

T A S M A N I A

L A W R E F O R M

I N S T I T U T E

Submission Template

Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?

The ability of a person who has been the victim of a crime, a witness to a crime or who has been accused of a crime to communicate effectively with police and give reliable evidence in criminal trials will fundamentally determine whether that person can gain access to justice.

The Tasmania Law Reform Institute (TLRI) recognises that many people in Tasmania have complex communication needs that can fundamentally impede their interactions with the police, lawyers and the courts, thereby affecting their ability to access justice.

The TLRI has written an Issues Paper that discusses the feasibility of instituting an intermediary/communication assistant scheme in Tasmania for people with complex communication needs involved in the criminal justice system, to assist them in gaining equal access to justice.

The TLRI is seeking your feedback as to whether an intermediary/communication assistant scheme would assist people with communication difficulties to give evidence as victims, witnesses or defendants as well as advice as to what might be an appropriate model for such a scheme in Tasmania.

The following questions are intended to guide your response to the issues covered in the Paper.

You can answer any or all of the questions and provide as little or as much information as you wish.

Before answering the questions or providing a response to the Paper, the TLRI strongly recommends that you read at least Part 4 and the Executive Summary of the Issues Paper.

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in the Issues Paper). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either email or post the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute

Private Bag 89

Hobart TAS 7001

Personal information

Name:

Organisation (if any):

Address:

Email:

Phone number:

Publication of submissions

Please tick the applicable box:

I agree to the publication and use of my submission

I agree to the anonymous publication and use of my submission

I do not agree to the publication or use of my submission

Questions

Question 1:

Is the term, 'people with complex communication needs' the best term to use to denote people with communication and comprehension difficulties that significantly impede their capacity to participate in the criminal justice process?

If not, what term would you recommend be used instead?

Question 2:

- (a) In your experience do people with complex communication needs face barriers when interacting with the police as victims, witnesses and suspects? If so, please provide details about these barriers.
- (b) In your experience do people with complex communication needs face barriers when interacting with defence and prosecution counsel? If so, please provide details about these barriers.
- (c) In your experience do people with complex communication needs face comprehension and communication barriers in relating their experiences and accounts of relevant events during criminal justice proceedings, hearings and trials? If so, please provide details about these barriers.
- (d) In your experience are there problems in identifying people with complex communication needs at different stages in the criminal justice process, for example:
 - At the investigation stage for the police?

- During interactions with defence and prosecution counsel?
- For court personnel and judicial officers?

If so please provide details.

Question 3:

- (a) Should relevant provisions of the Tasmania Police Manual and Guidelines for Interacting with People with Disability be enacted in legislation to ensure the provision of communication assistance to people with complex communication needs?
- In this regard, should the *Criminal Law (Detention and Interrogation) Act 1995* (Tas) be reformed to make such provision for suspects?
 - Should the *Evidence (Children and Special Witnesses) Act 2001* (Tas) be reformed to make such provision for witnesses, victims and complainants?
- (b) Are the existing mechanisms available to the police for identifying people with complex communication needs and managing interactions with them adequate?

- (c) Should a common assessment tool be developed in consultation with experts in communicating with people with complex communication needs to enable early identification of people with communication and comprehension problems?
- (d) Are the existing measures for obtaining communication assistance for people with complex communication needs when interacting with the police adequate?
- (e) Would a specifically trained cohort of independent, expert communication assistants/intermediaries assist the police in identifying and interacting with people with complex communication needs?
- (f) Should the establishment of a Barnehus (Children's House) model similar to that utilised in Norway (discussed in Part 4) as a place for interviewing people with complex communication needs be investigated for Tasmania?
- (g) If an expert communication assistant/intermediary scheme were available to the police who should bear the financial responsibility for engaging its services?
- (h) Are the mechanisms currently available to the police to identify existing support persons and advocates for people with complex communication needs adequate?
- (i) Would the process of identifying existing advocates and support people be enhanced by the creation of an integrated database with relevant government departments (like the DHSS – Disability Services) and allied agencies?

- (j) Is the current training received by police recruits in identifying and interacting with people with complex communication needs adequate? If not, how might it be improved?
- (k) Is the on-going training available to police officers in identifying and interacting with people with complex communication needs adequate? If not, how might it be improved?
- (l) Are there any additional measures that might be implemented to support people with complex communication needs in interacting with the police?
- (m) What type of communication assistance would be beneficial for people with complex communication needs when interacting with the police?
- (n) What might be some of the challenges for police when using an intermediary or communication assistant during their interactions with people with complex communication needs?

Question 4:

- (a) Are the measures currently available to defence and prosecution counsel to identify and interact with people with complex communication needs adequate?
- (b) Does undergraduate and postgraduate legal training adequately equip lawyers to identify and interact with people with complex communication needs? If it doesn't how might it be improved?

- (c) Do continuing legal education programs provide adequate on-going training to the legal profession in identifying and interacting with people with complex communication needs? If they do not, how might they be improved?
- (d) Are the mechanisms currently available to defence and prosecution counsel to identify existing support persons and advocates for people with complex communication needs adequate?
- (e) Would defence and prosecution counsel benefit from the establishment of an integrated government database in identifying existing support persons and advocates for people with complex communication needs?
- (f) Would a specifically trained cohort of independent, expert communication assistants/intermediaries assist defence and prosecution counsel in identifying and interacting with people with complex communication needs?
- (g) If such an expert communication assistant/intermediary scheme were available to defence and prosecution counsel who should bear the financial responsibility for engaging its services?
- (h) What type of communication assistance would be beneficial for people with complex communication needs in interacting with defence and prosecution counsel?
- (i) Are there any additional measures that could be implemented to support people with complex communication needs in interacting with defence and prosecution counsel?

- (j) What might be some of the barriers to using an intermediary or communication assistant during defence and prosecution counsel interactions with people with complex communication needs?

Question 5:

In your view what would be a suitable package of screening and support for people with complex communication needs in Tasmania in interacting with the police, defence and prosecution counsel during pre-trial stages of the criminal justice process?

Question 6:

- (a) Does current Tasmanian legislation provide an adequate framework through which communication assistant/intermediary support can be obtained to support witnesses with complex communication needs at trial?
- (b) Do existing pre-trial directions hearings operate as an appropriate mechanism for identifying and discussing any complex communication needs that witnesses may have?
- (c) Should there be a legislative base for pre-trial directions or ground rules hearings to be held in any case involving witnesses with complex communication needs as is the case in England and Wales for children and youths? (See discussion of the approach in England and Wales at 4.2)
- (d) Would there be merit in engaging an expert intermediary or communication assistant to provide advice and/or reports pre-trial to judges and lawyers about witnesses' communication and comprehension capacities?

- (e) Does s 41 of the *Evidence Act 2001* (Tas) provide an adequate and sufficient mechanism for controlling cross-examination at trial to ensure that witnesses with complex communication needs are asked questions that are suitable to their comprehension and communication capacities?
- (f) Is the pre-trial recording of witnesses' entire testimony an adequate measure to ensure that people with complex communication needs are asked questions that are suitable to their comprehension and communication capacities and are able to give coherent and reliable testimony about their experiences and relevant events?
- (g) What legislative and procedural changes may be required to support people with complex communication needs at trial?
- (h) Should an expert intermediary or communication assistant scheme be introduced in Tasmania to assist people with complex communication needs, lawyers and judges in the trial process?
- (i) What will some of the barriers be to using an intermediary or communication assistant at trial?
- (j) What might be a best-practice and integrated package for Tasmania to maximise the opportunity for people with complex communication needs to participate properly in the trial process?

Question 7:

Should no change be made to the current position in Tasmania with regard to implementing a statutory communication assistant/intermediary scheme for people with complex communication needs?

Question 8:

Who should be able to use a communication assistant or intermediary?

Anyone with complex communication needs? Or:

(a) Only children;

(b) Anyone who is under 18? and/or

(c) Anyone who has difficulty communicating accounts of their experiences or comprehending questions and whom an intermediary/communication assistant is likely to assist in giving accurate, complete or coherent testimony;

(d) Only victims of certain offences and if so, which offences;

(e) Only children and special witnesses as defined in the *Evidence (Children and Special Witnesses) Act 2001* (Tas), which is cognate with s 106R of the *Evidence Act 1906* (WA).

Question 9:

(a) When should communication assistance be available?

- Only during trials?
- And/or during pre-trial recording processes?
- And/or during police interviews?
- And/or during interviews/consultations with legal counsel including prosecution counsel?
- And/or prior to police interviews?

(b) Should communication assistance be prescribed on a mandatory basis in some cases for some people and if so, in which cases, when and for which people?

(c) If communication assistance is mandatory in some cases for some people, should exceptions be provided to this requirement and if so, what should those exceptions be?

Question 10:

Should intermediaries/communication assistants act:

- As interpreters only?
- And or as advisors to courts, counsel and the police?

- And/or be able to intervene in inappropriate questioning and if so what type of intervention should be permitted?

Question 11:

- (a) Should communication assistants/intermediaries be required to have any particular qualifications and if so what qualifications should they have?
- (b) Should any person deemed suitable and competent be able to act as a communication assistant/intermediary?
- (c) Should a panel of communication assistants/intermediaries be established who may be assigned to cases based on their particular expertise and/or experience, and if so, who should have responsibility for establishing such a panel?
- (d) Should courts have the power to appoint anyone considered suitable and competent to act as an intermediary/communication assistant?
- (e) Who/what agency is best placed to assess the suitability of people to act as communication assistants/intermediaries?

- (f) Should a ground rules hearing be held in every case involving a person with complex communication needs to determine the need for and role to be performed by a communication assistant/intermediary and the type and style of questions that the person with complex communication needs may be asked?
- (g) Might different communication assistants/intermediaries with different qualifications be employed at different stages of the criminal justice process?

Question 12:

- (a) Who should have financial responsibility for a Tasmanian intermediary scheme?
- The agency/institution that uses the communication assistant/intermediary?
 - The State Government?
- (b) What training should communication assistants/intermediaries undertake?
- (c) What organisation(s) are best placed to develop training programs for intermediaries/communication assistants?
- (d) What additional infrastructure might be necessary to support an intermediary/communication assistant scheme in Tasmania?