

# When good intentions are not enough: Professionals' perceptions of the South Australian communication partner scheme

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## Funding information

Law Foundation of South Australia

## Abstract

Children and other vulnerable parties such as those with a cognitive, social or communication impairment frequently struggle to understand, and be understood in, the criminal justice environment. One way this has been addressed in jurisdictions around Australia and overseas is through the introduction of intermediary (or communication partner) schemes, whereby an independent third party assists vulnerable witnesses, and in some cases, defendants, with their communication needs. The South Australian Government introduced a trained volunteer communication partner scheme for defendants and prosecution witnesses as one element of its Disability Justice Plan in 2016. However, the scheme had relatively limited use and ceased operation on 1 March 2020. This study provides a qualitative analysis of stakeholders' ( $N = 23$  professionals) perceptions of how the scheme was implemented, the factors that constrained the usefulness of the scheme and how the initiative could be improved. Participants highlighted the need for a future communication partner service to include highly trained and specialized professionals situated within a government agency.

## KEYWORDS

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communication partner, intermediaries, intermediary scheme, special measures, vulnerable witnesses

## 1 | INTRODUCTION

Children and other vulnerable parties such as those with a cognitive, social or communication impairment frequently struggle to understand, and be understood in, the criminal justice environment. The vulnerability may stem from a cause such as an intellectual disability, physical or mental trauma, cognitive impediments or may be age-related, for example, due to normal developmental milestones in children. We have adopted the term '*complex communication needs*' in describing this diverse group of people because that is the term contained in South Australian legislation, however we recognize the valid opposition to this term due to its negative connotations (Tasmanian Law Reform Institute, 2018). There is a broad body of research showing that people with disabilities may struggle to understand police interview or courtroom processes, and to make themselves understood when answering questions and giving evidence in those settings (Australian Human Rights Commission, 2013; Australian Law Reform Commission, 2014; Law Council of Australia, 2018). The ability of child prosecution witnesses to provide credible testimony can be impaired, and juries may potentially have unfair perceptions of the witness or their testimony, ultimately reducing the likelihood of conviction (Davies et al., 2010; Sumner-Armstrong & Newcombe, 2007). At an even earlier stage, the police and prosecution may decide to abandon cases rather than proceed to prosecution if the witness's communication difficulties present as an inability to provide credible testimony (Gudjonsson et al., 2000; Keilty & Connelly, 2001; Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability, 2020).

In response to these concerns, a range of interventions has been implemented in Australia and overseas. Such measures include improved investigative interviewing techniques and new offence categories for cases where a child witness has difficulty particularizing multiple offences and restrictions on abusive or overly complex cross-examination. (Richards, 2009; Royal Commission into Institutional Responses to Child Sexual Abuse, 2017). However, even those measures have not removed all the barriers that vulnerable people face, and the Australian Human Rights Commission (2013) reported in 2013 that witnesses with communication and cognitive impairments still face an inability to access the support and communication aids needed to provide testimony.

One means of addressing the barriers to justice for vulnerable witnesses is the introduction of a third party, commonly referred to as an 'intermediary' to the justice system. While the scope of the intermediary's role varies between jurisdictions, their broad purpose is to facilitate effective communication between vulnerable people and those they encounter within the criminal justice system. There are many ways they can do this. For example, they may explain questions that are put to a witness during an investigative interview or during cross-examination in court. They may advise the police and advocates on the person's specific needs and limitations prior to an interview or trial. They may assist the police or the court to understand a person's responses, or they may provide more general support to a vulnerable person by helping them to understand the judicial process itself. A key feature of such schemes is that the intermediaries are an impartial party and their paramount duty is to the court (Cashmore & Shackel, 2018; Cooper, 2016; Victims & Witnesses Unit, Ministry of Justice, 2012).

The intermediary model as it is understood in Australia has its roots in England and Wales, where it was introduced in 2003 and is now firmly embedded in the criminal justice system (section 29(2) *Youth Justice and Criminal Evidence Act 1999*). Under that model, trained professional intermediaries assess the witness's communication needs and abilities and advise police

officers, judges or advocates on effective questioning, intervening only if miscommunication occurs (Cooper & Mattison, 2017; Plotnikoff & Woolfson, 2015). They also contribute to the pre-trial case management, or 'ground rules' hearing, making recommendations as to how questioning should be tailored at trials to ensure that the witness can provide their best evidence. The intermediaries typically come from a range of professional backgrounds including speech and language therapy, psychology and education.

The idea of using an independent advisor to assist with witness communication has spread to many countries around the world. The terminology differs; for example, the independent advisor is sometimes referred to as a 'communication partner', which is the term used in South Australia and which (for ease of presentation) we use in the remainder of this paper. The scheme also varies across jurisdictions. In South Africa, an intermediary works in a similar way to an interpreter, listening to questions from prosecution and defence through an earpiece before translating them into appropriate language for the witness. They do not intervene in questioning during a trial (*Criminal Procedure Act 1977*). In Norway, a specialist child interviewer questions vulnerable witnesses on behalf of both prosecution and defence during a video-recorded interview overseen by a judge. That recording is then played at the trial (Hanna et al., 2013). In Northern Ireland, the scheme and legislation operate in a similar way to England and Wales, except that it extends to defendants with communication difficulties (*Criminal Evidence (Northern Ireland) Order 1999*). Defendants are also provided for under the New Zealand model, where professionals with experience of the England/Wales intermediary model have driven a grassroots introduction of communication partners for both witnesses and defendants (Howard et al., 2020a, b).

Within Australia, intermediary models of varying form and scope now exist in all Australian jurisdictions apart from the Northern Territory (Mackay & Giuffrida, 2020). New South Wales has conducted a pilot intermediary program for child sexual offence cases based closely on the England/Wales model (see Cashmore and Shackel (2018) for the evaluation of that pilot), while the pilot programs in the Australian Capital Territory, Victoria, Queensland and Tasmania are still underway. All of those schemes bar the Australian Capital Territory restrict communication assistance to prosecution witnesses and all use paid professionals in the intermediary role. Western Australia has the longest standing intermediary scheme in Australia, but it is only available to children; there is no limitation on who can perform the intermediary role and it is rarely used (Victoria Law Reform Commission, 2015).

The adaptation of the intermediary model from its original form in England and Wales to the variants implemented in other jurisdictions around the world is inevitable, as it is necessary to formulate an intermediary scheme that is best suited to the particular economic, cultural, political and demographic parameters of that jurisdiction. In South Australia, the 'communication partner' role was introduced as one element of the landmark Disability Justice Plan in 2016 (Government of South Australia 2014). That plan was in part a response to public concern arising from the discontinuance of criminal proceedings against a school bus driver accused of sexually assaulting his child passengers who had intellectual disabilities. The proceedings were discontinued because 'prosecutors were concerned the disabled victims could not adequately communicate what happened to them' (Haxton, 2011). The Disability Justice Plan was developed through an extensive consultation process. It detailed a comprehensive approach to supporting vulnerable parties throughout the legal process and included a number of initiatives aimed at improving access to justice for vulnerable witnesses. One of these initiatives involved a statutory entitlement to communication assistance, which is now contained in sections 12A, 12B and 14A of the Evidence Act 1929 (South Australia).<sup>1</sup> The model, unlike other intermediary models in Australia and England and Wales, is not confined to victims and prosecution witnesses but extends to suspects and accused and includes both the police investigative and trial stages (Rau, 2015). The legislation makes the support available to anyone with 'complex communication needs', whether that need arises from disability, illness, injury 'or some other cause', including due to normal developmental milestones in children (*Evidence Act 1929* (SA), s. 4).

The South Australian Government subsequently allocated up to \$1.362 million in funding over four years from 2016 to establish a Communication Partner Service and the model was finalized in consultation with criminal justice agencies (Plater, 2016). The Government contracted Uniting Communities, a not-for-profit organization, to establish and run the communication partner service. Uniting Communities undertook a comprehensive and competitive recruitment process. Volunteers were chosen from applicants with suitable professional backgrounds, including retired teachers, social workers and psychologists who had demonstrated relevant knowledge, skills and experience of working with people with disability and/or working in the legal sector (Weir, 2016). The service then provided an initial three-day training course for those volunteers before they began performing the role of a communication partner (Jacobs, 2020).<sup>2</sup>

Despite widespread support for a communication partner scheme and the considerable efforts, commitment and expertise of Uniting Communities and the communication partner volunteers, the scheme had relatively limited use in practice. Specifically, Plater et al.'s research shows the communication partner service was only used for four trials in the District Court from 2016 to 2019, though it was used more often in other court contexts (Jacobs, 2020). Communication partners were also seldom used by the police in interviewing suspects with complex communication needs, although it was used more often by specialist police in interviewing vulnerable witnesses and victims (Jacobs, 2020). Funding for the scheme was not renewed, and on 1 March 2020, the trained volunteer scheme ceased operation, in part due to its apparent lack of use. Under the new fee-for-service model, paid professionals can now be privately funded by the individual, agency and/or the party requiring communication assistance. The eligibility to act as a communication partner has also been adjusted, with the fee-for-service model requiring that a communication partner be qualified in speech pathology, occupational therapy, psychology, developmental education or social work (Government of South Australia & June, 2020).

Why was the South Australian scheme unsuccessful? Without focused research, this question is difficult to answer. The process by which the South Australian model was formulated appeared sound, with extensive consultation having been conducted, including the study captured in Powell et al. (2015), and a significant amount of support was offered across the political spectrum and among professionals. However, despite the prevalence of variants of intermediary models around the world, there is a paucity of evaluation of the efficacy of specific models in practice, meaning that government bodies such as the South Australian Attorney-General's Department must develop and revise a scheme through trial and error and the process of community consultation. Cooper and Mattison (2017) have also flagged the need for further empirical research in this area to guide reform. The absence of evaluation data undermines the efforts of service providers and provides governments with limited return on their investments in financing reforms. To improve the system, we need to adopt contemporaneous research data and methodologies that inform the reason for deficiencies and the potential impact of any new approaches.

The current paper addresses the need for further research into communication partners by providing the first qualitative analysis of frontline users', developers' and administrators' perceptions of the South Australia scheme. Its contribution is unique because South Australia is one of the few jurisdictions globally to implement a single communication partner scheme for both prosecution witnesses and suspects or defendants and to use trained volunteers rather than paid experts.

Although professionals' perspectives cannot establish the efficacy that a particular program or policy has on hard outcome indicators, they are nonetheless useful in understanding how the scheme was implemented and the factors that constrained the usefulness of the scheme (on a practical administrative level) and in identifying how the initiative could be

improved. Indeed, the social policy literature is replete with examples of implementation gaps at the point of service delivery, with worker practice typically shaping the policy, often with consequences that are unforeseen by policy developers (Hill & Hupe, 2002; Lipsky, 1980).

## 2 | METHOD

### 2.1 | Participants

The participants included 23 professionals whose work intersects with vulnerable people in the criminal justice system in South Australia, many of whom worked in organizations that were either responsible for developing the scheme, administering the scheme, or were key users of the scheme. The breakdown of professions represented in the interviews includes 10 lawyers (representing defence, prosecution, government departments and the private bar and firms), one judge, five speech pathologists, two social workers (including one academic), two policy experts and three victim advocates from government departments. None of the participants came from, or worked extensively with, Aboriginal communities, because the impact of the scheme on Aboriginal communities was the subject of a separate research study.

Participants were approached through word of mouth; people who used the trained volunteer scheme, a communication partner under the trained volunteer scheme and those who act as, or use, communication partners on an ad hoc basis since the closure of the trained volunteer scheme, as well as professionals involved in the design and implementation of the scheme. All but 8 people who were approached agreed to participate in an interview. The final sample size was determined by data saturation, that is, when no new information was being obtained about the topics of inquiry (Sim & Wright, 2000).

The study was approved by the Griffith University Human Research Ethics Committee. To preserve the anonymity of participants, only broad descriptors are used in the results and no further demographics are provided.

### 2.2 | Procedure

All interviews were administered by telephone and were conducted by the first author from May–July 2021. The interviews ranged in length from 15 to 39 min and were semi-structured, guided by the following questions:

- a. What do you know about the communication partner model in South Australia?
- b. In your view, how useful (if at all) is the South Australian communication partner model?
- c. How widespread has the model been used so far in South Australia?
- d. What system changes (if any) are needed to the current South Australian communication partner model?

A conversational style of interviewing was used, allowing the interviewer the flexibility to pursue lines of inquiry raised by the stakeholder and direct the discussion towards involvement with the scheme and concerns personally relevant to the stakeholder. The broad questions and recursive, conversational style of interviewing allowed participants to voice their perspectives, relay experiences and suggest appropriate courses of action. The interviewer was largely passive, asking broad open-ended questions to encourage further elaboration and seek further clarification.

## 2.3 | Data management and analysis

All of the interviews were audio recorded, transcribed verbatim and checked for accuracy. The first two researchers independently read all of the interview transcripts, made extensive notes and then met to discuss the content on a line-by-line basis. Identified concepts and categories (and subcategories) were then grouped according to core themes (see Miles & Huberman, 1984). Quotations are provided to support the results, with grammatical changes made to improve flow and clarity, and potentially identifying detail removed.

## 3 | RESULTS

Overall, all participants expressed unanimous support for government intervention to better facilitate access to justice for people with complex communication needs. Several reasons were offered for this, including the high representation of people with a disability in the criminal and youth justice systems, the level of vulnerability of those people in the criminal justice system as either defendant or witness, as well as a possible ingrained perception that people with certain disabilities cannot give reliable evidence.

Seventy-three percent (17/23) of the participants in this study expressed an opinion on the effectiveness of the trained volunteer communication partner. All of those people conceded that the model used was not suitable in at least some respects. The remaining six participants who did not wish to comment on the effectiveness either did not have direct experience of its operation or felt they could not comment because the scheme was simply not given adequate time to embed. Eight participants raised this concern, with most suggesting that problems with the model could potentially have been addressed if the scheme had been allowed to run for longer.

The diversity of professional background of the participants meant not all four questions were relevant to every participant. For ease of presentation, we are presenting the overriding themes to emerge from the study rather than individually addressing the interview questions. Five key themes emerged as to the reasons the scheme was not widely accessed: the use of volunteers, leadership, scope of rollout, early support and centralization, and the community's readiness for change. Each of these is now discussed in turn.

### 3.1 | Integrity of a volunteer model

The strongest theme to emerge in the study was a belief that the decision to use volunteer communication partners was detrimental to the scheme's success. Of those who expressed a view on the scheme's effectiveness, 88% raised the use of volunteers as a key issue (frequently, it was the first concern raised in the interviews). Two key reasons for why volunteers were not appropriate were raised.

#### 3.1.1 | Legitimacy and expertise

The most common concern was that the use of volunteers adversely affected the legitimacy of the scheme, and therefore, its takeup among police and legal practitioners. Even for those who acknowledged the actual expertise of the volunteers, many expressed concern that within the legal profession high value is placed on qualifications; the term '*volunteer*' conjures an image of someone with lesser expertise and experience.

There is the perception from stakeholders that if you're paid then there is value to what you're adding.

(Speech pathologist)

We spoke with six lawyers who worked in prosecutions during the operation of the trained volunteer communication partner scheme. One lawyer was not aware of the scheme at the time, one considered that it was too difficult to involve a communication partner at such a late stage in proceedings and one used privately sourced communication partner in a trial. Two prosecutors used, or directed the use of, trained volunteer communication partners when they met with complainants to proof the evidence. Rather than playing an active role in the meeting, the function of the communication partner was to provide a report to the prosecution following the meeting. Both the prosecutors noted that these reports tended to provide basic suggestions about questioning the witness, which trained prosecutors are already well versed in:

The feedback ranged from some not unhelpful suggestions and guidance to details that didn't add anything to any meetings; it was just an extra person in the room in a situation where the victim was already having to meet the prosecutor, the police officer and the witness assistance officer. It wasn't even guaranteed that if they had to come back again that they could get the same communication partner back.

(Prosecutor)

Some prosecutors expressed the view that in order for a communication partner to add value beyond the skills of a prosecutor (who had extensive experience in questioning vulnerable witnesses) they needed to be practising experts in their field.

It might be different if you're talking to defence counsel who isn't involved in talking to vulnerable people and understanding their difficulties, but for people like me who have been doing that for 20 years I haven't found them useful because they assumed a level of knowledge that was much lower than what we had.

(Prosecutor)

Asking a volunteer to understand (in the moment) the problem with a question is a big ask. For them to respond as the question is asked is like asking them to be both a lawyer and a clinician at once in court as the question is asked.

(Prosecutor)

In contrast, the paid and currently practising speech pathologists who are providing an ad hoc communication partner service within the youth justice system, distinct from the current user-pays model established by the Government, reported positively on the way their support was being received by the accused:

The lawyer told me that when I started drawing, the young person's face just lit up and he really engaged with the session. He commented that he could better understand what we were saying to him, and he felt like he could be heard.

(Speech pathologist)

We spoke with a prosecutor and judge involved in some of the few trials in which communication partners have been used in South Australia. The prosecutor used a communication partner once for a witness with an intellectual disability and in a separate case was prosecuting a man for whom defence had appointed a communication partner. In the first case, the prosecutor sourced

the communication partner privately because the range of expertise offered through the Uniting Communities scheme was not appropriate for the witness.

The prosecutor's view was that the real value of the communication partner was in giving the prosecutor grounds to object to certain questioning of the witness:

What the communication partner assisted me with was to give me something concrete that I could hang my hat on when I needed to make an objection... In my view this is a protective scheme, so it's to stop cross-examination that is confusing.

(Prosecutor)

This study showed a distinction between practitioners using communication partners for prosecution witnesses and those using them, or providing the service, for clients facing criminal charges. The latter category was generally more supportive of the scheme than the former. One participant had supervised defence counsel who used a communication partner for the accused in a District Court sexual assault trial. Their understanding was that this was the first time that the defence had used a communication partner in a South Australian trial. The practitioner found the communication partner's assistance invaluable in explaining the court process and taking instructions from the client:

Although the client was convicted on the evidence, he and his family felt that he had a much fairer trial because he had a communication partner. He was satisfied that everything that could have been done for him was done and that his disabilities were taken into account.

(Defence counsel)

### 3.1.2 | Availability of volunteers

The second reason that participants did not view volunteers as being appropriate for the CP role is the logistical difficulty of a volunteer being available at short notice and potentially for protracted periods during trials. Participants highlighted the unpredictable nature of the criminal justice system; new cases arise at all hours and trial schedules are constantly changing depending on availability of witnesses, legal practitioners and the judiciary.

Participants purported that the system would work better if a single person performed the communication partner role from the police interview stage, through to prosecution proofing and then to the trial itself. They acknowledged that this was not realistically achievable with volunteers.

To be on-call between 7am and 10pm to potentially go anywhere at four hours' notice and not have any rapport established or understanding of those clients' communication needs... I don't think that was possible for a volunteer.

(Speech pathologist)

An underlying theme in the interviews was the highly specialized nature of the skills a communication partner needs to be effective within the legal system, especially if they are to play an active role in objecting to questions during court proceedings. Several legal practitioners speculated that a practitioner who had that level of skills would be unlikely to have the availability, even if they had the inclination, to provide a service on a voluntary basis for the length of time that a criminal trial would require.



You're talking about professionals who use that profession to make a living, so when you're balancing paid work to non-paid work I can only speculate where the priorities may lie.

(Legal practitioner)

### 3.2 | Leadership

The second major theme to emerge in the interviews was the importance of leadership. Participants perceived that even where the model's framework is sound, there needs to be strong advocates as well as accountability to provide the necessary incentive for change. This is particularly the case within the conservative environment of the criminal justice system. Participants' views were that the Uniting Communities scheme lacked leadership from government, the judiciary and within relevant workplaces.

Some participants (6/23) saw the decision to use volunteers in the Uniting Communities scheme as a reflection of the lack of political will to effect meaningful change. There was a strong sense that the scheme was not comprehensively funded or supported by government.

We don't ask someone that's sitting on a board for the Tourism Association to do it voluntarily and we don't ask interpreters in a different language to come into court and do it voluntarily. Why is it that when someone with a disability or special needs is involved, we ask people to do it voluntarily?

(Prosecutor)

Although there was a lot of publicity about it, although a lot of glossy brochures were drawn up and although there was some money made available to Uniting Communities for the Communication Partner Scheme, in my view it was nothing more than an exercise in political expediency and popularism. The reason why it failed was because there was no political will to actually move it forward.

(Defence counsel)

I feel like there was a willingness to have this project here but then there was not a willingness to provide it with the resources that it needed to be a success. It's kind of like having a plan for a Rolls Royce version and then trying to achieve it with a Hyundai Getz, which is just not going to work.

(Legal practitioner)

Despite efforts by Uniting Communities to conduct information sessions and produce information flyers, several practitioners were not aware, or were only vaguely aware, of the scheme and its potential benefits despite working in relevant areas at the time.

That's the transient nature of these jobs and how under the pump people are. It is a change management piece that I think people are forgetting. I don't think you can just say 'let's create this whole new model and introduce this new person within a very strict system' and then expect that people are just going to know about and understand the system.

(Policy expert)

My concern about our current model is that no one knows how to use or access communication partners. So they won't use them and then there'll be a review of

the current scheme and the Attorney-General will say ‘well no one’s utilised it and therefore there’s no need’. So it will become a self-fulfilling prophecy.

(Victims’ rights advocate)

Several interviewees expressed the view that for the legal profession to adopt change and use the new scheme, the judiciary would need to meaningfully engage with it. For example, people expect judges should question why communication partners have not been engaged in situations where it appears a witness or defendant would benefit from their assistance.

I cannot recall being involved in or my staff being involved in or even hearing of a single case where a judicial officer, on becoming aware that a person might have an intellectual disability or some sort of communication problem, has said ‘do you think it might be a good idea if we utilise the legislation to appoint a communication partner?’.

(Defence counsel)

I think it’s one thing for prosecutors and police to be across these measures but if the court isn’t receptive to them that’s just an obstacle that is very difficult to get past.

(Prosecutor)

Participants also noted the importance of ‘champions’ within the workplace in order for reforms to succeed. For example, three participants referred to the high level of engagement of South Australian Police’s specialist victim management service with the scheme in its early days, due to strong leadership within that team.

Some participants expressed the view that for many police and legal practitioners who are resistant to change, overstretched and under-resourced, they will not take the additional step of considering the use of a communication partner unless they receive directions to do so from their supervisor and unless there are consequences for failure to do so.

You’ll go and do training and get all fired up and then if there’s not a mechanism in place to use that training, where does it go? You’re busy, you’ve got competing priorities so it wouldn’t take too much of a dampener from management to push it to the side.

(Speech pathologist)

One suggestion was to legislate a requirement that police turn their minds to communication assistance for all witnesses and all defendants, although ostensibly this statutory duty already exists.<sup>3</sup> Other suggestions included integrating the right to have a communication partner into the *Victims of Crime Act 2001* and making training on clients with communication difficulties a mandatory part of lawyers’ continual professional development.

### 3.3 | Scope of the rollout

Some participants (5/23) perceived that with the benefit of hindsight, implementation of the communication partner scheme in South Australia should have commenced with a pilot phase, as has been done in other jurisdictions. Instead, the expectation was that the scheme be rolled out across the State within the first 12 months of its operation. Participants also pointed out that the scheme was introduced in addition to several other vulnerable witness measures so in many ways it got lost within a lot of other, more urgent, legislative changes.

It needs to be a controllable pilot that people can really focus on, with a champion within the judiciary who says ‘all right this is going to be my baby and I’m going to really watch and hear these matters.’

(Prosecutor)

### 3.4 | Early support and centralisation

The importance of communication partners being involved from early in the criminal justice process, at the point of police interviews, was emphasised by 11 participants. The reason cited was that for vulnerable people, it is often at the early stage of police interviews that mistakes are made, which prevent complaints or reports being progressed. Further, as one prosecutor explained, if no communication partner is used during police interviews, it can be hard to justify their involvement as the prosecution prepares for trial, because the complainant has already provided their evidence, often in pre-recorded interviews.

Even if the initial evidentiary product is plagued by communication difficulties, getting a communication partner onboard wouldn’t result in better evidence being obtained. By embarking upon yet another pre-recorded version of the evidence you’re just manufacturing potential inconsistencies, so it’s just cross-examination fodder...

(Prosecutor)

The anecdotal view from legal practitioners was that they did not see cases coming through the system in which communication partners had been used at the police interview stage. Despite some positive feedback on the engagement of South Australian Police’s specialist victim management service, a victims’ rights advocate pointed out that awareness of the importance of communication partners did not extend to frontline staff who may be the first point of contact for a victim reporting an incident. Participants expressed the view that one way to achieve consistent support for a witness or defendant throughout the criminal justice process, as well as to simplify access to the scheme, was to have a centralized body responsible for allocation of communication partners.

Over half of the participants emphasised the need for the scheme to be centrally coordinated. The prevalent view was that this function should not be referred to an NGO but rather it should sit within a government department to increase the perceived legitimacy of the scheme. Alongside affordability, a lack of central control was one of the primary criticisms of the user-pays system that replaced the Uniting Communities volunteer scheme.

Right now if a lawyer or a police officer wanted to have a communication assistant, they need to... go to the list, start calling and then find someone who can come. When they find someone, that person might be an amazing speech pathologist with children, and this is a child issue, but do they know anything about sitting in a police interview writing a purpose-built report for that space? To find that someone who’d trained in the space would be like striking gold in the Sahara Desert.

(Speech pathologist)

### 3.5 | Readiness of the disability community

Participants raised the importance of engaging with the disability community about what a communication partner scheme should look like and how its value should be communicated

to potential users of such a scheme. One disability lawyer and advocate we spoke to had been provided with the following explanation by a representative of the disability community: people whose access to justice could be improved with the use of a communication partner either:

- a. do not identify as having a communication disability and so do not want to be a part of the scheme or
- b. do identify as having a communication disability, but do not use communication partners in their everyday interactions and so decline the offer of one because they think it is not relevant for them.

### 3.6 | Communication partners are not a panacea

The experience of the judge who participated in our study was that the communication partners who were present during trials did not have a significant role. The judge's perception was that this was because children with certain minor intellectual disabilities have the potential to be compelling witnesses, as they tend to be unable to lie.

While acknowledging that there is a place for communication partners, particularly in the earlier stages of police interviews and prosecution preparation, the judge's view was:

the problem in child sex trials is overwhelmingly that jurors don't understand how children perceive things. That's why in my view the conviction rate in child sex trials is so low. Jurors simply do not understand that a child's unreliability about matters of history or things of importance to adults is not adverse to the child's credit about the offending and their actual experiences. Now that's not solved by a communication partner; it's solved by jurors having a better understanding.

(Judge)

This view was echoed by other practitioners with experience of using the communication partner scheme. Their view was that while there would be some vulnerable witnesses whose specific disability meant that a communication partner is the best tool to facilitate their evidence, for many others (including children) their needs would be better served with ground rules hearings, education of practitioners and (when required) expert reports to inform the court of the nature of a person's disability and its implications for interviewing. The need for the police and legal practitioners to be well trained in questioning of vulnerable witnesses, as well as aware of legislative protections available for their clients was a recurring theme.

Another participant flagged that not enough was done to identify the specific need that the scheme was addressing, and whether communication partners, in the manner introduced in South Australia, were the best way to address that need. That person highlighted the complexity in matching a communication partner who can effectively meet the specific needs of a vulnerable person:

I have seen many times over the years that a person may be almost entirely dependent on one or two other people—often a mother—to open up their communication. Bringing somebody in and treating it as a sort of shoe fitting exercise doesn't get anywhere near the problem, especially in an environment characterised by mistrust and trauma and with a whole lot of authority thrown in.

(academic, disability policy analyst)

A concern that emerged was the perceived challenge in verifying the accuracy of evidence that has been passed from a witness (or accused) through a communication partner. Some participants

suggested that often the person most likely to be able to perform the role of communication partner is a close friend or family member who has a comprehensive understanding of that person's difficulty. However such a person would be likely to lack impartiality. One participant noted that even if an external communication partner is used, there is a challenge in verifying their interpretation of the client's evidence.

If they possess this piece of nuanced knowledge that no one else possesses, how can you guarantee that they're being accurate? Whereas if you've got an interpreter, say it's Spanish, you can then get your own interpreter in to sit there and listen and say whether they are right or not.

(Counsel—defence and prosecution)

## 4 | DISCUSSION

This study revealed clear insights into the factors that made the communication partner reforms in South Australia challenging. The participants included the key practitioners in the jurisdiction with experience of using, or acting as, communication partners. They were therefore able to offer fruitful suggestions on two key aspects: the practical value of the trained volunteer scheme in South Australia and the process by which the reforms were implemented. While we cannot propose a roadmap to best practice implementation of an intermediary scheme based on this study, we are able to distil the following learnings, applicable beyond the South Australian jurisdiction.

An overriding theme was a distrust of the volunteer model. Despite the broad consultation process that South Australia conducted prior to the introduction of the scheme, participants involved in those consultations told us they were surprised and disappointed when they learnt that the exact model to be implemented would rely on volunteers. Those participants had expected a paid professional model as operated in other jurisdictions and believed the choice of volunteers reflected a lack of government commitment to the change. The findings from our study suggest that the imposition of a volunteer model negatively impacted the perceived legitimacy, and probably receptiveness to the scheme. However, we are not suggesting that there is no place for a volunteer model; indeed, they are used in many parts of the criminal justice system (Pierpoint, 2000) and concerns such as legitimacy, credibility, expertise and availability are not specific to a volunteer scheme (see Powell et al. (2017), for a discussion about the challenges of using interpreters in child sexual abuse interviews).<sup>4</sup>

The challenge of having access to communication partners with the necessary level of expertise to make a meaningful contribution was a dominant theme, often linked to criticism of the volunteer model. The clear view from prosecution counsel who used the trained volunteer communication partner service was that the level of expertise offered did not go beyond the knowledge that a prosecutor trained to work with vulnerable witnesses possessed. It was telling that the only prosecutor to use a communication partner in a trial sourced their own professional because those available through Uniting Communities did not have the expertise she needed for that client. We speculate that the significant South Australian reforms focussed on training the police and prosecutors to ask more effective questions of vulnerable witnesses may have contributed to the prosecutors' views that the trained volunteer communication partners did not add value beyond their own questioning skills. In any future scheme, as interview training reforms continue to improve base-level professional interview skills, the role of a communication partner or intermediary may need to become more specialized, focussing on adapting questions to suit the specific needs of the individual person they are assisting, as opposed to providing generic feedback about how to simplify language and minimize error (advice applicable to all vulnerable interviewee groups). Further, given the breadth of people

entitled to access communication support under South Australian legislation, any pool of communication partners will need to be able to respond to a diverse range of needs, (e.g., age-related impediments in a prosecution witness, defendants with an intellectual disability). To the extent that volunteers are used, appropriate selection, training and regulation are key. This is consistent with findings in relation to the volunteer 'appropriate adult' scheme in England (Pierpoint, 2000).

Prosecutor criticism of the expertise of the trained volunteers was part of a broader theme in our study, which suggested that defence counsel was generally more supportive of the scheme than prosecution counsel. As Howard et al. (2020a, b) pointed out, the difference between prosecution and defence views are, in part, explained by the slightly different function that a communication partner serves in each scenario; for the prosecution, a communication partner is used to assist a vulnerable witness to provide their best evidence to the police and in court. Their performance may be assessed against the ability to obtain evidence through existing processes, such effectiveness questioning by prosecution counsel. For defence, the role is broader, and some may argue less technically challenging because the accused often does not give evidence, meaning the communication partner's role is focussed on seeking to facilitate understanding of, and participation in, the criminal justice process. There is support for intermediary schemes to be extended to vulnerable defendants in other jurisdictions (see, for example, Giuffrida & McKay, 2021). However, with most jurisdictions currently only using professional intermediaries to assist prosecution witnesses, there is a paucity of research into the best way to support suspects or defendants with communication difficulties, and whether their needs can be met by the same systems, which currently support witnesses.

The challenges that participants spoke to related not only to the quality of the service that was delivered by communication partners in the South Australian scheme but also the way in which the service was imposed and maintained. For a significant change to the criminal justice system to be effective, all stakeholders (the lawyers, police, judiciary and disability community) need to be invested in the change and committed to making it work. Achieving this requires meaningful consultation, leadership, and accountability. In the South Australian example, our study raised concerns ranging from the imposition of the trained volunteer model, the lack of a pilot program to allow the scheme to be evaluated and improved, lack of political will for the scheme to succeed and the failure of judges to intervene when inappropriate questions are asked, missing the opportunity to shape professionals' behaviour. Fairclough (2021) examined the consequences of unenthusiastic criminal justice reform in the context of the special measures reforms for defendants in England and Wales, revealing that the way in which reform is implemented can have a negative impact on the extent to which the measures are embedded and the extent of uptake, even when the measures themselves are worthy. Similarly Powell et al.'s study found that where governments legislated for schemes that were not implemented properly, any problems with professional skill, knowledge or competency were compounded by '*creating the sense that government measures were futile and the barriers to justice insurmountable*'. This perception foreshadowed the outcome of the current study.

## 5 | CONCLUSION

Our study demonstrated widespread enthusiasm among practitioners regarding the need for communication support for both witnesses and defendants in the criminal justice system. The participants painted a picture of what such support should look like and why the South Australian trained volunteer model did not gain traction. Many participants appeared to focus their criticism on the volunteer element of the model. However, being the first communication partner scheme in South Australia, participants had no direct experiential basis on which to compare the service offered with other models. Thus, many of the issues raised, such as limited

availability and knowledge base of communication partners, may well be applicable to other schemes involving paid (as opposed to volunteer) professionals.

South Australian legislation allows communication support to be provided to a diverse range of people—prosecution witnesses and defendants, typically, developing children and adults with impairments of varying kinds. Our study has highlighted the need to develop a pool of communication partners who have broad expertise sufficient to meet the specific needs of that diverse group. As the police and advocates continue to receive training and experience in best practice interview techniques, communication partners need to become less focussed on communicating the generalist knowledge of questioning techniques and more on adapting questions to meet the specific needs of the individual vulnerable person. The scheme should be centralized within a government agency and tailored to the unique economic, cultural and geographic features of the jurisdiction.

## ACKNOWLEDGEMENTS

This article arises from a recent project of the independent South Australian Law Reform Institute based at the Adelaide University Law School. The research was funded by a grant from the Law Foundation of South Australia Inc. to examine the role and operation of communication partners to assist parties with complex communication needs to provide their best evidence. Any views expressed in this article are those of the authors alone and not of any agency. Open access publishing facilitated by Griffith University, as part of the Wiley - Griffith University agreement via the Council of Australian University Librarians.

## AUTHOR CONTRIBUTION

Sarah Hoff: conducted interviews, coded and analysed the interview transcripts, drafted the article, approved the final manuscript. Martine Powell: conceived of and designed the study, coded and analysed the interview transcripts, provided vital input and revisions, approved the final manuscript. David Plater: conceived of and designed the study, provided vital input and revisions, approved the final manuscript.

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## ENDNOTES

<sup>1</sup> Section 14A *Evidence Act 1929 (South Australia)*.

<sup>2</sup> The recruitment process involved pre-interview phone screening, a three-page written application, face to face interview, which includes a case study that interviewees are to answer, two reference checks and three full days of training, plus compulsory police and working with children checks (Jacobs, 2020).

<sup>3</sup> *Summary Offences Regulations 2016 (SA)* Reg 18(2) already contains an obligation for an investigating officer to make arrangements for a prescribed communication assistant or prescribed communication device to be used if they intend to interview a suspect who they believe may have complex communication needs.

<sup>4</sup> The implications of a volunteer communication partner scheme for regional or Aboriginal communities in South Australia were beyond the scope of this study but see Plater et al. (2021) for discussion of this issue.

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**How to cite this article:** Hoff, S., Powell, M., & Plater, D. (2022). When good intentions are not enough: Professionals' perceptions of the South Australian communication partner scheme. *Australian Journal of Social Issues*, 00, 1–17. Available from: <https://doi.org/10.1002/ajs4.208>