



THE UNIVERSITY
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South Australian Law Reform Institute

Review of the Use of Communication Partners in South Australia

Background Information & Consultation Questions

About SALRI

The South Australian Law Reform Institute (SALRI) is an independent non-partisan law reform body based at the University of Adelaide Law School that conducts inquiries into areas of law. SALRI examines how the law works in South Australia and elsewhere (both in Australia and overseas), conducts multidisciplinary research and consults widely with the community, interested parties and experts. SALRI then makes reasoned recommendations to the State Government, enabling the Government and/or Parliament to make informed decisions about any changes to relevant law and/or practice. Any changes are then entirely up to Government and Parliament.

Communication Partners in South Australia

There are wide and continuing concerns around access to justice for vulnerable parties, notably children and persons with intellectual disability or cognitive impairment. This includes both access to criminal and civil justice.

SALRI's expert Advisory Board has approved SALRI as a multidisciplinary reference to examine the role and operation of communication partners in South Australia, with a particular focus on their use in the higher South Australian courts. A communication partner (also known as a 'communication assistant' or 'intermediary') is a person who provides objective support to a vulnerable party¹ with complex communication needs.² Their important role is to assist vulnerable parties, whether suspects, witnesses, witnesses or victims, to provide their 'best evidence'. Their role is to help communication with the vulnerable party and to assist that party to give evidence to police and both in and out of court. Intermediaries are neutral and are not advocates or support persons for the vulnerable party.

A communication partner program was introduced by the South Australian Government in late 2015,³ which used the services of trained volunteers through a state funded program run by Uniting Communities to fulfil the role of a communication partner. The role received wide support from the South Australian Parliament, experts, practitioners and the community.⁴ However, despite this wide support and the efforts, commitment and expertise of Uniting Communities and the trained volunteers, this scheme was little used in practice, notably in the higher courts. The original scheme lapsed in early 2020 and funding was not renewed and a user pays model now operates.

The use and implications of an intermediary model are not confined to a criminal court and have wider application.

¹ This may include witnesses, victims, suspects and/or defendants. A 'vulnerable' person may include children, persons with cognitive impairment, persons from a non-English speaking background and/or Aboriginal communities. The term 'vulnerable' is not universally supported in this context but SALRI uses this term to ensure consistency with the leading Act, the *Statutes Amendment (Vulnerable Witnesses) Act 2015 (SA)*.

² A 'complex communication need' extends beyond lingual translation and interpretation. It may include assisting a person to communicate via gestures and/or behaviours, facial expressions, physical or emotional cues, or through the use of technological aids. The term 'complex communication needs' is not universally supported in this context but SALRI again uses this term to ensure consistency with the *Statutes Amendment (Vulnerable Witnesses) Act 2015 (SA)*.

³ The program was created as a result of the *Disability Justice Plan* and the *Statutes Amendment (Vulnerable Witnesses) Act 2015 (SA)*.

⁴ See, for example, South Australia, *Parliamentary Debates*, Legislative Council, 2 July 2015 (Hon Kelly Vincent MLC).

SALRI will be looking at the reasons as to why there was little uptake of the program among law enforcement, legal practitioners, the courts and the community. Its lack of uptake is not a reflection upon Uniting Communities and the program's trained volunteers, and instead may be attributed to other factors such as the structure of the scheme, operational considerations or training and cultural issues that could have played a part in the scheme's overall effectiveness. SALRI will also consider the features of a preferable model appropriate for South Australia, as well as wider issues and implications of the use of communication assistance both in and out of court.

What Are Your Thoughts?

SALRI welcomes any comments or feedback that you would like to share regarding this reference. If you would like to make a written submission, please respond to the questions outlined below. Please note that any comments can be deidentified. SALRI cannot provide legal advice as to any individual case.

Consultation Questions

1. Do you see a need for communication partners in South Australia?
2. What criteria should be used to determine the eligibility to be a communication partner?
 - a. Are trained volunteers or paid experts preferred?
3. What should be the role of the communication partner?
 - a. What should be the role of a communication partner for vulnerable parties with a complex communication who also require a language interpreter?
4. Why was the previous communication partner model used so little in South Australia?
5. What experience do you have with the previous or current South Australian communication partner model?
6. When and where should the communication partner model be used?
7. Are current training and educational programs about the use of communication partners in a legal setting sufficient for law enforcement and legal practitioners?⁵
 - a. If not, what types of materials and/or educational programs should be available?
 - b. Who should be responsible for the development and provision of such materials and/or programs?
8. Should the communication partner program be available in civil, family and youth courts or before tribunals?
9. Are any changes to South Australian law or practice appropriate to clarify or improve the use and operation of communication partners.
10. Should pre-trial ground rules hearings be held?
 - a. If so, when and in what cases should they be held?
 - b. What should ground rules hearings involve?
 - c. Should they be mandatory in certain cases?
11. Should an approach used in an alternative jurisdiction be adopted in South Australia?
 - a. If so, which approach should be used?
12. Do you have any further comments or suggestions about the role and operation of communication partners or the wider issues and implications of such a role?

<p>Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice, we encourage you to speak to a lawyer and/or contact a community legal service.</p>

9 March 2021

SALRI acknowledges the assistance of the Law Foundation of South Australia Inc in providing grant funding for this project.

⁵The educational materials currently available in South Australia include guidelines published by the Attorney-General's Department, *Supporting Vulnerable Witnesses in the Giving of Evidence: Guidelines for Securing Best Evidence*, and *A Guide for Communication Partners*. These guidelines give a general overview of the role of the communication partner both in and out of court. As for training programs, there are currently no programs aimed towards lawyers or judicial officers that inform them of the existence of the communication partner service, and promotes its use in a legal setting.