

The use of communication partners in South Australia

Submission to the
South Australian Law
Reform Institute

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Table of Contents

About knowmore	3
Our service	3
Our clients	3
knowmore's submission	5
Support for the use of communication partners	5
Support for a revised legislative framework	8
Practical considerations	14

About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has been funded to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore is funded by the Commonwealth Government, represented by the Attorney-General's Department and the Department of Social Services, and receives additional funding from the Financial Counselling Foundation.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane and Perth. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 31 March 2021, knowmore has received 44,640 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 8,600 clients. 30 per cent of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples, 59 per cent identify as male, and 21 per cent are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in South Australia

knowmore has a significant client base in South Australia, with 5 per cent of our current clients residing in the state. We therefore have a strong interest in the use of communication partners (or witness intermediaries) to help victims and survivors of child sexual abuse to give their best evidence in police investigations and court proceedings.

knowmore's submission

Our submission outlines our strong support for the use of communication partners, also known as witness intermediaries, in the investigation and prosecution of child sexual abuse matters. We suggest that South Australia should introduce a new, comprehensive legislative framework for the use of communication partners to better align its approach with key recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse and the practices of other states and territories. We also note some important practical considerations.

Support for the use of communication partners

Q1. Do you see a need for communication partners in South Australia?

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) identified a clear need for witness intermediaries, or communication partners, in the investigation and prosecution of child sexual abuse matters across Australia.

First, the Royal Commission found that many victims and survivors of child sexual abuse face barriers participating in the criminal justice system and accessing a criminal justice response because of difficulties communicating and giving evidence about their experiences.¹ This particularly reflects the stress and re-traumatisation involved in participating in criminal prosecutions, and the particular difficulties some witnesses, especially children and people with disability, can have in giving evidence that is regarded as accurate and reliable.

Second, the Royal Commission found that witness intermediaries can provide real benefits in assisting witnesses in child sexual abuse matters to give their best evidence.² By ensuring witnesses' communication needs are taken into account during questioning by police and in court, intermediaries can make the criminal justice system more accessible to victims and survivors of child sexual abuse and increase the likelihood of perpetrators being brought to justice. A powerful example of this in New South Wales was highlighted at the Royal Commission:

We recently did an intermediary matter at Ballina, and although it was outside of the pilot scheme, [the Department of Justice] assisted us in interviewing a little girl there who was suffering from cerebral palsy.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_executive_summary_and_parts_i_to_ii.pdf>.

² Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, 2017, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_parts_vii_to_x_and_appendices.pdf>.

*It was a matter that, more than likely, police wouldn't have been able to gain a disclosure from the child. Because of the input from the intermediary, the police were enhanced in relation to the way that they interviewed that child and they got a full disclosure from that child, and, as a result of that disclosure, the person pleaded guilty and got a custodial sentence. That more than likely wouldn't have happened unless for that intermediary.*³

The Royal Commission ultimately recommended that each state and territory establish an intermediary scheme similar to that used in England and Wales, ensuring intermediaries are available to any prosecution witness with a communication difficulty in child sexual abuse prosecutions (Recommendation 59 in the text box below). It further recommended that the use of intermediaries be supported by ground rules hearings, to set parameters around the questioning of witnesses (Recommendation 60).⁴

Relevant recommendations from the Royal Commission's Criminal Justice Report

Recommendation 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

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.

Given the Royal Commission's findings and recommendations, knowmore strongly supports effective witness intermediary schemes being established in all Australian jurisdictions,

³ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 69.

⁴ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 101.

including South Australia. While we acknowledge South Australia's communication partners model as one of the first intermediary schemes introduced in Australia, more recent developments in other states and territories in response to the Royal Commission's recommendations suggest South Australia's current approach could be improved. We particularly note that:

- Victoria's Intermediaries Pilot Program commenced in July 2018. As of October 2020, the program had received 1,032 requests for assistance from Victoria Police and the courts.⁵
- New South Wales's three-year Child Sexual Offence Evidence Pilot, of which intermediaries ("children's champions") were a key component, successfully transitioned to a permanent program on 1 April 2019 and is being funded by the NSW Government until June 2022.⁶
- The ACT Intermediary Program commenced in January 2020. More than 150 vulnerable witnesses were helped to give evidence to police and courts in the program's first year.⁷

Tasmania and Queensland also introduced comprehensive legislative frameworks in 2020 to support pilot intermediary schemes,⁸ with Tasmania's pilot commencing in March 2021,⁹ and Queensland's pilot expected to commence in Brisbane and Cairns in July 2021.¹⁰

In our view, the use of communication partners in South Australia should be further aligned with the Royal Commission's recommendations and, particularly, with practices in other states and territories through a revised legislative framework and a clear approach to implementing and evaluating the new model. We expect this would have important benefits in terms of increasing the use of communication partners in South Australia and improving outcomes for witnesses and the justice system.

⁵ Victorian Government, *Annual Report 2020: Royal Commission into Institutional Responses to Child Sexual Abuse*, 2020, p. 20, <content.vic.gov.au/sites/default/files/2020-12/RCIIR%20to%20Child%20Sexual%20Abuse%20Annual%20Report20.pdf>.

⁶ Victims Services (NSW Department of Communities and Justice), *Child Sexual Offence Evidence Program: Information for Families*, 2020, p. 1, <www.victimsservices.justice.nsw.gov.au/Documents/wi_program-family.pdf>.

⁷ D Giannini, 'Intermediaries giving an important voice to the vulnerable seeking justice', RiotACT, 10 March 2021, <the-riotact.com/intermediaries-giving-an-important-voice-to-the-vulnerable-seeking-justice/445298>.

⁸ Part 2A, *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld).

⁹ Tasmanian Government (Department of Justice), *Witness Intermediary Scheme Pilot*, <www.justice.tas.gov.au/witness-intermediary-scheme-pilot>.

¹⁰ Queensland Government (Department of Justice and Attorney-General), 'Intermediaries to assist vulnerable witnesses to give their best evidence', 1 December 2020, <www.justice.qld.gov.au/community-engagement/news/2020/intermediaries-to-assist-vulnerable-witnesses-to-give-their-best-evidence>.

Support for a revised legislative framework

Q9. Are any changes to South Australian law or practice appropriate to clarify or improve the use and operation of communication partners?

Consistent with developments in other states and territories, we support South Australia introducing a new, comprehensive legislative framework for the use of communication partners. We outline below the key elements we consider that legislative framework should cover, drawing on the Royal Commission's findings and recommendations and comparable provisions in the ACT, New South Wales, Queensland, Tasmania and Victoria.

Use of communication partners

Q6. When and where should the communication partner model be used?

Use by police and the courts

In the context of child sexual abuse matters, knowmore strongly supports communication partners being used at both the police interview stage and trial stage, as recommended by the Royal Commission (part c of Recommendation 59). We note that South Australia's current model reflects this, and we particularly support the provisions in the *Summary Offences Act 1953 (SA)*¹¹ and Summary Offences Regulations 2016 (SA)¹² that provide the legislative basis for the use of communication partners by police. This is not present in other jurisdictions, and provides a useful foundation for South Australia to build on in revising its legislative framework.

Types of proceedings

knowmore notes that communication partners are currently able to be used in relation to court proceedings generally.¹³ We consider it particularly important for communication partners to be made available in relation to any proceeding for a sexual offence against a child, consistent with the Royal Commission's Recommendation 59, but support the ongoing wide application of South Australia's scheme. We note, for example, the value of communication partners in proceedings for sexual offences generally (see below discussion), and the importance of people with disability having access to communication partners in criminal proceedings regardless of the offence.

¹¹ Section 74H(2).

¹² Regulations 22 and 23.

¹³ Section 14A(1), *Evidence Act 1929 (SA)*.

Types of witnesses

knowmore supports communication partners being made available to all prosecution witnesses (including complainants) who:

- are children (that is, people under the age of 18 years), consistent with the approach taken in most other states and territories¹⁴
- have a communication difficulty, consistent with the Royal Commission's Recommendation 59.¹⁵

On this second point, we suggest that South Australia's current reference to witnesses with "complex communication needs" is too narrow, noting in particular the requirement that a witness's "ability to give... evidence is *significantly* affected by a difficulty to communicate effectively with the court" [emphasis added].¹⁶ In our view, witnesses' communication difficulties must be considered broadly, having regard to:

- The fundamental purpose of intermediaries being to enable witnesses to give their best evidence when they would not otherwise be able to do so (see discussion of role and functions below).
- The vulnerability of many victims and survivors of child sexual abuse (and indeed, victims and survivors of sexual assault generally), which can affect their capacity to give evidence. As the Royal Commission stated:

*It is clear to us... that many survivors of institutional child sexual abuse who are now adults and do not have disability are 'vulnerable', particularly when they are describing their experiences of abuse and particularly in the very unfamiliar and stressful environment of a court.*¹⁷

This observation completely accords with the experience of our service in working with survivors; many struggle to make any form of detailed disclosure about their abuse, and require support to do that in a way that helps to ensure their wellbeing and safety. We therefore welcome the acknowledgment of communication needs caused by trauma in the Tasmanian legislation,¹⁸ and suggest that consideration be given to incorporating this into South Australia's provisions.

¹⁴ Clause 89(3)(a), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZL(1)(a), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 71(1)(a) and (b), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389F(1)(a)(i), *Criminal Procedure Act 2009* (Vic).

¹⁵ And as reflected in the intermediary schemes in other states and territories. See section 4AJ(1), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 89(3)(b), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZL(1)(c), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 71(1)(c) and (d), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

¹⁶ Section 4(2), *Evidence Act 1929* (SA).

¹⁷ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 91.

¹⁸ Section 7F(2)(c), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

More generally, we note that child sexual offences (and other sexual offences) continue to be significantly under-reported to police, and feature high rates of attrition at each stage of the criminal justice process.¹⁹ We suggest that broader recognition of the difficulties that victims and survivors have in communicating their experiences to police and in court would encourage greater use of communication partners and, ultimately, help address broader concerns about the effectiveness of the criminal justice system's response to sexual offences.

Appointment by the court

We note that South Australia is similar to most other jurisdictions in enabling communication partners to be appointed by the court on its own initiative or on application of a party.²⁰ However, there are some additional aspects of other jurisdictions' models that we suggest are worth considering in South Australia.

- In NSW and the ACT, the court *must* appoint an intermediary for a child witness in relevant proceedings, subject to certain exceptions (for example, if a suitable intermediary is not available, it is not practical to appoint an intermediary, or appointing an intermediary would not be in the interests of justice).²¹ In our view, this requirement appropriately recognises the particular vulnerability of child witnesses and would help to promote the use of communication partners in South Australian courts.
- In Tasmania, a judge is required to order that an assessment report be prepared by a witness intermediary for any witness within the scope of the scheme, subject to certain exceptions (for example, it is unnecessary or inappropriate to make the order or making the order would be contrary to the interests of justice).²² A judge is then required to order that a witness intermediary be used in respect of that witness if they are satisfied, after considering the assessment report, that the use of the intermediary will assist the proceeding.²³ While Tasmania's pilot intermediary scheme has only recently commenced and it is not known how these provisions are

¹⁹ See, for example, A Freiberg, H Donnelly and K Gelb, *Sentencing for Child Sexual Abuse in Institutional Contexts*, 2015, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Sentencing%20for%20Child%20Sexual%20Abuse%20in%20Institutional%20Context%20-%20Government%20responses.pdf>; I Ting, N Scott and A Palmer, 'Rough justice: How police are failing survivors of sexual assault', ABC News, 3 February 2020, <www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0>.

²⁰ Section 14A(1), *Evidence Act 1929* (SA); section 4AJ(1), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 89(3)(b), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZL(2), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 389J(1), *Criminal Procedure Act 2009* (Vic).

²¹ Section 4AK(1) and (2), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 89(3)(a) and (4), Schedule 2, *Criminal Procedure Act 1986* (NSW).

²² Section 7I(1), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

²³ Section 7J(1), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

working in practice, they would appear to provide a clear foundation for firmly embedding the use of witness intermediaries in court proceedings.

- In most other jurisdictions, witnesses who are eligible or required to have an intermediary appointed are expressly enabled to give evidence without an intermediary if they prefer and are able to do so.²⁴ The relevant provisions in the ACT, for example, state that a court must not appoint an intermediary for a witness if it is satisfied that the witness is aware of their right to have an intermediary or make an application for an intermediary to be appointed, and is able and wishes to give evidence without the assistance of an intermediary. We recommend that similar provisions be incorporated into South Australia's legislative framework to empower complainants (and other witnesses), and to ensure that they retain the right to choose how they give evidence in court where appropriate.

Qualifications of communication partners

Q2. What criteria should be used to determine the eligibility to be a communication partner?

knowmore supports South Australia's current approach of using communication partners who are paid experts — that is, qualified speech pathologists, occupational therapists, psychologists, developmental educators and social workers. This is consistent with the Royal Commission's Recommendation 59 (part a) and other Australian intermediary schemes,²⁵ and appropriately reflects both the key functions of intermediaries (see below) and the importance of their role.

We note that South Australia currently also requires professionals who act as communication partners to have a minimum of five years' relevant experience working with people with complex communication needs.²⁶ While this is a reasonable approach to increasing the likelihood that a person will be effective in the communication partner role, it may also act as a barrier to having a sufficient number of communication partners available to assist witnesses, particularly in regional and remote communities.

²⁴ Sections 4AJ(2) and 4AK(3), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); new section 21AZL(6), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 71(3)(b), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389J(3), *Criminal Procedure Act 2009* (Vic).

²⁵ Section 4AH, *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 89(2), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZV(2) and (5), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7G(2), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389H(2), *Criminal Procedure Act 2009* (Vic).

²⁶ Government of South Australia, *A Guide for Communication Partners*, 2020, p. 3, <www.sa.gov.au/data/assets/pdf_file/0009/599337/Guide-for-communication-partners.pdf>.

We suggest that an alternative way of maximising the effectiveness of communication partners without compromising availability would be to require them to successfully complete a designated training course, as in New South Wales, for example.²⁷ As noted in the South Australian Law Reform Institute's factsheet, such training programs have been identified in the UK "as an important step in enabling intermediaries to effectively carry out their role in court", and we support them being a requirement for all communication partners.

Overall, we recommend that a revised legislative framework in South Australia specify who is eligible to be a communication partner, in a way that is consistent with comparable provisions in other Australian jurisdictions.

Role and functions of communication partners

Q3. What should be the role of the communication partner?

knowmore supports the role of communication partners being clearly defined in South Australia's legislative framework, as in other Australian jurisdictions. While there is some variation in their specific functions, intermediaries involved in court proceedings in other states and territories are generally responsible for:

- Assessing a witness's communication needs and providing reports on these to the court²⁸
- Communicating or explaining to the witness the questions put to them, to the extent necessary to enable the questions to be understood by the witness²⁹
- Communicating or explaining to other people in the court the witness's answers to questions, to the extent necessary to enable the answers to be understood by others³⁰

²⁷ Regulation 109, Criminal Procedure Regulation 2017 (NSW).

²⁸ Section 4AI(1)(a), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 89(6), Schedule 2, *Criminal Procedure Act 1986* (NSW); new sections 21AZM(2) and 21AZR, *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7H(1)(a), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

²⁹ Section 4AI(1)(b)(i), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 88(1)(a), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZM(1)(a), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 389I(1)(a), *Criminal Procedure Act 2009* (Vic).

³⁰ Section 4AI(1)(b)(ii), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 88(1)(b), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZM(1)(b), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 389I(1)(b), *Criminal Procedure Act 2009* (Vic).

- Otherwise assisting the court or any lawyer in the proceeding to communicate with the witness.³¹

We support the functions of intermediaries being formulated in this way, noting it is consistent with the court-based intermediary role as envisaged by the Royal Commission.

The Royal Commission also emphasised that an intermediary's duty in this context is to assist the court. We therefore support provisions in other jurisdictions clarifying that intermediaries are officers of the court and must act impartially in performing their duties.³² We particularly support the wording of the NSW provision, which states that an intermediary for a witness:

is an officer of the Court and has a duty to impartially facilitate the communication of, and with, the witness so the witness can provide the witness's best evidence. [emphasis added]

In our view, the reference to enabling a witness to give their best evidence is an important one that highlights the fundamental aim of the intermediary role. We suggest that a similar provision be included in South Australia's legislative framework.

As a final comment relevant to this topic, we suggest that South Australia consider moving away from the term 'communication partner'. In our view, 'intermediary' better reflects the nature of the role as outlined above.

Use of ground rules hearings

- Q10.** Should pre-trial ground rules hearings be held?
- If so, when and in what cases should they be held?
 - What should ground rules hearings involve?
 - Should they be mandatory in certain cases?

knowmore supports pre-trial ground rules hearings being held, at a minimum, for any witness with a communication need, as recommended by the Royal Commission (Recommendation 60). In our view, the provisions in the ACT, Queensland, Tasmania and Victoria regarding ground rules hearings provide suitable models for South Australia, particularly in terms of:

³¹ Section 4AI(1)(b)(iii), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); section 7H(1)(c), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

³² Section 4AI(2), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); clause 88(2), Schedule 2, *Criminal Procedure Act 1986* (NSW); new section 21AZM(3), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7H(2), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389I(2), *Criminal Procedure Act 2009* (Vic).

- Making ground rules hearings mandatory when an intermediary is appointed for a witness³³
- Requiring an appointed intermediary to be present at a ground rules hearing³⁴
- Enabling an intermediary's report on a witness's communication needs to be considered at a ground rules hearing³⁵
- Outlining the types of directions that the court may give at a ground rules hearing, including directions about the manner of questioning a witness, the duration of questioning of a witness, the questions that may or may not be put to a witness, and the use of models, plans, body maps or similar aids to help communicate questions or answers.³⁶

Practical considerations

Q12. 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?

While we are of the view that a revised legislative framework in South Australia is key to the implementation of an effective intermediary scheme, it is not sufficient in and of itself. To become embedded in the criminal justice system and effective in overcoming the difficulties vulnerable witnesses face in communicating and giving evidence about their experiences, it is essential that South Australia's scheme is:

- Adequately funded and resourced. It will be particularly important to ensure that suitable intermediaries are readily available to witnesses when required. We think it is especially important for South Australia's scheme to include specialist Aboriginal

³³ Section 4AB(2), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); new section 21AZP(1), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7K(1), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389B(3), *Criminal Procedure Act 2009* (Vic).

³⁴ Section 4AD(1)(c), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); new section 21AZQ(1)(c), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7K(2)(c), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389D(1)(c), *Criminal Procedure Act 2009* (Vic).

³⁵ Sections 4AE and 4AF(2), *Evidence (Miscellaneous Provisions) Act 1991* (ACT); new section 21AZP(4)(a), *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7K(5), *Evidence (Children and Special Witnesses) Act 2001* (Tas).

³⁶ Section 4AF, *Evidence (Miscellaneous Provisions) Act 1991* (ACT); new section 21AZS, *Evidence Act 1977* (Qld), to be inserted by section 44, *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld); section 7K(4), *Evidence (Children and Special Witnesses) Act 2001* (Tas); section 389E, *Criminal Procedure Act 2009* (Vic).

intermediaries to assist Aboriginal witnesses, noting that many Aboriginal people face specific communication challenges during criminal proceedings.³⁷

- Appropriately supported by police, the judiciary and legal practitioners. As the South Australian Law Reform Institute has noted, lawyers and judges may be reluctant or slow to change entrenched practices. In our view, education and training programs for key stakeholders will therefore be essential to maximising the use of intermediaries in South Australia. This is consistent with the findings of the Royal Commission, which recommended improved information and training for judges and legal professionals involved in child sexual abuse proceedings, especially in relation to understanding child sexual abuse and relevant current research.³⁸

It will be incumbent upon the South Australian Government to ensure that these and other practical matters critical to the success of intermediaries³⁹ are addressed in the operationalisation of any revised legislative framework.

³⁷ Aboriginal Legal Service (NSW/ACT) Limited, *Criminal Justice Consultation Paper: Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2016, pp. 10–12, available at <www.childabuseroyalcommission.gov.au/consultation-papers> (Criminal Justice Submission 1).

³⁸ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, Recommendations 67 and 68, p. 196.

³⁹ Tasmania Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?*, Final Report No. 23, 2018, section 5.3, <www.utas.edu.au/data/assets/pdf_file/0011/1061858/Intermediaries-Final-Report.pdf>.

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Image inspired by original artwork by Dean Bell depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands across Australia upon which we live and work. We pay our deep respects to Elders past, present and emerging.