

Special Hearing (when referring to children and cognitively impaired complainants)	A hearing in an indictable sexual offence case where the whole of the evidence including cross examination and re-examination of the child or cognitively impaired complainant is given and audio-visually recorded. This may happen before trial or during the trial.
Summary hearing	A summary hearing may take place if the accused pleads 'not guilty' to the charge(s). At the summary hearing, the prosecution presents its case and the defence may choose to present a case to the court. A magistrate will determine the outcome.
Summons	A summons is a document issued by the court requiring a person to attend at the court for the purposes set out in the document.
Subpoena	A subpoena is presented to a person compelling a person to attend court to give evidence or produce documents to the court.
Trial	A formal examination of evidence by a judge and/or jury in criminal cases to decide if guilt regarding an alleged offence is proven.
Unfavourable witness	A witness called by a party, who then gives evidence unfavourable to that party's case. The party can apply to cross examine the witness. Also known as a "hostile witness".
Victim impact statement	A statement made to the court by a victim/complainant of a crime setting out details of injury, loss or damage caused by the crime.
Voir dire	A voir dire is commonly referred to as a 'trial within a trial'. It is a hearing in the absence of a jury, in which a court may determine certain questions of fact and law.
Warrant	A legal document usually signed by a judge or magistrate authorising a specified person to perform certain acts, for example, to arrest a person and bring him/her before the court.
<i>Browne v Dunn (1893) 6 R. 67</i>	A case which presents the following principle: if counsel intends to present evidence contradictory to a witness's testimony as part of counsel's argument, counsel must put that version of events to the witness during cross examination of the witness. Often described as 'the rule in Browne v Dunn'.)

Appendix 2: Intermediary Communication Assessment Report (Court Proceedings)

When an intermediary is appointed to a court matter they will be required to write a report for the court regarding the communication needs of the witness.

To ensure an effective ground rules hearing and trial, the quality of the intermediary's communication assessment report should be high, and intermediaries are provided with the following guidance regarding the content and structure of a communication assessment report.

To ensure consistency, reports should be:

- One and a half line-spaced;
- Set out with wide margins;
- Printed double-sided;
- Font size 12 and font style Arial;
- Written in the first person;
- Written in plain English, containing no idioms or jargon;
- Written in short sentences with short paragraphs;
- Explanatory when detailing communication challenges of a technical nature or referring to particular terminology, for example: "X has dysphagia. This means they have difficulty swallowing which affects ...";
- Page-numbered, for example "Page 1 of 5" on the bottom right-hand corner of the page;
- Paragraph-numbered;
- Headed on each page with case name, matter reference with the front-cover page headed *Intermediary Communication Assessment Report*;
- Intermediary name and contact details on the front page;
- Clearly summarised conclusion and recommendations (which are clearly supported in the body of the report by assessment findings);
- Signed under the intermediary declaration;
- Dated;
- Proof-read and free of all grammar, spelling and typographic errors.

To assist with ensuring consistency of reports produced, the following is a suggested structure of a communication assessment report:

Suggested Structure of the Communication Assessment Report

- Front page
- Contents page
- Section 1: Summary of qualifications and experience
- Section 2: Background, instructions and chronology
- Section 3: Witness Communication Needs Assessment
 - 3.1 General observations
 - 3.2 Attention and listening skills
 - 3.3 Auditory comprehension/understanding of spoken language

- 3.4 Spoken expression (expressive language)
- 3.5 Speech sound intelligibility
- 3.6 Reading and writing ability
- 3.7 Non-verbal communication
- 3.8 Other forms of communication such as augmented communication
- 3.9 Emotional state
- 3.10 View of witness on being assisted by a witness intermediary
- 3.11 Other relevant information
- Section 4: Conclusions and recommendations
- 4.1 Conclusions
- 4.2 Recommendations for questioning
- 4.3 Other recommendations
- 4.4 Intermediary Declaration
- Appendices
- Appendix 1: Description of the Intermediary Role
- Appendix 2: Communication Aids (if relevant)

Front page

R v [Name of defendant/s]
Case reference number:

Intermediary Assessment Report and Recommendations in respect of [Name of witness]

Report prepared at the request of [Name and address]

Author: [Intermediary name]
Accreditation Number: [Number]
Contact details: [email]

[Date of report]

Confidential report

This report is addressed to the court on the understanding that it will be provided to the parties and their respective advisors in this matter. In all other respects this report is confidential and may not be used, reproduced or circulated for any other purpose (whether wholly or in part) without the author's prior written consent or order of the court. This report is for advice only and is not evidence in the case.

Contents page

[For all reports it is important to have a contents page with page numbers to help the parties and the Judge find their way around the report. All reports should be page and paragraph numbered whatever their length.]

Section 1: Summary of qualifications and experience

[There should be one or two paragraphs describing the intermediary’s relevant qualifications and relevant experience. A description of the intermediary role is included at Appendix 2.]

Section 2: Background, instructions and chronology

[This section should set out clearly the role of intermediary and what questions this report seeks to address. Suggested wording to include in this section follow.]

“The role of the intermediary was established by Chapter 1B of the Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT).

My role as an intermediary is to:

- *Communicate to the witness questions put to the witness, to the extent necessary for the witness to understand the questions; and*
- *Communicate to the person putting questions to the witness, the witness’s answers to the questions, to the extent necessary for the person to understand the answers; and*
- *Otherwise assist the court, and any lawyer appearing in the proceeding, to communicate with the witness.*

I have been asked to:

- i. Indicate whether or not the witness has the ability to communicate and, if so how;*
- ii. Indicate whether the use of an intermediary is likely to assist with the communication of questions to the witness and of the answers given and if so how;*
- iii. Advise on the most effective way of communicating questions to the witness;*
- iv. Make any other recommendations as to adjustments to enable the best communication with the witness at court.*

I am not instructed as an expert witness.

I cannot give an opinion on the accuracy of a witness’s recall of the facts in this case nor can I give an opinion on whether a witness is telling the truth in their evidence.

My role is limited to providing assistance to facilitate communication before trial and during the witness’s evidence and advising how this can best be achieved.”

[This section should also succinctly state who contacted the intermediary, key facts and dates including the name of the witness, their date of birth and the dates of the referral, the information stated on the referral form regarding communication concerns, and the preliminary assessment/s.]

Section 3: Witness communication needs assessment

[It is important that this section gives details of the facts upon which the intermediary has based their conclusions regarding communication needs. The report sub-headings below are suggestions only and may not be suitable in all cases.]

3.1 General observations and sources of information.

[For example: length of assessment, general location without name e.g. school, police station, who was present, age of witness at time of report, length of time police interview recording was observed and date of this recording, age of witness at time of police interview recording, paragraph listing the components of the assessment, paragraph stating what the activities were designed to assess.]

3.2 Attention and listening skills

[For example: engagement, willingness to answer questions, rapport building, elaboration on topics, ability to elaborate, ability to attend, prompting, listening, redirection required, eye contact as pertains to attention/listening, lip reading, seeking clarification, duration of attention.]

3.3 Auditory comprehension/understanding of spoken language

[For example: speaking pace, question forms, prepositions, figurative language, vocabulary, propositional questions, how to put an argument in court, topic changes, understanding of time and frequency, numbers, identify colours, days of the week, months of the year, seasons, knowing right versus left, other relevant considerations.]

3.4 Spoken expression (expressive language)

[For example: ability to answer questions, engaging in conversation, seeking clarification, retelling events in spoken narrative, sequencing of events and expressing 'first and next' in relation to a sequence, major and minor body part vocabulary, identifying and expressing actions.]

3.5 Speech sound intelligibility

[For example: comments may include dysfluency, sound substitutions, voice volume, voice, other relevant considerations.]

3.6 Reading and writing ability

[For example: comments may include reading aloud, reading comprehension, writing ability, drawing ability.]

3.7 Non-verbal communication

[For example: comments may include potential indicators of anxiety, eye contact, facial expression, use of gesture and other body language.]

3.8 Other forms of communication such as augmented communication

[For example: comments may include usual use of alternative communication, gestural, pictorial or technology based.]

3.9 Emotional state

[For example: comments may include those gained from the witness themselves or from the intermediaries' observations during the communication assessment or viewing of the police interview.]

3.10 View of witness on being assisted by a witness intermediary

[Witness's understanding of what intermediary's role is.]

3.11 Other relevant information

[Intermediaries should be guided by their own areas of expertise and professional knowledge when undertaking an assessment, keeping in mind it is **not** an opportunity to diagnose the witness. The report should always reflect the findings of the assessment and should relate to the capabilities for communication only.

In some cases the intermediary may feel compelled to include test results or partial test results in an appendix to their report because the intermediary feels it will help the reader to understand the communication issues presenting. This must **always** be discussed with the IPT before inclusion, as it may compromise the case. In most cases, inclusion is not required.

The intermediary should only include personal confidential information in their report in so far as it is necessary for their assessment of the witness's communication needs and abilities. Information regarding school, residence, location or other identifying information should **not** be included as it could compromise or endanger the witness and/or members of their family.]

Section 4: Conclusions and recommendations

[This section of the report should cover the issues that the intermediary has been asked to address, as outlined at the beginning of the report.

4.1 Conclusions

- i. Here indicate whether the witness has the ability to communicate and, if so how;
- ii. Here indicate whether the use of an intermediary is likely to assist with the communication of the witness.

4.2 Recommendations for questioning

- iii. Advise the parties on the most effective ways of communicating questions to the witness.
- iv. ...

All recommendations made by the intermediary should clearly relate to the witness and the communication assessment undertaken by the intermediary. For example, if the recommendation relates to avoiding the use of idioms, the intermediary should refer to the part of their assessment where it is apparent the witness did not understand their use.

It is advisable to refer, next to the recommendation, to the specific page and paragraph where the recommendation is discussed in the report. This allows quick cross referencing during court proceedings.

This section should also provide details regarding how the parties are advised to put their questions to the witness. This advice may for example relate to the pace of questioning, signposting topics prior to opening up lines of questioning, using the witness's preferred name and avoiding complex language or specific words.

The intermediary should also ensure this section provides practical examples on how to actively utilise the relevant recommendation. If, for example, a recommendation indicates the witness will not understand the use of “tagged questions”, the report should provide options for the parties on how “tagged questions” could be rephrased in order to be understood. A rationale for why the intermediary’s recommendation has been made should be included, with reference back to relevant discussion in the body of the report.

The intermediary should also keep in mind that recommendations should be specific, tailored to the witness. For example, if the intermediary has indicated the witness requires frequent breaks, they should provide details around:

- how often (in minutes) the breaks will need to take place (i.e. every 30 minutes, or every 60 minutes);
- how long (in minutes) the break should be;
- whether it should be an ‘in-room’ break where the camera is switched off, but the witness remains in the room, or whether the witness needs to leave the room.

This is also relevant to providing practical examples on how parties will ensure recommendations are implemented. For example, if an intermediary’s recommendation in this section includes the need for time for the witness to process a question being asked, the intermediary should outline how this may be done. For example, they may recommend the parties allow a certain number of seconds (depending on the length of time determined during the assessment) before proceeding with a follow-up question.

For the ease of reading the recommendations in the communication assessment report, recommendations should be set out as follows (note: the name ‘Jane’ used in the following table does not refer to a real person).

Questioning Recommendation	Advice for Questioner	Rationale	Location
Consider the use of open questions when questioning Jane.	Jane may use over agreement or silence as a means of being obliging in interactions.	The feature of ‘gratuitous concurrence’ should be avoided for Jane to give her best evidence.	<i>Page 2</i> <i>Section 3.3.2</i>
For Jane to have a break every forty-five minutes. Suggested break duration of 3-5 minutes.	Jane will need breaks to re-focus her attention and concentration.	Jane’s concentration may be reduced when communicating under stress at court.	<i>Page 4</i> <i>Section 3.3.2</i>

Ask questions at a slow speaking pace.	Ask the question at a slow pace and allow Jane extra time to process the information.	Jane will require extra time to process spoken language, especially when under stress (Van den Kolk, 2014).	Page 7 Section 3.4.1
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4.3 Other recommendations

[In addition to recommendations on formulating questions, the intermediary may also make other recommendations to support communication with the witness.]

Other recommendations as to adjustments to enable the best communication with the witness at court.

[Here insert examples of other recommendations which may be appropriate, depending on the individual witness’s communication needs. Some examples follow.

- Parties should share the wording of their proposed questions with the intermediary to seek advice regarding effective communication of questions;
- The intermediary should be located in the remote witness room to ensure they can be seen by the court and be in a position to assist communication;
- How the witness wishes the court to refer to the defendant;
- How the intermediary recommends the intermediary should intervene to get the court’s attention if a communication issue arises during proceedings;
- How the intermediary will assist with the use of communication aids during proceedings and the specific types of aids proposed;
- How the use of an interpreter will best interact with the intermediary role;
- Whether the court should give consideration to the best time of day for the witness to give evidence (for example, if they are on daily medication that induces sleepiness/fatigue at certain times, the intermediary may recommend the questioning takes place outside those times);
- Agreement on scheduling breaks and locations of these breaks;
- How a request for an unscheduled break will be communicated to the court;
- Agreement as to whether concessions need to be made regarding appearances of those in court (for example, whether robes and wigs may be removed during cross-examination);
- How the court will be able to access or observe particular witness’s non-verbal communication (for example the best means to appropriately indicate, point at diagrams, write etc).

4.4 Intermediary declaration

[The declaration should read as follows.]

I solemnly and sincerely declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as may be required of me according to the best of my skill and understanding.

Signed & dated:

Report Appendices

[Appendices should be used for relevant reference material that is too detailed for the main body or which would break up the flow of the main body of the report, for example pictures of communication aids recommend be used during the cross-examination process.]

Description of the intermediary role

[Here the intermediary should include in the Appendices a summary (up to one page) of the role of the intermediary as is described in the *Evidence (Miscellaneous Provisions) Amendment Act 2019* (ACT) and in this Program Guidance Manual.]

Appendix 3: ACT Intermediary Program Flowchart for Referrals

1. POLICE REFERRALS

Police processes

Police have indicated there are a range of internal referral process for police matters involving child complainants of abuse and sexual offences (complainants under 18 years of age).

Generally, if a child abuse or sexual assault matter is reported to a General Duties police officer, either the SACAT Sergeant on duty or the Criminal Investigations Officer (CIO) will be contacted.

- If the report meets the relevant threshold the matter is referred into SACAT.
- Matters involving children aged under 12 are usually referred to SACAT as a matter of course.

Within SACAT there are three teams who progress work on referred matters. The typical progression of matters involves the police officer arranging an initial meeting with the child and guardian/parent (unless immediate response is required, in which case the police immediately attend to the matter).

At the initial meeting, the following is discussed with the child and parent/guardian:

- the nature of the case
- available support services
- the nature of police investigation and court processes
- the process of obtaining evidence-in-chief.

If the child is determined not to be in immediate danger, the child and parent/guardian may consider returning another day to provide the child's evidence-in-chief. Children involved in sexual offence cases have their evidence-in-chief audio and video recorded.

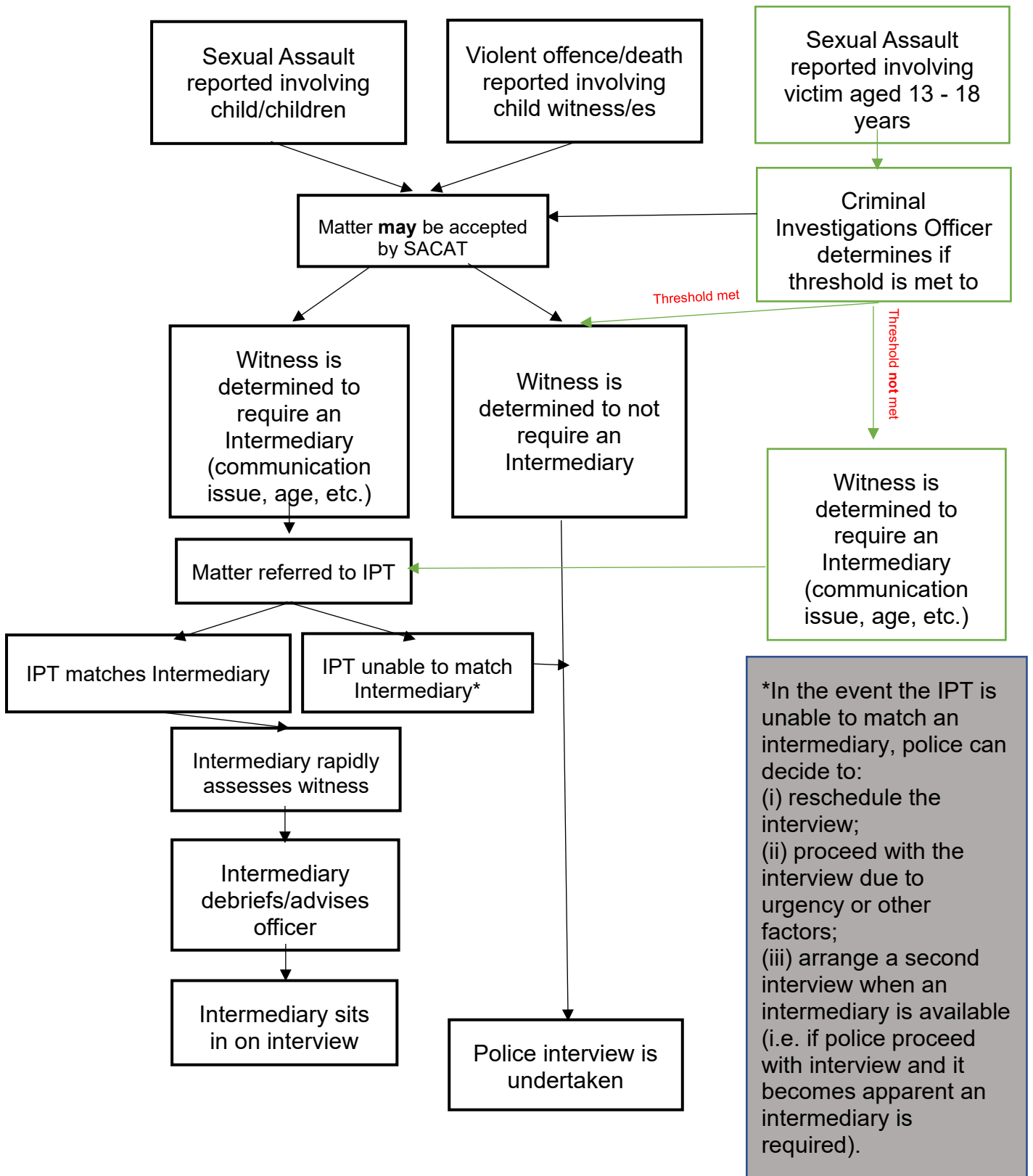
Note that stakeholders directly involved in making referrals of children's matters may include:

- Local Police Stations (where cases present)
- SACAT (where cases are referred to)
- CYPS (may refer cases to SACAT, or may be contacted by police)
- Support services (may be contacted to support children and families).

Intermediaries – allocation of intermediary to help police elicit evidence

Generally, SACAT will decide when to request an intermediary to help police elicit best evidence from witnesses under 18 years of age. Note - under ACT legislation, child complainants in a) sexual offence and b) serious violence offences involving a person's death are entitled to intermediaries during trial when giving evidence.

POLICE REFERRAL FLOWCHART



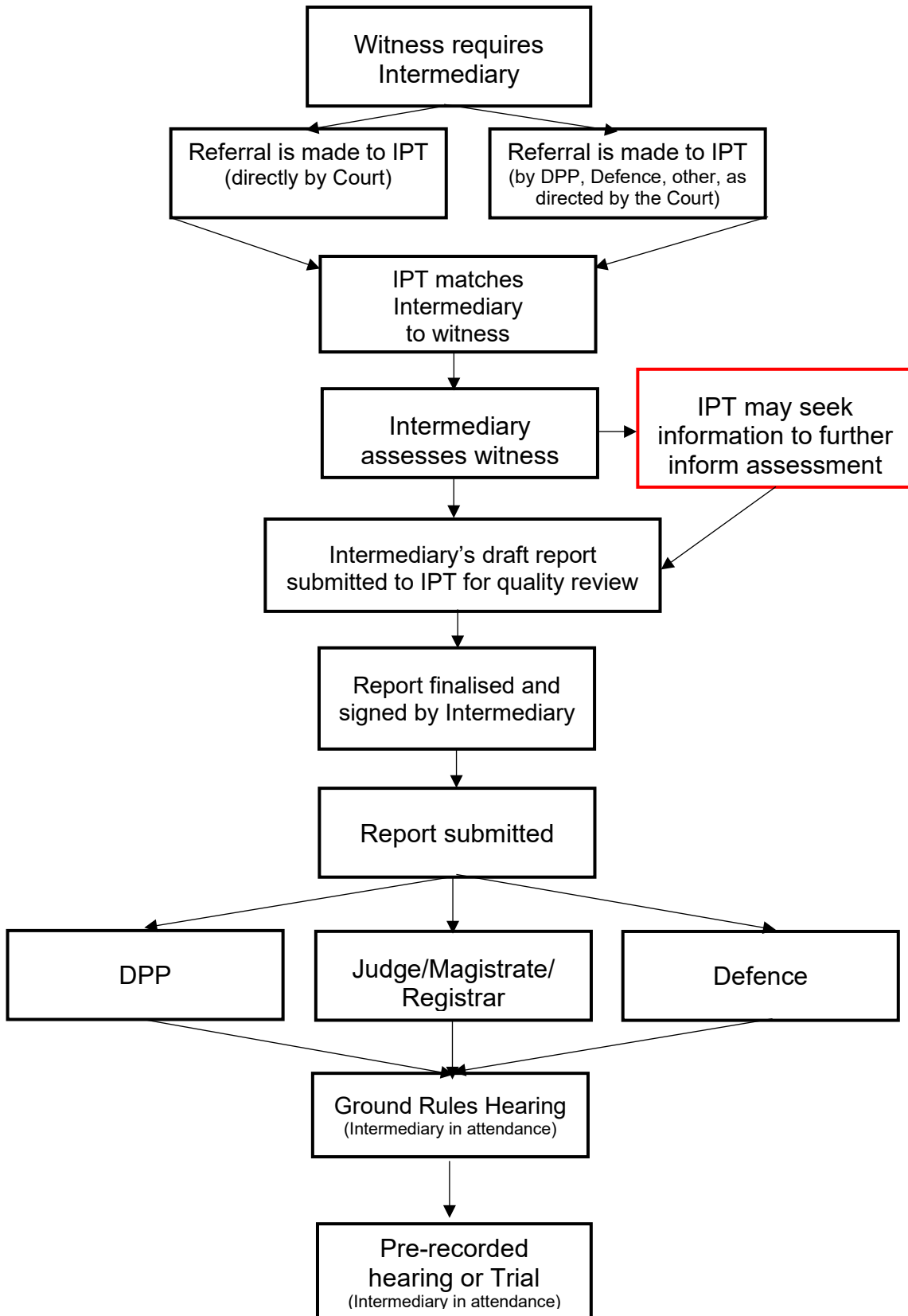
IPT = Intermediary Program Team

2. COURT AND DPP REFERRALS

The court has provided an indication as to how Intermediaries may be appointed to matters.

1. Case forms received by Registrar - may indicate an Intermediary is required or Registrar may determine an Intermediary is required.
2. Pre-trial applications stage - may be determined Intermediary required, if not already determined.
3. Criminal case conference (*Note: next steps 4. to 7. only occur if case is not settled.*)
4. Call over - may be determined Intermediary required, if not already determined.
5. Ground Rules Hearing (*usually before the Associate Judge - Intermediary present*)
6. Pre-trial evidence hearing (*usually before the Associate Judge*)
7. Trial (*before Judge - Intermediary present when vulnerable witness gives evidence*).

**INTERMEDIARY PROGRAM
COURT AND DPP REFERRAL FLOWCHART**



IPT = Intermediary Program Team

Appendix 4: Complaints Handling Guidelines for Intermediaries in the ACT

These procedures relate to the function of managing complaints and feedback about services provided by intermediaries operating within the Intermediary Program, which is implemented in accordance with the *Evidence (Miscellaneous Provisions) Amendment Act 2019*.

1. Introduction

1.1 Purpose

The Intermediary Program Team, within ACT Human Rights Commission, manages the Intermediary Program in the ACT. Any complaints received regarding program implementation will be treated seriously and respectfully, in accordance with these guidelines.

The Procedural Guidance Manual (PGM) details the Intermediary Program's expectations of the professional conduct of all intermediaries operating in the ACT, and these guidelines further impress their importance in the context of potential complaints being raised.

These guidelines are designed to ensure:

- complaints are handled respectfully, expeditiously and effectively in accordance with the law;
- the program's complaints handling processes are transparent; and
- all parties involved in a complaint understand how the complaint will be handled at each stage.

Complaints and feedback received about the Intermediary Program's implementation are considered crucial to its continued implementation and success and will inform any changes needed to procedural guidance and operational processes. The success and continued use of the program will only occur if there is faith in the procedural fairness of the complaints process and through reasonable outcomes being achieved.

1.2 Roles and responsibilities in the complaints process

Various levels of involvement may exist in the complaints handling process, and the following section illustrates how roles may interact:

Victims of Crime Commissioner:

- has overall responsibility for complaints management and the program itself. Where appropriate, responsibilities can be delegated to the Director of the Intermediary Program;
- liaises with the Director and Assistant Director of the Intermediary Program regarding complaints and feedback raised in the process as required;
- has the discretion and ability to suspend, revoke or impose other conditions on the accreditation of an intermediary depending on the nature of the complaint;

- can review any complaint decision at the request of a complainant who is dissatisfied with the outcome where to do so is deemed necessary.

Director, Intermediary Program:

- liaises with the Assistant Director, Intermediary Program regarding complaints and/or feedback received;
- liaises with the Victims of Crime Commissioner regarding complaints and feedback that require further action;
- is responsible for conducting a review of the final decision that is made before it is sent to the complainant.

Assistant Director, Intermediary Program:

- assists with the management and investigation of complaints and feedback received regarding the Intermediary Program;
- prepares relevant documentation outlining the details of the complaint to the Director of the Intermediary Program;
- ensures an effective and confidential complaints management process;
- maintains accurate and timely records of the entire process.

Intermediary:

- responds to any notice of a complaint within the timeframe specified by correspondence sent by the Intermediary Program Team;
- understands and complies with this guideline;
- understands that a facilitator of intermediary clinical debriefing may be contacted if required;
- as requested, provides any details or information which may assist and inform the complaints process in this guideline.

External agencies:

- serious complaints may be referred to the relevant professional body or other external agencies for investigation if necessary
- professional bodies may include ACT authorities, the Australian Health Practitioner Regulation Agency (AHPRA), the Australian Association of Social Workers, the Australian Psychological Association, Speech Pathology Australia, Occupational Therapy Australia and any other relevant professional body as required.

2. Overview of Compliments and Complaints

2.1 What is a complaint?

A complaint is an expression of dissatisfaction or a circumstance that is unacceptable as expressed, in relation to:

- an organisation
- a person; or

- a process

For the purposes of the Intermediary Program and this document, complaints covered by these guidelines include (but are not limited to):

- unprofessional conduct;
- fraudulent conduct;
- unethical practices;
- breaches of the client/professional relationship;
- breaches of the Procedural Guidance Manual; and
- undue delays in providing court reports (or otherwise).

2.2 Who can make a complaint?

Complaints can be made by individuals, groups or organisations, including, but not limited to:

- parents or guardians of witnesses who are engaged in the Intermediary Program;
- the witness themselves (where they are able to engage in the process);
- the legal representative/s of an accused person;
- the legal representative/s of a victim;
- ACT judicial members engaged in the Intermediary Program;
- Director of Public Prosecutions and members of their employ;
- any authorised representative of the witness;
- service providers and advocates;
- professional regulatory bodies; and
- staff within ACT Victims Support.

If a complainant does not wish to disclose their identity, the Intermediary Program Team may also accept anonymous complaints. However, with limited details, there is only so far the team can proceed with the investigation.

2.3 What information is provided?

If an individual makes a complaint, they will:

- be provided with information about the complaints handling process;
- be listened to and treated with respect and courtesy during the duration of the complaint process;
- be provided with updates to the process – particularly if there are any delays;
- be notified of the conclusion of the complaint process;
- be provided with reasons for any decision that is made and any options that exist for a decision review;
- not incur any fee for making a complaint.

3. Receiving and Acknowledging Complaints

3.1 Recording a complaint

When the Intermediary Program Team receives a complaint, the process will likely follow the below process:

- the contact information of the person (unless it is anonymous) will be recorded;
- the nature of the complaint will be recorded along with any supporting information provided by the complainant;
- the intended outcome of the complaint as outlined by the complainant;
- a determination will be made as to the seriousness of the complaint and whether the Victims of Crime Commissioner will need to be engaged immediately.

3.2 Acknowledging a complaint

The Intermediary Program Team will endeavour to promptly acknowledge the receipt of any complaints. An acknowledgement will take place within one to two working days.

Complaints will be prioritised in accordance with the severity or urgency of what is raised. Where required, the complaint will be escalated promptly if the security or safety of a complainant is compromised.

All complaints need to be processed thoroughly and the Intermediary Program Team will aim to resolve less serious complaints within three weeks (21 days). For those complaints that require additional information or are of a more serious nature, these will be referred to the Victims of Crime Commissioner for advice and action. The duration of the investigation may be further extended if information is to be sought from external agencies e.g. AHPRA.

If there are concerns by the Intermediary Program Team as to the capacity to meet any deadlines, the complainant will be kept informed of the status of the complaint. Revised timeframes will be outlined and reasons for the delay will also be provided.

3.3 Assessing and addressing complaints

Upon receipt of a complaint, the Intermediary Program Team will determine whether the issues raised in the complaint fit within the remit of the guidelines.

This will include assessing:

- whether the complaint has any merit;
- whether people's health and/or safety is at risk;
- the seriousness of the complaint and whether there is any urgency attached;
- whether other agencies or organisations will need to be involved to ensure a prompt and satisfactory resolution;
- the impact of the issue on the complainant;
- whether this impact will increase if the resolution of the complaint is delayed for any reason;
- what the ultimate outcome is sought by the complainant regarding the complaints process;

- whether the complaint is anonymous or if the complainant is happy to consent to the Intermediary Program Team formally addressing the issues raised.

Once this has occurred, the Intermediary Program Team can then address the concerns raised by following a series of procedural steps:

1. Acknowledge receipt of the complaint and outline an estimated timeframe for resolution – usually 21 days.
2. Seek a preferred method for updates regarding the complaints process (i.e. emails, phone calls etc).
3. If the complaint is not serious, the matter can be dealt with by the Director and Assistant Director of the Intermediary Program at a local level.
4. If the complainant wishes to remain anonymous and does not consent to the process taking place, they will be informed by the Intermediary Program Team of the limitations associated with the investigation process (i.e. it may mean the complaint cannot be fully addressed).
5. If the complaint is determined to require action involving the Victims of Crime Commissioner that may impact the accreditation status of an intermediary, a notice is sent to the intermediary notifying them of a complaint being made against them.
6. The intermediary is invited to respond to the complaint and given a specified, reasonable timeframe in which to make this submission;
7. Information is gathered from the complainant and the intermediary regarding the complaint.
8. An investigation utilising this information is undertaken – this may include speaking to parties who were involved and/or may have witnessed the event the complaint is concerning.

The Intermediary Program Team will keep the complainant updated as to the status of the progress of the investigation process. If an external party is required to be engaged to facilitate the investigation process, the complainant will be notified. All actions regarding the complaints process will be undertaken with consideration for any statutory requirements.

3.4 Information for Intermediaries

This process raises several considerations for intermediaries to be mindful of:

- Complaints will be dealt with respectfully and in accordance with the law;
- Where a complaint is determined to be serious in nature, the Victims of Crime Commissioner may decide to suspend referrals for the duration of the investigation. This does not in any way indicate a finding has been made, but rather is a protective measure for the intermediary, the complainant and the Intermediary Program while the complaint is being properly investigated;
- Intermediaries will be offered an opportunity to provide a response to any allegation raised against them;
- If the complaint has indicated there were witnesses present at relevant times, the witnesses may be contacted for further information. This does not in any way indicate a finding has been made;
- Where an intermediary is notified of a complaint against them, the intermediary must cease attempts to contact the complainant for the duration

of the investigation and should not resume contact until informed, in writing, to do so is acceptable.

4. Finalising the Complaint Process

4.1 Outcomes of the complaint process

There are several potential outcomes at the finalisation of any complaint process, such as:

- no further action is required i.e. no basis for the complaint is identified;
- guidance is provided by the Intermediary Program Team;
- a formal warning is issued by the Victims of Crime Commissioner;
- certain conditions are applied to the intermediary's role as a result of findings (i.e. suspension of referrals for a specific cohort, suspension of police referrals; other);
- monitoring of intermediary referrals and engagements for a period;
- permanent revocation of intermediary accreditation;
- or other outcomes in accordance with the law.

The intermediary will be clearly and respectfully communicated with regarding outcome finalisation.

4.2 Advising the complainant of the outcome

Once an outcome has been reached regarding the complaint, the Intermediary Program Team will contact the complainant to provide advice regarding:

- the outcome of the process;
- reasons as to how the decision was reached, insofar as they may be shared;
- relevant strategies put in place to address any justified concerns;
- options the complainant has, if they are unhappy with the outcome.

4.3 Finalising the complaint process

For the duration of the process, the Intermediary Program Team will ensure they keep detailed records of the process. This includes information about the nature of the complaint, the investigation process, the outcome, and any contact made with relevant stakeholders. The Intermediary Program Team will also embed follow-up processes for any outcome that requires additional action(s) to ensure they have occurred.

5. Conclusion

The Intermediary Program Team is committed to the continuous improvement of the program and this includes responsibly and respectfully managing complaints in accordance with the law, as well as receiving other feedback from users of the program's services.

To ensure systematic treatment of complaints received, a register will be maintained that records:

- number of complaints received;
- systemic issues that arise out of recorded complaints;
- the outcome of complaints to ensure once a precedent is set, consistent treatment occurs insofar as it is relevant.

By regularly monitoring this register, the Intermediary Program Team can ensure consistent, high-quality program service provision.

For further information please contact the Intermediary Program Team:

Email: intermediaryprogram@act.gov.au