



## What is the QIS Pilot Program?

The Queensland Intermediary Scheme (QIS) is an initiative arising out of recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. The scheme will commence in Brisbane and Cairns in July 2021 and will operate as a two-year pilot program. Through the use of intermediaries, the scheme will assist witnesses with communication needs give their best evidence.

In the pilot phase, the scheme is limited to prosecution witnesses (not just complainants) in child sexual offence matters who:

- are under 16; **or**
- have an impairment of the mind; **or**
- have difficulty communicating.

## Legislative framework

Any prosecution witness in a child sexual offence matter who falls into a category listed above (regardless of age) is eligible for an intermediary. 'Child sexual offence' means an offence of a sexual nature committed in relation to a child, including offences contained in Chapter 22 (Offences against morality) and Chapter 32 (Rape and sexual assault) of the [Criminal Code Act 1899 \(Qld\)](#).

The insertion of new Division 4C into the [Evidence Act 1977 \(Qld\)](#) will provide the framework in which the scheme operates. These legislative amendments to the *Evidence Act* will commence on a date set by proclamation. Currently, they can be viewed in the [Criminal Code \(Child Sexual Offences Reform\) and Other Legislation Amendment Act 2020](#).

## What is an intermediary?

Intermediaries are professionals with qualifications in speech pathology, psychology, occupational therapy, or social work who help witnesses to understand and be understood.

Through their experience as professionals and with training provided by the QIS program team, they will facilitate communication between witnesses and police and witnesses and courts.

Intermediaries can:

- assess vulnerable witnesses and advise on their specific communication needs; and

- provide practical strategies to police, lawyers and judges on how to best communicate with and question vulnerable witnesses to obtain the best evidence.

Intermediaries are impartial – they are not a support person for the witness and cannot take anyone's 'side'. These professionals form part of the Intermediaries Panel and are assigned work by a staff member of the QIS based on the individual needs of a witness.

## What does an intermediary do?

When engaged during a **police investigation** an intermediary:

1. conducts a witness assessment;
2. provides recommendations to the police officer on how best to communicate with the witness during the police interview; and
3. attends the police interview to ensure the witness understands and their evidence is understood.

When engaged at the **court stage** an intermediary:

1. conducts a witness assessment;
2. writes a court report with recommendations about how to best communicate with the witness;
3. participates in a 'directions hearing' where the intermediary's recommendations are discussed; and
4. attends court when the witness gives evidence to ensure the witness understands and their evidence is understood.

Interactions between an intermediary and witness will be electronically recorded and disclosable. An intermediary will never be left alone with a witness (including during a witness assessment); a police officer or ODPP officer will always be present, and it is this person who will provide an independent account of events if required.

## Why do we need the QIS?

Vulnerable witnesses may be unable to give clear and accurate evidence due to their communication needs.

Intermediaries are experienced in assessing and advising on these needs, including (but not limited to):

- very young age
- cognitive issues

- trauma
- learning disabilities
- ADHD & autism

The QIS aims to overcome communication barriers and improve access to justice. The use of intermediaries aims to reduce trauma to vulnerable witnesses and increase the quality of evidence they provide.

## Directions hearing

A directions hearing occurs prior to a vulnerable witness giving evidence.

At this hearing, the intermediary will explain to the court:

- their assessment of the vulnerable witness's communication issues; and
- their recommendations about how to communicate with the vulnerable witness.

The QIS team expects that the intermediary will be directed by the court to prepare a court report that will inform the directions hearing.

The directions hearing is an opportunity for the judge and legal representatives to discuss the recommendations and determine the conduct of the proceedings.

The judge may then give formal directions about the giving of evidence by the witness including:

- the manner and duration of questioning the witness;
- the questions that may, or may not, be asked of the witness;
- the use of communication aids;
- the frequency and length of breaks;
- the use of an audio-visual link or another communication facility; and
- how the intermediary will intervene.

The court can hold additional directions hearings at any stage of the proceeding in order to further discuss the giving of evidence by that witness.



## What can't intermediaries do?

The intermediary assists with communication when the witness is being interviewed by the police, giving evidence at a pre-recorded evidence hearing or at trial.

Intermediaries **must not**:

- advocate for the witness;
- examine or cross-examine the witness;
- answer questions on the witness's behalf or coach the witness in how to answer questions;
- be a support person;
- ordinarily act as an interpreter;
- assess or address issues such as capacity or credibility; or
- enter into discussions, give advice or express opinions concerning the evidence the witness is to present.

## Intervening during pre-recorded evidence hearings

It is assumed the evidence of vulnerable witnesses in the majority, if not all, matters involving intermediaries will be pre-recorded.

The intermediary must be sworn in via oath or affirmation before the witness gives evidence: *Evidence Act* s 21AZN.

How and when an intermediary is to intervene during the pre-recording of evidence will be determined at the directions hearing. It will ultimately depend on how the judge wishes to manage their court.

An intermediary may intervene when a court-approved recommendation has been contravened and in instances where the intermediary believes the witness does not understand the question asked.

Intermediaries must attempt to achieve a balance between:

- putting witnesses off as a result of their interruption; and
- the risk of unduly interrupting the questioner.

It is the decision of the judge whether or not to uphold the intermediary's intervention.

## Contacts

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