

THE UNIVERSITY OF
SYDNEY

EVALUATION OF THE ACT INTERMEDIARY PROGRAM

FINAL REPORT

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ABBREVIATIONS

ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ASD	Autism Spectrum Disorder
DPP	Director of Public Prosecutions
EIC	Evidence-in-Chief
EICI	Evidence-in-Chief Interview
FVO	Family Violence Order
GRH	Ground Rules Hearing
HREC	Human Research Ethics Committee
IO	Interviewing Officer
OCD	Obsessive Compulsive Disorder
ODD	Oppositional Defiant Disorder
PGM	Procedural Guidance Manual
PPO	Personal Protection Order
PTE	Pre-Trial Evidence Hearing
PTSD	Post Traumatic Stress Disorder
SACAT	Sexual Assault and Child Abuse Team
SD	Standard Deviation
VOCC	Victims of Crime Commissioner
WIs	Witness Intermediaries

Terminology

The term ‘children and young people’ is used at various points in the report but is also abbreviated to ‘children’.

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1 EXECUTIVE SUMMARY

This is the final report of the Evaluation of the ACT Intermediary Program ('the Program'). The Evaluation was conducted by researchers at the University of Sydney between Topic: Navigating the complexities of AI-enabled crimes: Detection, evidence and challenges in addressing 'pig-butcher' scams and high-concern AI-enabled fraud offences

Introduction and background to the Program

The Program commenced in the ACT in early 2020. Its implementation is reflected in the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*.

In the three and half-years following commencement of the Program, 1,206 referrals to Police and 239 court referrals were made, providing a service to 930 child and adult complainants and witnesses who engaged in police interviews, and over 230 child and adult complainants and witnesses in court proceedings. The ACT Intermediary Program provides a 24/7 service. This distinguishes the ACT Program from most other jurisdictions in Australia and overseas that largely operate only within core business hours.¹ The ACT Program relies heavily on in-house intermediaries,² another distinguishing feature of the ACT Program. Panel intermediaries support in-house capacity and absorb most of the out-of-hour referrals.

Evaluation methodology and scope

This is the first Evaluation of the ACT Intermediary Program. The Evaluation was commissioned by the ACT Human Rights Commission in 2023 following an open Tender process. The Evaluation strategy and methodology was informed by the Evaluation Framework (see Appendix B).³

Eight data points were used to collect key data and information about the Program to assess how it is operating and has been received by stakeholders in the ACT. The data analysed in the Evaluation included: Administrative Program data, interviews and surveys with key stakeholders including witnesses and their families, intermediary reports and notes, court observations, analysis of intermediary related training materials, and review of unsolicited feedback about the Program. In total the Evaluation examined feedback from 75 participants.

¹ The Tasmanian Intermediary Program also operates 24 hours a day, 7 days a week, every day of the year: Cooper, P. (2025). *Building on Solid Foundations – The 2024 Review of Tasmania's Witness Intermediary Scheme Pilot* (Tasmanian Department of Justice), 10.

² The Tasmanian scheme also employs several in-house intermediaries.

³ Professor Rita Shackel and Professor Judy Cashmore were commissioned to develop the Evaluation Framework for the ACT Human Rights Commission. Some of the evaluation questions and measures included in the Evaluation Framework could not be addressed in the Evaluation due to data not being available to the Program and the Evaluation team.

Key findings of the Evaluation

The Evaluation provides very strong and consistent evidence that the Program in the ACT is operating smoothly with positive impacts for witnesses and other key stakeholders.

The Intermediary Program has provided a service to around 930 child and adult complainants and witnesses engaged in police interviews and over 230 child and adult complainants and witnesses in court proceedings over the three-and-a-half-year period since the Program was established. In 54 court referrals, mostly with children 12 and under, an intermediary had been involved at the police evidence-in-chief interview (EICI) and nearly all these cases had proceeded.

Most of the police and all the court referrals have been managed by a relatively small team of in-house intermediaries with panel intermediaries mostly responding to the police referrals out-of-hours. The ACT runs a 24 hour, 7 day service. The operations of the ACT Intermediary Program can be separated into two functions: program and intermediary. Both are essential, and in working together ensure the program resources are expertly managed and directed as needed. The combination of the in-house and panel intermediaries provides a valuable community of practice, sharing expertise and experience, in responding to the multiplicity of communication needs of child and adult complainants and witnesses.

The service was expanded in March 2024 to include defendants and accused persons with significant communication needs. The ACT is the only Australian jurisdiction to formally provide intermediaries for vulnerable defendant and accused children, young people, and adults to date. This aspect of the program is in its early stages with training and practice guidance established and has dealt with six referrals by police and 14 at court; most were adults. None of the 14 court referrals had been referred by police for an intermediary but their communication difficulties – that included a combination of at least three issues, predominantly learning disabilities, trauma, cognitive impairment, language disorders and mental health issues – presented engagement challenges for the lawyers and the court. The feedback from legal and other professional stakeholders in the ACT is, like that in other jurisdictions in Australia and internationally, supportive of defendants with communication difficulties and disabilities having access to intermediaries, as an access to justice consideration.

The Program is very well received by all stakeholder groups who universally report that intermediaries are proficient and helpful in their role supporting complainants and witnesses with communication needs. Many stakeholders value the skills and expertise of intermediaries operating in the Program and suggest that intermediaries can substantively improve and contribute to the well-being of vulnerable witnesses navigating justice systems and processes.

Additionally, the Evaluation demonstrates the critical role intermediaries play in supporting the communication needs of witnesses and complainants, thereby

ameliorating their experience of participating in justice processes and giving evidence. Specifically, evidence from interviews and surveys with key stakeholders highlights the trauma-informed approach adopted by intermediaries and the concomitant effect of reduced stress for witnesses giving evidence. Overall, parents, caregivers and advocates highlight the respect and care with which children and vulnerable adults are treated by intermediaries and by virtue of intermediaries' presence, as enormously helpful for witnesses giving evidence.

There is also evidence that the involvement of intermediaries is beginning to build better understanding among criminal justice actors generally about the communication needs of child and vulnerable witnesses and changing some practices in questioning and working with child and vulnerable adults. The findings suggest that police, legal practitioners and judicial officers are reflecting upon and adapting their practices and strategies for engaging with vulnerable witnesses, highlighting the educative role the Intermediary Program may with time play in shifting cultural attitudes in working with vulnerable witnesses and better understanding and shaping trauma-informed practices.

More specifically:

- I. There is very strong and consistent evidence from the surveys and interviews with police, legal professionals, advocates, service providers, parents and witnesses that the Program is effective in enabling intermediaries to assess the communication needs of witnesses and advise on the use of developmentally, linguistically, and culturally appropriate language in a trauma-informed way to police during interviews, lawyers when engaging with witnesses and clients, and during examinations, cross-examination and re-examination processes in courts;
- II. There is very strong and a consistent perception from the surveys and interviews providing feedback from police, legal professionals, and judicial officers, that the intermediaries' recommendations and their advice in the course of police and court processes have:
 - facilitated communication with and the engagement of child and adult complainants and witnesses;
 - For example, police survey and interview respondents generally report feeling much more confident interviewing young children and vulnerable adults with communication-based difficulties with an intermediary present and report positive changes to the way in which they engage with and interview vulnerable witnesses after working with intermediaries.
 - influenced the way they approach interviews/engagement with (i) child and (ii) adult witnesses with communication difficulties:
 - For example, findings from interviews and surveys with police officers with experience working with intermediaries highlight the efficacy of intermediary

support during police interviews particularly for young children and in cases involving alleged sexual offending. Similarly, legal practitioners and court staff have noted changes in the way judicial officers communicate and engage with vulnerable witnesses at court.

- Additionally, reports from child and vulnerable adult witnesses who have experience giving evidence with an intermediary suggest that intermediaries greatly assist these cohorts by recommending adjustments specific to their communication needs during questioning. They facilitate their understanding and enable effective communication, often with the assistance of aids provided by intermediaries.

III. The feedback from parents/caregivers and advocates based on their observations and the reports from the complainants and witnesses they have dealt with indicates that the presence and recommendations of the intermediaries typically reduced the stress and increased confidence for (i) child and (ii) other vulnerable witnesses giving evidence in police and court processes:

- interview and survey data from parents, caregivers and advocates demonstrates the key role intermediaries play in mitigating stress experienced by witnesses prior to, during and immediately after giving evidence.
- interview and survey respondents from the legal profession, police and judiciary substantiate this finding. For example, most of the police survey and interview respondents report that children and adult witnesses appear more confident when answering questions with an intermediary compared with witnesses answering questions without an intermediary and highlight intermediaries' impact on reducing stress of these witnesses during interviews.
- many interview and survey respondents report observing the impact of intermediaries on minimising stress and trauma experienced by witnesses throughout the justice process.

The lack of comparative 'before' or 'without intermediaries' data means there is no clear evidence to indicate that the Program is directly associated with:

- an increase in the overall number or proportion of younger complainants/witnesses (children aged 5 and under) and people with a disability/communication difficulty interviewed by police and questioned in court with the assistance of an intermediary.
- the variation in the number of interviews by police to accommodate the different needs of witnesses, and particularly those with severe PTSD and with disabilities who may require a 'meet and greet' opportunity and more than one EICI to provide their best evidence without becoming overwhelmed and exhausted.

- improved access to justice for vulnerable witnesses including diverse groups of witnesses (those from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds, those with disability, impacted by trauma or mental health issues).

However, the findings from the interview and survey data suggest that intermediary assistance with matters involving Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and very young witnesses as well as witnesses with a disability is enormously helpful in terms of facilitating developmentally, linguistically and culturally appropriate communication strategies tailored to individuals within these respective cohorts.

While it would be instructive to analyse case and court outcomes (proceeding to charge, or outcome of court proceedings) and any impact of intermediary involvement, this analysis was beyond the scope of the Evaluation as the following data were not available to the Intermediary Program or the Evaluation team:

- the type and progression of matters
- plea rate and outcome/verdict of prosecutions
- resolution of civil disputes, and
- how these are associated with different witness characteristics (eg age of children and type of disability) and needs.⁴

Perhaps the most powerful endorsement of intermediaries and the ACT Intermediary Program comes from the Chief Justice of the ACT in the following terms:

I would almost call it indispensable – for complainants, witnesses and accused too, absolutely. I think that intermediaries operate as effective interpreters from the arcane language of lawyers into the English language and back. I think they bring a discipline to the proceedings that is extremely valuable and could be used elsewhere. It's effectively like having 'a fly on the wall' who reminds lawyers that the way that they think and articulate their thoughts can be very dense in language, and they're just reminding everybody to speak in simple language. I also think they focus the minds of the barristers in a way that they just wouldn't turn their minds to if they didn't know that there was an intermediary there who is going to raise an issue about a question – so they think more about framing their questions in a way that is comprehensible. Also I think it does encourage trauma informed thinking on the part of barristers who would otherwise not go down that route.

It promotes fairness for everyone, including the accused. A witness can give an answer which is ambiguous ... Witnesses giving their best evidence means

⁴ The ACT Program advised that it does not have a vested interest in case outcomes, and does not seek or record this information.

they can give their most clear evidence – that might be evidence that's against the interests of the Crown.

I think on the whole, most of them [intermediaries] are extremely good in that role. They're very experienced, and understand their role and neutrality.

Q: Are you in support of using intermediaries with accused persons?

Absolutely, absolutely. Yes, I think it should be equal. It should be available, bilateral.

Conclusions and future considerations

The findings of the Evaluation overwhelmingly evidence the positive impact that intermediaries are having on witnesses' experience of and participation in justice processes in the ACT, and in building greater understanding within the justice system of the communication barriers faced by many witnesses.

One complainant interviewed in the Evaluation clearly summed up the value of the Program:

"...the only thing I wanted to say is how beneficial the program was. Yeah, very grateful for the program. Really good, it makes a big difference." [Complainant witness, Interview participant]

Another complainant eloquently described the powerful impact that the program is having:

"But I think if I had to do that again and my application for an intermediary was either denied or the program didn't exist. I don't think I would have gotten through in the same manner that I got through. I think it really helps when you have someone in the room who also has studied how people communicate or how they lack communication skills after suffering a traumatic event. Because lawyers, lawyers don't really care. They're not there to care about your feelings. They're there to either win a case or, you know, get media attention. They're not there to worry about how they make you feel.

So having somebody who's aware, who's aware and whose job it is, to stand up and say like hey, actually, even though lawyers, it's not your job to care right now, I have made it your job to be a little bit more polite about it. And that is something that, looking back means the world to me, and I hope that if anyone has to unfortunately go through a similar thing to me, I hope that they get an intermediary. I hope the program stays. I hope that it is the new normal in cases like this, because there is, there is no one standing up for you. You have to fight for yourself and it's very lonely and having that additional little service to you. It makes so much difference, it really does.

...It is so, so important. I think everyone is under this impression that, you know, a trial is this very like, this person versus this person, and they get to battle and it's this battle of wits. And like the righteous will prevail – and it's not.

It's one of the most horrible things, everyone in that room is playing games. It's all about most of it's a popularity contest to be fair, and that's something that we don't want to admit.

So you know, I just think it's so important. That's probably the best way I can phrase it..." [Complainant witness, Interview participant]

While the findings of the Evaluation provide very strong praise for the Program and widespread acknowledgement of its success and unanimous support for it, the Evaluation has highlighted several areas for consideration in future development of the Program. These include:

- Boosting intermediary related training and professional development for all justice professionals with greater emphasis on development of practical skills and case studies.
- Exploring opportunities to build a community of practice and standards for practice, training and accreditation of intermediaries with reach beyond the ACT (ie exploring opportunities for building national schemes and alignment of intermediary standards of practice and training across Australian jurisdictions).
- Expanded use of intermediaries and their expertise in the ACT outside formal police and court processes eg to provide general guidance to lawyers on a need's basis regarding communication with witnesses or assisting lawyers to compose questions to ask witnesses. Perhaps, even formalising the role of intermediaries in development and approval of questions for use with witnesses especially in cross-examination, consistent with developments in overseas jurisdictions.
- Maintaining and managing administrative data and records consistently and in a form that facilitates the tracking of cases through the justice process in collaboration with other justice agencies. This would benefit future research and program evaluation.
- Ensuring that the Program is well resourced and funded so that its quality and scope can be maintained especially its availability to child and adult vulnerable complainants and witnesses, and vulnerable accused.

2 INTRODUCTION AND BACKGROUND TO THE PROGRAM

The ACT Intermediary Program ('the Program') was established in response to the findings and recommendations of the Royal Commission ('The Commission') into Institutional Responses to Child Sexual Abuse. The Commission reported that child and other vulnerable witnesses face profound communication barriers when participating in criminal justice processes, especially when giving evidence during cross-examination. The Commission accordingly recommended that all Australian jurisdictions establish intermediary schemes with intermediaries available to assist vulnerable witnesses such as children, with their communication needs at both the police interview and court stage.⁵

The Evidence (Miscellaneous Provisions) Act 1991 (ACT) ('the Act') established the ACT Intermediary Program, which commenced in early 2020 – first with Police (31 January 2020), and shortly after with ACT Courts (9 March 2020).⁶ Intermediaries are independent officers of the court, who must act impartially when assisting communication with a witness.⁷ They are communication specialists typically from the allied health professions with qualifications and expertise in speech pathology, psychology, social work and occupational therapy. As of December 2020, lawyers also may directly request intermediary assistance and referral.

The Program is administered by a dedicated small team within the ACT Human Rights Commission. The team consists of program administration staff, and in-house intermediaries. This team structure is key to the continued high-quality function of the program to date, as it enables the intermediaries to sit truly impartially from the requests the Program receives.

The intermediary administrator (the Victims of Crime Commissioner (VOCC)) is legislatively obligated to recruit and maintain a panel of suitably skilled intermediaries⁸ which cannot be done by the intermediaries themselves, and so is managed by highly-qualified program administrators. In addition, the intermediary administrator is also required to allocate suitably skilled intermediaries to match the needs of the witness the referral relates to. Again, this cannot be managed by the intermediaries, and so the Program will ensure this legislative obligation is met by triaging all referrals based on the needs identified. In doing this, the Program is balancing individual intermediary availability, intermediary skills and professional expertise, existing intermediary

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Criminal Justice Report, Parts VII to X and Appendices*, pp. 3–6; Final Report: Recommendations 9, 59 and 60.

⁶ See Chapter 4A (Ground Rules Hearings) and 4B (Intermediaries) of the *Evidence (Miscellaneous Provisions) Act 1991*.

⁷ *The Evidence (Miscellaneous Provisions) Act 1991 (ACT)*, Chapter 1B s 4AH.

⁸ *The Evidence (Miscellaneous Provisions) Act 1991 (ACT)*, Chapter 1B s 4AI (2).

workloads and conflicts of interest given the Program is available to both witnesses and defendants.

All intermediary referrals in the ACT are managed centrally by the Intermediary Program. To date, the Program has ensured an intermediary is available for all referrals it has received, which is due in no small part to the way the Program has been managed by the administrative team. The Act also introduced ground rules hearings in the ACT;⁹ if an intermediary is appointed for a witness in a criminal proceeding, the court must direct that a ground rules hearing be held for the witness.¹⁰

To date, all Australian jurisdictions except the Northern Territory have introduced an Intermediary scheme in some form. The intermediary schemes across Australia vary in a range of ways (as do intermediary schemes in overseas jurisdictions). Accordingly, there is currently no nationally consistent provision of witness intermediaries in Australia. The ACT Intermediary Program was the first jurisdiction in Australia to make intermediaries available to vulnerable accused. It was also the first Australian jurisdiction to offer a 24/7 intermediary service and the first to operate ‘in-house’ intermediaries supplemented by panel intermediaries.¹¹ A detailed literature review of intermediary schemes within Australia and in comparable overseas jurisdictions is provided in section 11 of this report. This literature review provides a summary and comparison of intermediary schemes operating in the Australia and similar common law jurisdictions, together with a review of Australian and international research and evaluations with relevant findings as to their content, implementation, professional acceptance, and perceived impact and effectiveness.

Witness intermediaries may be appointed in the ACT to assist a witness (including a defendant) who has a communication difficulty that will impact on their ability to participate in the justice process, including:

1. Children and young people;
2. Aboriginal and Torres Strait Islander people and their communities;
3. Culturally and linguistically diverse people and their communities;
4. Lesbian, gay, bisexual, transsexual, queer and intersex people and their communities;

⁹ The *Evidence (Miscellaneous Provisions) Act 1991* (ACT), Chapter 1A. “ In this chapter: **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. **witness, in** a criminal proceeding, includes the accused person in the proceeding.” (s 4AA).

¹⁰ The *Evidence (Miscellaneous Provisions) Act 1991* (ACT), s 4AB.

¹¹ See generally *Procedural Guidance Manual* (2024): Intermediary Program ACT Human Rights Commission.

5. People living with disability; or
6. People impacted by trauma or mental health issues.¹²

The Program aims to improve witnesses' engagement with the justice system, their evidence, and to reduce witnesses' trauma. The Program has expanded beyond its initial scope of child and vulnerable witnesses prescribed by legislation¹³ in sexual and serious violent offence matters – most notably in relation to homicide, family and domestic violence – to include some defendants' matters, Magistrate Court matters, and the facilitation of communication between lawyers and witnesses in other settings. Accordingly, the ACT Program now assists to facilitate communication in an expanded range of matters, involving a broad range of vulnerable witnesses with diverse communication needs.

¹² See: <https://www.actlawsociety.asn.au/article/act-intermediary-program>

¹³ Prescribed witnesses are defined in the *Evidence (Miscellaneous Provisions) Regulation 2009* pertaining to s 4AK (1) of the Act as a child, in a proceeding, s 42 of Act; a complainant, in relation to a proceeding for an offence – s 42 in a serious violent offence proceeding – s 40 or sexual offence proceeding – s 41 of the Act.

3 EVALUATION METHODOLOGY AND SCOPE

This Evaluation was conducted in the period August 2023 – March 2025. Human Research Ethics Approval for the project was granted by the University of Sydney Human Research Ethics Committee (HREC).¹⁴

Data were collected and analysed from eight data sources:

- **De-identified administrative data** from the Intermediary Program related to referrals, timing and allocation of intermediaries, at different stages (with police, with lawyers and at court). The administrative data covered the period 1 July 2022 to 31 July 2024.
- **Survey responses from:**
 - Police
 - Lawyers
 - Intermediaries
 - Parent/caregivers
 - Victim Support
 - Liaison officers
 - Criminal justice stakeholders (court staff)
 - Witnesses – child and adult witnesses (including complainants and accused).

Separate surveys were developed and administered anonymously via Qualtrics for each stakeholder group. Surveys included a mix of closed questions and free text responses. The survey was available online from 18 August 2024 to 31 March 2025.

- **Interviews with:**
 - Police
 - Lawyers
 - Judicial officers
 - Intermediaries
 - Parent/caregivers
 - Victim Support
 - Liaison officers
 - Criminal justice stakeholders (court staff)

¹⁴ Project Identifier: 2023/HE000618.

Semi-structured interviews were conducted with stakeholders online, recorded for the purpose of transcription, and typically lasted for approximately an hour.

- **Intermediary assessments, notes and reports** from police interviews and court (redacted).
- **Court observations** including, PTE hearings, ground rules hearings and at trial.
- **Training materials** for intermediaries and other professionals (provided by the Program).
- **Unsolicited Feedback.**¹⁵

¹⁵ Unsolicited feedback was received from four Program participants including one legal practitioner, one parent/caregiver, one police officer, and one unidentified individual.

Table 1: Summary of the data sources for outcome measures.

Data sources	Outcome measures
<p>Online surveys and/or interviews with:</p> <ul style="list-style-type: none"> • Child witnesses • Other vulnerable witnesses • Vulnerable accused persons • Parents/family of witnesses especially child witnesses or those with disability 	<p>Satisfaction with process</p> <p>Perceived effectiveness re facilitating communication, reducing stress re giving evidence, and being able to provide a coherent narrative</p>
<p>Online surveys or interviews with intermediaries</p>	<p>Acceptance of role and accommodation by police, lawyers and judicial officers, response to advice, recommendations; change of approach in questioning over time</p>
<p>Online surveys or interviews with professionals:</p> <ul style="list-style-type: none"> • Police • Prosecution and Defence Lawyers • Judges and magistrates 	<p>Value of intermediaries in assisting communication, facilitating eliciting of evidence</p> <p>Understanding of role</p> <p>Indication of change in approach of professionals over time</p>
<p>Online surveys or interviews with other professionals (Program Manager and Administrator (VOCC), support and liaison personnel, Remote Witness Suite staff and Court Officers)</p>	<p>Perceptions re accessibility, and witness responses pre- and post-intermediary use, and disability advocates</p>
<p>Court Observations</p>	<p>Type of recommendations made and accepted, use of resources to assist communication and level of intermediary intervention</p> <p>Appropriate questioning by police, lawyers and intervention by judicial officer regarding the communication needs of the witness:</p> <ul style="list-style-type: none"> ○ the way prosecution and defence lawyers respond to the intermediaries' recommendations in the ground rules hearing (GRH) ○ extent to which the intermediaries' recommendations are accepted by the court, particularly the judicial officer in the GRH ○ the implementation of the directions in the pre-trial evidence hearing (PTE) in the style of questioning by both prosecution and defence lawyers ○ extent to which the intermediary intervenes to bring the court's attention to any communication or stress-related difficulties, and the court's response

Data sources	Outcome measures
	<ul style="list-style-type: none"> ○ whether the prosecution or defence objects or the judicial officer intervenes in relation to relevant language and questioning problems ○ the extent to which judicial officers intervene, consistent with the intermediary’s recommendations ○ number/prevalence of leading and closed as opposed to open questions ○ the use of language and questioning that an intermediary has recommended is avoided.
<p>Training materials</p> <ul style="list-style-type: none"> • External engagement presentations • Intermediary training and accreditation material 	<p>For roll-out and ongoing support/professional development of intermediaries and other criminal justice professionals/actors</p>
<p>Intermediary Recommendation Reports and Communication Assessment Documents (redacted)</p>	<p>Assess the relative level of detail, expertise and knowledge demonstrated across the sample including the appropriateness of and justification for recommendations, the tools used, and the clarity of language, and how they compare with the recommended template report points (in procedural manual for WIs)</p>

4 ADMINISTRATIVE DATA ANALYSIS

De-identified administrative data concerning the referrals and appointments of intermediaries for police investigative interviews, for court hearings, and in response to requests from prosecution and defence lawyers were analysed to provide a clear description of:

- the characteristics and assessed needs of witnesses who have a referral, a match and appointed intermediary at different stages of the process (police, Court, lawyers)
- the qualifications and characteristics of the intermediaries involved
- the number of interviews and access by witnesses with different needs.

4.1 Police Referrals

There were 1,206 referral-related events for an intermediary in the police administrative database in the period from 1 July 2022 to 31 July 2024.¹⁶ A request for an intermediary is made by police but a witness, support person or liaison officer may also request an intermediary indirectly via the police officer. It is the decision of the interviewing officer as to whether an intermediary referral is made. Of these 1,206 events, 111 meetings and interviews were cancelled by the witness and 52 by police where the matter did not proceed or proceeded without an intermediary; 17 were re-scheduled for another date.

More than 80% of the referral events were for an evidence-in-chief interview; the remainder were nearly all for police ‘meet and greet’ meetings which are meetings between police and witnesses to describe police processes and answer witnesses’ questions in relation to engaging with police regarding alleged offending.

Table 2: Type of referral event interview

	All events		Interviews and meetings	
	Frequency	%	Frequency	%
EICI	994	82.7	836	81.7
Meet & Greet	203	16.9	185	18.3
Assessment meeting	1	0.1	1	0.1
Other (caution, face-fit ¹⁷)	5	0.3	3	0.3
Total	1,206		1,025	

¹⁶ The numbers of police referrals by year/half year were: 135 in 2020 (6 months); 230 in 2021; 235 in 2022; 382 in 2023, and 223 in 7 months of 2024.

¹⁷ Face-fit refers to processes of creating a facial composite or sketch of a suspect based on eyewitness descriptions including, electronic means to assist in identifying potential perpetrators of crime.

As Table 3 shows, most police referrals for an intermediary were in relation to SACAT matters ($n = 758$, 74.0%), in some cases referred from other locations.

Table 3: Police meetings and interviews involving an intermediary by location

	All events		Interviews and meetings *	
	Frequency	%	Frequency	%
SACAT	884	73.3	758	74.0
Tuggeranong	95	7.9	75	7.3
Gungahlin	69	5.7	57	5.6
Belconnen	55	4.6	46	4.5
Woden	54	4.5	45	4.4
City	45	3.7	41	4.0
Majura	2	0.2	2	0.2
AFP Melbourne	2	0.2	1	0.1
Total	1,206	100.0	1,025	

More than three-quarters of the referral events (78.2%) were allocated to in-house intermediaries; panel intermediaries (5 from NSW)¹⁸ were allocated to the remainder. The proportion of in-house intermediaries varied from 71.3% in 2024 to 85% in 2022 and 2020.

Table 4: Police referral events and allocation to in-house and panel intermediaries

	All events		Interviews and meetings	
	Frequency	%	Frequency	%
In-house	943	78.2	815	79.8
Panel	252	20.9	202	19.7
Panel (NSW)	5	0.4	4	0.4
N/A Cancelled prior to allocation	6	0.3	4	0.4
Total	1,206	78.2	1,025	

¹⁸ These five intermediaries were ACT-accredited, but resided in NSW.

About a quarter of the overall referral events were for out-of-hours referrals which includes overnight and weekend referrals (318/1206, 26.4%) and were mainly responded to by panel intermediaries (n = 220, 69.2%). In-house intermediaries were allocated to most referrals that were not out-of-hours (89.8%). There was no difference in this pattern for referrals relating to children versus those aged 18 and older.

While there were **1,206 events** in the police referrals administrative dataset, and **1,025 which proceeded**, a number of these were for ‘meet and greet’ meetings before an EICI for the same person. As noted above, there were also meetings or interviews which did not proceed or were cancelled or rescheduled. Where the tables and analysis refer to demographic details or rely on counts based on the people involved, as opposed to the referral events, the analysis is based on the number of (unique) persons.¹⁹ The tables where indicated are based on these 930 records (unique persons) particularly for demographics and role in the process.

Most persons for whom referrals were made by police were witnesses (94.2%), with only a small proportion ‘recorded’ as complainants (49, 5.5%). Due to police records not consistently recording which witnesses were complainants, more than 5.5% may be complainant witnesses. There were 6 accused/defendants (Table 5).

Table 5: Police referrals for complainants, witnesses and defendants

Role	Frequency	%
Witness	841	94.2
Complainant	49	5.5
Accused/defendant	6	0.7
Other/Missing *	34	
TOTAL	930	100.0

* Other includes ‘no data recorded’ for 34 persons mostly in months February to May 2020 (Covid-19 constraints in operation). Percentages exclude ‘other/missing’.

The following analyses concern complainants/witnesses as a combined group.²⁰

¹⁹ This was calculated by taking into account duplicate records of persons based on the birthdate of the witness/complainant/defendant, gender, offence type, relationship and assessed communication difficulties. This avoids double or multiple-counting.

²⁰ The police referral form refers to ‘witness’ throughout but provides a drop-down box for the referrer to indicate whether the person is a ‘witness’, a ‘complainant’ or ‘other’. The term ‘witness’ is used,

The Intermediary Program was expanded to include accused persons in March 2024. A later section describes the accused/defendant group for both police and court referrals, because of the small numbers involved.

As Table 6 shows, the most common offences were sexual offences (49.2%), family violence (26.5%), physical assault and other violence related matters (19.8%). These matters combined comprised 95.6%. The majority of witnesses/complainants in sexual offences were female (72.0%), and most were also under the age of 18 (77.3%). In contrast, physical assault offences were more likely to involve male witnesses or complainants (52.8%). Again, most were aged under 18 years (86% overall, and over 80% for both males and females). Witnesses and complainants in family violence matters were again most likely to be aged under 18 years but fairly equally divided between females (52%) and males (48%).

Table 6: Main offence involved in referrals – unique persons as complainants/witnesses

Type of matter (main offence)	Females	Males	Total *	% Female
Sexual offence/s – assault and indecency	327	122	454	72.0
Family violence & Family Violence Orders (FVO)	129	119	248	52.0
Assault/physical assault	92	103	195	47.2
Fraud/theft/robbery	8	6	14	57.1
Homicide	4	4	8	50.0
Breach of Personal Protection Orders (PPO) and harassment	3	1	4	75.0
Home Invasion/abduction	2	2	4	50.0
Child abuse/assault/neglect/	3	5	8	37.5
Other / Missing	11	4	15	73.3

Note: There was more than one offence for 31 persons, the most common involving a combination of family violence and physical assault offences. The total refers to complainants/witnesses

particularly for police referrals where police may not know the person’s role at the outset (e.g. they may start as a disclosure witness, but may also be a complainant).

The administrative database includes only 49 records (5.5%) which refer to ‘complainant’. Throughout this section on police referrals, complainants and witnesses are combined as ‘complainant/witness’. Information on the relationship was not provided by the referrer in the early stages of the Program.

related to these offences, and excludes the 6 defendants who were the subjects of a referral. There were also 8 non-binary persons: the main offences against them were sexual and physical assault.

Not surprisingly, as Table 7 shows, for children, the accused was predominantly a parent, carer or relative of the complainant/witness. These relationships provide access and privacy for sexual and other offences against children and adolescents. For adults, partners and ex-partners constitute the most prevalent relationship.

Table 7: Relationship of accused to complainant/witness – by child and adult complainants and witnesses

Relationship of accused to complainant/witness	Child < 18 years		Adult 18 + years	
	Frequency	%	Frequency	%
Parent	332	60.5	6	6.2
Step-parent/Carer	49	8.9	5	5.2
Partner/boyfriend/ex	15	2.7	34	35.1
Sibling	32	5.8	5	5.2
Other relative	37	6.7	1	1.0
Carer/caseworker	27	4.9	11	11.3
Religious/teacher/coach	9	1.6		
Family friend/neighbour	18	3.3	8	8.2
Friend/housemate	20	3.6	10	10.3
School/other peer	2	.4	3	3.1
Stranger	8	1.5	14	14.4
Total	549	100.0	97	100.0
Missing *	210		69	
TOTAL	759		166	

* Most of the referrals with missing data are because police officers either do not have or do not provide all the details at the time of the referral and were mostly in the early stage of the program, and during Covid-19.

Age and demographics

Police referrals concerned children aged from 2 years to adults up to the age of 92 years.

The average age was 14.3 years (SD = 14.2) and median of 10 years. Just over 80% of the referrals related to children (82.1%), most commonly 6–9 year-olds (27.7%) (see Table 8). Just under 10% of referrals were for people aged 35 years and older.

Table 8: Age group of subjects of referrals – unique persons

Age (years)	Frequency	%	Cumulative %
5 and under	163	18.3	18.3
6 – 9 years	248	27.8	46.1
10 – 12 years	151	16.9	63.0
13 – 15 years	128	14.3	77.4
16 – 17 years	44	4.9	82.3
18 – 24 years	44	4.9	87.2
25 – 34 years	35	3.9	91.1
35 – 44 years	30	3.4	94.5
45 – 59 years	28	3.1	97.6
60 – 74 years	12	1.3	99.0
75 + years	9	1.0	100.0
Total	892	100.0	

The majority of police referrals were for female witnesses and complainants ($n = 541$ 60.7%); there were 343 male witnesses and complainants (38.5%), and 8 (0.9%) who identify as non-binary. There was a higher proportion of male complainants/witnesses aged under 18 years (41.6%) than among adults (25.9%), and this difference was statistically significant ($\chi^2 = 13.38$, 1 *df*, $p < .001$).

The referrals concerned 32 child complainant/witnesses aged under 18 years whose cultural background was noted as Aboriginal (4.6%) and 108 (14.8%) of other cultural background. These included children and adults from Asia, Africa, the Middle East and Europe (primary language non-English countries). The most common alleged offences against Aboriginal child complainant/witnesses were sexual assault (20, 62.5%) and family violence (11, 34.4%); for child complainant/witnesses from a multicultural community, family violence (52, 48.1%) and sexual assault (33, 30.5%).

For adult complainants/witnesses, 17 were noted as Aboriginal (10.9%) and 18 (11.6%) of other cultural background. These included children and adults from Asia, Africa, the

Middle East and Europe (primary language non-English countries). Nearly all the alleged offences against Aboriginal adult complainant/witnesses were sexual assault (16, 94.1%); for adult complainant/witnesses from a multicultural community, nearly half the alleged offences were sexual assault (8, 44.4%) with family violence (5, 27.7%) and physical assault (3, 16.6%).

Communication difficulties – children

Children aged 6–9 years (248, 33.8%) were the most common age group to be referred by police to the Program, followed by children aged 5 and younger (22.2%). Over half of the complainant/witnesses aged under 18 years (57.7%) were female; 13 to 15 year-olds were the most likely to be female (75.6%). Children aged 6 to 9 years was the only age group in which males outnumbered females (52.8%).

The two youngest age-groups of children (5 and under and 6 to 9 years) were more likely to have age only as the referral issue than older children and adolescents to have age only as the referral issue. Conversely, they were less likely to be referred for communication difficulties apart from age (Table 9). Nearly one in three 16–17 year-olds were referred with three or more communication difficulties compared with 5%–13% for younger children. This association was statistically significant ($\chi^2 = 51.6, 12 df, p < .001$). There were no significant differences by gender.

Table 9: Child complainant/witnesses referred to the Program with age only and with one, two or 3+ communication difficulties by age group

Age (years)	None identified by police	Age alone	1	2	3+	Total N
5 and under	1	133	7	14	8	163
6 – 9 years	3	158	44	24	19	248
10 –12 years	2	78	42	14	15	151
13 –15 years	3	68	24	16	17	128
16 –17 years	0	12	8	10	14	44
Total	9	449 (61.2%)	125 (17.0%)	78 (10.6%)	73 (9.9%)	734

Table 10 shows the number of children with different categories of communication difficulties by age group. The most prevalent communication difficulty was behavioural disorder (ADHD, ADD, and ODD), mostly for children aged 6 to 15 years. The next most common was autism. The most common combination of communication difficulties was

ADHD (with or without ADD or ODD) and autism spectrum disorder (ASD) (27 children); trauma and ADHD was another common combination of difficulties (24 children).

About one in five child complainant/witnesses (151, 20.5%) were referred with more than one communication difficulty (apart from age); 73 were referred with 3 or more (9.9%).

Table 10: Child complainant/witnesses referred to the Program with different categories of communication difficulties by age group

Age (years)	ADHD/ ADD/ ODD/ OCD *	Autism (ASD)	Learning, cognitive, disability	Trauma	Speech/ language	Mental health**	Physical disability ***	TOTAL N ***
5 and under	5	5	4	5	7	-	1	163
6 – 9 years	24	22	13	3	16	6	1	248
10 – 12 years	22	20	11	9	3	4	0	151
13 – 15 years	19	14	11	23 *	7	10	3	128
16 – 17 years	7	10	13	22	6	12	1	44
Total %	77 10.5%	71 9.6%	52 7.1%	52 7.1%	39 5.3%	32 4.4%	6 ** 0.8%	734

Note. Complainants/witnesses with multiple communication difficulties are counted in each category. The totals column refers to the number of children in the age group, not the row total. Some children had multiple difficulties, up to maximum of 7.

* 55 of these 77 children were referred for ADHD, 11 with ADHD and ODD, and 6 with ADHD, ODD and ADD, 4 with ADD and 3 with ADHD and ADD.

** Mental health was primarily anxiety and/or depression; 7 adolescents aged 13–15 years were noted with mental illnesses include bipolar and dissociative disorders.

*** Physical disability includes cerebral palsy, head and brain injuries.

In summary, police-related referrals involved the following communication issues identified on the referral form for child complainants/witnesses:

- 77 (10.4%) were referred with behavioural (ADHD, ADD, ODD) and 71 (9.6%) with neurological disorders (ASD): 27 were referred with both
- 52 (7.1%) with learning disability (mild, moderate and severe), cognitive impairment, and physical and hearing disabilities

- 52 (7.1%) with trauma (including PTSD) and 32 with mental health issues (mostly anxiety and depression), 15 were also noted by police as shy, nervous, and several as fearful of police
- 39 (5.3%) with speech and language difficulties, including unclear speech (10), fluency issues (7), receptive language difficulty, language delay/disorder (16) and mutism (5)
- 6 (0.7%) with physical and hearing disabilities.

Communication difficulties – adult complainants/witnesses

Table 11 shows the number of adult complainants/witnesses with one or more different types of communication difficulty. One in three (34.8%) were referred with two communication difficulties and an additional 28.5% with 3 or more communication difficulties. More than half of these complainants /witnesses were under the age of 45 but most likely to be in the 18–24 and 35–44-year age-groups. This difference by age group was statistically significant ($X^2 = 22.8$, 10 *df*, $p = .012$).

Table 11: Adult complainants/witnesses referred to the Program with one, two or 3+ communication difficulties by age group

Age (years)	1	2	3+	Total N
18 – 24 years	13	11	12	44
25 – 34 years	16	17	5	35
35 – 44 years	11	9	12	30
45 – 59 years	7	14	8	28
60 –74 years	6	5	2	12
75 + years	8	2	0	9
Total	58 (36.7%)	55 (34.8%)	45 (28.5%)	158

Table 12 shows the number of adults with different categories of communication difficulties by age group. The most prevalent communication difficulty was associated with mental illness and anxiety and depression, and learning or cognitive disability, and more common among those under 45 years of age.

Table 12: Adult complainants/witnesses ($n = 158$) referred to the program with different categories of communication difficulties by age group

Age (years)	Mental health/ illness	Learning, cognitive, disability	Trauma	Physical disability	Speech/ language issues	Autism	ADHD, ADD, ODD
18 - 24 years	15	16	17	13	14	15	14
25 - 34 years	11	14	14	4	4	5	3
35 - 44 years	17	10	11	6	4	3	7
45 - 59 years	15	13	6	10	5	2	1
60 - 74 years	6	2	5	7	2	2	0
75 + years	0	8	0	1	1	0	0
Total %	64 40.5%	63 39.9 %	53 33.5%	41 25.9%	30 18.9%	27 17.1%	25 15.8%

Note: Complainants/witnesses with multiple communication difficulties are counted in each category.

In summary, police-related referrals involved:

- 64 (40.5%) adult complainants/witnesses with mental health issues (anxiety and depression) and/or with mental illness; 11 adults with both mental illness (bipolar, borderline personality disorder and dissociative disorders) and anxiety and depression
- 63 (39.9%) were assessed with learning disability (mild, moderate and severe) or cognitive impairment
- 53 (33.5%) with trauma (including PTSD); 17 were also assessed with mental health issues (anxiety and depression)
- 41 (25.9%) with physical disabilities including acquired brain injuries, degenerative and neurological conditions and cerebral palsy
- 30 (18.9%) with speech and language difficulties, including unclear speech, fluency issues, hearing problems, receptive language difficulty, language delay and mutism
- 27 (17.1%) with neurological disorders (ASD)
- 25 (15.8%) with behavioural (ADHD, ADD, ODD): these figures include 10 with both.

While age-related concerns were most common for children, mental health issues and trauma were together common co-occurrences for adults, and most prevalent in relation to sexual assault/sexual offence and family violence matters.

Adults commonly had 3 or more different communication difficulties (28.3% compared with 9.9% for children and adolescents).

Communication difficulties associated with cognitive impairment were much more common among adult than child complainants/witnesses (39.9% cf 7.1%), due to some extent to adult acquired brain injuries.

Physical disabilities (acquired brain injuries, degenerative and neurological conditions and cerebral palsy as well as hearing and sight) were also much more common among adults than children (25.9% cf 0.8%).

There were also differences between age groups for both children and adults. Nearly one in three 16–17 year-olds were referred with 3 or more communication difficulties compared with 5%–13% for younger children. Children aged under 10 were more likely to have age only as their referral issue than older children and adolescents. Adults in the 18–24 and 35–44-year age-groups were more likely to be referred for three or more communication difficulties and particularly for mental health related issues.

There were no notable differences between child or adult complainants/witnesses associated with gender although there was a higher proportion of male complainants/witnesses under 18 (40.8%) than among adults (28%). Overall, over 60% of the complainants/witnesses referred by police were female.

There were no notable differences between child or adult complainants/witnesses associated with cultural background (Aboriginal or from a multicultural community).

Timing of referrals, allocation of intermediary and interview assessment

The time from referral to interview was less than 24 hours for 69.5% of interviews and within 48 hours for 78.4%. Interviews involving children were more likely to be conducted within 24 hours (71.9%) than for adults (57.8%).

The duration of the actual referral process including the interview for police ranged from 1 to 7 hours for matters involving children, with an average of 2.5 hours (SD = 1.33) and median of 2 hours. For matters involving adults, the average duration was 3.5 hours (SD = 1.1) and median of 3 hours.

4.2 Court Referrals

There were 239 court-related referrals to the Program in the period from 1 July 2022 to 31 July 2024.²¹ Three referrals did not proceed beyond the initial allocation, and a report was not submitted for 8 referrals. An intermediary report was submitted for 21 referrals in which the matter did not proceed.²²

The court referrals included 54 matters in which there was an intermediary at the police investigative interview (48, 24.7% of those which proceeded). Most involved children under 18 (15 complainants and 23 witnesses), and predominantly children 12 and younger (10 complainants and 19 witnesses). There were an additional 5 court referrals involving children where there had been an intermediary at the police interview that did not proceed to court (one complainant and 4 witnesses). There were intermediaries at the police interview for 5 adult complainants and 4 witnesses in cases that proceeded with an intermediary.

The main referral agency was the Office of the DPP (117 referrals, 49%), followed by the courts (Supreme Court, 62; Magistrates Court, 39). Legal Aid (13), Aboriginal Legal Service (1), private lawyers (5), and the Drug and Alcohol Sentencing List (1) made up the remaining 20 referrals.

Table 13: Court referral agencies

Referral agency	Frequency	%
DPP	117	49.2
Supreme Court	62	26.1
Magistrates Court	39	16.4
Legal Aid	13	5.5
Lawyer	5	2.1
Aboriginal Legal Service	1	0.4
Drug & Alcohol Sentencing List	1	0.4
Missing	1	
Total	239	100.0

All the intermediaries for court referrals that proceeded beyond the initial referral were allocated to in-house intermediaries.

²¹ The numbers of court referrals by year/half year were: 23 in 2020 (6 months); 41 in 2021; 54 in 2022; 66 in 2023, and 52 in 7 months of 2024.

²² Of the 32 matters which did not proceed, 19 were in 2022, 6 in 2021 and 7 in 2023.

The majority of referrals were for witnesses (129, 55.4%), followed by complainants (89, 38.2%).²³ There were seven defendants and seven accused referred for an intermediary;²⁴ only one of the seven defendants was under the age of 18. Table 14 shows the number of referrals and those in matters which proceeded with an intermediary providing a report.

Table 14: Referrals for complainants, witnesses and defendants

Subject of referral	Referrals		Cases Proceed	
	Frequency	%	Frequency	%
Witness	129	55.4	108	53.7
Complainant	89	38.2	82	40.8
Accused/defendant	14	6.0	11	5.5
Other	1	0.4		
Total	233		201	
Missing	6		6	
TOTAL	239	100.0	207	

Of the 238 court referrals for which there is information about the type of matter, the most common offences were sexual offences ($n = 119, 52.2\%$), family violence, physical assault and other violence related matters ($n = 94, 41.2\%$) (see Table 15).

The majority of referrals were for female witnesses ($n = 69, 58.5\%$) and female complainants ($n = 58, 65.9\%$), and four transgender or binary witnesses/complainants. The majority of complainants in sexual offences were female (35/48, 72.9%), and most (30, 62.5%) were also under the age of 18.²⁵ This pattern was more marked for witnesses

²³ Like the police referral form, the Court referral form refers to ‘witness’ throughout but provides a drop-down box for the referrer to indicate whether the person is a ‘witness’, a ‘complainant’ or ‘other’. As Table 15 shows, the Court administrative database includes 89 records (38.2%) which refer to ‘complainant’. Court referrers were therefore more likely than Police referrers (only 5.5% of referrals) to use the ‘complainant’ option. In this section, the analysis describes ‘complainants’ and ‘witnesses’ separately unless there are small numbers or identifying aspects, in which case it is combined as ‘complainant/witness’.

²⁴ The terms ‘accused’ and ‘defendant’ are both used, ‘ with ‘defendant’ generally referring to persons under 18.

²⁵ There were 48 complainants in sexual offence matters: 30 children (22 female, and 8 male) and 18 adult complainants (13 female, one male, and one non-binary).

in sexual offence matters: 45 of 55 (81.2%) were female, and again mostly child witnesses;²⁶ 30 (62.5%) were also under the age of 18.

In family violence matters, there were substantially more child than adult witnesses (30 child witnesses: 14 male, 12 female, and 4 non-binary; compared with only 4, all female, adult witnesses). There were fairly similar numbers of child and adult complainants in family violence matters: 10 were children (4 female and 6 male) and 9 were adults (8 female).

Table 15: Type of matter involved in referrals

Type of matter	Frequency*	%
Sexual offence/s – assault and indecency	112	49.1
Sexual abuse and exploitation	7	3.1
Family violence & FVO	60	26.3
Assault/physical assault	27	11.8
Violence & Personal Protection Orders (PPO) and breach of PPO	7	3.1
Child abuse/assault/neglect	2	0.9
Homicide	10	4.4
Threat to kill	1	0.4
Kidnap	1	.4
Home invasion	1	0.4
Fraud	2	0.9
Culpable driving	1	0.4
Drug & Alcohol Sentencing List	1	0.4
Theft	1	0.4
Other ‘criminal’ matters	6	2.6
Housing	1	0.4
Legal interview / Instructions	2	0.9
Total referrals (non-missing data)* (11 missing)	228	

Note: 16 referrals included more than one type of matter, with the most common involving a combination of sexual offences and family violence/physical assault offences.

²⁶ There were 55 witnesses in sexual offence matters: 37 children (28 female, and 9 male) and 18 adult witnesses (17 female and one male).

Age and demographics

Court referrals concerned children aged from 3 years to adults aged over 80. The average age was 23 years (SD = 17.49) and median of 17 years. Just over half of the referrals (53.5%) related to children, most commonly 10–12 year-olds and 16–17 year-olds (Table 16).

Among adults, the most common age group was 18–24 year-olds; 6.2% of referrals were for people aged 60 and older.

Table 16: Age group of subjects of referrals

Age (years)	Frequency	%	Cumulative %
5 and under	10	4.4	4.4
6 – 9 years	22	9.7	14.2
10 – 12 years	33	14.6	28.8
13 – 15 years	24	10.6	39.4
16 – 17 years	32	14.2	53.5
18 – 24 years	40	17.7	71.2
25 – 34 years	17	7.5	78.8
35 – 44 years	19	8.4	87.2
45 – 59 years	15	6.6	93.8
60 – 74 years	7	3.1	96.9
75 + years	7	3.1	100.0
Total *	226	100.0	

* Excludes 13 with missing data.

Two-thirds ($n = 70$, 66.7%) of those aged 18+ years were female; 57% ($n = 69$) of referrals for children and young people under 18 were female. Six were Aboriginal children and there were also six children of other cultural backgrounds.

Court referrals concerned 32 adults whose cultural background was:

- Aboriginal ($n = 19$, 7.9%)
- European (primary language non-English countries) ($n = 11$, 4.6%)
- Filipino ($n = 5$, 2.1%)
- African ($n = 3$, 1.3%)
- Pacific Islander/Samoan ($n = 2$, 0.8%)
- Other (Asian, South American, or not specified) ($n = 5$, 7.9%).

Communication difficulties – children

Tables 17a, b provide a breakdown of child complainants and child witnesses by the referral reasons – for age alone or particular communication difficulties. Comparing these two tables indicates that child complainants were less likely than child witnesses to be referred to the Program based on age alone (about one in 4 complainants compared with nearly one in 2 child witnesses); 6 to 9 year-old witnesses were the most common group to be referred for their age alone. They were more likely to be referred for at least three communication difficulties, in some cases in addition to their young age (about one in 3 complainants compared with one in 4 child witnesses).

Adolescent complainants and witnesses were also more likely than those in the younger age groups to be assessed as having communication difficulties apart from age, consistent with the pattern for the police referrals.

Table 17 a, b: Number of referred communication difficulties by age for:
(a) child complainants and (b) child witnesses

Age (years)	Age alone	1	2	3+	Total N
(a) Complainants					
5 and under	0	0	0	1	1
6 – 9 years	3	1	1	1	6
10 – 12 years	6	5	2	1	14
13 – 15 years	1	3	2	5	11
16 – 17 years	2	4	2	5	13
Total	12 (26.6%)	13 (28.8%)	7 (15.5%)	13 (28.8%)	45
(b) Witnesses					
5 and under	4	2	0	3	9
6 – 9 years	12	3	0	1	16
10 – 12 years	7	4	4	2	17
13 – 15 years	4	2	2	4	12
16 – 17 years	5	3	3	7	18
Total	32 (44.4%)	14 (19.4%)	9 (12.5%)	17 (23.6%)	72

Table 18 (a) and (b) show the number of child complainants and witnesses respectively referred with different types of communication difficulties by age group.

Table 18a, b: Number of referred communication difficulties by age for:
(a) child complainants and (b) child witnesses

(a) Child complainants							
Age (years)	Trauma (and mental health issues)	ADHD/ADD /ODD or OCD	Autism (ASD)	Learning, cognitive, disability	Speech/ language issues	Physical disability	Total
5 and under	1	0	0	0	1	1	1
6 – 9 years	1	0	1	1	2	0	6
10 –12 years	3 (1)	4	2	1	0	1	15
13 –15 years	6 (4)	5	3	2	3	1	11
16 –17 years	5 (4)	6	2	1	0	1	13
Total	16 (9)* 54.3%	15 32.6%	8 17.4%	5 10.9%	6 13.4%	4 8.7%	46
(b) Child witnesses							
5 and under	3 (1)	0	0	0	2	0	9
6 – 9 years	1	2	0	0	1	0	16
10 –12 years	5 (3)	3	5	1	2	0	17
13 –15 years	4 (4)	6	4	2	2	2	12
16 –17 years	7 (6)	6	0	5	5	1	18
Total	20* (14) ** 47.2%	17 23.6%	9 12.5%	8 11.1%	12 16.7%	3 4.2%	72

Note: Child witnesses with multiple communication difficulties are counted in each category.

* The total includes those with either trauma or mental health

** Figures in parentheses indicate those referred with both trauma and mental health issues.

In summary, child complainants and witnesses were referred to the Program as follows:

- 59 (49.6%) with mental health (anxiety and depression) and trauma (including PTSD)
- 32 (26.9%) complainants/witnesses with behavioural (ADHD, ADD, ODD) and 17 (14.2%) with neurological disorders (ASD)
- 23 (19.3%) with a learning disability (mild, moderate and severe), cognitive impairment, and physical and hearing disabilities
- 13 (10.9%) with speech and language difficulties, including unclear speech, fluency issues, receptive language difficulty, language delay and mutism, and
- 7 (5.8%) with physical and hearing disabilities.

Communication difficulties – adults

Table 19 (a) and (b) provides a breakdown of the number of communication difficulties on the court referral for adult complainants and adult witnesses respectively. Five witnesses aged 18–24 years and one complainant aged 25–34 years were referred because of their young age at the time of the alleged offence.²⁷

Table 19 (a): Number of referred communication difficulties by age of adult complainants

Age (years)	Age at incident	Number of communication difficulties			Total N
		1	2	3+	
18 – 24 years	0	6	3	3	12
25 – 34 years	1	0	3	2	6
35 – 44 years	0	6	2	1	7
45 – 59 years	0	1	3	3	7
60 – 74 years	0	3	2	0	5
75+ years	0	3	2	6	3
Total	1 (2.5%)	12 (30.0%)	10 (25.0%)	17 (42.5%)	40

²⁷ The definition of ‘prescribed witnesses’ under the Act includes adults who were children at the time of the alleged offences.

Table 19 (b): Number of referred communication difficulties by age of adult witnesses

Age (years)	Age at incident	Number of communication difficulties			Total N
		1	2	3+	
18 – 24 years	5	3	4	5	17
25 – 34 years	0	0	1	7	8
35 – 44 years	0	3	2	4	9
45 – 59 years	0	1	0	3	4
60 – 74 years	0	0	0	2	2
75+ years	0	1	0	1	2
Total	5 (11.9%)	8 (19.0%)	7 (16.6%)	22 (52.4%)	42

Table 20 (a) and(b) show the number of adult complainants and witnesses respectively referred with different types of communication difficulties by age group.

Table 20 (a): Adult complainants referred with different categories of communication difficulties by age group

Age (years)	Trauma / mental health issues	Learning, cognitive, disability	Physical disability	Speech/ language issues	ADHD/ADD /ODD or OCD	Autism (ASD)	Total
18 – 24 years	7 (6)	3	0	0	5	1	12
25 – 34 years	4 (3)	1	1	1	0	0	6
35 – 44 years	5 (3)	3	1	1	1	1	7
45 – 59 years	4 (3)	3	3	4	0	2	7
60 – 74 years	2	3	3	0	0	0	5
75+ years	1	1	3	0	0	0	3
Total	23 (15)* 57.5%	14 35.0%	11 27.5%	6 15.0%	6 15.0%	4 10.0%	40

Table 20 (b): Adult witnesses referred with different categories of communication difficulties by age group

Age (years)	Trauma / mental health issues	Learning, cognitive, disability	Physical disability	Speech/ language issues	ADHD/ADD /ODD or OCD	Autism (ASD)	Total
18 – 24 years	11 (9)	1	0	1	6	1	17
25 – 34 years	7 (5)	5	1	1	2	1	8
35 – 44 years	4 (3)	2	1	4	1	0	9
45 – 59 years	4 (3)	3	3	3	1	0	4
60 – 74 years	1	0	3	2	0	0	2
75+ years	1	1	3	1	0	0	2
Total	27 (20) 64.3%	12 * 28.5%	11 26.2%	12 28.5%	10 23.8%	2 4.8%	42

Note. Complainants with multiple communication difficulties are counted in each category. Figures in parentheses indicate those referred with both trauma and mental health issues.

* Cognitive impairment and learning disability includes 6 complainants and 6 witnesses with acquired brain injuries.

Like child complainants and witnesses, the most common communication difficulties related to trauma and mental health issues and were almost as prevalent among complainants as witnesses. Referrals for communication difficulties associated with trauma and/or mental health were most common in sexual assault/sexual abuse matters. Mental health issues and trauma were common co-occurring issues.

Communication difficulties associated with cognitive impairment and also learning disability were more common than among child complainants/witnesses, due to some extent because of adult acquired brain injuries.

Physical disabilities (unspecified but also including hearing and sight) were much more common among adults than children.

Adult complainants and witnesses also commonly had 3 or more ‘issues’ or different types of communication difficulties (59.2% compared with 23.5% for children and adolescents).

4.3 Timing of assessment and Ground Rules Hearings

Table 21 shows the mean, median and standard deviation of the various timeframes: from referral to allocation, from allocation to assessment, and from assessment to the ground rules hearing for children and adults.

The numbers vary across the time periods taking into account the referrals which did not proceed beyond a certain point:

- 3 referrals for witnesses where an intermediary was not required after being referred by the DPP and allocated
- 8 referrals – an assessment report was not submitted because the matter did not proceed or was otherwise resolved (prior to the ground rules hearing or court date)
- 21 referrals and assessments where the report was submitted but the matter did not proceed – vacated court dates, discontinued
 - in 7 cases, the matter was resolved on the day of the ground rules hearing
 - in one case, the report for a complainant was submitted where the accused pleaded guilty (after the Ground Rules Hearing)
 - in another the witness was not required.

Court referrals are allocated after receipt and confirmation of the order for intermediary assistance and prior to the scheduled court hearing date. Priority is given to referrals with minimal time between the order confirmation and hearing date. Most court referrals were allocated within a week but more so for adults (78.9%) than for children (54.3%); about half were allocated on the same or next day for children (48.9%), and nearly two-thirds for adults (63.4%).

Similarly, most assessments were conducted within a week of being allocated: children (52.6%) and adults (59.3%).²⁸

The time periods from the Communication Assessment to the ground rules hearing was longer, with a median of 20 days for children and 15 for adults. Longer timeframes between assessment and ground rules hearing allow more time for legal practitioners and judicial officers to consider the assessment guidelines and advice. About half the ground rules hearings were held on the same day as the pre-recorded hearing: 52.8% for children

²⁸ Information from the Program staff indicates that the time between referral and communication assessments being arranged is influenced by the Program's trauma-informed approach; some complainants may require more than one contact, more time to consider their engagement and some require re-scheduled appointments.

and 47.1% for adults. The median number of days reflects this: 1 day for children and 2 days for adults.

Table 21: Timeframes for child and adult complainants, witnesses and defendants

Time-frames (days)	Child (under 18)	Adult (18+ years)
Referral to allocation		
Mean	17.9	11.2
Median	4.0	1.0
SD *	29.5	30.8
Range	0 – 162 days	0 – 196 days
Allocation to assessment		
Mean	17.9	16.9
Median	7.0	4.0
SD *	25.1	30.3
Range	0 –105 days	0 –148 days
Assessment to GRH		
Mean	37.5	35.4
Median	20.0	15.0
SD *	39.1	46.4
Range	1 – 165 days	0 – 175 days
GRH to Pre-record		
Mean	23.5	34.8
Median	1.0	2.0
SD *	45.7	64.6
Range	0 – 196 days	0 – 322 days

Note: The median provides a useful measure that is, unlike the mean, not affected by large outliers (e.g. high range of 196 and 322 days).

* SD = standard deviation (a measure of variance/variability)

4.4 Young children

Police investigators and prosecutors have generally faced challenges interviewing young children (under the age of 10, and particularly under 5 years), with concerns about children's communicative abilities, response to stress and to formal questioning, and their attention span.²⁹ This leaves young children more vulnerable to abusers who have been confident that young victims, complainants and witnesses will not be subjected to and withstand the police and court process. One of the anticipated benefits of having intermediaries work with interviewers and legal professionals is that it will provide appropriate scaffolding and improve the efficacy of questioning of vulnerable witnesses and particularly young people and children. While there is no comparative data prior to the establishment of the Intermediary Program in the ACT, the quite significant number of matters at court involving children under 10 is a very positive sign. There were:

- 10 matters involving children aged from 3 to 5 years proceeded to court, and six of these had an intermediary at the police interview as well as at court.
- 22 matters involving children aged from 6 to 9 years proceeded to court, and 13 of these had an intermediary at the police interview as well as at court.

Further, children aged 6 to 9 years (with more boys than girls in this age group) comprised a third of the child complainant/witnesses and the most common age group to be referred by police to the Program, followed by children aged 5 and younger. These children were mostly referred by reasons of their age, together with some receptive language and other communication difficulties, suggesting police sensitivity to their needs and a willingness to seek support from an intermediary. It is also worth noting the comments offered by prosecutors in ACT in interviews for this evaluation and in NSW, Queensland and South Australia in relation to research on prosecutorial discretion,³⁰ that they rarely saw children under the age of 10 give evidence prior to the use of intermediaries.

²⁹ Cashmore, J. (2017). Child witnesses. In L. Young, M. A. Kenny & G. (Eds.), *Children and the Law in Australia - 2nd Edition*, (pp. 563-586). Sydney: LexisNexis Butterworths; Martschuk, N., Cashmore, J., Hoff, S., Parkinson, P., Goodman-Delahunty, J., Shackel, R., Cowdery, N., & Powell, M. (2024). The importance of consistency in complainants' evidence in the decision to prosecute child sexual abuse cases. *Child Abuse and Neglect*, 158, 107095.

³⁰ *Threshold decision-making in deciding whether to prosecute for child sexual assault*, J Cashmore, P Parkinson, R Shackel, J Goodman-Delahunty, M Powell, N Cowdery (Australian Research Council (ARC)/Discovery Project (DP)).

4.5 Defendants

The program expanded in March 2024 to include defendants and accused persons, and this aspect of the program is still in the early stages. The numbers are therefore small.³¹

Police referrals

Six defendants (0.7%) were referred by police. Four were male and two were female. Three were aged from 11 to 14, referred by reason of age alone for the 11 year-old and one for multiple communication difficulties including learning disability, ADHD, autism and language and speech problems. Three adult defendants, aged from 28 to 47, were referred for multiple reasons, mostly mental health issues, PTSD, and intellectual disability, and ADHD. The alleged offences were sexual assault, family violence and physical abuse.

Court referrals

There were 14 defendants/accused persons referred for an intermediary by the Court or their lawyer (including Legal Aid or the Aboriginal Legal Service). Three were under 18, one male on a very serious charge; they were referred for learning disabilities, and variously for ADHD, trauma and language delay; another matter involving a young female did not proceed.

The 11 adult defendants (6 male and 5 female) were aged from 18 to 67 and all except two had multiple communication difficulties that included a combination of at least three issues, predominantly learning disabilities, trauma, cognitive impairment and language disorders and mental health issues. All but one of the referrals was in relation to learning disabilities and cognitive impairment. The defendants were before the court for serious offences such as sexual assault, family violence, physical assault and culpable driving, and some for less serious matters such as breaching Public Protection Orders (PPOs) or health orders. Four defendants were Aboriginal, and one was of a non-English-speaking background. The communication difficulties presented engagement challenges for the lawyers and the court. None had been referred by police for an intermediary.

4.6 Summary

The 1,206 referral events by police and 239 court referrals over the three-and-a-half-year period since the Intermediary Program was established indicate a very solid base of experience in providing a service to around 930 child and adult complainants and witnesses engaged in police interviews and over 230 child and adult complainants and witnesses in court proceedings. In 54 court referrals, mostly with children 12 and under,

³¹ The analysis in this report covers the period to July 2024 which includes only 3 months' practice with defendants and accused.

an intermediary had been involved at the police EICI and nearly all these cases had proceeded.

Most of the police and all the court referrals have been managed by a relatively small team of in-house intermediaries. The referral process includes triaging each matter to ensure the intermediary is suitably skilled to match the needs of the witness, and available to manage the follow-up appointments for the assessment, report-writing, and court dates for the ground rules hearing, pre-trial hearings or trial proper.

Panel intermediaries have supplemented in-house capability. This enables in-house intermediaries to form a community of practice, sharing expertise and experience, in responding to the multiplicity of communication needs of child and adult complainants and witnesses. This includes ongoing clinical debriefing, group reflective practice and the professional development of intermediaries to ensure they are able to continue a high-standard of service delivery and manage their own wellbeing.³²

The service was expanded in March 2024 to include defendants and accused persons with significant communication needs. While defendants and accused persons have their communication facilitated in several overseas jurisdictions such as New Zealand, Northern Ireland and the UK, the ACT is the only Australian jurisdiction to provide intermediaries for vulnerable defendant and accused children and adults, as outlined in the literature review (see section 11).

³² The Program Team also manages the recruitment, training, assessment and accreditation of intermediaries to ensure ongoing resources in a very competitive environment for highly skilled allied health professionals to meet their legislative obligation to maintain the panel.

5 SURVEY AND INTERVIEW DATA ANALYSES

The Evaluation collated and analysed data from 49 surveys in total. The distribution of survey respondents is as follows with completed surveys from:

- 9 police respondents
- 3 legal practitioners (all prosecutors)
- 10 intermediaries
- 8 parents/caregivers
- 7 court staff and Intermediary Program administrators
- 3 Victim Support ACT staff
- 2 Liaison Officers
- 4 child witnesses
- 3 adult witnesses

In addition, 22 interviews were conducted, transcribed and analysed from the following interviewees:

- 1 police officer
- 2 legal practitioners
- 7 judicial officers
- 3 intermediaries
- 1 parent/caregiver
- 3 adult complainants
- 1 court staff
- 3 Liaison Officers
- 1 Program team administrator

The following sections provide a summary of the findings from these surveys and interviews disaggregated by cohort. De-identified quotes from participants are presented to highlight key insights.

5.1 Cohort: Police

A total of nine police officers participated in the Evaluation. Nine police officers completed a survey, and one of the police officers also participated in an interview. Of the nine police respondents, all worked in the Sexual Assault and Child Abuse Team (SACAT); six are female and 3, male.

Experience working with intermediaries

All respondents had experience working with an intermediary in cases involving child and vulnerable adult witnesses and complainants. No respondents reported having worked with an intermediary in a case involving a child or vulnerable adult suspect; this is likely because SACAT mostly interview vulnerable witnesses and complainants.

Additionally, all respondents ($n = 9$) reported having worked with an intermediary in cases involving a child under 5 years of age, and almost all ($n = 8$) in cases involving a child or vulnerable adult with disabilities. Six respondents reported working with intermediaries in cases involving a witness from a multicultural community, and four in cases involving an Aboriginal and/or Torres Strait Islander witness and four in cases involving a LGBTQI+ witness.

When asked when they would seek intermediary advice, 5 stated they would seek intermediary advice in cases involving children under a particular age (ie 2 of 5 stated children under 12, the remainder stated children under 14, 18 and 10 respectively). Other responses included consideration of specific mental health diagnoses and neurodivergence such as autism, ADHD, PTSD ($n = 2$) and children with learning difficulties or delays ($n = 3$).

Most respondents stated they would seek intermediary advice in cases involving sexual offending ($n = 5$), followed by violent offending ($n = 3$).

“Since I’ve been in the Sexual Assault and Child Abuse Team, I would say a good 80% of cases I would use an intermediary.” [Police officer, Interview respondent]

Just over half ($n = 5$) had worked with an intermediary in 20 or more cases.

Understanding of the intermediary role:

All respondents ($n = 9$) reported that the intermediary role had been clearly explained to them and reported broadly similar understandings of the intermediary role.

Frequency with which respondent can speak with an intermediary prior to questioning:

Almost all respondents ($n = 8$) stated they ‘always’ or ‘often’ get the chance to speak with an intermediary prior to interviewing a child or vulnerable witness/suspect. One respondent said they ‘sometimes’ get to speak with an intermediary prior to interview.

Almost all respondents ($n = 8$) stated they typically have sufficient time with an intermediary prior to questioning. One respondent noted that the amount of time is ‘variable’.

Benefits of intermediaries' advice

Extent to which intermediaries' advice has assisted in conduct of interview/police role:

All police respondents ($n = 9$) answered positively when asked whether intermediaries' advice has assisted in the conduct of interviews with vulnerable witnesses. Several highlighted advice concerning 'question styles/types, vocabulary', 'most appropriate language to use' and 'question strategies' as particularly helpful. Others noted advice around witnesses' 'communication needs', 'signs of trauma' and of 'distress and/or losing focus' to be helpful.

"Intermediaries have been vital in assuring that we speak in a way that can be understood, especially when it comes to complex crime matters." [Police officer, Survey respondent]

Extent to which intermediaries reduce stress:

Almost all ($n = 8$) police respondents reported that intermediaries reduce the stress experienced by child and vulnerable adult witnesses during police interviews. Five of eight respondents highlighted intermediaries' assistance in rapport building with the witness as helpful in the mitigation of stress during the interview. One respondent was 'uncertain' as to whether intermediaries reduced the stress experienced by child and vulnerable adult witnesses during interviews.

Extent to which better evidence is elicited:

All police respondents were positive when asked whether intermediaries assist child witnesses to give better evidence, as were nearly all in relation to adult witnesses.

Impact of intermediaries on particular cohorts:³³

- *Aboriginal and/or Torres Strait Islander:* Of four police respondents who had experience working with an intermediary in a case involving an Aboriginal and/or Torres Strait Islander child or adult witness, three reported that intermediaries' advice on culturally appropriate communication strategies assisted them in conducting the interview and in eliciting better evidence from the witness. One respondent noted that:

"An intermediary may not be the best person for a First Nations witness and instead a First Nations interview friend may be." [Police officer].

³³ Police respondents generally did not engage with options for detailed responses to effectiveness of intermediaries in eliciting better evidence from these cohorts. Those that did respond demonstrated an understanding of both why the interviewees were experiencing difficulty and examples of communication strategies and approaches offered by the intermediary.

- *Child witnesses under 5*: All the police respondents with experience of interviewing children under 5 reported that intermediaries assist young children to give better evidence. One noted:

“They assist in putting the child at ease, pitching ideas to their level and providing useful and relevant feedback to myself as an investigator how to ask questions and explain things. At times I will find myself stuck on a topic and an intermediary will pass me a note with a suggestion about a certain way to approach it and it will result in further information being forthcoming that I may not have been able to gain without their assistance.” [Police officer, Survey respondent]

- *Culturally and Linguistically Diverse witnesses*: Similarly, all police respondents with experience with this cohort indicated that positively when asked whether intermediaries assist witnesses from a multicultural community to give better evidence.
- *Witnesses with disabilities*: Again all respondents with experience with this cohort ($n = 4$) noted that intermediaries assist witnesses with disabilities to give better evidence. One noted:

“I have found intermediaries will always find or create a way to communicate even with the most high needs witnesses and victims, including people who are non-verbal.” [Police officer]

- *LGBTQI+ witnesses*: One respondent remarked that intermediaries assist with the communication needs of LGBTQI+ witnesses.

Impact of intermediaries on confidence:

Most police respondents reported that children with intermediaries are more confident when answering questions than those without one; two were ‘not sure’ and thought that confidence levels remained the same. Similarly, a majority ($n = 6$) reported that adult witnesses with intermediaries are more confident answering questions. Two respondents thought their confidence level remained the same with or without an intermediary, and one respondent was unsure.

‘Best thing’ about working with intermediaries:

Police respondents had many positive things to say about the Intermediary Program and the intermediaries they have worked with:

“[Intermediaries] facilitate communication with very vulnerable individuals. They are key to the role of Policing, specifically in the context of the SACAT space. I have interviewed many vulnerable witnesses with intellectual disabilities or communication difficulties and having Intermediaries is a game changer.” [Police officer]

“I really believe that they have provided better outcomes for victims and witnesses in terms of lessening the trauma of speaking with Police and attending Court.” [Police officer]

“They help us with communication so much that they should be a permanently funded role. Without intermediaries, members of the public are worse off when navigating a complex and difficult system.” [Police officer]

“I think overall they tend to make us all better interviewers. I think they’re a great response to our evolving understanding of trauma and memory and how it impacts testimony, and not just like victims and things, but any kind of witness. And yeah, I definitely think they have been a really, really valuable addition to the justice process in general.” [Police officer, Interview respondent]

They are the service I utilise most as a SACAT investigator. I have had positive feedback from victims about them and have had victims request them on numerous occasions. [Police officer]

The intermediaries are an incredible resource and addition to the criminal justice system. They assist Police, witnesses, victims, the Court and offenders. I cannot name a single other service that can do that. I have only ever found them to be professional, well trained and excellent communicators. [Police officer]

Changed practices – have intermediaries changed the way vulnerable witnesses are interviewed?

All the police respondents reported that intermediaries have positively changed the way they interview vulnerable witnesses. One stated:

“Working with intermediaries has improved my interviewing skills exponentially. I know more questions to ask about communication needs and know some of the signs and body language to keep an eye out for with witnesses and victims”.

Yes, I’m able to have more of a conversation / ease around difficult / uncomfortable topics.

Most reported having learnt techniques and strategies that can assist with the conduct of interviews generally.

About half of the police respondents reported feeling ‘not very confident’ or ‘OK’ interviewing a child or adult witness with a communication-based disability without an intermediary. All, however, reported feeling ‘reasonably confident’ or ‘very confident’ when interviewing witnesses with a communication-based disability with an intermediary present.

“It assists in building rapport, assists with different question strategies, and helped me talk to a demographic I wasn't comfortable with (young children).” [Police officer, Survey respondent]

Training and support:

All police respondents reported having received sufficient training and support to work with intermediaries.

Room for improvement

Four police respondents made suggestions for ways in which intermediaries' advice to police could be enhanced. One highlighted the importance of communication prior to the interview and ensuring this always takes place; another suggested a debrief post-interview to review communication approaches and improve practices over time. Two others suggested: (1) greater capacity for out-of-hours support from intermediaries to assist with interviews that need to occur outside of business hours, and (2) use of technology to assist during interviews rather than reliance on post-it notes which “can limit the evidence or how it comes across in Court”.

“There's been a huge uptick in times when they're needed and things like that. So I guess like it might be useful in the future for them to have more intermediaries if possible, and potentially a couple more who are trained to assist in offender interviews. Because I feel like that'll be more common moving forward as well.” [Police officer, Interview]

Most challenging thing about working with intermediaries:

When asked what the most challenging thing about working with intermediaries was, only two police respondents responded stating:

“In SACAT, we've almost used them so much we know most of the tricks now, so they almost become redundant in that the communication strategies are already implemented without them.” [Police officer]

“Overzealous intermediaries that will interject during an interview and interrupt the flow of conversation.” [Police officer]

5.2 Cohort: Judicial Officers and Legal Practitioners

Seven interviews were conducted with judicial officers in the Magistrates and Supreme Courts.³⁴

Six legal practitioners, four prosecuting lawyers and one defence lawyer, participated in the evaluation.³⁵

All legal practitioners had experience working with an intermediary in cases involving child and adult witnesses; one had worked with an intermediary in relation to an adult defendant. Several lawyers indicated they had worked with an intermediary on over 10 occasions, and one with an intermediary between 5 and 9 occasions. This included witnesses or defendants from a multicultural community and those with disabilities as well as one who reported having worked with Aboriginal and/or Torres Strait Islander and LGBTQI+ witnesses/defendants.

All the lawyers had used an intermediary in matters involving family violence or physical assault or child or adult sexual offences, and one in matters involving homicide, and also burglary and theft.

Frequency with which respondent can speak with an intermediary prior to questioning:

The prosecution lawyers stated that they ‘often’ or ‘sometimes’ get the chance to speak with an intermediary prior to interviewing a child or vulnerable witness/suspect, but one stated this was not generally the case but ‘not the fault of the intermediary service’. The defence lawyer had not spoken with the intermediary prior to questioning in any matter.

Types of recommendations/directions for questioning:

Particular question types and strategies were identified, as well as physical aids, as common among recommendations made at ground rules hearings. For example, respondents noted the use of “*simple language*”, “*no double negatives*”, “*signposting topics*”, “*no tag questions*”, “*breaks, and providing cross-examination questions in advance as well as physical aids such as “fidget toys”, “weighted blankets”, “support animals”, and “reading guides.”*”

The judicial officers made generally positive statements about recommendations made at GRHs. However, some noted the similarities between intermediary reports in terms of recommendations:

“The recommendations of the actual questions might probably copy and paste because they’re standard things that are recommended...but the basis for that recommendation and those questions is, in my experience,

³⁴ Judicial Officers were invited to be interviewed rather than respond to a survey.

³⁵ Two prosecutors were interviewed and three completed a survey, one of whom was also interviewed. Another legal practitioner provided unsolicited feedback via email on the Program.

always specific to that witness, and it provides examples of why that recommendation is made,” [Judicial officer]

“They tend to be pretty “samey” after a while, but I assume that’s because the needs are found to be samey, but they are good and comprehensive reports... I would like to see things that very clearly indicate the needs of that individual, and it would give me comfort – maybe this is asking too much – to understand why it was concluded that they would benefit from a certain thing. I think that would give confidence to those who are asked to apply those rules in a hearing that there’s a good reason for doing so.” [Judicial officer]

Another judicial officer noted that occasionally there’s an “excess in the number” of recommendations, and another took issue with requests for breaks every 30 minutes:

“The one I struggle with is a break every 30 minutes; I think that can really be disruptive to a cross-examiner’s flow... It’s a problem for the court because we are so time poor, so starved of time for hearings and so if a 5-day matter takes 7 days because of those breaks, it really does stuff us around.” [Judicial officer]

It was noted that one of the more common exceptions to the recommendations made at the ground rules hearings was in regard to “*providing cross-examination questions in advance*”.

While generally positive feedback was noted about aids used by intermediaries in court proceedings, one judicial officer gave a number of examples of aids being distracting or a barrier to a witness giving evidence:

“[In one instance], a girl...had a squeegee tactile kind of thing, like a frog. It was a rubber frog. And when she squeezed – and she was very anxious. So she when she squeezed it, it made the frog’s mouth kind of blow out, and it made a noise... [The Judge in that matter] said it was driving him nuts but he thought because all the measures have been set up, ‘I’d better be supportive.’” [Senior judicial officer]

“[In another instance], this girl, she’s 25 and she came in one day holding an enormous rabbit on her lap, like an Easter bunny you might win for throwing balls at a showground. You know, it’s enormous, and it was up to her chin [above and over her shoulder - gestures]. And it was a jury trial.” [Senior judicial officer]

“I had one case where it was a murder trial where the accused was a child... the intermediary was pointing to cards – she had cards that said, ‘If you don’t know the answer, say ‘I don’t remember’’. And she was pointing to a card and I said, ‘Can you just tell me what the cards are?’ And she was pointing

to, 'I don't remember'. And he kept saying 'I don't remember'...This card just became a device for him to avoid answering questions. I felt that by being supportive, she was inadvertently prompting him to say he didn't remember.” [Senior judicial officer]

On the other hand, an example of a weighted blanket provided to vulnerable witnesses as an invisible aid was well-received:

“I've had a number of kids that have had weighted blankets and they love them. They say they find them very effective and it's completely unobtrusive and they just come into the remote witness room and put the blanket on their lap. And you, I know they've got that comfort of a blanket, but it's completely invisible. I think the less visible it is to the court, the better.” [Senior judicial officer]

Acceptance of recommendations/directions for questioning:

The prosecution lawyers indicated that judicial officers generally accept all the recommendations of the intermediary. One stated they have witnessed judicial officers “*frustrated at the frequency of breaks*”. Another stated they “*have not had an experience where a judge has pushed back at the ground rules hearing*”. These sentiments were reflected in interviews with judicial officers.

Benefits of intermediaries' advice

Extent to which intermediaries' advice has assisted in conduct of interview/your role:

Several lawyers stated that the intermediaries' advice on the communication needs of witnesses and defendants had been helpful in their questioning them though one of the prosecution lawyers stated that it has taken them “*a long time to adapt [their] practices*.” Similarly, three indicated that it has been helpful in objecting to the cross-examination of the witness or defendant.

“I think the best aspect from a judicial officer's perspective is having the confidence that there is someone there helping to make sure the witness can give their best evidence. In the absence of an intermediary, it's left to the judicial officer to make determinations about the form of questions and whether they are appropriate or should be objected to. And was the witness understanding or not understanding? But once the witness has gone through the intermediary assessment and we've got the recommendations there, it's much clearer to the court what the witness would best benefit from and how they should be questioned to ensure that their best quality evidence can be given.” [Judicial officer]

Impact of intermediaries on confidence:

Several lawyers stated that child and adult witnesses with an intermediary are ‘more confident’ in answering questions than those without, one survey respondent said that they have the ‘same level of confidence’ in answering questions than those without, and another survey respondent was ‘not sure’.

A judicial officer also stated in reference to intermediaries’ impact on the confidence of both child and adult witnesses:

“From my perspective, it’s certainly assisted vulnerable witnesses in giving evidence, partially because I think they feel more supported, whether that’s because they’re appreciating the role of the intermediary in terms of the communication side or whether it’s partially because they have that time with somebody before the evidence and then during the evidence, and so they see the intermediary as someone familiar and comfortable and who’s helping them in the sense of a support person, even though they’re not.”
[Judicial officer]

Another stated:

“I think from my experience that the greatest benefit that they provide is the confidence for the witness and the comfort”. [Judicial officer]

Extent to which better evidence is elicited

The prosecution lawyers stated that child witnesses/defendants are ‘generally’ able to give better evidence than those without, noting the significance of the ground rules and the intermediary being able to interject when the rules were not followed, as well as the value of the intermediary requesting breaks. For example:

Intermediaries with child witnesses are often able to interject and ask for breaks/allowances more than practitioners. This helps the witness be as comfortable as possible and allow evidence to run smoother in most cases.
[Prosecution lawyer]

Overall, it’s really positive. I particularly noticed when intermediaries are being used, it seems to bolster a complainant’s confidence in having that extra person there who, while (he or she) isn’t a support person is advocating for them giving the best evidence that they can by intervening when they think that they need a break or where a question is being asked where it’s obvious the complainant is confused ... having that extra person there to say, ‘Sorry, can you rephrase that (as) it doesn’t accord with the communication rules’ rather than that necessarily falling on the complainant, who themselves are having that intense experience and might not feel comfortable advocating for themselves in the time. [Prosecution lawyer]

“The other big difference with an intermediary is use of breaks. No matter how many times I prepare a witness to ask for breaks as needed, some will never ask for a break of their own volition. The intermediary intervening and asking for a break, or the witness being able to point to the “break” card, means they get a chance to reset. This means they are less likely to become burnt out during evidence; they stay engaged for longer.” [Prosecution lawyer]

Judicial officers were also positive about the role of the intermediary in providing valuable advice in relation to appropriate questioning and the need for breaks.

“I think there’s absolutely an increase in the quality of the evidence primarily because the questions that will be asked elicit the best evidence in a way that wasn’t previously as easy to obtain.” [Judicial officer]

“If you study cross-examination and you’re not struck in some sort of bygone era, frankly, one of the things you’re taught is that it’s a good idea to telegraph that you’re moving onto a new topic, not to use double negatives etc... Regardless of whether or not you’re dealing with a child or someone with a language communication difficulties, tacking things on with a double negative or negative on the end, it’s not really good evidence in the end, because what are they answering to?” [Judicial officer]

Several prosecution lawyers also indicated that adult witnesses/defendants with an intermediary are ‘usually’ able to give better evidence than those without.

Intermediaries are able to interject more frequently and appropriately than a practitioner because they often have a greater familiarity with a witness’s particular needs. This allows the witness to provide evidence in a more comfortable environment than otherwise. [Prosecution lawyer]

Yes, because the witness will get more breaks with an intermediary. Similarly, if they are not understanding the question, the intermediary will generally intervene before they inadvertently agree or disagree with something they have misunderstood. [Prosecution lawyer]

Impact of intermediaries on particular cohorts:

While the legal practitioner survey data provided limited insights into the impact of intermediaries on particular cohorts of witnesses, several judicial officers, including the Chief Justice, had experience of an intermediary being very helpful with young witnesses and also an Aboriginal defendant. In one case with an Aboriginal woman providing evidence in a sexual assault and family violence matter, the complainant left the court after some time in cross-examination, saying “I can’t do this anymore...I’ve had enough.” The judge asked her to consider coming back the following day to complete her cross-examination and suggested an application for an intermediary. The judge commented:

“It wasn't just the fact that she wasn't coping and she was plainly highly distressed. She was smart, but there were times when she was saying, “Hang on, what year are you talking about now? There was so many incidents. You going back to another one?” So the next time we did have an intermediary ... she wasn't Aboriginal but I think that that woman was happy just to have any support. And the policewoman and the intermediary just looked after this woman so beautifully and eventually on the third trial, there were convictions. So it was such an important outcome.” [Judicial officer]

The defence lawyer commented in relation to defendants that:

I would not let a defendant interview with Police, even with an intermediary, particularly if they were someone with communication skills which would rise to the level of being eligible for one. ... Police ask the questions they want to know the answers to, they need to also ask the questions that they should know the answers to so to make a fair assessment of the merits of a witness or a case.

'Best thing' about working with intermediaries:

Legal practitioners readily identified the best aspects of working with intermediaries including:

“Seeing complainants be more confident in answering questions, particularly after an intermediary has intervened either asking for the question to be rephrased or asking for a break.” [Prosecution lawyer]

“Their presence makes for clearer cross-examination. They also get witnesses through evidence when they might otherwise want to give up, because they call for breaks. If the witness just kept going unassisted, they would be more likely to effectively burn out and want to stop.” [Prosecution lawyer]

“I particularly noticed when intermediaries are being used, it seems to bolster a complainant's confidence in having that extra person there who, while (he or she) isn't a support person is advocating for them giving the best evidence that they can by intervening when they think that they need a break or where a question is being asked where it's obvious the complainant is confused ... but having that extra person there to say, ‘Sorry, can you rephrase that (as) it doesn't accord with the communication rules rather than necessarily falling on the complainant, who themselves are having that intense experience and might not feel comfortable advocating for themselves in the time. So I've noticed that witnesses who've had intermediaries do seem to be more confident than witnesses who haven't. Obviously, each individual complainant is different, so that's more my

observation rather than anything research based. But I think the main thing that I have noticed, I would say, is that quite a few intermediaries are not as vocal as potentially I think in some instances they should be.” [Prosecution lawyer]

One prosecution lawyer expressed enthusiasm for the expediency of the Program and also commented on the mitigation of trauma and stress for the witness:

“I made a last-minute request for the assessment of two very young children, one of whom was the victim in a family violence matter. Not only was your service able to accommodate and schedule assessments for both, but the reports were provided on a short time frame and an intermediary attended court for the ground rules hearing all in less than a week of the referral process being complete.” [Legal practitioner, unsolicited feedback]

In this matter, the witness was not required to give further evidence in court on the basis of intermediary advice and agreement of both parties:

“In Court and immediately prior to the ground rules hearing, the defence solicitor and the prosecutor agreed that the recorded interviews of the children could be played and neither child would be required to give further evidence or undergo cross examination... The matter proceeded this way because the intermediary report made it clear that it will be difficult to structure questions in cross examination in such a way that would be understood by the children... Having the intermediary report, both parties were able to use the independent professional and reliable information within... to allow them to make the necessary submissions without negative inferences being drawn from any failure to ask certain questions of the children... They [caregivers of the children] were all visibly relieved to find out the children would not be required to give evidence and I imagine that this would have lessened the overall stress of the day and allowed them to focus on their own evidence... So not only did the reports save the children from any potential trauma of giving evidence in a criminal proceeding but it also lessened the impact on other witnesses, including decreasing the amount of time all the witnesses had to wait around to give evidence, civilian and police included.” [Legal practitioner, Unsolicited feedback]

Judicial officer interviewees expressed similar sentiments about the benefits of intermediaries' assistance for witnesses' comfort and confidence while giving evidence:

“I think they increase the comfort for the witness... So there is that comfort of knowing that there's someone there who is going to help them communicate when being in court is scary for most witnesses.” [Judicial officer, Interview respondent]

“I think they're always more comfortable with another person in the remote suite. And better in terms of understanding the question and being able to give an answer definitely. I don't know if it's a better experience for them as people. I can't see how it could make the experience of giving evidence worse. I think that it could provide for a little more empowerment for witnesses to think that they have control over how they answer and there was an absence of that control previously, and that's one of the big changes that I can see from being counsel. That witnesses are now more empowered in terms of how they answer questions and being not scared to say I don't understand your question. Or looking at the intermediary, clearly trusting them, saying I have no idea what they just said. What do they want me to say?” [Judicial officer]

Judicial officers also noted the usefulness of intermediary recommendations in encouraging better and more considered question strategies and styles:

“I actually think one of the greatest benefits of it is educating lawyers about asking questions in a way that's actually effective, because the rules that are set by the intermediary and ground rules hearing often are actually very logical and would potentially apply beyond people with recognised communication difficulties.” [Judicial officer]

“Regardless of whether or not you're dealing with a child or someone with a language communication difficulties, putting things like a double negative or negative on the end. It's not really good evidence because what are they answering to? You know what I mean? I think a lot of what's suggested should be considered to be best practice regardless of whether or not it's a case where an intermediary is involved.” [Judicial officer]

Changed practices (child):

Several lawyers stated that their experience with intermediaries has changed the way they question both child and adult witnesses or defendants. One survey respondent stated they “*infrequently*” have to rephrase questions in a way that they would not normally consider for adult witnesses/defendants.

When asked about the extent to which the assistance of an intermediary is embraced by legal practitioners, one judicial officer stated:

“I think the calibre of the intermediary in our Program is part of why it is now much more widely accepted by the defence lawyers than it was when it was first introduced...I think one of the strengths that have come from the Program is because the defence now understand that it's just as much to help them and their client. There is more acceptance of an intermediary. I

rarely see opposition to a ground rules hearing; now it's usually all by consent. There's nothing controversial." [Judicial officer]

Another stated:

"Initially it was very much seen as this is for complainants and proving prosecutions for people who make complaints of crime. And it's not going to help the accused people. And I think as people have seen how it works, the defence lawyers have come on board a lot more with a lot more understanding that this is there to help and is just as helpful to them and helpful to their clients (as it is to complainants and the prosecution)... I think generally because of how well the program has been rolled out in the ACT, it has the growing confidence of the defence lawyers as to what it is, and that it's not there to stop them doing their job or to limit what they can do, but it's ultimately helpful to everyone." [Judicial officer]

Any change in judicial practices:

Two judges/magistrates indicated that they have changed the way they intervene in the questioning of child or vulnerable witnesses. The other respondents did not speak specifically to this question.

"The great benefit of the witness intermediary program is it has opened my eyes to the fact that the population has a great degree of diversity which affects their capacity to give evidence. And that simple measures substantially improve their capacity to give evidence. And that without the exposure of the problems that those witnesses have through the witness intermediary process, you would often not realise that the evidence that you're getting is suboptimal because the misunderstandings or the difficulties that people have in responding to questions are not exposed without the benefit of a person with some expertise." [Judicial officer, Interview respondent]

Training and support:

All three lawyers surveyed stated they have been provided with enough training and support for working with intermediaries.

A judicial officer noted:

"I don't see a need for training for my end, but I think the defence – if there's any area that needs it – it's the defence side to understand that they have that access to the intermediary service and Program just as much as the prosecutors." [Judicial officer]

Similarly, another judicial interviewee stated:

“I think it wouldn't be a bad idea to hold a seminar for local lawyers and barristers about how the system operates with intermediaries.” [Judicial officer]

One judicial officer suggested that further training for police officers could assist:

“I just don't think police are being well trained enough. But has there been an improvement? Yes, I think there has been an improvement. But I also think that there's some improvement to come.” [Judicial officer]

And two judicial officers suggested that further training and support for judicial officers could be of benefit:

“We could have more training as a bench course. We really don't have any training...I mean, we had an excellent presentation, I think two years ago at our judicial education retreat, which was great. But there hasn't really been any formal feedback from the intermediaries, which I think is important... I just think there's so much room for more.”

“We took it on ourselves to invite the intermediary programme to present at some of our internal judicial days, and that was very helpful, but of course, as magistrates turn over, they may not have had that exposure. I think it is a useful thing and would be very useful for the profession to have, not necessarily training, which is exposure to the theory but rather information on how intermediaries work and what their processes are.”

Room for improvement

What intermediaries could do to better assist/advise:

Two prosecution lawyers stated that intermediaries do not typically intervene when the questioner has misunderstood what the child or vulnerable adult witness/defendant has said; one said otherwise that they do typically intervene.

“No, I would like to see intermediaries take a more active role in reminding the court about the communication rules. A lot of the intermediaries I have experience with apologise for interrupting the proceedings and don't do it enough (in my opinion). [Prosecution lawyer]

“The program is very valuable. I would like to see intermediaries being more interventionist when questions aren't being asked in appropriate ways. In a recent matter the intermediary did not speak up about the way the cross-examination was being conducted, when it did not accord with the ground rules in any way. When the prosecutor spoke up the defence barrister argued that she had not had any difficulties thus far and it was therefore harder to enforce the rules.” [Prosecution lawyer]

“No. my one criticism for the intermediaries is that some intermediaries do not intervene enough (not the majority, but some). The ones that do not intervene enough appear to not want to disrupt the proceedings; they are a bit too rigid in following formalities, allowing the judge to finish speaking etc. But when there is a live jury there, the intermediary needs to get in ASAP and intervene when needed, not wait for all the other speakers to finish.”
[Prosecution lawyer]

“I think it’s more about getting the intermediaries confident in the courtroom environment” [Judicial officer]

[On issues where intermediaries should intervene more regularly]

“So the multiple proposition questions, it’s just so easy for them to slip through. And I just think if the two of you are working to stop them, then you’re going to have a lot more success. It would be really in that transcript of that [aforementioned] matter. There was a litany of double-barrelled questions. It’s a common advocacy failure. And I had stepped in a lot of time but it was just really interesting [when I went over the transcript in writing the judgment] that the ones that slipped through were the ones that they thought were so valuable. But I thought were of absolutely no use whatsoever because I genuinely couldn’t determine what the witness was responding to in terms of the question. So, I just thought it was a great example of that particular failing.”
[Judicial officer]

In contrast, a number of judicial officers described some instances of overzealous intermediaries interrupting the flow of questions with excessive interventions:

“I do remember once with a particular intermediary, and I can’t recall how long ago it was, where I felt the particular intermediary was so nervous to ensure that they weren’t superfluous to the process that I felt on the number of occasions they intervened just to demonstrate that they were there.”
[Judicial officer]

“Depending on their background, every now and then you get someone who is a bit rigid in their application of the ground rules. But I just say, if they keep interrupting with “Your Honour, that question has a tag” and if I think the witness is handling it, and I think it’s interfering with the flow, I’ll just say, “Look, I think the witness is OK. Could I ask you please just to exercise your judgement, notwithstanding the ground rules?” [Judicial officer]

In light of interventions interrupting the flow of questions, one judicial officer suggested consideration of alternate supports that could be used by the courts:

“... if we had more time to flesh out individual cases, I think we would find occasions where in fact the person would be better off without an

intermediary. By having their needs addressed in a different way...if the courts adopted a different way of receiving their evidence...we could perhaps address those issues in a different way, which then might allow the evidence to be received in a more natural way that would not need the interventions.” [Judicial officer]

One judicial officer expressed some concern about potential overreliance on the Program, to the extent that prosecuting legal practitioners “*forgo their own responsibilities to ensure a witness gets the supports they need and...manage the objections themselves*”:

“We don’t want to over-utilise the service, particularly because it is resource intensive. It takes additional time for the court to complete matters. It’s more onerous on the witnesses who are having to participate in the assessments.” [Judicial officer]

Most challenging thing about working with intermediaries and/or the Intermediary Program:

Some challenging aspects of working with intermediaries and/or the Intermediary Program were identified by practitioners and judicial officers including:

a) too few intermediary interventions:

“Their timidness during the proceedings.” [Prosecution lawyer]

“They are excellent, for the most part. They need to have the courage to interrupt judges and barristers when needed, and do not apologise for doing so. Their voice is important.” [Prosecution lawyer]

“When they do not intervene. I have found this frustrating on occasion. I can see the witness needs a break. As the Crown, I can ask for a break but as the witness is not in the room with me, I am really relying on the intermediary to make that call. Most intermediaries get this right and call for a break when I would not have even known one was needed, but some appear to be reluctant to disrupt proceedings which they should not be. They have an important role and should not apologise for interrupting.” [Prosecution lawyer]

b) delays and extra time required by special measures generally:

“As you can tell, I am a fan. I am a fan but it’s not the intermediary scheme, but the package of measures, including pre-trial evidence, takes up a lot of court time which you need to have judges who can hear the matters. Otherwise the purpose behind the measures is defeated.” [Judicial officer]

*“Look, obviously ground rules hearings are an extra step in the process”
[Judicial officer]*

“But in terms of the benefit of the process, it can be highly beneficial, but at times it can slow the process down in a way which is not necessarily helpful even for the witness, I think... I think because quite rightly, the intermediary is very keen to ensure that the rules which have been set are adhered to. And that can be particularly difficult for lawyers. I have found that, and that's the benefit of having lawyers think about how they have put questions. But in the process of doing so, it can become very staccato, which can extend the time and can make it a little more stressful in that way, I think, for the witness.” [Judicial officer]

Not directly part of the Intermediary Program, but interlinked as an adjacent special measure, one judicial officer expressed concerns about increasing delays caused by pre-recorded hearings:

“Pre-records are a massive problem for us at the moment there and they're spinning out. I don't know why. But whereas we used to have, now it'll be 1–2 days of pre-recorded evidence. We're now being asked to set aside five days for pre-recorded evidence and then that adds. So then the trial takes an extra 5 days because it gets pre-recorded, then played in the trial so that's causing additional days of hearing, court time.” [Judicial officer]

Additionally, one judicial officer described difficulties in instances where intermediaries were brought in after EIC:

*“The ...issue is that the intermediaries can be brought in at different stages of the process. For example, the police might interview a child and then the prosecution get hold of the matter and say, well, we want an intermediary. What do you do with the first interview? When you've got it, it's been recognised that an intermediary is required at another stage. Does that mean that the first interview is meaningless? Worthless? Shouldn't it be excluded and yet we have it? Should the first interview be excluded even though we have it? I don't think we have come to grips with that issue yet.”
[Judicial officer]*

Finally, two judicial officers noted ambiguity around the definition and corresponding thresholds for ‘communication difficulties’ as defined in the legislation. One expressed concern that it was too broadly applied by the courts:

“The first one is the definition of communication difficulties. It's defined in the legislation, and it's been applied very broadly, which I think is where there's a perception of unfairness, often by defence lawyers. And I struggle with that every time... Does being a child in itself mean that a person has a

communication difficulty, for example? If a person suffers with anxiety and therefore takes their time to respond, is that a communication difficulty?... The court's taken a very broad approach to the issue. But I think that it's problematic because it's very hard to know what the parameters are and that's where questions of fairness arise.” [Judicial officer]

Another recalled an instance where another Judge took a narrow view of the threshold:

“There was an application for an intermediary which another judge refused because there wasn’t a medical certificate. And so I think that the notion for some people, the notion of communication difficulty, they see that through the lens of a medical or cognitive issue which does include mental state, but a lot of people maybe come around to that more slowly than others.” [Judicial officer]

Impartiality/neutrality of intermediaries:

None of the lawyers or judges who participated in the Evaluation expressed any concern about the neutrality of the intermediaries. They were very positive about their approach. The only comment from legal practitioners was positive:

“They always come across as entirely impartial and neutral to me. They appear to be totally focused on their role, and not really engaged in a substantive way with the content of the evidence at all (which is a good thing).” [Prosecution lawyer]

Additionally, one judicial officer stated:

“I’ve been very impressed by the professionalism of the ACT intermediaries that we’ve had and I’ve seen ones that have been there from the beginning and ones who have come and have also been trained in the Program.” [Judicial officer]

Recommendations:

A number of recommendations emerged from interviews with judicial officers about the Intermediary Program. A number of judicial officers expressed support for continued expansion of the Program to defendants with communication difficulties:

“I think that in terms of using intermediaries, it's a good idea to look at their use for accused who have communication difficulties, I would think it would be important to - potentially extend it to accused children, accused with cognitive difficulties or what have you.” [Judicial officer]

“I think they're almost more important for accused than for some of the adult complainants in sexual assault trials that that I've seen them used for.” [Chief Justice, Interview respondent].

Another judicial officer suggested that further consideration could be given to alternate supports already available to courts especially in contexts where intermediary assistance is not appropriate:

“As I say, a lot of the difficulties that people arise from discomfort of the situation rather than just general issues. And of course, the Evidence Act allows for narrative evidence, and I see that being used so rarely - I've used it a few times myself. I think very effectively to just invite someone to say we know why you're here. Can you tell us what happened on this day and just let them tell the story? And I'd love to see that used more frequently... I've never, never, from my recollection, had a case or an intermediary, who has said the best way to receive evidence from this person will be to allow them to tell this story.” [Judicial officer]

5.3 Cohort: Parents/Caregivers

Eight parents/caregivers participated in the evaluation. Seven parents/caregivers completed the online survey, and one parent completed the survey and was interviewed. Additionally one parent/caregiver provided unsolicited feedback via email to Police about their experience of the Program.

All respondents have children who speak English as a first language: five children are of Australian/English background, one Aboriginal, and two of other cultural backgrounds.

Five respondents reported that their child does not have any specific communication issue. The other three respondents reported their child has: *“Intellectual disability, autism, speech disorder”*, *“ASD Level 2”*, and *“ADHD/ODD”* and *“hyperactivity”* respectively.

Experience with intermediaries at police interview

Meeting with the intermediary prior to interview:

Two parents/caregivers were present when the intermediary assessed their child. Both reported that the intermediary explained their role, and that the explanations were understood. Both also reported that their child appeared to feel comfortable with the intermediary. One reported that the intermediary made recommendations that helped their child communicate with the police. The other reported being unaware of whether recommendations assisted their child as they were not present during the interview.

Prior to police interview, a majority of parent/caregiver respondents ($n = 5$) reported that their child felt ‘very’ to ‘extremely’ stressed with respondents noting:

“He cried a couple of times before we arrived at the police station. He mentioned that his heart was pounding while we were waiting at the police station.” [Parent/caregiver, Survey respondent]

“My child was very quiet in the time directly prior to the interview. I could tell she was feeling nervous and a little stressed.” [Parent/caregiver, Survey respondent]

The other respondents reported their child seemed ‘sort of stressed’.

Answering police questions:

One parent/caregiver was present during the police interview, and reported that the intermediary provided aids which were extremely helpful, and made it easier for their child to speak with police by:

“Focus[ing] on him and helping him to understand what was happening and brought a tool kit with items to help refocus him and alleviate his apprehension.” [Parent/caregiver, Survey respondent].

This parent also noted that the police supported their child to communicate with them:

“The police officers...were really good with him and adjusted their approach to him as necessary to make him feel more comfortable”. [Parent/caregiver, survey respondent].

Seven parents/caregivers were not present at the police interview: four felt that the presence of an intermediary either did not make their child feel more comfortable to be interviewed, or were unsure whether it assisted:

“My child would not be willing to be put in that situation without me also being present” [Parent/caregiver, Survey respondent]

“I think that the courts and police did everything they could to provide appropriate supports although I am of the view that the justice system tends to fail the victims and support offenders and their rights.” [Parent/caregiver, Survey respondent]

Three responded positively when asked whether the presence of the intermediary assisted their child to answer police questions without them being present:

“[My child’s] first time providing a statement to police, no intermediary was provided or even recommended by the police officers who took the statement. I believe having a meet and greet with the police officer’s [sic] and intermediary in the days prior to providing a statement would have assisted my daughter [to] feel more comfortable. I feel the meet and greet should not be at the same time as the child provides a statement as I feel this does not make them feel more relaxed. The meet and greet should be totally separate.” [Parent/caregiver, Survey respondent]

Of note in this parent’s comment is the recommendation that the ‘meet and greet’ with the intermediary needed to be conducted at least a day prior to the interview. The decision

to schedule a 'meet and greet' is made by the interviewing police officer, not the intermediary.

Feedback relayed to police from a parent/caregiver whose child participated in a police interview with an intermediary indicated the value of the intermediary helping to reduce the child's stress:

*"He [witness] said [the intermediary was] really nice and kind. While he still feels so scared of the court attendance, he mentioned that having [intermediary] around would make a great difference for him."
[Parent/caregiver, Unsolicited feedback]*

Experience with intermediaries at court

The children of four of the parent/caregivers, all aged 10–12 at the time of the court hearing, underwent cross-examination about what they told police; three children had an intermediary present. These children all gave evidence at a PTE hearing, and their parents all stated that pre-recording their child's evidence was extremely helpful to their child:

*"Being able to provide evidence prior to the trial meant there was minimal waiting around for my daughter to be called. As I provided evidence at the trial, it also meant that we weren't dealing with it all in one day."
[Parent/caregiver, Survey respondent]*

"He didn't want to get questioned a lot at the court but because of the recording, there were less questions from the lawyers." [Parent/caregiver, Survey respondent]

Three parents stated that their child was 'very' or 'extremely stressed' before giving evidence at court, and one as 'sort of stressed'. Several parents commented on their own stress levels.

"She did feel quite stressed, which is understandable. It's a pretty adversarial space, so I feel quite stressed." [Parent/caregiver, Interview respondent]

*"It's very hard to know your child is giving evidence in court. In any court. Especially when you cannot be in there with them to support them or make sure they are not being asked questions to try to trick them and someone is trying to tell them that what they are saying didn't happen."
[Parent/caregiver, Survey respondent]*

Answering questions at court:

Two parents were present when their child was assessed by the intermediary prior to court. No respondents (including survey and interview respondents) observed their child give evidence at court. When asked whether anything might have made it easier for their

child to give evidence at court, one suggested the pre-trial hearing taking place somewhere other than at the courts, noting:

*“...even attending the remote witness rooms is a little scary for a child.”
[Parent/caregiver, Survey respondent]*

Another, whose child did not receive intermediary support at court stated:

“My child shared that the other lawyer came across as not knowing how to communicate effectively with children and his tone felt aggressive which frightened my child.” [Parent/caregiver, Survey respondent]

The same parent later stated:

“...lawyers should really learn how to talk to children in a gentle and understanding manner (DPP lawyer was very nice, my child said). It’s not fair for children to face the stress of providing evidence as a witness. Despite the efforts of intermediaries and recorded testimony, direct interactions can still be overwhelming, so a caring approach is essential.” [Parent/caregiver, Survey respondent]

One parent also spoke about how ‘aggressive’ the defence lawyer was towards her child:

“I think court started at 9:30 am and it was meant to be done by 1:30 pm...And it continued into the afternoon till around 4:00 because the defence were quite aggressive. And that was starting to be a problem in terms of the aggression of the defence. And I think the intermediary had to intervene, and so did the prosecution, every time the defence was out of line. For my daughter, the end of the day, she said “the lady was becoming really aggressive and that was starting to stress her out” but I think that’s a strategy that they use, unfortunately.” [Parent/caregiver, Interview respondent]

Overall, most respondents noted that their child did not have much to say about the intermediary at court, for example:

“She didn’t mention anything specific with the intermediary. I think she did find her helpful and said she was a nice lady and that was good but there wasn’t any real comments around her. There was a lot of commentary around the line of questioning and how aggressive the defence lawyer was, which was obviously in the forefront of her mind more than anything, yeah.” [Parent/caregiver, Interview respondent]

Preparation for court:

Three parents said their child knew all they needed to know about giving evidence at court prior to going to court with one respondent noting:

*“The process was well explained to my daughter by the intermediary.”
[Parent/caregiver, Survey respondent]*

Another was unsure, stating:

“I think he sort of knew what was happening but not completely understanding.” [Parent/caregiver, Survey respondent]

One parent also suggested their child may not have understood what to expect at court and was apprehensive about a number of aspects of the process:

“One of her main concerns was that she'd see her father in the courtroom or would have to be physically in the courtroom, and that was quite frightening, but with the supports in place with being in the remote witness room and having these other supports and the intermediary as a support person, and actually turning the cameras away from the perpetrator. So that she just saw the lawyers and the judge, that was actually some of the things they put into place to reduce that anxiety. Because once she, when she was in there, it was fine, she felt quite comfortable. But I guess not knowing, not having any idea of what this involves and being frightened about seeing the perpetrator in court were some of her concerns.” [Parent/caregiver, Interview respondent]

Overall reflections:

While parents/caregivers noted the benefits of intermediary assistance, especially for those who were not able to be present, their feedback about the impact of the court and justice process on their child giving evidence was strongly negative:

“It helped knowing that the intermediary was there to set ground rules and interject if needed.” [Parent/caregiver, Survey respondent]

*“Seeing him feel anxious and fearful in court is heartbreaking; no child should have to experience such emotional strain at such a young age.”
[Parent/caregiver, Survey respondent]*

“I am saddened by the fact that a young child has to testify against her parent in the first instance.” [Parent/caregiver, Survey respondent]

*“It's very hard to know your child is giving evidence in court. In any court, especially when you cannot be in there with them to support them or make sure they are not being asked questions to try to trick them and someone is trying to tell them that what they are saying didn't happen.”
[Parent/caregiver, Survey respondent]*

And in terms of delays between investigation/police interview and trial:

“I'm finding dealing with the criminal justice system somewhat challenging, largely because of the time that it takes between someone being charged for an offence and it going to trial is a long time. To give you an idea, the crimes committed against me and my daughter occurred in 2021 and prior to 2021, and we're now in 2024 and we're still haven't finished the court process.” [Parent/caregiver, Interview respondent]

“The first time we were in court, we turned up and there was no judge available to hear the matter. So we had to leave. And on the second time, the defendant found a reason or his lawyer did to not go ahead with the hearing. So I mean, there's a lot of time wasted. There's a lot of time wasted with defendants pleading guilty or moving the goal posts and not pleading guilty and changing their mind, and that essentially means that all these support systems and the amount, just from a monetary perspective, it's quite expensive, with the waste of public time and money. So people like victims of crime and all the support systems around them have to appear in court to find out that they can go home and you've taken time off work. So it is very, very frustrating from that standpoint and my it's very disruptive. I have to take my child out of school, so I would consider that to be very disruptive for anybody, you know, not just a child, but those experiences are frustrating because the intermediary has to be there just to be told to leave.” [Parent/caregiver, Interview respondent]

As well as siloed agencies and organisations that parents, witnesses and victims of crime are required to navigate:

“I think one of the things that needs improving is...there's not a great deal of cross-collaboration between agencies and each agency is a bureaucracy in its own right... It's just when you're dealing with these different agencies and their complexities and their inability to talk to somebody else where there's an overlap with what they do and another organisation, they don't seem to talk very much.” [Parent/caregiver, Interview respondent]

These experiences, cumulatively, seem to have been at the forefront of parents and caregivers' minds in reflecting on their overall experience of the justice system.

In summary, parents and caregivers appreciated the role of the intermediary and the support and communication assistance they provided for their child but were concerned about the challenges of the criminal justice system for child complainants and witnesses. Intermediaries are one component of a complex justice system which parents, caregivers and their children struggle to navigate. Notably, children and young people's experiences of being engaged with aggressively by lawyers was raised by other stakeholders. There is

some evidence that intermediaries attempt to attend to such behaviours and that the role of intermediaries in doing so was understood.

5.4 Cohort: ‘Child’ witnesses

Four children completed an online survey: three female, and one male.

Two of the respondents are now 18+ years old, and two are aged 12–14 years. The survey did not ask about the reasons/the offences involved in their matters but the administrative data indicate that most were related to (child) sexual assault and other offences.

Experience with intermediaries at police interview

Three of four respondents had an intermediary at police interview, one did not.

Meeting with the intermediary prior to interview:

Of the three respondents who had an intermediary at police interview, two reported meeting with the intermediary prior to answering police questions and having enough time with the intermediary. One reported not meeting with the intermediary prior to answering police questions. The two who met with the intermediary reported feeling ‘good’ when talking with the intermediary prior to answering police questions.

Understanding of the intermediary role:

The child witnesses who met with an intermediary prior to police interview recalled the intermediary explaining their role to them, and understood the explanation.

Answering police questions:

Three respondents answered police questions with an intermediary present; two reported finding it ‘not that hard’ to understand the police questions. This may reflect the work of the police and the intermediary prior to the interview to establish the best way to communicate with that child respondent.

The issue for the other child who answered questions with an intermediary present was that it was hard to remember what the police wanted to know: “[it] was hard remembering what happened.” [Child witness, Survey respondent]. This respondent also reported not being able to tell the police everything they wanted to say: “[I] would’ve liked to have mentioned a couple of incidents that were important.” [Child witness, Survey respondent].

One respondent who answered questions without an intermediary present reported finding it hard to understand police questions, not that hard to remember what the police wanted to know, and sort of hard to tell the police what they wanted to know: “I found it hard to communicate and understand at times what was being asked.” [Child witness, Survey respondent].

All respondents reported feeling either ‘scared/shaky’, ‘upset’ or ‘nervous’ during questioning regardless of the presence or not of an intermediary.

Intermediary support during police interview:

The three respondents with an intermediary during police interview stated that the intermediary ‘helped a lot’ to understand police questions during the interview and that aids used by the intermediary were also helpful. Three of the four reported receiving sufficient breaks throughout the interview (one of three without an intermediary and two with an intermediary). One who answered questions with an intermediary present stated:

“The intermediary...explained questions in a way I understand and kept suggesting breaks.” [Child witness, Survey respondent].

Experience with intermediaries at court

All four child respondents went to court to answer questions about what they told police and had an intermediary present. Two of the three who had an intermediary at police interview said they had the same intermediary at court; one had a different intermediary at court. All three met with the intermediary prior to answering questions at court and received and understood explanations about what the intermediary was there to do. After speaking with the intermediary and prior to answering questions at court, three respondents felt ‘good’, the other respondent felt ‘nervous’ and ‘scared/shaky’.

Answering questions at court:

Two respondents were asked questions by the defence lawyer, the prosecution and the judge/magistrate. The other two respondents were asked questions by the defence and prosecution. One respondent felt negatively about the questions asked in court and recalled finding it hard to understand the questions asked:

“The questions were too long/complicated, they asked about the different times that things happened but not in order.” [Child witness, Survey respondent]

Another reported feeling positively about the questions asked in court but when asked whether they got the chance to tell the court everything they wanted to say, they moved a sliding scale to 3 out of 10 (indicating they ‘did not get the chance’):

“I understood the questions, they spoke at a normal pace, the questions were short and simple, I felt confident answering their questions.” [Child witness, survey respondent]

Two had mixed feelings about the questions asked in court with one indicating: *“I felt confident answering their questions”* but also reporting that:

“They tried to make me say something I didn’t mean or ‘they put words in my mouth’, they expected me to remember too much information.” [Child witness, survey respondent]

And the other stating:

“I understood the questions, the questions were short and simple, they used words I could understand”, but also:

“I didn’t understand some questions, they spoke too fast, they repeated the same sort of question, and they asked about the different times that things happened but not in order.” [Child witness, survey respondent]

These two respondents reported finding it ‘extremely hard’ to understand the questions they were asked.

Intermediary support at court:

Two respondents reported that the intermediary intervened during questioning at court. One who felt positively about the questions asked in court also reported that the intermediary did not intervene during questioning. The other, who reported feeling negatively about the questions asked, stated they were unsure whether the intermediary intervened during questioning. All four respondents received aids to assist during questioning and all found these very or extremely helpful. Three of four respondents reported feeling positively about having the intermediary with them at court:

“It made me feel more comfortable.” [Child witness, survey respondent]

“It was comforting and helpful.” [Child witness, survey respondent]

“Made me feel more relaxed.” [Child witness, survey respondent]

Overall, all respondents felt they were treated very and extremely well at court respectively with one respondent stating:

“The support dogs were a big help.” [Child witness, survey respondent]

And another respondent noting:

“The defence made me feel not so good.” [Child witness, survey respondent]

5.5 Cohort: Adult witnesses/defendants

Three adult witnesses completed an online survey: two female, and one male. Two respondents were 40 years or older, and one 18 –24 years of age. Two identified as Australian/English, and one as Aboriginal. Three adult witnesses participated in an interview.

Experience with intermediaries at police interview

Two survey respondents did not have an intermediary at police interview; one did. None of the interview respondents had an intermediary at police interview.

Meeting with the intermediary prior to interview:

One respondent who had an intermediary at police interview reported meeting with the intermediary prior to answering police questions but not having enough time with the intermediary: *“I would have liked more time.” [Adult witness, Survey respondent]*. The respondent reported feeling ‘nervous’, ‘upset’ and ‘scared/shaky’ when talking with the intermediary prior to answering police questions.

The intermediary explained their role to the respondent and the explanation was understood.

Answering police questions:

The respondent who answered police questions with an intermediary present reported finding it extremely hard to remember what the police wanted to know and extremely hard to tell the police what they wanted to know. S/he stated not being able to tell the police everything they wanted to say: *“I have had about 8 sessions and there’s still more to discuss” [Adult witness, survey respondent]*. During the police interview, s/he reported feeling ‘confused’, ‘upset’, and ‘scared/shaky’.

The two respondents who spoke with police without an intermediary present reported finding it ‘very hard’ to *remember* what the police wanted to know’ and ‘extremely hard’ to *tell the police* what they wanted to know but felt they were able to tell the police everything they wanted to say. The other respondent reported finding it ‘sort of hard’ to tell the police what they wanted to know, and ‘unable to tell the police’ everything they wanted to say, being ‘nervous’ and ‘upset’ during the interview.

The respondent with intermediary assistance during police interview stated that the intermediary helped ‘a lot’ to understand police questions during the interview and that aids used by the intermediary were also ‘extremely helpful’. S/he reported receiving sufficient breaks throughout the interview and that the intermediary offered support *“before, during [and] after”* the interview *[Adult witness, survey respondent]*.

Experience with intermediaries at court

Two of the three survey respondents went to court to answer questions about what they told police and had an intermediary present. Both respondents met with the intermediary prior to answering questions at court and received and understood explanations about what the intermediary was there to do. After speaking with the intermediary and prior to answering questions at court, both said they felt ‘good’, with one also reporting feeling ‘confident’ and ‘calm’; the other was ‘nervous’ and ‘scared/shaky’.

Two interview respondents reported feeling anxious:

“I was a bit anxious about giving evidence, so I wanted to get through, wanted to get through this process.” [Adult witness, Interview respondent]

“I remember before I went on the stand, I had to throw up. I was so nervous.” [Adult witness, Interview respondent]

This same respondent also reported feeling unprepared for court:

“Yeah, I like... I felt very unprepared after I gave evidence. Because everything I put in the statement was true, so I didn't look... I just looked back through it quite quickly and I didn't read through it very thoroughly, so I should have... I should have spent more time looking at what I'd written down.” [Adult witness, Interview respondent]

In contrast, one interview respondent reported feeling more prepared for court following their communication assessment with the intermediary:

“But sitting down with the intermediary for this communication assessment, I actually think that was probably the single most beneficial thing leading up to my days testifying... So I think it was only because of the intermediary that I felt even 2% prepared so I'm really, really grateful for that communication assessment. I really was.” [Adult witness, Interview respondent]

Answering questions at court:

Both survey respondents had the intermediary with them while answering questions in the remote suite. One also had a counsellor with them. Both respondents were asked questions by the defence lawyer. One “understood the questions” asked in court, while the other found the questions challenging:

“They spoke too fast, the questions were too long/complicated, they asked about the different times that things happened, but not in order, they made me feel confused, they suggested I wasn't telling the truth.” [Adult witness, survey respondent].

“Yeah, I found that a little bit difficult at times. I just got a little bit lost at some points in time. Just following along with what he was... What his questions were. I was feeling a bit like overwhelmed and flustered at the time. Yeah, I answered to the best of my ability, but I could tell that my memory was affected as well as my comprehension to comprehend what he was communicating as well.” [Adult witness, Interview respondent]

One survey respondent felt overall that it was very hard to understand the questions asked, but that they got the chance to tell the court everything they wanted to say. The

other, despite finding the questions easier to understand, reported not getting the chance to tell the court everything they wanted to say. This appears to be a function of the actual questions they were asked – witnesses are limited to answering precise questions asked by the prosecution and defence lawyers (and sometimes the judge). Intermediaries have no ability to influence the scope or direction of questioning of witnesses.

Another respondent reported difficulties with sequencing of events:

“Yeah, he jumped around with the events around the, so the events that he's been prosecuted for, they were in a chronological order, but there were other events that were ancillary to those events that this guy's been prosecuted for, and those events were, I don't think, from memory they weren't in chronological order. That's what I had trouble following at points in time. He was asking, you know, did you speak to your mum at this point in time. And I thought I hadn't, but then after thinking a bit more, I'm like OK, I have actually spoken to my mum about it.” [Adult witness, Interview respondent]

Intermediary support at court:

Both respondents reported that the intermediary intervened during questioning at court and receiving aids from the intermediary. One interview respondent stated:

“I think she intervened a few times. Just enough, I think.” [Adult witness, Interview respondent]

Both also reported finding the aids ‘very’, and ‘extremely helpful’, respectively. One stated:

“You know, she brought in some fidget toys for me and little things like that help you calm down enough. Just to do what you're there to do.” [Adult witness, Interview respondent]

Overall, both respondents felt they were treated ‘very’ and ‘extremely well’ at court respectively and said they had been able to have enough breaks while answering questions. One interview respondent stated:

“Yeah, the only thing I wanted to say is how beneficial the program was. Yeah, very grateful for the program. Really good, it ‘makes a big difference.’ [Adult witness, Interview respondent]

And another reported:

[I think there was a lot that can be attributed to having an intermediary present as to how I managed to get through it.” [Adult witness, Interview respondent]

In contrast, one interview respondent reported that neither the intermediary nor the Judge intervened during questioning despite finding the questions difficult to comprehend:

“I just got a little bit lost ... the intermediary didn’t intervene at all...the judge didn’t intervene at all, no.” [Adult witness, Interview respondent]

5.6 Cohort: Remote suite staff/Court staff and Intermediary Program administrators

Seven court staff and Intermediary Program administrators participated in the Evaluation. Three court staff completed an online survey; one court staff completed a survey and also participated in an interview. Two Intermediary Program administrators completed a survey, and one administrator completed a survey and was interviewed.

Experience working with intermediaries:

All surveyed remote suite staff ($n = 4$) had experience working with an intermediary in matters involving child and adult complainants and witnesses. One respondent also had experience working with an intermediary in a matter involving an adult defendant. All surveyed remote suite staff ($n = 4$) also reported having worked with an intermediary in matters involving a child or vulnerable adult with disabilities; three reported having worked with an intermediary in a matter involving an Aboriginal and/or Torres Strait Islander witness/defendant; three with a witness/defendant from a multicultural community; and two with a LGBTQI+ witness/defendant.

All survey respondents have worked with an intermediary in 10 or more court matters.

Understanding of the intermediary role:

All surveyed remote suite staff respondents ($n = 4$) reported that the intermediary role had been clearly explained to them and reported broadly similar understandings of the intermediary role.

Types of recommendations/directions for questioning:

When asked what sort of recommendations are made in ground rules hearings for accommodation of communication needs, remote suite staff listed many, varied aids and strategies including, but not limited to: ‘breaks’, ‘sensory adjustments (lights, volume, fidgets, weighted tools etc.)’, ‘fixed in place chairs’, ‘simplified questions’, ‘stimulation toys’, and ‘visual aids’. Longer lists were provided by Intermediary Program administrator respondents. For example, one respondent stated:

“They are many and varied. Recommendations are tailored to each individual in response to identified communication needs. It is not an exhaustive list, but some common recommendations include:

- *The need for focus or emotion regulation items*
- *Introduction of parties prior to questioning*
- *Addressing the witness by their preferred name and pronouns*

- *Dimming lights in the remote suite*
- *Ensuring the defendant is not visible on screen to witness*
- *Allowing the presence of the court support dogs*
- *Ensuring questions are asked in a slow, steady pace*
- *Asking questions containing one idea at time*
- *Avoid tag questions*
- *Use simple vocabulary and avoid complex terms*
- *Avoid questions framed in the negative*
- *Avoid repetitious questioning*
- *Use signposting for new topics*

Allow sufficient time to process questions and respond.” [Intermediary Program administrator, Survey respondent]

Acceptance of recommendations/directions for questioning (if relevant):

All three Intermediary Program administrators who completed the survey reported that ‘almost all’ or ‘most’ of the recommendations are directed by judicial officers. Where recommendations were not directed, these tended to ‘relate to parties providing their questions in advance of the hearing’ or ‘sharing of draft questions’ in advance of a hearing or trial.

Benefits of intermediaries’ advice

Extent to which better evidence is elicited (child):

Two of four surveyed remote suite staff reported that child witnesses/defendants appear to give better evidence at police interview or at evidence in chief when they have an intermediary present than those without. The other two respondents had no experience of intermediaries’ assistance at police interview or evidence in chief. Comparatively, at court, all four remote suite staff reported that intermediaries assist child witnesses/defendants to give better evidence, noting:

“I found those with an intermediary seemed to be more comfortable and were able to answer questions more effectively.” [Remote suite staff, Survey respondent]

“...the difference is night and day. So I remember...before the Intermediary Program happened, we had a young child who was giving evidence...and we thought he was doing quite well until he just went into complete meltdown, broke down, threw himself on the ground crying because he thought that if...he took a break, he thought that the parties would think he was lying because he'd take a break to go get his story together. Whereas if we had an intermediary in that situation, that communication...could be identified and

even if that hadn't been identified, the body language and the monitoring, they would have been able to flag a break for the witness.” [Remote suite staff, Interview respondent]

Responses from Intermediary Program administrators mirrored those of remote suite staff, reporting positive impacts from intermediary assistance at police interview/evidence in chief on child witness/defendant’s capacity to give better evidence with some caveats. Two Intermediary Program administrators noted that much of the quality of the evidence is contingent on external factors such as the skill of the interviewer. However, one program administrator also noted that intermediary support facilitates interviews with witnesses whose evidence may not otherwise have been taken due to their vulnerability and young age. Another program administrator stated:

“intermediaries improve the criminal justice experience overall for vulnerable people, whether that is because they give their best evidence or they felt they were able to meaningfully participate.” [Intermediary program administrator, Survey respondent].

Intermediary Program administrators were similarly positive about the role of intermediaries in the court context for child witnesses/defendants giving evidence, noting:

“Child witnesses with intermediaries are less likely to be confused by questioning.”

And:

“intermediaries have resulted in vulnerable witnesses participating where there otherwise would have very likely been some kind of attrition.” [Intermediary Program administrators, Survey respondents]

“The communication support, they're there to facilitate communication and they're there to be a physical reminder that actually this person needs adjustments to the process, whether that's breaks, whether that's (something else). It's that reminder that that person is part of that process rather than just barrelling along because everybody else is understanding and gets it where that person might not.” [Intermediary Program administrator, Interview respondent]

Extent to which better evidence is elicited (adult):

No remote suite staff reported having direct experience of intermediaries’ assistance of adult witnesses/defendants at police interview or evidence in chief and consequently, could not report on the quality of evidence elicited. Comparatively, all four reported positive effects of intermediaries’ assistance on adult witnesses/defendants’ evidence in court.

Intermediary Program administrators' responses when asked whether intermediary assistance at police interview and at court facilitated better evidence from adult witnesses/defendants mirrored that of the same question for child witnesses/defendants. Intermediaries assist both police and court questioners to better understand the communication needs of vulnerable witnesses/defendants, and to employ strategies that can maximise the communication capacities of these witnesses/defendants. Respondents gave examples where questioning either could not begin or be completed without the assistance of an intermediary.

'Best thing' about working with intermediaries:

Remote suite staff variously reported appreciating the proficiency and professionalism of intermediary staff ($n = 2$) and their positivity and calming presence ($n = 2$). Cumulatively, the respondents noted that intermediaries' assistance improves witnesses' experience of the court process and remote suite staff's work supporting the courts:

"I haven't had a single problem since the Program started, and it's only just been positives and just enabling us to do things we couldn't do before."
[Remote suite staff, Interview respondent]

"The best thing is seeing them be able to assist vulnerable witnesses in a way we wished we could before they came on board." [Remote suite staff, Survey respondent]

"The Program is amazing, we have a very strong relationship with the team and it's fantastic seeing the direct impact they have on the witnesses."
[Remote suite staff, Survey respondent]

"I have seen them assist with interviews with police and questioning at court, where I am certain there wouldn't have been an engagement without their involvement. I have seen people who have had an intermediary say that they have felt properly heard for the first time, and comments from support and advocacy services who have said the same. Their work is truly impressive."
[Intermediary program administrator, Survey respondent]

"The presence of intermediaries in the CJS undoubtedly enables access to justice for some individuals for whom this has historically been denied, due to procedural or accessibility reasons." [Intermediary program administrator, Survey respondent]

Changed practices:

Three of four remote suite staff respondents reported observing changes in the way judicial officers intervene in the questioning of vulnerable witnesses since the introduction of the Intermediary Program, noting "[judicial officers] are more open" and

“some...now pre-emptively interject before an intermediary does.” [Remote suite staff, Survey respondents].

Two of three intermediary program administrators were able to comment on changed practices in the way judicial officers intervene in the questioning of vulnerable witnesses or defendants. Both highlighted the openness of judicial officers to awareness and recognition of communication needs of witnesses and defendants, and to intermediaries’ recommendations. One respondent suggested awareness among judicial officers is more pronounced among judiciary at the Supreme Court compared with the magistracy at the Magistrates Court.

Another administrator commented on changed practices among police:

“I think that there's been a huge cultural shift. I think there's been a huge shift in their way that they sort of embrace intermediaries into the fold. They do their own thing now they're very proud to say, to the intermediaries I've started doing this when I do engagements. So there's been a shift in understanding and interacting with very vulnerable people, very young people.”

Room for improvements

Most challenging thing about working with intermediaries:

The remote suite staff had nothing to report when asked what, if any, challenges they had experienced while working with intermediaries.

One Intermediary Program administrator noted challenges for intermediaries meeting court deadlines when preparing their Court Reports for submission especially in circumstances where a witness/defendant requires extra time during the Communication Assessment process. The same respondent also noted difficulties supporting intermediaries who are vicariously traumatised by their work while maintaining operational requirements. Another Intermediary Program administrator stated that there are systemic barriers in the adversarial court system *“that even the most talented and capable intermediary can’t overcome.”* [Intermediary Program administrator, Survey respondent].

Impacts on timeliness of proceedings:

Indications of timing between ground rules hearings and trials varied among Intermediary Program administrator responses. All three respondents noted that the time can vary, however one noted time differences of months in advance to the same day, while the other two indicated that it varied between weeks prior and the same day. When asked what an optimal time difference would be, two respondents noted that a week would allow for the parties to make necessary adjustments to their questions and the intermediary to gather necessary resources for the trial.

Impartiality/neutrality of intermediaries:

All remote suite staff ($n = 4$) reported that intermediaries retain their impartiality at all times.

Similarly, Intermediary Program administrators universally reported that intermediaries maintain their impartiality and neutrality in police and court settings. However, one respondent noted that other parties not aware of the intermediary role such as family members or support persons sometimes expect an intermediary to offer emotional or other support which is beyond the purview of the intermediary role. Another respondent highlighted the difficulty for some intermediaries of maintaining impartiality while not appearing 'robotic' with the witness.

5.7 Cohort: Victim Support ACT

Three Victim Support ACT staff completed a survey.

Experience working with intermediaries

All survey respondents ($n = 3$) had experience working with an intermediary in matters involving vulnerable adult witnesses. Two of three respondents had worked with an intermediary in a matter involving a child witness, and one respondent had experience working with an intermediary in a matter involving a child suspect/defendant, and an adult suspect/defendant respectively.

All three had worked with an intermediary in a matter involving a witness/defendant with disabilities. Two of three respondents also reported having worked with an intermediary in a matter involving an Aboriginal and/or Torres Strait Islander witness/defendant, and one respondent had worked in a matter involving a witness/defendant from a multicultural community. No respondents reported experience working with an intermediary in a matter involving a child under 5 years old, or a LGBTQI+ witness or defendant.

All three respondents had worked with an intermediary in 1–4 police cases. Two of three respondents had worked with an intermediary in 1-4 court matters, and one respondent in 5–9 court matters.

Understanding of the intermediary role:

All three respondents reported that the intermediary role had been clearly explained to them and reported broadly similar understandings of the intermediary role.

Types of recommendations/directions for questioning:

All three respondents observed intermediaries use aids such as pictures, post-it notes or 'focus items' during interviews and consider these aids to be "extremely helpful" ($n = 2$). One respondent suggested that the aids act as:

*“another form of communication, which eased the client and supported alternative means of communication and allowed further engagement.”
[Victim Support ACT staff, Survey respondent]*

Benefits of intermediaries’ advice

Extent to which intermediaries’ advice has assisted in conduct of interview/your role:

One respondent noted that intermediaries ameliorate pressures they feel to advocate for ‘adjustments’ for their client:

“It is almost a sigh of relief when I hear an intermediary is appointed because I know how positive their impact is. It takes the pressure off me to advocate for adjustments because the intermediary provides the structure and suggestions so well that advocacy is no longer required.” [Victim Support ACT staff, Survey respondent]

Extent to which better evidence is elicited (child):

Two respondents who had experience working with an intermediary in a matter involving a child witness/defendant, both indirectly suggested that intermediaries assist children to give better evidence at police interview/evidence in chief by itemising ways in which intermediaries “educate and assist” police. For example, one respondent noted that intermediaries provide “communication aids and tools” and “suggestions [that] are age appropriate” which helps to “minimise the trauma a child may experience while giving their evidence” [Victim Support ACT staff, Survey respondent].

Both respondents reported similar observations of children’s evidence at court with one respondent noting:

“Ground rules being implemented and followed is beneficial to the witness and the Court. It supports the process of cross examination to ensure the child understands the questions and can provide their honest answer. It can also take the responsibility off the child to request a break if timed/allocated breaks are a recommendation in the report.” [Victim Support ACT staff, Survey respondent].

Extent to which better evidence is elicited (adult):

Two respondents had experience working with an intermediary in a matter involving an adult witness/defendant at police interview/evidence in chief. These two respondents responded positively when asked whether intermediaries assist these witnesses/defendants to give better evidence:

“I have seen interviews both with and without an intermediary appointed and there is a significant difference in Police engagement, even so far as confidence to go ahead with the interview, particularly if the witness has a

disability that impacts their verbal communication.” [Victim Support ACT staff, Survey respondent]

Three respondents reported having experience working with an intermediary in a matter involving an adult witness/defendant at court. All three also responded positively when asked whether intermediaries facilitate better evidence from vulnerable adults. Two of three focused specifically on intermediaries’ capacity to minimise trauma experienced by the witness/defendant while giving evidence:

“The intermediary uses practical tools and strategies to assist in keeping the witness within their emotional window of tolerance to try to avoid any dissociation or panic attack or other episode that could cause them harm or interfere with their communication capacity.” [Victim Support ACT staff, Survey respondent]

Impact of intermediaries on confidence (child):

Of two respondents with experience with a matter involving a child witness/defendant and an intermediary, both reported that they experience children to be more confident answering questions with an intermediary than children answering questions without an intermediary.

Impact of intermediaries on confidence (adult):

Similarly, all respondents considered adult witnesses/defendants with an intermediary to be more confident answering questions than those without an intermediary.

‘Best thing’ about working with intermediaries

“Their capacity to help keep my client emotionally regulated while giving evidence.” [Victim Support ACT staff, Survey respondent]

“They are greatly experienced and respected, so Police and Courts are far more receptive.” [Victim Support ACT staff, Survey respondent]

Room for improvements

Most challenging thing about working with intermediaries:

One respondent reported difficulties around intermediaries *“understanding the boundaries of their role”*. Another suggested that explanations from intermediaries around why they cannot be *“1:1...in the same room”* are occasionally confused or over-emphasised. However, this is a clear procedural rule – that an intermediary is never to be alone with a witness. The other respondent reported historical difficulties with a lack of resources and funding and suggested further resources are required to support vulnerable accused.

Impartiality/neutrality of intermediaries:

All three respondents reported that intermediaries remain impartial throughout proceedings. However, one respondent noted that this can be confusing for clients who see intermediaries as “*their advocate*”.

Training and support:

One respondent indirectly noted that additional training may be needed for defence lawyers:

“I have experienced defence dispute an Intermediary being appointed due to believing this to be advantageous to the witness. This is incorrect – however I am unsure if the benefit is understood by defence.” [Victim Support ACT staff, Survey respondent]

5.8 Cohort: Liaison officers

Four liaison officers participated in this evaluation. One completed an online survey, one completed the survey and was interviewed, and two others participated in an interview. These included DPP Witness Liaison Officers with over 10 years’ experience in their role, a Disability Liaison Officer and a social worker with extensive experience as a disability advocate in the ACT respectively. All had experience working with an intermediary in matters involving child and adult witnesses but not in a matter involving a child or adult suspect/defendant.

Benefits of intermediaries’ advice

Extent to which better evidence is elicited (child):

Both survey respondents stated that, from their perspective, child witnesses appear to give better evidence with an intermediary than without. Both respondents highlighted the fact that communication recommendations and directions are tailored to each individual child, resulting in strategies that can meet the idiosyncratic needs of children with different ‘*literacy level[s]*’, ‘*cognitive...maturity*’, and ‘*trauma.*’ [Liaison officer, Survey respondent].

Extent to which better evidence is elicited (adult):

The same or similar responses were recorded for adult witnesses at court. One respondent noted that whether or not a vulnerable adult with an intermediary is able to give better evidence is a “*case by case scenario*” depending, in part, on the “*intersectionality of backgrounds/needs*” [Liaison officer, Survey respondent]. An interviewee also noted that eliciting better evidence from vulnerable adults is a ‘group effort’:

“Again, so many hidden disabilities. People are not always openly discussing what disabilities they have, and then compounded by the trauma, and not being able to verbalise anything and then shutting down, dissociating and

everything. It's definitely very beneficial to ensure they have regular breaks, but it's such a group effort. It's a combination of having an intermediary, having emotional support, having counselling support or psychological support before, during and after, and even a medical team for those who may have seizures.” [Liaison officer, Interview respondent]

‘Best thing’ about working with intermediaries:

One survey respondent said the intermediary team are ‘lovely to work with’ and the other stated:

“Together, we can bring some reassurance to the witness about implementing the recommendations made and granted, to ensure the witness provides their best evidence.” [Liaison officer, Survey respondent].

“I think they fulfil a really important function around addressing systemic issues and systemic inadequacies. They can't always fully do that, but they can go a long way to making sure that someone is more included in processes, has more information in ways that meet their needs, and can make informed decisions around the processes and situations that they're going through. Whilst their role itself is in helping the courts or in helping the system rather than helping the individual directly, their role can serve to make the system sort of more fair. One of the complicating factors is the challenges around how all the systems work together to make sure that that people have a better experience with any justice systems that they're engaging with.” [Liaison officer, Interview respondent]

“[The Program is] bringing into conscious awareness things that the systems are not necessarily consciously always aware of. And giving practical solutions and pathways of steps people can take to adjust what they're doing.” [Liaison officer, Interview respondent]

Room for improvements

Most challenging thing about working with intermediaries:

One interviewee noted some challenges managing differences in the ways individual intermediaries approach their work:

“I think it's just everyone works differently and they all have their different specialties and different personalities and it's just if you haven't worked with them before, I think it's hard to gauge the expectations and how they operate.” [Liaison officer, Interview respondent].

Neither survey respondent had any particular challenges to report in their experience working with intermediaries.

Three respondents noted that to varying degrees, the Program is limited by allocated funding and referral pathways. Specifically, one survey respondent noted that the Program requires more funding. Two interviewees spoke along similar lines, noting the limitations in referral pathways for access to intermediaries:

“One of the challenges at the current time is around the – so in some ways, and this is a broader systemic sort of topic, it's being assumed that people with communication barriers are the exception in interacting with justice system, rather than actually it being the rule. So there's a requirement for there to be a referral and there's limited pathways for referral. That at times can make it more complex...my ideal would be that it became universally offered and then – with the opt out – if it became apparent that the person was someone who didn't want an intermediary involved and also wasn't experiencing communication barriers.” [Liaison officer, Interview respondent].

All three advocated for the Program's expansion. One interviewee stated:

“I can only imagine that this space may grow. I think there's room for society to be more aware of hidden disabilities and more understanding that actually most people have anxieties and could benefit from having an intermediary, whether it's a victim or a defendant.” [Liaison officer, Interview respondent].

Impacts on timeliness of proceedings:

One respondent reported that in their experience, intermediary involvement does not impact the timeliness with which the matter is handled, noting that *“if it did for whatever reason, it is worth the delay.” [Liaison officer, Survey respondent].*

The other was unsure about impacts on timeliness and suggested it may be “case by case”.

Training and support:

When asked whether the respondents had been provided with sufficient training and support to work with intermediaries, their answers were mixed. One respondent answered positively that sufficient training and support had been provided. The other was unsure, noting areas for additional training or support that could assist:

“Drawing clear boundaries of communication between the intermediary and my role when at court and providing this information to my work area; and having readily available access to recommendations for the relevant witness to facilitate meetings that occur without the intermediary (so that appropriate therapeutic items are available)” [Liaison officer, Survey respondent].

5.9 Cohort: Intermediaries

Professional/demographic background:

Thirteen intermediaries completed the survey or were interviewed including three panel intermediaries and 10 in-house intermediaries. Ten intermediaries completed the online survey (including 8 in-house intermediaries and 2 panel intermediaries) and three were interviewed (including 2 in-house and 1 panel intermediary). Of the survey respondents, three are speech and language pathologists, three social workers, and the others are an occupational therapist, a psychologist, a child protection professional, and a lawyer with a psychology degree.

Experience working as an intermediary

Of the interview respondents, one works full time, two work as an intermediary part time.

The number of police referrals intermediary respondents had dealt with ranged between 4 (for a relatively new panel intermediary) and 100 to over 200 for an experienced in-house intermediary over a period of five years. One intermediary reported having done 15–20 police and court referrals with the same witness or defendant.

Police interviews

Ten intermediary survey respondents had been involved with police interviews with a child/adult witness and eight with both a child/adult witness and a child/adult suspect.

All ten surveyed intermediaries have been involved in police interviews with witnesses with disabilities, 7 have experience with Aboriginal and/or Torres Strait Islander witnesses, 6 with child witnesses under 5 years old, 6 with LGBTQI+ witnesses, and 5 with Culturally and Linguistically Diverse witnesses. These respondents indicated they have worked on a total of 16 cases with witnesses who are Aboriginal and/or Torres Strait Islander; 5 cases with child witnesses under 5 years of age; 4 cases with witnesses from multicultural communities, 6 cases with LGBTQI+ witnesses and 19+ cases with witnesses with disabilities respectively. One intermediary could not quantify the number of cases, having been involved in ‘too many to count’ since starting work as an intermediary.

As indicated by the administrative data, the timing of the referral varies, with several intermediaries indicating they have usually received police referrals on the same day as the interview, but it can range from notice of just 30 minutes in an emergency to a week or two in advance.

Communication assessments

Intermediaries were asked about their work in undertaking communication assessments. Intermediaries prepare two types of assessments: (1) rapid assessments of the witnesses’ communication capabilities undertaken prior to police Evidence-in-Chief

Interviews and (2) lengthy, detailed communication assessments of the witnesses' communication capabilities undertaken for the purposes of preparing a Court report with recommendations for trial. When asked what communication assessments typically involve, responses were varied but they generally assess conversation, communication rules, narrative skills, prepositions, time concepts and expressive and receptive language.

Seven survey respondents indicated they generally have sufficient time to conduct a communication assessment with a child but, two stated they are not always allowed sufficient time, and one has not yet conducted a communication assessment of a child. Similarly, most intermediaries working with adult witnesses, felt they have sufficient time to conduct a communication assessment though one indicated that it depends on the adult's needs and preferences; one indicated they are not allocated sufficient time.

“Police found client was able to communicate sufficiently with them and so declined assessment opportunity further than my introductions and explanations for consent and some preliminary questions and explanations of communication rules.” [Intermediary, Survey respondent].

“Again, sometimes – no referral is typical, generally however, there is a short window to conduct an assessment.” [Intermediary, Interview respondent].

What a communication assessment involves for:

- **Aboriginal and/or Torres Strait Islander children and adults:**

One survey respondent described the following as part of a communication assessment specifically for Aboriginal and/or Torres Strait Islander witnesses:

“Minimising Eye Contact, Allowing Time for Response, Use of Interpreters, Awareness of Gratuitous Concurrence, Men’s/Women’s Business, Experiences of Trauma, Need to be culturally sensitive - discuss openly the potential lack in your knowledge regarding cultural safety, and what that looks like for someone, Understand historical implications, Be aware of language, especially English as a second language, Be aware of storytelling norms and other communication norms like eye contact, humility etc., Intergenerational trauma and possible fear of engaging with justice system and stakeholders, Use of alternative communication approaches - drawing, use of gestures and body movements and language to convey information, Importance of rapport building. Having time to build rapport.” [Intermediary, Survey respondent]

- **Child witnesses under 5 years old:**

One intermediary described the following elements as part of a communication assessment for a child under 5:

“Building rapport using games, Attention Span and Physical Activity, Clear Boundaries and Instructions, Simplified Language, level of speech and language development and eagerness to please adults, getting down at the child's level if needed.” [Intermediary, Survey respondent]

- **Culturally and Linguistically Diverse persons:**

One intermediary indicated:

“Cultural needs: explored through direct questions and through observations and then curious questions and active listening, asking what will work for the person.” [Intermediary, ACT, Interview respondent]

Two respondents stated respectively:

“Building Rapport and Explaining Roles, Use of Interpreters, Cultural Sensitivity and Practices, Providing Clear and Culturally Relevant Information, discussing cultural norms, flagging my level of understanding and inviting information sharing role and perception of police in different cultures, Possible fear of engaging with the criminal justice system and stakeholders”. [Intermediary, Survey respondent]

“Respecting individuality”. [Intermediary, Survey respondent]

- **LGBTQI+:**

One intermediary indicated:

“Introducing myself with pronouns, asking about specific needs relating to communication and any barriers which may hinder best possible communication, asking what will work for the person.” [Intermediary, Interview respondent]

Another stated:

“Respecting Pronouns and Identity, Inclusive Language, Understanding Diverse Experiences, Avoiding Stereotypes and Assumptions, Lead with pronouns, make the space as 'safe' as possible for people to be themselves, Possible fear of engaging with the criminal justice system and stakeholders, Appropriate use of pronouns, Respecting individuality.” [Intermediary, Survey respondent]

- **Witnesses with disabilities:**

“Physical Considerations, Language and Communication, Alternative Communication Methods, Sensory Considerations, I recognise that each individual with a disability has unique needs and preferences, Timing and

Pacing: this is very varied, be aware of environmental adjustments, Seek input from person, make sure there are multiple strategies available for the witness to express themselves, including drawing, nodding/shaking head, post-it notes for anchor points and sequencing, Difficulties and possible reliance on others to engage with the criminal justice system and stakeholders.” [Intermediary, Survey respondent]

“Accessing different physical environments.” [Intermediary, Survey respondent]

“Impacts of medication.” [Intermediary, Survey respondent]

“Impacts of fatigue.” [Intermediary, Survey respondent]

“Assisting stakeholders to be aware of differences which exist for adults in communication (each adult is different, and adults may still have communication difficulties, not just children).” [Intermediary, Survey respondent]

Discussions with others prior to police interview (child):

Most of the (survey and interview) respondents indicated they ‘never’ or ‘hardly ever’ had a discussion with others prior to a police interview with a child or adult witness, apart from the police; only one said ‘often’. If they did speak to anyone, it would be a parent/ guardian to obtain consent for intermediary involvement.

Verbal debriefs with police:

Nine of ten survey respondents indicated they ‘often’ or ‘always’ do a verbal debrief with police, and one respondent stated they ‘sometimes’ get this chance.

“Typically, I prefer to conduct a thorough verbal debrief with police to ensure effective preparation and communication. However, due to time constraints, this is not always possible.” [Intermediary, survey respondent]

“So it's been fine in some cases to sort of review in front of the child what we've just done and what I think would be helpful. Like it doesn't always have to be away. And then during the interview, it's the passing post-it notes, usually if I spot something that I think they could modify.” [Intermediary, Interview respondent]

“These involve: providing recommendations to the officer/s to assist with communication, discuss how recommendations may be provided during the interview if I observe any communication needs i.e. passing a post it note to officer, Opportunity to share recommendations and possible communication difficulties which have been identified, outlining three or four key recommendations that might best assist communication, confirming my

communication method with them during interview, Brief concise feedback on what I observed and suggested strategies. I also check how they want me to flag their attention in the interview. Understanding if/how the intermediary recommendations were useful for the interviewing officer/s.” [Intermediary, Interview respondent]

Understanding the intermediary role:

All survey respondents stated that police, especially SACAT officers with more experience working with intermediaries, have a good understanding of the intermediary role but that other officers with less experience may have less of an understanding. Two respondents specifically stated that understanding has improved over time:

“Sometimes, the police may not fully understand the intermediary role. It often requires a clear explanation, as there can be a tendency to view it as a support role.” [Intermediary, Survey respondent]

“Getting better every day.” [Intermediary, Survey respondent]

“I think police at other stations are starting to see the benefits.” [Intermediary, Survey respondent]

“Other officers – general understanding only (may forget we can't be left alone with the witness) or may conflate the role with one that can advise about reliability, competency etc when they have not worked with an intermediary previously.” [Intermediary, Survey respondent]

“I think they generally understand it. I think they don't know some of the rules and they forget.

Some, they haven't learnt or they've forgotten things like they can't leave me alone with the witness.” [Intermediary, Interview respondent]

Adopting guidance (child):

Intermediaries were asked to rate how often the police follow their advice and adopt their guidance (on a scale from '0 = 'not at all' to '10' = 'always'). Their responses were all at the high end of the scale for interviews with both children and adults.³⁶

Overall, most police adopt the intermediary's guidance for a child and/or make a concerted effort to adapt their interview strategy and questioning according to advice.

“If I give a smaller number of succinct strategies, they're more likely to follow them. Sometimes an officer has dismissed the strategies, but opted to try

³⁶ For child witnesses/complainants, 3 rated a '9', 2 rated '8', and one rated '6'; for adults, 3 rated '9', 2 rated '8', and one rated '6'.

them later on in the interview when things aren't working for them.”
[Intermediary, Survey respondent]

“Generally, interviewing police officers make a strong effort to adopt my recommendations when questioning a child witness or suspect.”
[Intermediary, Survey respondent]

“So I think overall there's good intent and will to adjust. I think sometimes some of the challenges might (have) been, particularly at the start of the program, where people have been told we can't use those type of questions or we can't reframe those. Everything has to be an open question for instance.” [Intermediary, Interview respondent]

“Police recognise that we are a tool which is at their disposal to support the communication and facilitation of best evidence - has taken time for police to trust that we are not trying to take over their roles, or their interviews.”
[Intermediary, Survey respondent]

Most police also are seen to adopt the intermediary's guidance for an adult.

“Police worked professionally and did listen to what was said” [Intermediary, Survey respondent]

“Generally, interviewing police officers follow my guidance when questioning adult witnesses or suspects. However, there are times when they may perceive the adult's communication level differently and might not always adjust their approach accordingly.” [Intermediary, Survey respondent]

“The SACAT officers are becoming very skilled and adopting intermediary techniques.” [Intermediary, Survey respondent]

One interview respondent stated that implementation of recommendations comes down to both the experience of the interviewing officer working with intermediaries, and the experience of the intermediary themselves:

“When I feel like things haven't been implemented in the way that I think would have been most effective, which might have come down to the way I've explained it or (mistakenly) I've glossed over something thinking that we're on the same page. And I haven't actually said, “Have I explained that to a point where you feel comfortable to use it?” or “would you even feel comfortable to use it?” So that like for instance, I'll say using post-it notes to create a visual timeline. I might, I might have said something like “You could use post-it notes to create a visual timeline”, but I haven't actually said “Shall we have a practice with the witness” about an innocuous topic beforehand. Because when they've gone to do it all they might have said to me later, ‘actually, I

didn't. I thought it was a good idea, but I didn't know how to do it."
[Intermediary, Interview respondent]

Overall

All survey respondents have observed changed practices over time in the way that police conduct interviews consistent with intermediary communication advice.

The intermediaries' positive experiences at the police interview are reflected in the following comments:

"Police being very supportive of trying to enhance the quality of the evidence they collect and so being keen to involve intermediary support."
[Intermediary, Survey respondent]

"Watching an officer build rapport with a witness by being able to engage in a fun task." [Intermediary, Survey respondent]

"Assisting police to understand what a witness had meant, but had previously been misunderstood." [Intermediary, Survey respondent]

"I think the ones that I've really felt have gone well have been the ones funnily enough that have had the more complex needs where I've had/we've had more time to assess, plan and make really useful recommendations, because you've had time to reflect and plan with police about the approach." [Intermediary, Interview respondent]

"When the officer is open to trying different strategies and recognise that their current approach isn't working. It becomes collaborative."
[Intermediary, Survey respondent]

"I guess it's where people acknowledge that there might be a, you know, a significant level of need for the person in terms of communicating their evidence ...but they've adjusted the process to really suit the individual."
[Intermediary, Survey respondent]

Challenging experiences at police interview (including difficulties experienced assisting and anything else that could be done):

"The biggest challenges police experience when following my communication advice include instances where officers do not fully implement recommendations, leading to unclear communication. This can result in misunderstandings and ineffective interactions with witnesses or suspects." [Intermediary, Survey respondent]

"The change to the way they are taught to do things, changing the script."
[Intermediary, Survey respondent]

“Time limitations for assessment and then needing to conduct interviews rapidly.” [Intermediary, Survey respondent]

“I’ve learnt that the police don’t always understand – they’re OK in theory with getting some help but I’ve learnt that I do actually need to be firmer than I thought I would need to be about what we’re doing.” [Intermediary, Interview respondent]

“..you’ve had no time to talk with the officer to plan, no time to assess. Really. You’ve just explained your role and then basically very minimal time to even suggest anything before the recording is put on, I think those have been the times where I thought, oh goodness, had we just taken a few minutes even to plan and talk about how things were going to work (it) probably would have gone a lot better.” [Intermediary, Interview respondent]

“So I don’t know, I haven’t had a negative experience with – I’ve had officers who have been really hesitant and dismissive when I’ve gotten there. But then afterwards, 99% of the time have gone, “That was awesome. Thank you so much. I’m going to... I’ve taken notes and I’m going to implement that into my investigative space”. So yeah.” [Intermediary, Interview respondent]

Training and supports:

Four survey respondents indicated that police would benefit from further training; six said they were ‘not sure’.

“In the ACT they get training as they come through, so some of them have more experience than others or are more in tune than others. But it’s probably the kind of thing that as they do a few, they will get better.” [Intermediary, Survey respondent]

“Police can benefit from training in effective communication and cultural competency to enhance interactions with intermediaries.” [Intermediary, Survey respondent]

“I think officers outside of SACAT, and definitely police trainees, should be offered information and training on the scheme.” [Intermediary, Survey respondent]

Challenges to impartiality/neutrality:

None of the survey or interview respondents said they had experienced any challenges to their impartiality or neutrality.

Court

Five survey respondents had been involved with a Pre-Trial Evidence Hearing with a child/adult witness/defendant. Three had been involved with a trial with a jury with a child/adult witness/defendant.

One intermediary had worked with self-represented persons in civil matters and a child/adult defendant.

Two of three interview respondents indicated they have worked with vulnerable witnesses in court matters. One interviewee estimates they have done approximately 70 court matters with witnesses aged between 5 and 90 across Children's, Magistrate's and Supreme Courts and involving both pre-recorded hearings and trials. Another interviewee did not specify the frequency of their experience with court matters but spoke to key differences between police and court referrals:

*"Court is more relaxed, more planned, more strategic, and you know, you create a plan, you create a communication plan with the witness."
[Intermediary, Interview respondent]*

The other interviewee did not have experience with court matters.

Three intermediaries had worked across the Magistrates Court, the Supreme Court, and also the Children's Court and been involved in court matters with:

- Aboriginal and/or Torres Strait Islander
- Young child witnesses (under 5 years old)
- Culturally and Linguistically Diverse
- LGBTQI+
- Witnesses with disabilities.

Understanding the intermediary role (judges/magistrates):

When asked whether judges/magistrates need more training and support to work with intermediaries, four survey respondents were 'not sure' and generally expressed that judges/magistrates have a good understanding of the intermediary role:

"I believe judges and magistrates generally understand the intermediary role well. Overall, they recognise the importance of intermediaries in facilitating effective communication." [Intermediary, Survey respondent]

"I think that most have a fair understanding, however this is improving and there is a noticeable shift in knowing what the role entails and what it doesn't - there is still the notion that intermediaries are to be sworn in prior to discussing recommendations, or that they are to be 'cross-examined' about the recommendations made." [Intermediary, Survey respondent]

"Reasonably well overall." [Intermediary, Survey respondent]

“Again, some of them a lot. Very much so. Our Chief Justice is awesome. She is just incredible and, you know she'll implement the process.” [Intermediary, Survey respondent]

Some intermediaries ($n=4$ survey respondents) indicated that judges/magistrates would likely benefit from training or education about the Program:

“I think that it is imperative that there is continued education in regard to our roles, and what that looks like in the court room.” [Intermediary, Survey respondent]

“I'll always say that training is beneficial... it assists in ascertaining what confusion may exist about the role, what things stakeholders may need us to elaborate about, hearing feedback from them about what we could do that would assist in the court context and within the scope of our role.” [Intermediary, Survey respondent]

Understanding of the intermediary role (legal practitioners):

Two survey respondents stated that legal practitioners generally understand the intermediary role and that this understanding is improving over time:

“They're getting better, some of them.” [Intermediary, Survey respondent]

“In my experience, lawyers' understanding of the intermediary role can vary.” [Intermediary, Survey respondent]

“Again, I believe that the role of the intermediary is becoming better understood, I feel that defence will embrace the program, once they fully realise that our roles is to facilitate best evidence, NOT to curtail their capacity to meet the requirement of 'Browne v Dunn'.” [Intermediary, Survey respondent]

“Extremely varied.” [Intermediary, Survey respondent]

“Reasonably well overall.” [Intermediary, Survey respondent]

Six survey respondents indicated that lawyers need more training about the role of an intermediary. Interviewees expressed similar sentiments but also emphasised that understanding of, and appreciation for, the role is growing over time: *“No, I think prosecution is a lot more on board, but I think that's because there's been a lot more training with the prosecution within the DPP space. They're very open to it. They will ask questions whereas defence still has that mindset sometimes that, you know, where we're going to get their client into more trouble.” [Intermediary, Interview respondent]*

“Yes, lawyers would benefit from more training on working with intermediaries. This training should focus on understanding the intermediary’s role in facilitating clear and unbiased communication, the benefits they provide in ensuring fair proceedings, and how to effectively collaborate with them.” [Intermediary, Survey respondent]

“Training needs to occur before the lawyers are taking on their own cases, they are learning from existing counsel, and the change needs to be embedded within the schools of law, so that they have a full understanding.” [Intermediary, Survey respondent]

Ground Rules Hearings (GRH)

All survey respondents stated that the timing of GRHs relative to pre-recorded hearing/trial varies between courts, which accords with findings from the administrative data analyses. It may be on the same day (usually in Magistrates and Children’s Courts), one day before, or 1 to 2 weeks prior in the Supreme Court.

When asked about the orders that are made at a GRH, intermediaries indicated that their recommendations are generally part of the order and made the following comments on their content:

“At a Ground Rules Hearing, judges generally make directions based on recommendations that the intermediary has provided after a comprehensive communication assessment of the witness.” [Intermediary, Survey respondent]

“They can be for parties to introduce themselves and their jobs prior to questioning, reminding the witness of the communication rules, directing the way in which questions are asked, break times and duration etc.” [Intermediary, Survey respondent]

“Mostly direct all recommendations.” [Intermediary, Survey respondent]

“Length of breaks and frequency of breaks, Presence of support animals or therapy animals, how arguments or the case will be put in cross-examination - form of questions, the use of visuals to assist with context setting, understanding or to create visual timelines etc (e.g. body charts, photographs of locations), avoiding the use of complex vocabulary, indirect or abstract language.” [Intermediary, Survey respondent]

Their recommendations that had been contested at GRH were likely to include those relating to tag questions and the frequency of breaks:

“I have had a magistrate who has directed half of the recommendations and half not because defence didn't want to concede on some of them.” [Intermediary, Survey respondent]

“At a Ground Rules Hearing, intermediary recommendations that are often contested include those related to avoiding the use of tag questions and implementing specific questioning techniques tailored to the witness’s needs.” [Intermediary, Survey respondent]

“Tag questions – counsel does not like to feel as though intermediaries are telling them how to do their jobs” [Intermediary, Survey respondent]

Review of questions (Crown & defence):

In the experience of these intermediaries, they had infrequently (‘never’, ‘hardly ever’ and only ‘sometimes’) been asked by prosecution or defence lawyers to review their questions.

“For contact with parties, some parties like to share their questions beforehand.” [Intermediary, Survey respondent]

“Defence, yeah. So they’ll ask, “You know, how can I put that question if I can’t use a tag question, how do I put that question? You know what other wording can I use? Can you give me some examples? And it’s not about, you know, a lot of the time when we have a recommendation, you know, parties to share a draft of their proposed questions.” [Intermediary, Survey respondent]

Overall comments about GRHs:

“It is sometimes an ‘all or nothing’ - feeling like you are being cross-examined or being asked no questions at all.” [Intermediary, Survey respondent]

“There’s always been a ground rules hearing, which has been great and that’s an opportunity for both parties to ask you questions about your report.” [Intermediary, Survey respondent]

“Sometimes the problems have been they haven’t asked any (questions) and then they’ve disagreed to everything and then they haven’t realised in practicality what they’ve agreed to in terms of what the intermediary would intervene on.” [Intermediary, Survey respondent]

“I find generally there’s good intention to comply with the ground rules ... The directions that have been made.” [Intermediary, Survey respondent]

“Sometimes when we haven’t had a ground rules hearing where things have been really discussed and it’s been unclear how the intermediary should intervene, and it might make you reluctant to intervene because you think (you) might intervene in an improper way because it hasn’t been really made clear.” [Intermediary, Survey respondent]

At hearing/trial

Intermediaries indicated that their recommendations were generally followed by legal practitioners. All four with court experience said ‘often’.

When their recommendation is not followed, several intermediaries indicated that they did not intervene whereas some said they did. They indicated that the prosecution and defence lawyers and some judicial officers did not intervene often.

Recommendations routinely not followed:

“And I (have) found more frequently judges and magistrates themselves are saying that's actually against the directions, actually pointing out to parties when they haven't complied.” [Intermediary, Interview respondent]

“Most interventions will be by the intermediary. I'd say if it's not adhering to directions about communication, probably the judge or magistrate more so than the other party, but sometimes the other party might (intervene when its more) about the legal arguments around the questions would be the other party.” [Intermediary, Interview respondent]

“It is difficult for counsel to follow tag question directions, however in my experience counsel on both sides usually pick themselves up and rephrase the question.” [Intermediary, Interview respondent]

“My approach is always, like. don't over or under intervene if the witnesses quickly answer the question and you don't think they've misunderstood. There's no need to intervene.” [Intermediary, Interview respondent]

“Reminders about times for breaks are usually needed. Parties often struggle with short simple questions.” [Intermediary, Survey respondent]

Facilitating responsive questioning:

“There can be lack of appreciation or understanding of cultural differences with respect to communication (for example, use of drawing to explain information or allowing facial expressions or gestures to replace or supplement verbal information), and if there are expectations things are done a certain way at court (for legal reasons), the system is not able to be flexible to meet individual needs related to culture.” [Intermediary, Survey respondent]

“LGBTIQ+: The person's own pronouns or their use of pronouns may not be embraced or adopted or may need further probing/questioning for legal reasons. This can affect people's engagement at court.” [Intermediary, Survey respondent]

“Invisible or unseen disability – sometimes people may not realise how impacted an individual's communication may be or may be reluctant to

change their approach to doing things, particularly for teenage or adult witnesses.” [Intermediary, Survey respondent]

Changed practices (prosecution & defence):

Several intermediaries indicated that lawyers had adapted their questioning techniques since working with intermediaries:

“Prosecution lawyers have adapted their practice by incorporating intermediary communication advice.” [Intermediary, Survey respondent]

“Questions appear to be tailored to the witnesses needs, there appears to be more consideration given to language used and the timing of the day.” [Intermediary, Survey respondent]

“Increased use of simplified language and question forms.

- *Increased sharing of draft questions.*
- *Less use of multipart questions.” [Intermediary, Survey respondent]*

“Overall, I would say yes. Increased sharing of draft questions or consultation with the intermediary prior to questioning.

- *Increase consultation with the intermediary during breaks in questioning.*
- *Changing approach to putting arguments.” [Intermediary, Survey respondent]*

“Defence lawyers have adapted their practice by incorporating intermediary communication advice.” [Intermediary, Survey respondent]

“Apart from one or two defence counsel who do not like that intermediaries are in the court room, or that they have the right to intervene, if required, most are similar to prosecution.” [Intermediary, Survey respondent]

Changed practices (judicial officers):

Several intermediaries also indicated that they had noticed that judicial officers had changed their practice, including being more likely to explain communication rules and court processes to witnesses and complainants.

“Judicial officers appear to be more open to thinking outside the box and allowing for varied recommendations, supporting these and enforcing them during trials.” [Intermediary, Survey respondent]

“Really explaining communication rules and court processes to individuals at court. Asking the intermediary for suggestions where it is clear there has been a communication breakdown...” [Intermediary, Survey respondent]

“Intervening when directions aren't adhered to, even before the intermediary can do so.” [Intermediary, Survey respondent]

Suspects

About half of the intermediary respondents had worked with a child or adult suspect in a police interview.

Differences in approach for child or adult suspects:

“Core work remains the same.

Concepts that need to be explored/conveyed are different, additional factors and influences are different.” [Intermediary, Survey respondent]

“Different considerations because of the context the person is entering into.

Presence of lawyer required at some engagements.” [Intermediary, Survey respondent]

Differences in police response (child and adult):

“No. Police have been very receptive to advice, just as they have been in complainant or similar act witness engagements.” [Intermediary, Survey respondent]

Positive experience:

“Assisting understanding where there wasn't before.” [Intermediary, Survey respondent]

“Officers to convey the purpose of the meeting:

- *The young person to understand the roles of each person present;*
- *Explanation of the terms contained in the protection order to the young person in simple, straightforward language; and*
- *With framing of questions police could ask or use and development of diagrams police could utilise to confirm the young person had understood the information.” [Intermediary, Survey respondent]*

Defendants

Three intermediaries indicated working with an adult defendant, and one with a child defendant.

Differences in approach (child and adult defendant)

One intermediary emphasised that a more wholistic approach is generally needed by intermediaries and the court when working with defendants.

“Writing reports and conducting assessments needs to consider the whole of trial process/engagement at court - not just questioning.

2 x ground rules hearings potentially.

They consider the recommendations for the whole of process - so I can see they turn their mind to these even when stakeholders are conversing amongst themselves (e.g. explaining in straightforward language to the defendant/accused what is being spoken about and the importance of the conversation).” [Intermediary, Survey respondent]

Positive experiences:

“In terms of if they've chosen to give any evidence in their matter that it's been really useful for them, they felt like even just, you know, that comfort of having it explained to them that they can, you know, push back if they've not pushed back, but indicate to the court if they haven't understood something or something's becoming overwhelming for them.” [Intermediary, Interview respondent]

“Day 1 - “Young person's speech was muffled as he covered his mouth with his hand. Intermediary interventions (in defence and prosecution questioning):

- Pace of speech*
- Communication rules*
- Signposting topics*
- Allow drawing to assist descriptions. Propositions not put as per directions*
- Intermediary interventions were difficult to hear in the courtroom”.*

Day 2 - Outcomes:

- The young person's speech was intelligible throughout questioning*
- He utilised discreet focus items*
- The young person questioning was completed.” [Intermediary, Interview respondent]*

Other comments:

“But that planning when you plan together ... when you can really give people a clear idea around how things can work most effectively, I think that's the result of over time accepting that feedback. But working with people and being more assertive so that that you avoid those issues happening again”.
[Intermediary, Survey respondent]

Feedback:

Four intermediaries indicated that they have received positive feedback or comments on their role or approach from witnesses and judges, magistrates, lawyers, police officers, court staff.

“Yes, I have received positive feedback that my recommendations have effectively facilitated communication.” [Intermediary, Interview respondent]

“I've received a lot of positive feedback from parents, caregivers, support people, witnesses themselves.” [Intermediary, Interview respondent]

“I have had a defence barrister approach, when a matter was being deliberated by the jury, to thank me for the recommendations and work that was put in during a trial. The Chief Justice has thanked me for my counsel during a particularly complex matter. Prosecutors have approached and offered appreciation of the role. Sherriff's and court staff thank me for my assistance in matters. I have had counsel mention me in training and the recommendations which I have made. I have had victim support approach to conduct information sharing sessions with other parties, to get a better understanding of what each role can and cannot do. I have had witnesses thank me for assisting them in telling their stories.” [Intermediary, Interview respondent]

“Police officers: have expressed thanks for specific recommendations and assisting with rapport building - both in email and in person and

- Lawyers: have expressed thanks for specific recommendations and regarding intermediary professionalism - both in email and in person*
- Judges and magistrates: have expressed thanks for intermediary professionalism and engagement in proceedings which have assisted communication.” [Intermediary, Survey respondent]*

One intermediary stated that any less positive feedback tends to concern a misunderstanding about the parameters of the intermediary role. For example:

“Sometimes with support people, I think the only feedback I've had is that, you know, why didn't you intervene for X, Y and Z and I had to explain. That's why I'm a lot better explaining my role, even to support people.” [Intermediary, Interview respondent]

Another emphasised the importance of explaining adaptive communication strategies and techniques to interviewing police officers in a way that is understandable and responsive to their purpose and practices:

“Sometimes I get, “Oh, you know, that worked really, really well. And that one opened up the door to, you know, this avenue of questioning that we hadn't thought of before. And that was excellent.” Or “Yeah, that one I felt

was a little bit clunky and, you know, that didn't really work so well. And maybe, you know, maybe finding a different way of explaining that might work better.” And yeah, so it's a mixed bag” [Intermediary, Interview respondent]

Challenges to impartiality/neutrality:

One intermediary pointed to some tension around defence lawyers not understanding the role of the intermediary and not always being seen to be impartial.

“Not questioned necessarily, but comments made in the intermediary's presence about being a 'prosecution witness!'” [Intermediary, Survey respondent]

Support and resources as an intermediary:

Intermediaries (survey and interview respondents) were happy with the professional support and resources they are provided with:

“I think the Program does a great job supporting Intermediaries to do their job...I think the Program does a great job of that in giving the training that we need to feel secure in the role and confident in doing the role.” [Intermediary, Interview respondent]

“Here we get monthly individual external clinical debriefing. We also get monthly group reflective practice, so a group supervision session. Then we get one-on-one with one of the directors.” [Intermediary, Survey respondent]

“Yes, I have received ample professional support and resources, including valuable assistance from colleagues and opportunities for external supervision, which have greatly contributed to my effectiveness in the role.” [Intermediary, Survey respondent]

“For me personally, I think I've had enough opportunities. And I think it shows in the types of referrals I can go out to now that I probably wouldn't have felt comfort, comfortable or confident with at the beginning... I think the Program does a great job supporting intermediaries to do their job... does a great job of that in giving the training that we need to feel secure in the role and confident in doing the role.” [Intermediary, Interview respondent]

“The Program is available to discuss any referrals or court attendance which we wish to discuss.” [Intermediary, Survey respondent]

“The in-house team provide a lot of support, and there is always someone available to debrief with following a challenging referral. The resources are

great and the team is very supportive of one another.” [Intermediary, Survey respondent]

“I have access to monthly external debriefing and reflection sessions.

I also have access to a fortnightly face-to-face meeting with my Senior Director where I feel very supported.” [Intermediary, Survey respondent]

Positive experiences (at court):

“My most positive experience as an intermediary has been seeing my recommendations accepted and translated into directions at Ground Rules Hearings. These tailored directions significantly facilitated communication during the hearing, ensuring that witnesses could provide their best evidence and improving the overall effectiveness of the proceedings.” [Intermediary, Survey respondent]

“Supporting a highly distressed witness to be able to complete their evidence through recommendations...Being a part of systemic change in the criminal justice space.” [Intermediary, Survey respondent]

“Assisting the justice system to evolve.” [Intermediary, Survey respondent]

Challenging experiences (at court):

“My most challenging experience as an intermediary was when a defence lawyer questioned my experience and credibility during a Ground Rules Hearing. This scrutiny required me to clarify and reaffirm the validity of my role and recommendations.” [Intermediary, Survey respondent]

“Being cross-examined by defence counsel, who appeared to be threatened by recommendations which would ultimately support the interests of justice.” [Intermediary, Survey respondent]

“Limited scope of the role and need for safeguards.” [Intermediary, Survey respondent]

Other comments:

“Am very privileged to have the opportunity to be a part of an emerging profession which has the potential to change the core of our criminal justice system.” [Intermediary, Survey respondent]

6 INTERMEDIARY PRE-EICI AND EICI ASSESSMENT CASE NOTES

A set of 37 police related intermediary case notes³⁷ dated in the period 2020-2024 was analysed. Three matters involved a ‘meet and greet’ session.³⁸ Thirty matters involved both a pre-EICI assessment and police EICI; one involved only a pre-EICI assessment. Six matters involved an additional police interview. Of the 37 matters examined, 32 were conducted by in-house intermediaries and 5 by panel intermediaries. Only two cases involved accused persons; most involved complainant and other witnesses.³⁹

Seven cases involved Aboriginal children and adults, and four involved a witness from a multicultural community (3 of the four were adults). The main reasons for the intermediary referral included:⁴⁰

- Age: $n = 9$ (children aged 3–12 years)
- Trauma/ Mental health issues: $n = 8$
- Cultural/linguistic issues: $n = 9$
- Language delay/barriers: $n = 4$.

In all the cases that indicated an EICI took place, the intermediary’s pre-EICI assessment was conducted on the same day as the EICI. The longest pre-EICI assessment lasted 85 minutes and the shortest 6 minutes; the average duration of the assessment was 23.9 minutes. A range of factors may impact the length of an assessment including individual communication needs and/or the need for a rapid assessment in the particular circumstances. But, it is interesting to note that in the period 2022–2024, the average duration of a pre-EICI assessment steadily increased from 21 minutes in 2022, to 28 minutes in 2023, and then to 37.5 minutes in 2024, compared to 18.4 minutes in 2020 and only 14.6 minutes in 2021. Perhaps assessments were conducted more rapidly during 2020-2021 because of Covid-19, but perhaps the increasingly longer assessment times over 2022-2024 signal a cultural shift reflecting a greater willingness on the part of police to give intermediaries more time to undertake their pre-EICI assessments and/or greater

³⁷ Prior to a police interview, the intermediary will undertake a brief assessment of the vulnerable person’s communications skills. Intermediary case notes of this assessment were analysed and the findings of this analysis are reported in this section.

³⁸ “If circumstances allow, the police officer may conduct a meet and greet session to inform the witness (and where relevant their parent/guardian) about police and criminal justice system processes and the 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 to introduce themselves and explain the nature of their role. Police guide the intermediary’s involvement at the meet and greet stage.” (ACT *Intermediary Program Procedural Guidance Manual*, 26).

³⁹ The case notes do not consistently differentiate between ‘complainant’ witness and other witnesses so all witnesses are categorised together in contradistinction to suspect/accused persons.

⁴⁰ Some referrals were made for one or more reasons.

confidence in intermediaries to take additional time; if so, this may signal that police increasingly are seeing the value of intermediary assessments.

In 18 of the 30 cases involving an EICI, the intermediary intervened during the interview to provide recommendations to the police officer in order to facilitate communication or request a break from the interview process. Interventions were most often made by handing a written note or post-it note to the police officer, rather than the intermediary making a verbal request. In a majority of cases (12 of 18), the case notes recorded that the police officer implemented or attempted to implement the intermediary's recommendations following the intermediary's intervention.

In summary, pre-EICI intermediary assessments and recommendations for interview are generally being implemented by police.

Overall, the analysis of case notes indicates that intermediaries are increasingly spending more time on pre-EICI assessments and playing an active role during the EICIs.

7 INTERMEDIARY COURT ASSESSMENT REPORTS

Intermediary recommendations in 11 court assessment reports were analysed.²⁹ These reports matched the GRHs and PTEs observed by the Evaluation team. All the court assessment reports analysed were written by in-house intermediaries.

All eleven reports were prepared for complainants or non-complainant witnesses. Four reports related to children aged 8 to 12 years, four to children aged 13 to 16 years, and three related to adults aged 19, 36 and 56 years of age respectively. One report was for an Aboriginal child and one for an adult from a non-English speaking background.

The communication issues noted in the reports included:

- Age (as the only factor): 6
- Trauma and/or mental health: 5
- Cognitive impairment: 2
- ADHD: 1
- Dyslexia: 1
- Brain injury or degenerative or neurological disorder: 2

Recommendations for questioning included:

- Use a slow speaking pace and pause between questions
- Use simple, straightforward language, avoiding complex terms and phrases
- Use direct and unambiguous language
- Signpost topics during questioning
- Witness should be advised of the names and roles of the parties
- Witness should be informed and reminded of the relevant communication rules
- Avoid use of ‘tag’ questions
- Ask direct questions and avoid multi-part questions
- Questions related to ‘the rule in *Browne v Dunn*³⁰ should be asked in a format that permits the witness to respond with simple clear options such as: ‘true/not true’, ‘agree/disagree’, ‘true/false’, or ‘correct/incorrect’, or a combination of these options. The recommendations overall favoured *Browne v Dunn* questions framed as true/false or agree/disagree.
- Use the witness’ own vocabulary when referring to body parts.

Though recommendations were often presented in similar terms across reports, the rationale was tailored to the specific needs of the individual witness assessed. The reports used language and technical terms consistently in the recommendations made; this is important to facilitate shared understanding and uniform implementation of the

recommendations by legal professionals and courts. In three reports, the intermediary recommended the parties share their questions with the intermediary prior to trial to gain assistance with question structure and form. The survey and interviews, however, indicate that this recommendation is only infrequently implemented, even though the value of this recommendation is seemingly acknowledged by legal practitioners.

“I don't think anyone has ever really, in my experience, taken up the option of revealing their questions.” [Judicial officer, Interview respondent]

“I know that that is a concern for a lot of people involved in criminal defence. They're concerned about, for example, speaking to an intermediary about questioning structure and that a topic will be disclosed to the prosecution or. And I've heard of, but I'm not sure it's correct. If orders being made for defence counsel to provide a list of questions to an intermediary, I've not yet seen that.” [Judicial officer, Interview respondent]

All the reports provide that “The intermediary will be available to parties at the hearing to provide communication guidance, as directed and required.” This highlights the important role that intermediaries can play in offering ongoing and agile advice and guidance to legal practitioners and the court throughout a matter, as it unfolds, and as communication issues arise. This valuable resource and role of intermediaries is yet to be fully realised in the ACT.

Other recommendations frequently contained in the reports included:

- Witness be permitted to raise their hand to indicate a communication issue has arisen or to ask for a break
- Use of a therapy dog
- Presence of a (named) support person

All 11 reports analysed included recommendations that communication aids be available to the witness. These most often included the use of visual aids (e.g. true/false card, I need a break card), focus aids (e.g. sensory gel/squishy balls, fidget toys) and emotion regulation aids (e.g. weighted companion animal/lap pad, tactile cushion, foot roller).

In summary, the analysis undertaken of a sample of intermediary court assessment reports highlights that intermediary recommendations are comprehensive and offer a range of communication interventions to support witnesses with their communication needs at court. Though some recommendations frequently appear in reports, these are tailored to the individual needs of witnesses and the case.

It is worth noting that intermediaries are available to provide ongoing and out-of-court advice to support the implementation of their recommendations and ensure effective communication with witnesses throughout the matter, yet this element of the work of intermediaries is currently under-utilised.

8 TRAINING MATERIAL ANALYSIS

Since its inception in 2020, the Program has delivered extensive training to legal and other justice professionals in the ACT, as well as to intermediaries. Training sessions and workshops have been held regularly each year for police, judicial officers, legal counsel and intermediaries. The content of this training includes material explaining the role of intermediaries, the legislative and procedural framework, examples of intermediary recommendations and communication interventions, and tool kits (e.g. Advocacy Gateway).

Surveys and interviews with key stakeholders indicate that the training provided by the Intermediary Program is well attended and highly regarded and is considered useful for understanding how the Program operates and what intermediaries do. There is a clear sense however, that stakeholders are open to engaging with more training opportunities and would now welcome training that is more detailed and practical in its orientation.

Several survey and interview respondents noted that there would be benefit in having more training led by intermediaries themselves, which is interactive and practical, and that provides a forum for direct engagement and feedback between intermediaries and other justice professionals, including judicial officers.

“That's something that I'm really interested in. I'd like to have a more active role in that. I'm feeling a bit under-utilised in my role in terms of training. When I was at the bar, I did a lot of advocacy training for the ABA. And I think that this really is an extension of that, that skill-set. We could have more training as a bench course. We really don't have any training. I mean, we had an excellent presentation, I think two years ago at our judicial education retreat, which was great. But there hasn't really been any formal feedback from the intermediaries, which I think is important. So for example, I'm sure there's things that I do that I could do better and I'd like to hear about that because I'd like to do them better. So there could easily be that sort of forum as well I think, but I'm very open to that. Others may not wish to hear constructive criticism.” [Judicial officer, Interview Participant]

“So, particularly the Intermediary Program in the ACT is really active in trying to, in my perspective, making sure that everyone is on board and aware of what the program can offer. We've had various training sessions. Although I would say that they would not necessarily be training sessions as opposed to kind of information sessions ... so potentially having a training session [with an] intermediary because usually it's the kind of the coordinators who are coming and saying, hey, this is what the intermediary program is about blah blah blah, which I think is very useful, but it potentially could be something to think on of having an actual intermediary come into the office for a training session ... saying, you know, ‘these are typical

communication rules that we're suggesting' ... (or) 'This is maybe how you could formulate questions and how maybe you can be aware of the types of questions that we're seeing defence lawyers ask and we've noticed that they're not being objected to or that they're not being asked in a certain way.' [Legal practitioner, Interview Participant]

The responses from the intermediary survey and interviews reveal that though intermediaries consider that their role is increasingly being better understood that generally, intermediaries feel that police, judicial officers, and lawyers should be provided more training especially in relation to the boundaries of the intermediary role, and how the role differs from that of a support person. As explained by several intermediaries:

"Lawyers would benefit from more training on working with intermediaries. This training should focus on understanding the intermediary's role in facilitating clear and unbiased communication, the benefits they provide in ensuring fair proceedings, and how to effectively collaborate with them." [Intermediary, Survey participant]

"Sometimes, the police may not fully understand the intermediary role. It often requires a clear explanation, as there can be a tendency to view it as a support role. It's important to emphasise that the intermediary role is impartial and focused on facilitating communication rather than providing support." [Intermediary, Survey participant]

"I think that it is imperative that there is continued education in regard to our roles, and what that looks like in the court room. Counsel will look towards the judicial officer to gauge how they interact, or how much notice they take of the recommendations." [Intermediary, Survey participant]

"With law [lawyers], it's still a work in progress. But I think, you know, if there was a possibility, a way of being able to actually get access to law schools before, you know, even in the first year just to run like 1/2 day or even an hour" just to sit down with you know law students and say, "Look, this is what's happening in Canberra and probably around Australia, it's going to change". So you know, just be really mindful when you're being taught this black and white view of what the world's going to look like, it's actually not. There's so many shades of grey and there's so many different colours that you have to actually open your mind to it. You know it's not going away. You know the benefit, the evidence is already there to show, you know, the difference that it's made for the justice system. It's for the benefit of justice. So it's not something that's going away. So I think, yeah, if we had the opportunity to get into law schools and say, 'Just turn your mind to this when you're going through, you know, doesn't have to change anything, but just be really mindful

because nine times out of 10, you're going to come across an intermediary during your career'. And for you to have an understanding of what it is that they do – as opposed to going in there with this archaic mindset . We're not here to...not allow you to continue to do your job. You know that's not what it is. It's about getting the best evidence which can only be beneficial for both sides.” [Intermediary, Interview participant]

Intermediaries regularly identified that defence counsel in particular, should be targeted with more training as they could benefit from better understanding of the intermediary role.

“While prosecution lawyers typically recognise and value the intermediary's role in facilitating witness communication, defence lawyers may not fully understand it and might view the intermediary as biased, seeing their involvement as favouring the witness over the suspect.” [Intermediary, Survey participant]

“I feel that defence will embrace the program, once they fully realise that our role is to facilitate best evidence.” [Intermediary, Survey participant]

At the time of writing defence counsel at the ACT defence bar had been offered training opportunities by the Intermediary Program, but these are yet to be taken up.

A recurring theme that emerged in the surveys and interviews is the perceived reluctance on the part of some intermediaries to intervene particularly at court. This was commonly noted by prosecutors and judicial officers but, was also raised in interviews with some intermediaries. While survey results indicate that all intermediaries feel they have been provided with sufficient support and training, expanded training on in-court intervention and criminal justice processes could help build intermediary confidence and address this issue:

“Because I obviously came with my areas of expertise and professionally, professions that I've worked in previously. But that's grown over time, and I think that's due to the training and support I've received in the last five years, which has been great and we get a lot of debriefing opportunities and supervision opportunities and all that sort of stuff, which has been excellent. I think for me, one thing I have had that's been useful that maybe others need to develop over time, but having that understanding of the criminal justice process and the job of parties.” [Intermediary, Interview participant]

Importantly, lawyers and judges also need to understand the reasons behind intermediaries making a decision regarding whether or not to intervene at any given time and the complexities that underpin such decisions:

“I think they're so respectful of the court and the people in the court space, they don't want to seem like they're intervening unnecessarily often; they might not intervene because a person's answering the questions and they don't want to look like they're being protective 'cause they're not, and the person might be answering what you can never perfectly replicate in a communication assessment by which I mean the stress and anxiety of answering questions at court. And so they might, through that innocuous assessment activity, make recommendations. But they have to also adjust in the same way they expect the stakeholders to adjust to what that person is understanding, understanding and following during proceedings. So they'll only intervene if they get the sense, or if it's clear that that person hasn't understood. If they're asking tag questions, for example ... tag questions is the one that gets raised a lot. Simple tags are pretty ... I don't want to say easy to understand. They're easier to follow because it's mostly just affirming that you've understood what someone has said or you're affirming something that someone has previously said. And so someone will answer that because it's an easier sort of format to follow. It's when you start inserting double negatives or front end tags that it gets a bit more complex. So, for a practitioner that's asking the questions, they might go “Well, why didn't you intervene when I was asking all of those tag questions earlier? And the intermediary might say: “Well, actually they were answering and I'm going to intervene just cause it's a tag question. I'll intervene if that person's not following you asking those tag questions”. So this complexity is a nuance in the way the intermediary does their role. So the perception might be they're under intervening or they're not intervening enough. But they're kind of making that call on the fly by the sense they get of that person's participation in the process.” [Program Administrator, Interview participant]

In summary, the findings of the Evaluation indicate that training that has been offered to date by the Program has been successful in introducing intermediaries and their work into the ACT, and has built solid understanding and familiarity with the Program. However, justice professionals including intermediaries, are now seeking to further boost their training and professional development – there is a genuine sense that professional stakeholders want to work even more effectively together and make the most of intermediaries and their expertise to support communication with witnesses.

9 CONCLUSIONS

The Evaluation overwhelmingly has found that the ACT Intermediary Program is operating efficiently and effectively with strong positive impacts. The Program has been extremely well-received, and overall, the work of intermediaries is highly valued and considered to be of a very high standard. The team of in-house intermediaries provide a community of practice, sharing expertise and experience, and tools and resources, in responding to the multiplicity of communication needs of child and adult complainants and witnesses.

The Program Team's tight coordination of the Program's administration and its heavy reliance on in-house intermediaries safeguards its timely operations and quality assurance.

The Program's administrative data highlights that the Program is sustaining a high volume of referrals and appointments at police and court, and that it is operating effectively within tight timeframes. Most police interviews take place within 24 hours of an intermediary referral and most court referrals are allocated within a week with most communication assessments likewise conducted within a week. Stakeholders perceive that intermediaries improve communication with vulnerable witnesses and thereby the quality of their evidence, as well as reducing the stress for witnesses and their families and caregivers. There is also a growing sense amongst key stakeholders that intermediaries are helping to build broader understanding in justice processes of the communication needs of child and other vulnerable witnesses. Intermediaries are also seen to be providing justice professionals who work with vulnerable witnesses with the tools to improve communication with them. There are therefore signs that the Intermediary Program in the ACT is shifting the culture in justice processes towards better understanding the needs of and supporting witnesses with communication needs.

The Evaluation has also provided an opportunity to reflect on possible future challenges for the Program and areas where the Program might be refined and developed. In particular, the findings of the Evaluation indicate that there are opportunities for the Program to boost intermediary-related training and professional development both for intermediaries and for other justice professionals. There may also be untapped potential for intermediaries to play an extended role in providing police, legal practitioners, and the court with guidance on communication issues outside formal police and court processes. In particular, given developments in intermediary schemes in some jurisdictions overseas, perhaps it is timely for the ACT to consider whether intermediaries should play a more formal role in drafting approved questions for use in questioning vulnerable witnesses. The ACT Program is exceptionally well placed to take leadership in advancing a national intermediary profession and shaping national standards of accreditation and practice.

There was resounding support in the ACT for the use of intermediaries to assist vulnerable child and adult accused persons and defendants. Most intermediary schemes in

Australia have yet to include vulnerable accused persons/defendants though there is growing support in this direction. In their recent report, the Australian Law Reform Commission (ALRC) “supports intermediaries being available for suspects and accused persons who are under 18 years of age or have communication needs”.⁴¹ The findings of this Evaluation lend strong support and justification, on the grounds of fairness and access to justice, for making intermediaries available to vulnerable complainants, other witnesses, as well as accused persons/defendants. This recognises that many accused persons, defendants and perpetrators have communication and other difficulties, have experienced disadvantage, and may be victim-survivors of violence or other forms of trauma.⁴²

While overall extremely positive, the findings of the Evaluation highlight that it is important that the Program continues to be well-resourced and that it receives ongoing funding consistent with the Program’s scope and caseload, and likely future expansion. As the Program and demand for intermediaries grows, there is a risk that this demand will outstrip the Program’s capacity, unless resources are provided for the program to sustain this growth and demand.

Understanding the role of intermediaries

Overall, the role of intermediaries was reasonably well understood by all stakeholder groups including, child and adult witnesses and defendants, and their families. The need for intermediaries to remain impartial was also generally appreciated by stakeholders. Nevertheless, some stakeholders seemed to conflate the role of an intermediary with that of a support person; this was particularly noticeable for police, indicating that the exact parameters of the intermediary’s role may still not be entirely clear to all stakeholders. Some parents and caregivers although positive about intermediaries, were not entirely clear about the precise impact of intermediary involvement in their child’s case. Some parents also noted that their child made little mention of intermediary involvement in their matter.

Intermediaries themselves felt that their role was being better understood by police, lawyers and judicial officers but reported some ongoing confusion about their role, noting that more professional training would help clarify their role, particularly for defence counsel, who were seen by intermediaries to be the group most likely to question their impartiality and independence.

⁴¹ Australian Law Reform Commission (2025). *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143), para 10.30.

⁴² See for example, Queensland Government Statistician’s Office, Queensland Treasury. (2023). *The overlap between offending and victimisation in Queensland*; Berg, MT and Mulford CF. (2017) ‘Reappraising and redirecting research on the victim-offender overlap’, *Trauma, Violence, & Abuse*, 21(1), 16–30.

A recurring issue that was raised by stakeholders related to intermediary intervention, with some justice professionals questioning whether intermediaries were too restrained in their interventions. This issue was also raised by some intermediaries. This has also been a theme in other jurisdictions.⁴³

Effectiveness of the Program

All the stakeholder groups who participated in the Evaluation noted positive impacts of the Program.

Both child and adult witnesses and defendants overall expressed a positive view of intermediary involvement. They described feeling comfortable with having an intermediary present at the police and court stage. However, despite having an intermediary present with police and at court some witnesses in the Evaluation said they did not feel they were able to communicate everything they had wanted to. This is attributable to systemic barriers, which render criminal justice processes often inaccessible and hostile to witnesses. For example, some witnesses highlighted feeling uncomfortable and fearful when interacting with police and at court; others said they lacked information and did not understand what was happening around them making them feel confused. Most often witnesses pointed to feeling intimidated and shut down by aggressive cross-examination and defence counsel.

Survey responses from the Police highlighted a strong perception that intermediaries improve communication with vulnerable witnesses and defendants, and that in turn this leads to better evidence and reduction in stress levels for witnesses. The survey responses from police also highlighted that police feel that engaging with intermediaries is helping them to develop their understanding of the reasons why vulnerable witnesses and defendants experience communication difficulties and how to provide practical solutions to overcome these communication barriers. Intermediaries agreed that police are increasingly adapting their questioning and interviewing techniques to align with their recommendations.

Similarly, prosecutors consistently reported that intermediaries are improving the quality of questioning of witnesses and defendants, and enabling witnesses to perform better in giving evidence, particularly during cross-examination. Prosecutors consistently noted that intermediaries assist in making cross-examination fairer for witnesses and less traumatic for them, though they expressed mixed views about whether intermediaries help witnesses to be more confident.

Positive aspects of the Program identified by prosecutors were echoed by judicial officers who strongly support the use of intermediaries, noting that intermediary recommendations are generally accepted and implemented at court, and help to improve

⁴³ Plotnikoff, J., & Woolfson, R. (2015). *Intermediaries in the criminal justice system: Improving communication for vulnerable witnesses and defendants*. Policy Press: Bristol, UK.

courtroom communication. This is consistent with what intermediaries reported, noting that police and courts are increasingly implementing their recommendations. Some intermediaries suggested that judicial officers are increasingly proactive in anticipating their interventions and enforcing their recommendations to ensure fair and effective communication in court.

Other court and victim support staff, and liaison officers also agreed that intermediaries are improving the quality of witnesses' evidence at police interview and at court and are making the justice experience better for vulnerable witnesses and defendants.

Unfortunately, defence counsel did not directly engage with the Evaluation. However, other stakeholders, including prosecutors and judicial officers, reported that some defence lawyers remain concerned about intermediaries undermining their ability to test the evidence during cross-examination. Even so, there was a general feeling that defence are adapting their questioning style to align with intermediary recommendations and increasingly engaging with intermediaries.

Training and professional development

There was general agreement that intermediary related training in the ACT has been of high quality and has assisted in increasing understanding and acceptance of the Program and the work and expertise of intermediaries. Many stakeholders who participated in the Evaluation expressed a desire for more training in working with intermediaries and witnesses with communication needs.

Intermediaries agreed they are well supported in their training and professional development.

10 FUTURE CONSIDERATIONS AND RECOMMENDATIONS

The ACT Intermediary Program is working extremely well, with a strong governance, management and training base which provides strong support for the intermediary team. It has the advantage of operating in a small jurisdiction and being able to offer 24/7 access to intermediaries. Stakeholders unanimously agreed that intermediaries are having a positive impact and improving communication with vulnerable witnesses and ameliorating their experience of justice processes.

While the Program is running smoothly and is well received in the ACT, the Evaluation provides some insights into some current and potential future challenges for the Program and areas that may warrant further consideration, refinement and development. On this basis, the following recommendations are made.

Data collection

The Program is currently collecting and recording detailed administrative data regarding referrals and various other aspects of intermediary engagement and the Program's operations. This data collection can be made more systematic and consistent.

Recommendations:

The administrative data provides a useful means of tracking the referrals. For tracking purposes and consistency, a review of the referral forms and the data analysis they allow would be useful. This includes, for example, dropdown boxes and guidance for referrers to differentiate between 'complainant' and 'witness' and consistent use of these terms in the administrative database would be useful, and consideration of the categories of communication difficulties and needs.

It would also be useful to be able to track cases and individual complainants, witnesses and defendants through the process, and across courts to identify unique 'service users' and the outcomes. Does a complainant or witness with an intermediary at the police interview 'proceed' through to the court process, and with the same intermediary? Ideally, it would be useful for evaluation and research purposes to be able to track cases through to their outcome – in criminal matters, for example, not proceed, to plea, dismissed, verdict.

It may also be useful for the Human Rights Commission/VOCC to "establish and fund an independent centralised feedback mechanism for complainants of sexual violence to report their experience of the criminal justice system", including the Intermediary Program. This feedback mechanism, as recommended by the Australian Law Reform Commission (2025) report, and the "data will become an invaluable evidence base for

evaluating processes and reforms specific to that jurisdiction.”⁴⁴ The Program might therefore consider whether it would be useful to continue to ask those using their services for permission to re-contact witnesses – this would be helpful for future research/evaluation.

Intermediary recruitment, training, accreditation and professional development

The Evaluation found that Intermediaries in the ACT are highly skilful and performing very proficiently. There is consensus that intermediaries are well trained and that they engage in training opportunities regularly.

Like intermediary programs in other jurisdictions, the ACT has found it difficult to find and recruit Indigenous intermediaries and those with culturally diverse backgrounds to match the demographics of some of the witnesses and defendants needing their assistance – both in relation to police and court referrals.⁴⁵

Recommendations:

- A national system for professional qualification and accreditation of intermediaries be explored, as recommended by the Australian Law Reform Commission Report 143 (Recommendation 31).⁴⁶ This is important to ensure “there are no barriers to the availability and engagement of an intermediary”⁴⁷ and that the quality and diversity of intermediaries is assured. Given the success of the ACT Program, it is very well placed to contribute to developing a national intermediary profession and national standards of practice.
- The in-house intermediaries in the ACT Intermediary program comprise a valuable community of practice that provides a model that could be developed for intermediaries with national (and even international) reach.
- For intermediary training, consider further expanding content on in-court interventions and broader criminal justice system processes.

⁴⁴ See Australian Law Reform Commission. (2025). *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143), Recommendation 6 concerning feedback mechanisms and para 5.77.

⁴⁵ As the administrative data analysis indicates, police referrals concerned 32 child complainant/witnesses aged under 18 years whose cultural background was noted as Aboriginal (4.6%) and 108 adults of other cultural background. The court referrals involved 6 Aboriginal children and 6 children and 32 adults of other cultural background (from Asia, Africa, the Middle East and Europe (primary language non-English countries).

⁴⁶ Australian Law Reform Commission (ALRC). (2025). *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143).

⁴⁷ ALRC (2025) Report 143, 10.32.

- Discussions should be initiated with Law Schools, the Council of Australian Law Deans and legal profession accreditation bodies to promote inclusion of material on Intermediary Programs and the work of intermediaries, in law school curricula and professional legal training and mandatory/continuing legal education.

Stakeholder and legal professional training and workshops

While regular and comprehensive training has been offered to legal and other professionals who work with intermediaries across the justice system, the Evaluation has highlighted some areas where there are opportunities to further develop and enhance stakeholder training.

Recommendations:

- Training materials and workshops for stakeholders be further developed to provide more detailed information about the role of intermediaries with a view to specifically addressing any prevailing misconceptions about the work of intermediaries and particularly the boundaries of intermediary work and their role. This training should be tailored to specific stakeholder groups.
- Further training opportunities be specifically offered to defence counsel in order to foster greater engagement with and understanding of the Intermediary Program.
- Training for professional stakeholders including, judicial officers, should utilise to a greater extent case studies and hypotheticals, and should focus more on developing practical skills rather than focussing predominantly on sharing information. This should include training related to techniques for effective communication with persons facing specific communication barriers.
- Incorporate across all training materials relevant excerpts from key resources like the Procedural Guidance Manual and Advocacy Gateway toolkit, as well as key legislative provisions.
- Training materials should include academic research, case law, and intermediary perspectives to substantiate the purpose and value of the intermediary role.
- For police and legal counsel training, consider developing more comprehensive materials that can serve as ongoing reference guides.
- Ensure consistency of core information across all stakeholder training materials while tailoring materials specific to each stakeholder group's needs.
- Develop information sheets for child and adult witnesses, complainants, defendants and parents/caregivers on the role of intermediaries, what can be expected from their involvement and how intermediaries can assist in a case.

Redefining the role of intermediaries

The findings of the Evaluation highlight the growing awareness and understanding of the communication barriers facing many witnesses as well as the educative function of intermediaries in assisting professionals in the justice system to develop for themselves ways of overcoming these barriers. Currently in the ACT, justice professionals can seek guidance and advice from intermediaries on interventions that could be utilised to aid communication and improve their questioning. This aspect of the role of an intermediary could be further promoted and expanded.

Recommendations:

- Ways to further support and grow the advisory aspect of intermediaries' work should be explored, for example, offering drop-in-sessions with an intermediary or having an intermediary dedicated to advice work. This would have budgetary and resource implications that would need consideration.
- Consider alternative models to involve intermediaries more directly in developing questions to ask vulnerable witnesses. In some jurisdictions overseas, for example, counsel (especially defence) is required to share in writing with the court and intermediary, the questions that they plan to ask a vulnerable witness.⁴⁸ This

⁴⁸ **UK s 28 checklist:**

Give Directions re the Questions to be included in the GRH form the defence advocate must complete:

- (i) Advocates should follow the *20 principles of questioning* & Advocates Gateways and the relevant authorities.
- (ii) Advocates and Judge need to have watched the ABE or at least read the transcript before GRH (CPD); helps you to rule on questions so you understand the witness and what is/is not contentious.
- (iii) Require written questions from the advocate who will cross examine. For a child (and some vulnerable adults) these must be in full, not just headings and have headlines so each topic is set out with relevant questions underneath. The cross examination must follow the document, and the witness told what the next topic is and when that topic is finished. Require the planned questions will have options if eg unexpected answers are given – a sort of “if no, then... “if yes, then...”
- (iv) The questions should be necessary, short, open and clear.
- (v) The questions must be sent to the intermediary to check the witness will understand them (no double-negatives, rolled- up or tagged questions etc) and at the same time to the prosecution advocate. A submission from the defence that they do not want to provide the questions to the prosecution should be resisted; it is essential that these hearings are meaningful and that the questions are neither unnecessary or improper in content or structure and the judge needs to hear submissions if there is disagreement.

NB. The questions are not to be provided to anyone beyond the trial advocate, however, to ensure the witness cannot be made aware of them in advance.

provides an opportunity for questions to be reviewed, agreed upon and/or approved by all parties. There is increasing acceptance overseas that such practice serves the interests of justice, for example:

“In England... it is now a routine event, and indeed, expected practice, for counsel to be directed to disclose their proposed questions of a vulnerable party in writing to the judge in advance of the ground rules hearing. At the ground rules hearing there is then discussion about the questions which are approved or amended. This practice is seen as unobjectionable and consistent with a fair trial (a point also made to [the South Australian Law Reform Institute] by Judge Lees). In R v Boxer, the English Court of Appeal provided further support for the growing practice of counsel submitting their questions ahead of time to the intermediary and approved the practice for the submission of questions examination in chief should that be necessary.” (footnotes omitted).⁴⁹

Funding implications and resourcing

Several stakeholders interviewed and surveyed in the Evaluation described the ACT Intermediary Program as ‘First-Rate’ and ‘Gold-Class’. This was viewed as attributable to the operational effectiveness of the Program Team, the quality of the intermediaries, and the current level of funding for the Program.

Some stakeholders interviewed, however, raised concerns about how future funding costs or increased referrals and demand for intermediaries might impact on the Program. Specifically, concerns were raised about how intermediary referrals would be prioritised should the demand for intermediaries outstrip the resources of the Program.

Recommendation:

- Budgetary implications of Program expansion need to be closely monitored with forward planning to ensure the accessibility and quality of the Program is maintained.

Future research and program evaluations

Although beyond the scope of the current Evaluation, it would be instructive in the future to examine the association between use of intermediaries and the length, nature and frequency of interviews with child and vulnerable adult witnesses, case progression and

(vi) Questions are then included in the completed GRH form by defence and that uploaded onto DCS / sent by email to the judge and prosecution advocate.

⁴⁹ Plater D, Nicholls H, Basso S, Brunacci A, Holt J, Jacobs J, Leaver A, Muecke G, Oxlad M, Pandos O, Powell M, Wade N and Washusen B. (2021). *Providing a Voice to the Vulnerable: A Study of Communication Assistance in South Australia* (South Australian Law Reform Institute, Adelaide).

outcomes including, whether the use of intermediaries is associated with more cases with younger complainants and vulnerable witnesses progressing through the justice process, and time taken for final case disposition. Research of this type would need careful planning so that cases can be tracked through the justice process from police to court and, where possible, appropriately matched with cases that did not involve an intermediary. Of course, this research would also need to account for the fact that the use of intermediaries is only one element of a case that may influence its management, progression and outcomes. Despite the Program clearly having a positive impact in the ACT, with promising potential to shift culture, attitudes and practices, inevitably there are numerous structural and systemic features of the justice process that will continue to impact on how witnesses experience the justice process and how a case is handled and ultimately disposed of, as highlighted by the Australia Law Reform Commission (2025).⁵⁰

⁵⁰ Australian Law Reform Commission. (2025). *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143).

APPENDIX A: EVALUATION MATERIALS

A.1 Participant Information Statement – parents and caregivers



Participant Information Statement

Parents/caregivers

Evaluation of the ACT Intermediary Program

Professor Rita Shackel (Responsible Researcher)
University of Sydney Law School
Email: intermediary-program.evaluation@sydney.edu.au

1. What is this study about?

We are conducting a research study to evaluate the ACT Intermediary Program. This program was introduced in early 2020 with a focus on assisting child witnesses to communicate their best evidence at police interview and during the court trial process. Adults with communication difficulties are also eligible to participate in the program. The Program makes intermediaries available for most children interviewed by police officers where sexual assault and/or homicide have been alleged. Intermediaries will also be available to assist in these types of court matters. Additionally, an intermediary may be appointed in other types of cases depending on police, court and Program decisions about the case.






This study aims to evaluate the impacts of the Program and inform future implementation.

You and/or your child have been invited to take part. Taking part in this study is voluntary.

Please read this sheet carefully and ask questions about anything that you don't understand or want to know more about.

2. Who is running the study?

The study is being carried out by the following researchers from the University of Sydney:

-  Professor Rita Shackel, Professor of Law and Ethics
-  Professor Judy Cashmore, Professorial Research Fellow
-  Rukiya Stein, PhD Student and Research Assistant
-  Laura Metcalfe, PhD Student and Research Assistant
-  Anthony Jenkins, Research Officer.

This project is being conducted through a research consultancy funded by the ACT Government.

3. Who can take part in the study?

We are inviting parents or caregivers of children who have participated in the Program to participate in an interview or an online survey about their child's experiences at a police interview and, if relevant, at court.

Additionally, your child has been invited to take part in this study because they have participated in the Program.

4. What will the study involve?

If you decide to take part in this study, you will be asked to talk about your and your child's experience of the Intermediary Program.

If your child decides to take part in this study, they can say how they experienced the Intermediary Program via either (1) an online survey, (2) an interview or by (3) completing the **attached postcard**.

If you and/or your child decide to take part in the online survey, you can follow these links:

→ if your child would like to take the survey: <https://bit.ly/45ZXGzA>;

→ if you would like to take the survey: <https://bit.ly/3LifRH9>] once you have read and understood everything in this Participant Information Sheet.

The online survey is anonymous and no identifying information will be collected about you or your child.

If you and/or your child decide to take part in an interview, we will ask you to participate by phone, video conference or face-to-face. Interviews with parents/caregivers will take approximately 45 minutes and interviews with your child, approximately 30-40 minutes with time for breaks built-in.

During the interview, we will audio record what is said, with your consent, and prepare a transcript to ensure we have an accurate record of everything you said. Any mention of your name or your child's name, or any details that might identify you or your child, will be removed from the transcript.

5. Can we withdraw once started?

Being in this study is completely voluntary and you do not have to take part.

If you decide to take part in the study, but change your mind mid-way through your interview, you can let us know and the interview will be terminated. If you decide to take part in the study, but change your mind after completion of an interview, you can withdraw by emailing us or completing a 'Withdrawal of Consent Form' which will be provided to you prior to being interviewed.

You can withdraw from the online survey by not completing the survey or not submitting your answers. Once you have submitted your answers, it will not be possible to withdraw as the survey is anonymous and we will not be able to locate yours or your child's survey.

If you choose to withdraw, we will not collect any more information. Please let us know at the time of withdrawal what you would like us to do with information we have collected about you or your child up to that point.

6. Are there any risks or costs?

Aside from giving up time, we do not expect that there will be any risks or costs associated with taking part in this study for you and/or your child.

If anything in this survey has upset you or the child/young person it relates to, you can call someone at **Victim Support ACT** on 1800 8222 72. They can help you with accessing counselling and other services. More information about their services can be found on the website: <https://www.hrc.act.gov.au/victim-support>.

Your child can also call the **Kids Helpline** on 1800 55 1800 or visit their website <https://kidshelpline.com.au/>. It is a free and private phone counselling service for young people aged between 5 and 25.

7. Are there any benefits?

There are no direct benefits for you or your child from being in the study. There are, however, benefits to the project in learning about the experiences of those who have been involved.

8. What will happen to information that is collected?

By providing your consent, you are agreeing to us collecting information about you and/or your child for the purposes of this study. This information will be kept for twenty years after the project's completion. We will store information about you and/or your child in a non-identifiable format at the University of Sydney.

Any information provided to us will be stored securely and we will only disclose identifiable information with your permission, unless we are required by law to release information. We are planning for the study findings to be published.

You and/or your child will not be individually identifiable in these publications.

9. Will I be told the results of the study?

You and your child have a right to receive feedback about the overall results of this study. If you would like to receive a copy of the results, you can let the research team know by emailing us, by ticking the relevant box in the accompanying Participant Consent Form, by answering the relevant question in the online survey or by filling out the relevant information on the postcard. This feedback will be a brief lay summary of the results of the evaluation.

10. What if I would like further information?

When you have read this information, the following researcher will be available to discuss it with you further and answer any questions you may have. If you or your child would like to know more at any stage, please feel free to contact:

✚ The research team, intermediary-program.evaluation@sydney.edu.au

11. What if I have a complaint or any concerns?

The ethical aspects of this study have been approved by the Human Research Ethics Committee (HREC) of The University of Sydney 2023/618 according to the *National Statement on Ethical Conduct in Human Research (2007)*. If you are concerned about the way this study is being conducted or you wish to make a complaint to someone independent from the study, please contact the University: Human Ethics Manager human.ethics@sydney.edu.au +61 2 8627 8176

A.2 Parent caregiver survey

Online survey questions

Parents/caregivers

ACT Intermediary Program Evaluation

Professor Rita Shackel (Responsible Researcher)

University of Sydney Law School

Phone: +61 2 9351 0368 | Email: rita.shackel@sydney.edu.au

Introduction page

We are researchers from the University of Sydney. We have been engaged by the ACT Intermediary Program (the Program) to evaluate the work of intermediaries in the ACT. We are asking parents who have had engagement with the Program to tell us what it was like - for you and your child - when your child took part in an interview with police, with an intermediary, and perhaps went to court as well. Intermediaries work with witnesses and defendants to communicate their best evidence. It would be very helpful if you would answer the following questions about your child's experience giving evidence.

Taking part in this study is voluntary. You can withdraw from the online survey by not completing the survey or by not submitting your answers. Once you have submitted your answers, it will not be possible to withdraw as the survey is anonymous and we will not be able to locate yours or your child's survey.

For more information about this study, please read the Participant Information Statement provided to you.

If you would like to proceed, please read the following and continue on to the survey.

I agree to take part in this research study. In giving my consent, I confirm that:

- The details of any involvement have been explained to me and I have been provided with a Participant Information Statement to keep.
- I understand the purpose of the study is to evaluate the ACT Intermediary Program.
- I acknowledge that the risks and benefits of participating in this study have been explained to me to my satisfaction.
- I understand that in this study I will be required to complete an online survey and answer questions about my child's experiences with the Program.
- I understand that information may be used in future research and will be stored securely for twenty years at the University of Sydney.
- I understand that being in this study is completely voluntary.
- I am assured that my decision to participate or not will not have any impact on the police investigation, court process/outcome or ability to access the Intermediary Program.

- I understand that I can withdraw from this study by not completing the survey or not submitting my answers.
- I have been informed that the confidentiality of the information that I provide will be protected and will only be used for purposes that I have agreed to.
- I understand that the results of this study may be published, and that publications will not contain any identifiable information about myself or my child.

Do you have more than one child who gave evidence at police interview or at court with an intermediary present? Select all that apply

- Yes, I have more than one child who spoke with police with an intermediary
- Yes, I have more than one child who gave evidence with an intermediary at court
- No, only one child who gave evidence with an intermediary with police, *continue to Q2*
- No, only one child who gave evidence with an intermediary at court, *display logic: display Qs 3, 4, 6, 7, 15-18, 24-26, 28; then continue to court section.*

If yes: Could you please complete separate surveys for each child that gave evidence with an intermediary present? This survey will continue and at the end, you will have an opportunity to follow a link to begin the survey again and answer questions about your other child/ren.

1. How old was your child when first interviewed by the police with an intermediary present?

- Under 5 years
- 6 years
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17+ years
- Other, please specify [text box]
- I can't remember/prefer not to say

2. What is the cultural background of your child?

- Aboriginal
- Torres Strait Islander
- Both Aboriginal and Torres Strait Islander
- New Zealand
- Pacific Islands
- Asian
- African

- Middle Eastern
- South and Eastern European
- North-West European
- English language Australian
- The Americas
- Other – please specify
- Prefer not to say

3. Does your child speak English as a second language?

- Yes / No /Prefer not to say

4. Does your child have any particular issues with communication?

- Yes, please specify [text box]
- No
- Prefer not to say
-

THESE QUESTIONS ARE ABOUT YOUR CHILD'S EXPERIENCE SPEAKING WITH THE POLICE

5. When your child spoke with police with an intermediary present, was it a: *Select all that apply*

- Meet and Greet
- Police Interview
- Communication Assessment
- I don't remember

6. Did your child speak with the police without an intermediary present? [yes/no/not sure]

If yes, continue. If no/not sure, skip to Q9

7. Was this a: *Select all that apply*

- Meet and Greet
- Police Interview
- Both

8. Do you know what an intermediary does? *Select all that apply*

- Assesses a witness's communication needs
- Provides witnesses with strategies to manage stress and anxiety
- Interjects when inappropriate/difficult questions are asked
- Suggests ways to ask questions appropriately
- Provides visual aids to assist with answering questions
- I'm not sure

9. Were you present when the intermediary assessed your child and their communication needs? [Yes/no/not sure]

If yes, continue. If no/not sure, skip to Q16

10. **Did the intermediary explain their role to you and/or your child?**
 - Yes, *continue to Q12*
 - No, *skip to Q13*
 - Not sure, *skip to Q13*

11. **Did you understand the intermediary role as it was explained to you and/or your child?** [yes/no/not sure]

12. **Did your child appear to be comfortable in the presence of the intermediary?** [Yes/No/Not sure]

13. **Did the intermediary make recommendations that helped your child communicate with the police?** [Yes/no/not sure]

14. **Would you like to say anything more about that?** [text box]

15. **Where were the interviews with your child conducted?** *Please select all that apply*
 - at a police station
 - at home
 - at school
 - at another office
 - at a hospital
 - somewhere else, please specify [text box with forced response]

16. **How stressed was your child before the police interview?** *Sliding gauge from 0 – not much at all, to 10 – really stressed*

17. **Can you tell us a bit more about that?** [text box]

18. **Were you present when your child was interviewed by police?** [Yes/no/not sure]
If no/not sure skip to Q28

19. **Did the intermediary provide any visual aids, focus items or anything to help your child feel less stressed?** [Yes/no/not sure]

20. **How helpful were the aids?** [Scale very helpful – not helpful at all]

21. **Do you think having an intermediary present made it easier for your child to speak to the police?**
 - Yes
 - No, *skip to Q24*
 - I don't know, *skip to Q25*

22. **What did the intermediary do that was helpful for your child?** [Text box]

23. **Did the intermediary do anything that was not helpful for your child?** [Text box]

Display if Q22 answer was no

24. **Do you think your child had enough breaks while answering questions from the police?** [Yes/no/not sure]
25. **Do you think the Police could have done anything to make it easier for your child to communicate?**
- Yes
 - No
 - I'm not sure
26. **Do you want to say anything more about that?** [text box]
27. **Did the presence of an intermediary make your child more comfortable to go with the police officer for an interview while you waited outside?** [Yes/no/not sure]
28. **Is there anything else you would like to say about what could have made it easier for your child?** [text box]
-

THESE QUESTIONS ARE ABOUT THE INTERMEDIARY AT COURT:

29. **Did your child give evidence at court?** [Yes/no/not sure]
- If yes, skip to Q32.*
30. **Do you know why your child did not give evidence at court?** [text box]
- Skip to end of survey.*
31. **Do you remember which court your child gave evidence at:**
- Supreme Court
 - Magistrates Court
 - Children's Court
 - I don't remember.
32. **Do you know if your child gave evidence at a pre-trial hearing that was recorded?**
- Pre-trial Hearing – **recorded** - *continue*
 - Pre-trial Hearing – **not recorded**– *skip to Q36*
 - Gave evidence at trial – *skip to Q36*
 - I'm not sure – *skip to Q36*
33. **Do you think recording the child's evidence before the trial helped your child?**
Visual gauge from 0 not much help at all, to 5 some help, to 10 a lot of help.
34. **Can you tell us more about this?** [text box]

35. How old was your child when giving evidence at court?

- Under 5 years
- 6 years
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17+ years
- Other, please specify [text box]
- I can't remember/prefer not to say

36. Was the intermediary role at court explained to you? [Yes/no/I can't remember]

37. Did you understand the role of the intermediary at court as it was explained?

[Yes/no/not sure] *Display if Q37 answer was yes.*

38. Were you present when the intermediary did their assessment of your child's communication needs for court?

[Yes - continue/no - skip to Q42/not sure - skip to Q42]

39. Did you understand the reason for the assessment of your child's communication needs? [Yes/no/not sure]

40. Do you have any comments on the intermediary's assessment of your child's communication needs for court? [text box]

41. How stressed was your child before giving evidence?

Visual gauge from - 0 not much at all; 5 somewhat; 10 really stressed

42. Did you observe your child give evidence at court? [Yes/no]

If yes, continue. If no, skip to Q57.

43. Do you think the intermediary helped your child feel more confident about answering the lawyers' questions?

Sliding gauge from 0 - not much help at all, to 10 - a lot of help

44. Do you think your child understood most of the questions asked by the lawyers?

Sliding gauge from 0 - understood none of the questions; to 10 - understood all of the questions

45. Do you think your child had a proper chance to tell their story in court about what happened?

- Yes
- No

- Not sure
- 46. Please tell us why that is.** [text box] *Display if Q46 answer is no/not sure*
- 47. Do you think overall your child gave the best evidence they could?**
- Yes
 - No
 - Not sure
- 48. Can you say more about that please?** [text box]
- 49. Did the intermediary intervene during your child's evidence?** *Sliding gauge from 0 – never intervened to 10 – intervened a lot*
- 50. Do you think the intermediary helped to reduce your child's stress in court?**
- Yes
 - No
 - Not sure
- 51. Can you say more about that please?** [text box]
- 52. Did your child use any aids (e.g. post-it notes, pictures, or fidget toys) when giving evidence?**
- Yes, *continue*
 - No, *skip to Q55*
 - Not sure, *skip to Q55*
- 53. How helpful were the aids?** *Visual gauge from 0 not much help at all, to 5 some help to 10 a lot of help*
- 54. Do you think your child had enough breaks while answering questions at court?**
[Yes/no/not sure]
- 55. Please tell us what, if any, aspects of the intermediary role were helpful to your child.** [Text box]
- 56. Did your child say anything about the intermediary to you?** [text box]
- 57. Is there anything that would have made it easier for your child in court?** [text box]
-

6 THESE QUESTIONS ARE ABOUT YOUR CHILD'S EXPERIENCE GENERALLY AT COURT

58. How long was it from when your child talked with the police to when they first gave evidence at court?
- Under 3 months
 - 3 to < 6 months
 - 6 to < 12 months
 - 12 to <18 months
 - 18 to <24 months
 - 2 to <3 years
 - 3 to <4 years
 - 4 years or longer
 - I'm not sure
59. Do you think your child knew all they needed to know about giving evidence and what to expect before going to court?
- Yes
 - No
 - Not sure
60. Can you tell us more about this? [text box]

THESE QUESTIONS ARE ABOUT THE COURT OUTCOME

61. What was the outcome or verdict in this case?
- Guilty on all charges
 - Guilty on some charges, not guilty on other charges
 - Not guilty on all charges, by direction from Judge
 - Not guilty on all charges by jury
 - Trial was aborted
 - Don't know
 - Other (please specify)
62. What was the sentence? [text box]
63. How do you feel about the outcome? [text box]
64. Please add anything else you would like to tell us about *your child's* experience giving evidence at court. [text box]

This is the final question for this survey. By answering this question, and pressing submit, you are submitting the survey and cannot retract your answers.

65. Please add anything else you would like to tell us about *your* experience with your child giving evidence at court. [text box]

Concluding Page

Thank you for your assistance in completing this survey.

Would you like to receive information about the results of this study? [Yes / No]

Would you like to chat more with a member of the research team about yours and/or your child's experience talking with an intermediary? [Yes/no]

If you have answered 'yes' to either of the above questions, please enter your email address here. This will only be used to contact you for the purpose of communicating the results of the study and/or contacting you for an interview. [Free text with content validation]

You indicated that you have another child/ren who has given evidence with an intermediary present. Please click this link to complete a new survey about your other child/ren's experiences [insert link to Parent/Caregiver survey] *Display if answered 'yes' to Q1*

If anything in this survey has upset you or the child/young person it relates to, you can call someone at Victim Support ACT on 1800 8222 72. They can help you with accessing counselling and other services. More information about their services can be found on their website: <https://www.hrc.act.gov.au/victim-support>

You can also call the Kids Helpline on 1800 55 1800 or visit their website <https://kidshelpline.com.au/>. It is a free and private, phone counselling service for young people aged between 5 and 25.

A.3 Professionals interview schedule



Interview schedule (semi-structured)

Defence & prosecution lawyers, Victim Support
ACT staff, Child and Youth Protection Services staff,
judicial associates, intermediary administrators and Witness Liaison Officers

ACT Intermediary Program Evaluation

Professor Rita Shackel (Responsible Researcher)
University of Sydney Law School
Phone: +61 2 9351 0368 | Email: rita.shackel@sydney.edu.au

Proposed interview themes/questions to be explored via semi-structured interviews with professionals and practitioners

At the outset of the interview, participants will be:

- Asked to verbally consent to the interview being recorded
- Asked if they have read the PIS and whether they have any questions

The following questions are indicative of the themes/issues that will be explored with child witnesses/defendants in semi-structured interviews covering the themes outlined below. The interview will be dynamic and responsive to specific issues raised by individual interviewees. The direction of the interview will be shaped by each interviewee and researcher as discussion unfolds.

1. A bit about you

Example questions

- What is your occupation/area of work?
- How long have you been working in this field?

2. Working with intermediaries

Example questions

- Have you worked with an intermediary?
 - With both child and adult witnesses?
 - With defendants?
- Do you get the chance to speak with an intermediary before questioning a child or vulnerable witness?

- In your experience, do you think child or vulnerable adult witnesses with intermediaries appear to give better evidence than child or vulnerable adult witnesses without intermediaries? Any difference between child and vulnerable adult witnesses in your experience? [if experience of both]
- In your experience, are child or vulnerable adult witnesses with intermediaries more confident in answering questions than those without intermediaries? Again, any difference between child and vulnerable adult witnesses in your experience?
- Examples of cases?
- Use of aids? Useful?
- Change in your questioning? Other police?
- Would you like to comment on the fairness of intermediaries?
 - To complainant and to accused?
- In your experience, what has been the best thing about intermediaries?
- In your experience, what has been the most challenging thing about involving intermediaries?
- Do you feel you have been provided with enough training and support about working with intermediaries?
- What if any other training or support might be beneficial?
- Have you experienced any ethical dilemmas working with intermediaries?
- Is there anything else you would like to say about intermediaries?

Intermediaries in court: *Example questions*

- How often is there a ground rules hearing (i.e. a meeting with the judge, lawyers and intermediary to establish the do's and don'ts for questioning the witness)?
- What sort of rules were established in the ground rules hearing?
- In your experience, how often does the prosecution follow the ground rules/suggestions made by the intermediary?
- In your experience, how often does the defence follow the ground rules/suggestions made by the intermediary?
- If someone asked a question that was too difficult, what happened?
- In your experience, has the intermediary suggested using aids such as timelines or diagrams?
- In your experience, does the intermediary also intervene when the questioner has misunderstood what the child or vulnerable adult witness has said?
- Do you think intermediaries have any impact on a jury's level of engagement with the witness?
- Is the purpose of the intermediary usually explained to the jury?
- Do you have any other comments on the role or impact of having intermediaries at court?
- Have cases been dealt with more promptly?

Any other comments?

A.4 Professionals Survey



Online survey questions

Professionals and practitioners

ACT Intermediary Program Evaluation

Professor Rita Shackel (Responsible Researcher)
University of Sydney Law School
Phone: +61 2 9351 0368 | Email: rita.shackel@sydney.edu.au

We are conducting a research study to evaluate the ACT Intermediary Program (the Program). Taking part in this study is voluntary.

The Program was introduced in early 2020 with a focus on assisting child witnesses to communicate their best evidence at police interview and during the court trial process. Adults with communication difficulties may also receive communication assistance from intermediaries. This study aims to evaluate the impacts of the Program and inform future implementation.

You have been invited to take part in this online survey because you have participated in the Program. If you decide to take part in this survey, you will be asked questions that explore your experiences with the Program, how it might be improved and if anything else could be done to help child and vulnerable adult witnesses and defendants to communicate their best evidence.

By submitting your survey, you consent to take part in the study. You can withdraw any time before you submit however once your responses are submitted, they cannot be withdrawn. This is because they are anonymous, and we will not be able to tell which one is yours. Before continuing with this online survey, please carefully read the Participant Information Statement provided to you.

If you would like to continue with this online survey, please read the following and continue to the beginning of the survey.

I agree to take part in this research study. In giving my consent, I confirm that:

- I have been provided with a written Participant Information Statement to keep and have had the opportunity to contact the research team with any further questions.
- I understand the purpose of the study is to evaluate the Program.

- I acknowledge that the risks and benefits of participating in this study have been explained to me to my satisfaction.
- I understand that in this study, I will be required to participate in an online survey during which I will answer questions about my experiences with the Program.
- I understand that my information may be used in future research and will be stored securely for twenty years after the project's completion.
- I understand that being in this study is completely voluntary.
- I am assured that my decision to participate will not have any impact on my relationship with the research team or the University of Sydney.
- I am assured that my decision to participate will not have any impact on my relationship with the Program.
- I understand that I am free to withdraw from this study at any time by not completing the survey or not submitting my answers.
- I have been informed that the confidentiality of the information I provide will be protected and will only be used for purposes that I have agreed to. The information I provide will not be shared with the Program.
- I understand that the results of this study may be published, and that publications will not contain my name or any identifiable information about me.

About you

1. What is your occupation?

- Crown Prosecutor
- Prosecuting instructing solicitor
- DPP Witness Liaison Officer
- Defence lawyer
- Disability Liaison Officer
- Child and Youth Protection Services staff
- Victim Support ACT staff
- Witness Liaison Officer
- Judicial associate
- Intermediary program administrator
- Remote suite staff
- DV Court Service staff

2. How long have you been working in this field? [Text box]

Working with intermediaries

3. Roughly how many times have you worked with an intermediary in police matters?

- 0
- 1-4
- 5-9
- 10+

4. Roughly how many times have you worked with an intermediary in court matters?

- 0
- 1-4
- 5-9
- 10+

5. Have you worked with an intermediary in cases involving: *Select all that apply*

- A child witness
- A child suspect/defendant
- An adult witness
- An adult suspect/defendant

6. Did the intermediary explain their role to you?

- Yes
- No
- Not sure

7. Did you understand the intermediary role as it was explained to you?

- Yes
- No
- Not sure

8. What is your understanding of the intermediary role? *Select all that apply*

- Helps with communication
- Assesses communication needs
- Explains difficult questions to vulnerable witnesses/defendants
- Interjects when inappropriate/difficult questions are asked
- Suggests ways to ask questions appropriately
- Minimises stress for witnesses or defendants answering questions
- Provides visual aids to assist with answering questions

9. How often do you get the chance to speak with an intermediary before questioning a child or vulnerable adult witness/suspect?

- Always – go to Q11
- Often – go to Q11
- Sometimes – go to Q10
- Hardly ever– go to Q10
- Never – go to Q10

10. Could you elaborate a little? Why don't you always or often get the chance to speak with an intermediary before questioning a child/vulnerable adult witness/suspect?

[Text box]

11. In your experience, do you think child witnesses/suspects with intermediaries generally appear to give better evidence at police interview than child witnesses/suspects without intermediaries? Please tell us why [Text box]

12. In your experience, do you think child witnesses/suspects with intermediaries generally appear to give better evidence at court than child witnesses/suspects without intermediaries? Please tell us why [Text box]

13. In your experience, do you think vulnerable adult witnesses/suspects with intermediaries generally appear to give better evidence at police interview than vulnerable adult witnesses/suspects without intermediaries? Please tell us why [Text box]

14. In your experience, do you think vulnerable adult witnesses/suspects with intermediaries generally appear to give better evidence at court than vulnerable adult witnesses/suspects without intermediaries? Please tell us why [Text box]

15. Do you think that having an intermediary at court is fair to the complainant?

Not fair at all _____ Very fair

Place a mark on the scale above

16. Why do you think it is fair or unfair? [text box]

17. Do you think that having an intermediary at court is fair to the accused?

Not fair at all _____ Very fair

Place a mark on the scale above

18. Why do you think it is fair or unfair? [text box]

19. In your experience, what has been the best thing about working with intermediaries? Please explain your answer. [Text box]

20. In your experience, what has been the most challenging thing about working with intermediaries? Please explain your answer. [Text box]

21. Do you feel you have been provided with enough training and support for working with intermediaries?

- Yes
- No

22. Please explain more about that [Text box]

23. What if any other training or support might be beneficial? [Text box]

24. Have you experienced any ethical dilemmas when working with intermediaries?

- Yes
- No

25. Please explain more about that [Text box]

26. In your experience, do you think intermediaries are impartial/neutral?

- Always, go to Q28
- Most of the time, go to Q28
- Sometimes, go to Q27
- Hardly ever, go to Q27
- Never, go to Q27

27. What would need to change for your view on the impartiality of intermediaries to change? [text box]

28. Do you have any further comments about intermediary impartiality/ neutrality? [text box]

Intermediaries in court

29. What sort of directions for questioning are generally made in the Ground Rules Hearing? [Text box]

30. How often does the judicial officer support the directions at court during the pre-recorded hearing or trial?

Hardly ever Sometimes All the time

Place a mark on the scale above

31. In your experience, how often does the prosecution follow the Ground Rules/directions for questioning made by the intermediary?

Hardly ever Sometimes All the time

32. In your experience, how often does the defence follow the Ground Rules/directions for questioning made by the intermediary?

Hardly ever Sometimes All the time

Place a mark on the scale above

33. If someone asked a question that was too difficult to understand, what happened?

	Never	Hardly ever	Sometimes	Often	Mostly/always
The intermediary intervened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The opposing lawyer objected	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The judge intervened	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The person asking the question rephrased it	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The intermediary rephrased the question	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The person asking the question was allowed to ask the question	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The judge enforced the rule/suggestion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

34. In your experience, has the intermediary suggested using aids such as post-it notes or diagrams?

- Yes, go to Q35
- No, go to Q36

35. How helpful were the aids?[Text box]

36. In your experience, does the intermediary also intervene when the questioner has misunderstood what the child or vulnerable adult witness/defendant has said?

- Yes
- No

37. Please explain more about that [Text box]

38. Do you think intermediaries have any impact on a jury's level of engagement with the witness/defendant?

Substantially less impact No difference Substantially more impact

Place a mark on the scale above

39. Is the purpose of the intermediary usually explained to the jury? [Text box]

40. Please add any other comments about the role of an intermediary in court.
[Text box]

41. Do you think cases involving an intermediary are dealt with more or less promptly?

- More promptly
- Less promptly
- About the same

42. Could you please explain your answer? [Text box]

43. Is there anything else you would like to say about intermediaries? [Text box]

44. Do you have any other comments you would like to add? [Text box]

Concluding Page

Thank you for your assistance in completing this survey.

Would you like to receive information about the results of this study? [Yes / No]

Would you like to be interviewed further about your experiences working with intermediaries for this study? [Yes / No]

If you have answered yes to either of the above questions, please enter your email address here. This will only be used to contact you for the purpose of communicating the results of the study and/or contacting you for an interview.

[Free text]

APPENDIX B: EVALUATION FRAMEWORK

ACT INTERMEDIARY PROGRAM EVALUATION FRAMEWORK

Contents

1. Executive Summary
2. Background and aims of the Intermediary Program
3. Overview of the roll-out of the ACT Intermediary Program
4. Purpose of the evaluation framework, evaluation logic and measures
5. Criminal justice, human rights and the policy context in the ACT relevant to operation of the Intermediary Program
6. Proposed evaluation strategy and methodology
7. Budgetary considerations
8. Key considerations for evaluation management processes and risk mitigation
9. Reference and resource list
10. Appendices

ACT INTERMEDIARY PROGRAM EVALUATION FRAMEWORK

1. Executive summary

This evaluation framework provides an outline of the key measures for evaluation of the ACT Intermediary program (‘the Intermediary Program’); it sets out important background and context for the evaluation and provides a preliminary plan for data collection, analysis and key evaluation management processes.

We map out the evaluation questions against the key data points, areas of focus and relevant measures (see Table 1 pp. 9–12).

This framework also provides a proposed time plan and sequence for conducting the evaluation, key milestones, and some preliminary budgetary considerations.

We also identify some key potential risks and ethical considerations for the evaluation process.

2. Background and aims of the Intermediary Program

The ACT Intermediary Program was set up in response to the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (‘The Commission’). The Commission reported that vulnerable witnesses, such as child complainants in sexual abuse matters, face major communication barriers when giving evidence. The Commission, accordingly, recommended that all states and territories establish intermediary schemes to assist ‘vulnerable’ witnesses to communicate their best evidence.¹ To date, all Australian jurisdictions except Western Australia² and the Northern Territory

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report, Parts VII to X and Appendices*, pp. 3–6; Final Report: Recommendations 9, 59 and 60. See Appendix to this framework: Royal Commission Final Report: Witness Intermediary Recommendations.

² District Court of Western Australia *Consolidated Practice Directions & Circulars To Practitioners: Criminal Procedures* [As updated on 11 March 2021]

19.1.2 The State Government is presently considering introducing legislation and providing resources for an intermediary scheme in Western Australia. However, as an interim measure the Court will conduct ‘ground rules’ hearings in cases where a witness is extremely vulnerable and within its existing legislative framework. Due to limited resources at this time, ground rules hearings will generally be listed only in [limited] circumstances.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjpte6O-8L6AhVHwjgGHbomC1UQFnoECAwQAQ&url=https%3A%2F%2Fwww.districtcourt.wa.gov.au%2F_files%2FDC_Consolidated_Criminal_Procedure.docx&usg=AOvVaw0DUcfr_GRLEzWerFmHzqxc

have introduced provision for intermediaries in some form.³ Only the ACT, South Australia (named The Communication Partner Service)⁴ and Tasmania⁵ extend intermediary assistance to vulnerable defendants. The intermediary schemes across Australian states and territories vary in a range of ways (as do intermediary schemes in overseas jurisdictions). Accordingly, there is currently no nationally consistent provision of witness intermediaries in Australia.

We believe the evaluation process in the ACT provides a timely and key opportunity to conduct an up-to-date detailed literature review of intermediary schemes within Australia and internationally, and of the experiences of selected countries where intermediary programs have been established, rigorously evaluated, and successfully extended. Of particular interest are the intermediary programs in the United Kingdom⁶, Northern Ireland⁷ and New Zealand.⁸ This literature review would inform the ACT evaluation by providing an evidence base for assessing program measures and outcomes. It would also provide a valuable basis for comparison across jurisdictions to inform future development of the Intermediary Program in the ACT and in other jurisdictions. This review would further provide an opportunity to consider contemporary perspectives and recent scholarship on trauma-informed communication and practice, which inform witness intermediary schemes and the work of intermediaries.

The ACT Government passed legislation⁹ and allocated funding in its 2019–2020 budget to establish its Intermediary Program. The Program commenced in early 2020 – first with ACT Police (31 January 2020) and shortly after with ACT Courts (9 March 2020). Lawyers may also now directly request intermediary assistance and referral (as of December 2020).

The general aim of the ACT Intermediary Program is to facilitate clear and effective communication between witnesses and police, lawyers, and others at court so that vulnerable witnesses¹⁰ (primarily children) can provide their best evidence at police interviews and during the trial process. As a corollary, the Program also aims to reduce stress and trauma for witnesses and improve access to justice.

³ J Giuffrida & A Mackay (2021) Extending witness intermediary schemes to vulnerable adult defendants, *Current Issues in Criminal Justice*, 33:4, 498–516, DOI: [10.1080/10345329.2021.1955459](https://doi.org/10.1080/10345329.2021.1955459)

⁴ *Evidence Act 1929* (SA), s 14A and *Summary Offences Regulations* (SA). See also: https://www.sa.gov.au/data/assets/pdf_file/0010/599338/Guide-to-engaging-a-communication-partner.pdf

⁵ Tasmania has had some cases involving intermediaries with defendants.

⁶ *Youth Justice and Criminal Evidence Act 1999* (UK).

⁷ *Criminal Evidence (Northern Ireland) Order 1999, Articles 17 and 21BA*.

⁸ *Evidence Act 2006* (NZ), s 80.

⁹ *Evidence (Miscellaneous Provision) Amendment Act 2019* (ACT).

¹⁰ Vulnerable witnesses with communication difficulties, including children, young people and adults with a disability.

Importantly, the Intermediary Program has expanded beyond its initial scope of child and vulnerable witnesses in child sexual abuse matters to include different types of violent crime – most notably in relation to homicide, family and domestic violence – and also to include some defendants’ matters, Magistrate Court matters, and the facilitation of communication between lawyers and witnesses in other settings. Accordingly, the Intermediary Program now assists to facilitate communication in an expanded range of matters, involving a broader range of vulnerable witnesses with diverse communication needs.

Intermediaries¹¹ (as termed in the ACT) were introduced by the *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*. Chapter 1A of the legislation also introduced Ground Rules Hearings in the ACT.¹² An intermediary “appointed for a witness is an officer of the court and must act impartially when assisting communication with the witness”.¹³ All intermediaries must undergo rigorous training to become accredited and must abide by the Code of Conduct for Intermediaries.¹⁴ Intermediaries are typically drawn from allied health professions including, Speech Pathology, Social Work, Psychology, Occupational Therapy and other related professions although there are provisions to allow individuals without specific professional qualifications to become accredited intermediaries.¹⁵

Police and lawyers may request intermediary assistance. Judicial officers may also require an intermediary to assist the court. Intermediaries are most often requested to assist the witness’ communication during the police evidence-in-chief interview and the court hearing or trial, so that they can assist immediately if a breakdown in communication arises when the witness is providing their evidence to the court. Intermediaries may also assist lawyers to communicate with witnesses in some instances.

In the ACT, the intermediary conducts a Communication Assessment to assess the communication needs of witnesses so they can provide police and the court with tailored recommendations regarding how the witness best communicates:

¹¹ Section 4AG of the legislation defines an “intermediary” to mean 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.

¹² *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*, Chapter 1A.

¹³ *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*, Chapter 1B s 4AI (2). Intermediaries have no role to play in judging the merits of the content of elicited evidence. They can be charged with aggravated perjury if they are seen to mislead the court. [see ACT Intermediary Program *Procedural Guidance Manual (PGM)* (2020) p. 37. Available at: <https://hrc.act.gov.au/wpcontent/uploads/2020/05/1.-ACT-Intermediary-Procedural-Guidance-Manual-FEBRUARY-2020.pdf>

¹⁴ See PGM pp. 5–7.

¹⁵ *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*, Chapter 1B – 4AH.

- immediately prior to the witness' interview with police (a short assessment usually about 20 mins); and
- prior to the witness' attendance at court (a more comprehensive assessment usually about 45–60 mins).

Judicial officers must turn their mind to appointing an intermediary for legislatively prescribed categories of witnesses, specifically: (a) a child complainant in a sexual offence proceeding and (b) a child in a serious violent offence proceeding involving the death of a person.¹⁶ In court matters, the court orders a Communication Assessment and directs a Ground Rules Hearing to discuss the intermediary's recommendations. The hearing occurs prior to the witness giving evidence and at the hearing, "the court may make any direction it considers is in the interests of justice".¹⁷ This may include "directions about how a witness may be questioned, the content of questions asked, the use of communication aids or support animals, and the conditions in which the witness gives evidence".¹⁸ The judicial officer makes directions regarding what recommendations will be followed during questioning.

3. Overview of the roll-out of the ACT Intermediary Program

The ACT Intermediary Program is overseen by the Victims of Crime Commissioner who is the intermediary administrator.¹⁹ The *Procedural Guidance Manual (2020)*²⁰ outlines the roles and responsibilities that intermediaries must adhere to. The Program's implementation is guided by a group consisting of senior representatives from criminal justice stakeholders including: ACT Courts, ACT Police, Legal Aid, DPP, CYPS, The Law Society, HRC, JACS, and the ACT Bar Association. Their role is to ensure the Program operates in a way which is consistent and attuned to the needs of their agency whose business involves interaction with intermediary service provision.

From the outset, the Program was implemented in planned phases, initially focusing on intermediary appointments in 'prescribed witnesses' cases with police and courts (as defined in the *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*) and then expanding to appointing intermediaries to other categories of witnesses and cases (ie. other groups of vulnerable witnesses including adults with communication difficulties, defendants and

¹⁶ *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*, Part 2, 3B.

¹⁷ *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*, s 4AF.

¹⁸ *R v QX (No 2) [2021] ACTSC 244* para 15.

¹⁹ *Evidence (Miscellaneous Provisions) Amendment Act 2019 (ACT)*, s 4AG and *Explanatory Statement: New Section 3A Intermediaries administrator—Act*, s 4AG (2): "intermediaries administrator" means the person prescribed by regulation as the intermediaries administrator".

²⁰ <https://hrc.act.gov.au/wp-content/uploads/2020/05/1.-ACT-Intermediary-Procedural-Guidance-Manual-February-2020.pdf>

assisting in other courts and tribunals).

In the period 31 January 2020 – 31 July 2022:

- 510 Police referrals were made and all were matched with an intermediary.
- 102 Court (52 Supreme Court, 38 Magistrates Court)/Other (12 by lawyers) referrals were made and all were matched with an intermediary.²¹

The ACT is the only jurisdiction (in Australia and likely internationally – the proposed literature review would examine and confirm this feature of the Program) where Intermediaries are available 24 hours a day, every day of the year including public holidays. This is an important service offering as police attend to child sexual assault and abuse cases, domestic and family violence, and homicide cases around the clock. Intermediaries are made available to facilitate communication between police and vulnerable witnesses at all times as needed.

All intermediaries are referred through the Intermediary Program Team (IPT). As of June 2022, there were eight full-time in-house intermediaries employed in the ACT Intermediary Program. Additionally, the Human Rights Commission has established a panel of accredited intermediaries whose expertise can be drawn upon should the in-house intermediaries not be available or not possess the particular skills to facilitate the referred witness' communication. The in-house intermediaries are full-time employees of the ACT Human Rights Commission; panel intermediaries are individually contracted service providers (paid at an hourly rate).

All intermediaries (in-house and panel) must complete the accreditation processes required to become an intermediary. The majority of intermediaries operating in the ACT in September 2022 have a Social Work or Speech Pathology background.²² Their areas of expertise include specialisation with children across the age range, with adults, people with physical and other disabilities, learning disability (ranging from mild to severe), Autism Spectrum Disorder (ASD), ADHD, selective/elective mutism, and children and adults dealing with trauma and/or mental health issues. Three of the current intermediaries are listed as having experience and cultural awareness of working with people of Aboriginal and Torres Strait Islander background, two from a multicultural community, and six with LGBTIQ+ people. Intermediaries range in age from mid-20s to early 50s. with social work background, 4 speech pathologists and 3 psychologists and 2 occupational therapists.

²¹ Presentation 3 August 2022 *Interviewing Vulnerable Witness Training ACT Human ACT Intermediary Program*.

²² Information provided on intermediaries' disciplinary background: 5 of 8 in-house with social work background and 2 speech pathologists; 3 of 12 private practitioner panel intermediaries

4. Purpose of the evaluation framework, evaluation logic and measures

The purpose of the evaluation framework is to outline a research design and methodology to evaluate the effectiveness of the Intermediary Program to achieve its aims in both the short and longer term. The evaluation framework will be an important tool providing regular performance information able to assist the Program to continually improve its operations in line with its objectives.

The main research and evaluation questions focus on assessing whether the Intermediary Program:

- (vii) effectively enables intermediaries to assess the communication needs of witnesses and advise on the use of developmentally, linguistically, and culturally appropriate language in a trauma-informed way to police during interviews, lawyers when engaging with witnesses and clients, and during examinations, cross-examination and re-examination processes in courts;
- (viii) is associated with justice stakeholders reporting that intermediary recommendations/and their advice in the course of police and court processes has influenced the way they approach interviews/engagement with (i) child and (ii) adult witnesses experiencing communication difficulties; and if so, in what ways;
- (ix) reduces the stress for (i) child and (ii) other vulnerable witnesses giving evidence in police and court processes.

Further, the evaluation will also explore the following aspects of the way the Intermediary Program functions:

- (x) whether there is an increase in the overall number or proportion of younger complainants/witnesses (children aged 5 and under) and people with a disability/communication difficulty interviewed by police and questioned in court with the assistance of an intermediary;
- (xi) the variation in the number of interviews by police to accommodate the different needs of witnesses, and particularly those with severe PTSD and with disabilities who may require a 'meet and greet' opportunity and more than one EIC interview to provide their best evidence without becoming overwhelmed and exhausted; .
- (xii) Whether there is evidence of improved access to justice for vulnerable witnesses including diverse groups of witnesses (those from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds, those with disability, impacted by trauma or mental health issues).

5. Criminal justice, human rights and the policy context in the ACT relevant to operation of the Intermediary Program

The implementation, operation and outcomes of the ACT Intermediary Program must be evaluated within the context of the broader criminal justice, human rights and policy landscape in the ACT.

The recent report to the ACT Government, *Listen. Take Action to Prevent, Believe and Heal* by the Sexual Assault Prevention and Response Steering Committee in December 2021 indicates that the ACT criminal justice system, its processes and related service systems are not effectively meeting the needs of children and other vulnerable groups with complex needs.²³

The Intermediary Program in the ACT is thus operating within a broader criminal justice system that is facing systemic and resource related challenges. Its effectiveness must be considered in this context.

Importantly the goals of the Intermediary Program in the ACT must also be evaluated within the context of relevant human rights frameworks and priorities including, the *Disability Justice Strategy 2019–2029* and the *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028*, which prioritise equitable access to justice and recognise that “one size fits all” solutions should be avoided.

The *Aboriginal and Torres Strait Islander Agreement* acknowledges the importance for people to be “recognised, listened to and understood”.²⁴ Intermediaries play a critical role within the justice system towards this end, and consistent with the underlying principles articulated in the Agreement, represent an important conduit for promoting respect and cultural safety for Aboriginal and Torres Strait Islander peoples involved in justice processes.

The *Disability Justice Strategy* “aims to ensure people with disability in the ACT have equal access to justice”.²⁵ The Strategy is underpinned by the principles of:

- equality before the law and access to justice as fundamental human rights (as expressed in Articles 12 and 13 of the Convention on the Rights of Persons with Disability (CRPD) and section 8 of the *Human Rights Act 2004 (ACT)*)
- people with disability are significantly disadvantaged members of society in being able to access justice

²³ See *Listen. Take Action to Prevent, Believe and Heal. Report presented to the ACT Government by Sexual Assault Prevention and Response Steering Committee, December 2021*: https://www.communityservices.act.gov.au/d_ata/assets/pdf_file/0006/1915332/CSD_SAPR_approved_W_CAG_plus.pdf; and *Government Response to See Listen. Take Action to Prevent, Believe and Heal report*: https://www.communityservices.act.gov.au/data/assets/pdf_file/0004/2015869/Government-Response-to-the-Listen.-Take-Action-to-Prevent-Believe-and-Heal-Report.DOC.pdf

²⁴ *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028*, p. 3.

²⁵ ACT Government, *Disability Justice Strategy 2019–2029*.

- an ACT justice system which provides equal access to justice for people with disability will be a better justice system for everyone.²⁶

A key focus area of the Strategy is ensuring that people with a disability in the ACT are supported in their access to information and in communication. The Strategy thus recognises that “[e]ffective communication where information is heard and understood – both by the person with disability and by the justice system players – is vital to achieving equality before the law”.²⁷

The ACT Supreme Court in *R v QX (No 2)* [2021] ACTSC 244 recently affirmed the fundamental role that intermediaries play, through facilitating effective communication, in upholding the rights of complainants at trial, including in promoting equality before the law, and the protection of children and the right to a fair hearing. The Court held that the appointment of an intermediary does not affect an accused’s right to a fair trial, in and of itself.²⁸ Rather, a fair trial involves a “triangulation of interests”, which accounts for multiple interests including, the position of the accused, the victim and his or her family, and the general public/community.

6. Proposed evaluation strategy and methodology

The proposed evaluation framework includes the analysis of the following existing datasets, materials and information, and the use of surveys and/or interviews with professionals and all relevant key stakeholders involved in the intermediary program including the program administrator, and witnesses and families affected by it. The aim is to address the primary and secondary evaluation questions outlined above related to the roll-out and the Program outcomes. The measures are summarised below in Table 1; they build upon, adapt and expand upon the measures used in the evaluation of the NSW Child Sexual Offence Evidence Pilot (this provides some useful points for comparison).²⁹ In brief, they relate to both the roll-out and the expected outcomes of the Intermediary Program as well as any unintended outcomes (benefits or otherwise) insofar as they are important to ACT Government objectives.

²⁶ ACT Government, *Disability Justice Strategy 2019–2029*, p. 2, 11.

²⁷ ACT Government, *Disability Justice Strategy 2019–2029*, p. 11.

²⁸ See *R v QX (No 2)* [2021] ACTSC 244 Case Notes. [93]–[130]. The judgement cites Lord Steyn pointed out in *Attorney-General’s Reference (No 3 of 1999)* [2001] 2 AC 91, 118:

“There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public”.

²⁹ J Cashmore and R Shackel (2018) *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report*.
https://www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/articles/Cashmore-Child_sexual_offence_evidence_pilot_final_outcome_evaluation_report_24Aug2018.pdf

For the roll-out

- De-identified administrative data on the referrals, timing and appointment of intermediaries, at different stages (with police, with lawyer/s and at court), relative to the overall numbers of cases, non-referrals, and cases where there was no match
- Materials and information related to intermediary recruitment processes (including intermediary profiles, range of skills and backgrounds of the Intermediaries, and retention in the Program), training, accreditation and continuing professional development and provision of ongoing support
- Materials and information related to key stakeholder engagement (including Magistrates, DPP, Police, CYPS, Legal Aid, DLO), training and events
- Interviews with relevant ACT HRC staff and Victim Support ACT personnel.

For outcome measures:

- De-identified data on the charges, pleas, progression and/or outcomes of prosecutions (and other matters eg cases involving Family Violence Orders (FVO) in relation to matters that proceed to court and are finalised
- Online surveys for parents and child witnesses and other vulnerable witnesses [including vulnerable accused persons]³² – with an option for interviews
- Online surveys or interviews with professionals:
 - intermediaries
 - police
 - prosecution and defence lawyers
 - Judges and magistrates
 - Other professionals involved (Program Manager and Administrator (VOCC), support and liaison personnel, Remote Witness Suite staff and Court Officers esp re their views about witness responses pre- and post intermediary use, and disability advocates).
- Transcripts of the pre-recorded hearings and child’s evidence and/or court observations
- De-identified intermediary communication assessments and court reports
- Discussions and individual interviews with key stakeholders to clarify interpretation of findings, including ACT Intermediary Program and Victim Support ACT personnel.

³⁰ Assistance may be required to obtaining feedback from children and other vulnerable people and special provision for families for whom English is not their first language to participate in surveys/interviews.

Table 1: Evaluation questions and measures

PRIMARY EVALUATION QUESTIONS			
Evaluation question 1: Does the Intermediary program effectively enable intermediaries to assess the communication needs of witnesses and advise on the use of developmentally, linguistically, and culturally appropriate language in a trauma-informed way:			
	Data	Focus	Measures
By police during interviews?	Administrative data	Referrals and appointment of intermediaries for police investigative interview	<ul style="list-style-type: none"> • Number and type of matches – <i>accessibility for children, people with disabilities, Aboriginal people, people from a multicultural community, LGBTQI+, elderly people, defendants</i> • Timeframe from request to appointment and interview • Number of interviews including ‘meet and greet’ opportunity prior to EICIs and tailoring to the needs of the witness • Inside and outside-of-hours referral time breakdowns
	Intermediary interviews /survey	Intermediary satisfaction re process with police	<ul style="list-style-type: none"> • Timeframe to access • Adequate time to assess / advice provided • Capacity to advise – police take notice / use measures / change terminology and approach to interview • Understand role • Assistance of intermediary team • Perception of effectiveness of police-witness communication

	Data	Focus	Measures
	Police survey/ interviews	Police satisfaction re process	<ul style="list-style-type: none"> • Appropriate match – <i>as above</i> • Value of Intermediary assistance in approaching interview - terminology/ rewording/tools/location/other for (i) child witnesses (ii) adult witnesses with communication difficulties/needs eg. disability and culturally appropriate • Value of Intermediary in facilitating eliciting of evidence from wide range of witnesses including witnesses in categories not previously able to be effectively interviewed eg children under 5 years; witnesses who are non-verbal or use unfamiliar communication aids etc
	Legal professionals’ surveys/interviews	Prosecution and other lawyers’ assessment on quality of EIC interviews	<ul style="list-style-type: none"> • Appropriate use of language and tools/ timelines etc • Culturally appropriate questioning • Quality and comprehensiveness with and without intermediary involvement <p>Value of intermediary in facilitating eliciting of evidence from wide range of witnesses including witnesses in categories not previously able to be effectively interviewed eg. aged under 5 years; witnesses who are non-verbal or use unfamiliar communication aids etc</p>
By lawyers when engaging with witnesses and clients?	Administrative data	Referrals and appointment of intermediaries for communicating with client/s	<ul style="list-style-type: none"> • Number and type of matches – <i>accessibility for children, people with disabilities, Aboriginal people, people from a multicultural community, LGBTQI+, elder people and defendants</i> • Timing and flow of matters from request to assessment, police investigative interview to court, pre-recorded hearings and court and outcome – by witness characteristics/needs

	Data	Focus	Measures
	Legal professionals' surveys/interviews	Lawyers' satisfaction with intermediary involvement	<ul style="list-style-type: none"> • Accessibility - when requested • Satisfaction with intermediary assistance including flexibility and responsiveness taking account of specific circumstances/special needs • Value of intermediary in facilitating eliciting of evidence from wide range of witnesses including witnesses in categories not previously able to be effectively interviewed eg children under 5 years; witnesses who are non- verbal or use unfamiliar communication aids etc
By lawyers during examination, cross-examination and re-examination processes in courts?	Administrative and other data	Referrals and appointment of intermediaries for court	<ul style="list-style-type: none"> • Number and type of matches – <i>accessibility for children, people with disabilities, Aboriginal people, people from a multicultural community, LGBTQI+, elder people and defendants</i> • Timeliness, responsiveness • Magistrates, DPP, Police, CYPS, Legal Aid, DLO engagement, training and events
	Prosecution and defence lawyers' surveys/interviews	Lawyers' satisfaction with intermediary's assessment and involvement	<ul style="list-style-type: none"> • Accessibility - when requested • Quality of assessment report – tailored/appropriate • Usefulness of recommendations – opposed/accepted by lawyers • Acceptance by court of recommendations • Value of Intermediary assistance in communication - terminology/ rewording/tools/location/other for (i) child witnesses (ii) adult witnesses with communication difficulties eg. disability and culturally appropriate • Impact on rights of both complainant and accused

	Data	Focus	Measures
	Intermediary interviews/survey	Intermediaries' satisfaction	<ul style="list-style-type: none"> • Assistance of Intermediary Program team – QA process re report • Understand role • Acceptance by court of role of intermediary in courtroom • Acceptance by court of intermediary recommendations • Any indication of change in communication with witnesses with communication difficulties by lawyers/judicial officers over time
	De-identified intermediary assessment reports	Review sample of intermediary assessment reports	<ul style="list-style-type: none"> • Quality of communication advice provided • Evidence of unique, tailored reports for individual witnesses • Clarity and comprehensiveness of report
	Transcripts of pre-recorded hearings	Obtain sample [selection/cost-dependent]	<ul style="list-style-type: none"> • Ground rules hearing – acceptance of intermediary recommendations • Intermediary involvement /need to intervene re questioning of child or other witness with communication difficulty • Judicial responses to intermediary interventions in questioning of witness
By judges and magistrates in court processes?	Judicial interviews	Judicial views re intermediary role	<ul style="list-style-type: none"> • Accessibility and timeliness - when requested/ordered – appropriate match • Quality of assessment report – tailored/clear/appropriate • Usefulness of recommendations – opposed/accepted by lawyers • Accepted some/all recommendations – selectivity • Reasons for accepting recommendations • Value of Intermediary assistance in communication – terminology/ rewording/tools/location/other for (i) child witnesses (ii) adult witnesses with communication difficulties eg. disability and culturally appropriate • Perceived impact on complainants' stress and coping • Impact on rights of complainant and accused / plea • Impact on resolution of civil matters and outcomes • Observations on effects of stress experienced by children and other witnesses with communication difficulties • Observations whether effects had on access to justice.

Evaluation question 2: Is the Intermediary Program associated with justice stakeholders reporting that intermediary recommendations and their advice in the course of police and court processes has influenced the way they approach interviews/engagement with (i) child and (ii) adult witnesses experiencing communication difficulties; and if so, in what ways?

	Data	Focus	Measures
By police during interviews?	Police survey/ interviews	Police satisfaction and perceived value of intermediary process	<ul style="list-style-type: none"> • Trust/satisfaction with intermediary’s communication facilitation • Ongoing educational value – change the way you question children and vulnerable witnesses, people with disability, people from a multicultural community, ATSI, aged other
By lawyers during examination, cross-examination and re-examination processes in courts?	Prosecution and defence lawyers’ surveys/interviews	Lawyers’ satisfaction with intermediary assessment and involvement	<ul style="list-style-type: none"> • Trust/satisfaction with intermediary’s communication facilitation • Effect on communication approach - assisted/interfered with – intermediary’s understanding of role • Ongoing educational value – change in approach to examination/cross/re-examination of child and other witnesses with communication difficulties
By judges and magistrates in court processes?	Judicial interviews	Judicial views re role of Intermediary	<ul style="list-style-type: none"> • Trust/satisfaction with intermediary’s communication facilitation • Effect on communication facilitation – assisted/interfered with – intermediaries understand role • Ongoing educational value – change in own way of engaging with child and other witnesses with communication difficulties • Observations of any changes in approach of police and lawyers to engaging with children and other witnesses with communication difficulties

Evaluation question 3: Does the Intermediary Program reduce the stress for (i) child and (ii) other witnesses with communication difficulties giving evidence in court processes?

	Data	Focus	Measures
Court-related stressors [including experience in police interviews]	Parent surveys	Parents' views re child's experience as witness	See NSW surveys esp communication
	Child witness surveys	Child's views re experience as witness	See NSW surveys esp re telling whole story
	Vulnerable witness surveys	Views re experience as witness	To draft
	Judicial interviews	Judicial reflections re witness stress	Perceptions of: <ul style="list-style-type: none"> • witness stress levels and • communication capacity
	Support persons Remote Witness Suite staff and Court Officers - surveys/interviews	Disability Liaison officers, Witness assistance personnel and Remote Witness views re witness' experience	<ul style="list-style-type: none"> • Reports of witness experience • Practical challenges

DERIVATIVE PROGRAM INDICATORS AND BENEFITS

Operation and some key indicators of Intermediary Program

Feedback from Intermediary Program staff	Interviews	Recruitment and training of intermediaries Quality assurance process Management of issues intermediaries escalate for resolution when working with courts, lawyers, police	<ul style="list-style-type: none"> • Challenges of recruitment especially for matching with Aboriginal and culturally and linguistically diverse witnesses • Challenges in accreditation and training of intermediaries and ongoing professional development • Quality assurance process
Court data	Court data	Outcome / plea data	<ul style="list-style-type: none"> • Plea rate • Prosecution progression and/or outcome • Resolution of civil disputes
<p>Is the Intermediary Program associated with an increase in the number and proportion of witnesses interviewed involving children aged 5 and under, and interviews with people with a disability and people who are Aboriginal, Torres Strait Islander, people from a multicultural community, LGBTQI+ and aged?</p>			
<p>Is the Intermediary Program associated with improved access to justice for child/vulnerable witnesses including diverse groups of children (those from Aboriginal and Torres Strait Islander and culturally and linguistically diverse backgrounds, those with disability, impacted by trauma or mental health issues)?</p>			

7. Budgetary considerations

The total budget available to conduct the evaluation is not to exceed \$200,000 [incl. GST].

8. Key considerations for evaluation management processes and risk mitigation

- Data quality and cleaning of data as necessary
- Quality assurance and presentation of report/s
- Project management and communication/engagement strategy: the evaluation must be properly planned, resourced and delivered on time and within budget to the highest standard. This will require:
 - A close and trusted working relationship and clear shared understanding between the evaluators and the ACT Intermediary Program staff of the evaluation objectives, context and measures requirements, which is regularly revisited.
 - An initial discussion of the shared tasks, responsibilities, and arrangements to secure ethics approval and access to data, documents, and participants.
 - Appropriate communication channels and engagement from the outset of the project so that stakeholders understand the purpose and rationale of the evaluation and cooperate with the process.
- Risk mitigation strategy, in particular to avoid delays and overruns.
- Ethical considerations including access to, recruitment, and confidentiality of participants, data storage and privacy.

Professor Rita Shackel

and

Professor Judy Cashmore

Professor of Law and Ethics

Professor of Socio-legal Research & Policy

The University of Sydney Law School

Professorial Research Fellow

October 2022

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10. Appendix

Royal Commission Final report: Witness Intermediary Recommendations ³³

Recommendation 9: Investigative interviews for use as evidence in chief

9j: Intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses.

Recommendation 59:

59. State and territory governments should establish **intermediary schemes** similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution.

Governments should ensure that the scheme:

- a. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses
- b. provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial
- c. makes intermediaries available at both the police interview stage and trial stage
- d. enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.

Recommendation 60:

60. State and territory governments should work with their courts administration to ensure that **ground rules hearings** are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a prerecorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.

³³ An important benefit of introducing witness intermediaries, which we recommend in Chapter 30 [of the Royal Commission Final Report] is their role in educating judges and legal practitioners in the context of the particular trial and particular witness Intermediaries.