

## 63A. Intermediaries

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### 63A.1 Legislation

[Last reviewed: February 2025]

#### Evidence Act 1977

[Division 4C](#) - Intermediaries

[Section 21A](#) – Evidence of special witnesses

[Section 21AW](#) – Instructions to be given to jury

### 63A.2 Commentary

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The Queensland Intermediary Scheme (QIS) Pilot Program commenced in July 2021 in Brisbane and Cairns.

The scheme was established in response to recommendations 59 and 60 of the Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice report published in August 2017.

The main objective of the scheme is to achieve the best evidence from a witness with communication difficulties.

The insertion of Part 2, Division 4C to the *Evidence Act 1977* (Qld) provides the framework in which the scheme operates.

The court's power to appoint an intermediary is found in s 21AZL of the *Evidence Act 1977* (Qld). An intermediary may be appointed for a prosecution witness in a child sexual offence prosecution who:

- is under 16 years; or
- is a person with an impairment of the mind as defined under the Criminal Code; or
- has difficulty communicating; or
- is of a class prescribed by regulation.

No regulation has been made under this section and there are no plans to prescribe any additional categories during the pilot phase of the scheme.

Intermediaries help vulnerable witnesses to understand and be understood. Intermediaries have specialist skills in communication, holding a tertiary qualification in occupational therapy, psychology, social work or speech pathology: s 21AZV(5).

They facilitate communication between the witness and police, and the witness and courts.

### *Functions of intermediaries*

Intermediaries are officers of the court who must act impartially: s 21AZM(3). Pursuant to s 21AZM, intermediaries have the following functions:

- (a) to communicate or explain to the witness questions put to the witness, to the extent necessary to enable the witness to understand the questions;
- (b) to communicate or explain to a person asking questions of the witness the answers given by the witness in reply, to the extent necessary to enable the person to understand the answers.

An intermediary must take an oath or affirmation before performing any function in court: s 21AZN. An intermediary is an essential person (s 21AU(4)) and may be appointed for a witness at any stage of a proceeding: s 21AZL(3).

### *Police investigation*

When engaged during a police investigation an intermediary:

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

### *Court proceedings*

An intermediary performs the following functions when engaged at the court stage:

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

### *Directions hearing*

Upon making an order appointing an intermediary, the court must give a direction that a directions hearing be held: s 21AZP(1). The purpose of an intermediary at a directions hearing is to:

- inform the court of the communication needs of the witness; and
- recommend to the court the most effective way to communicate with the witness: s 21AZR(1).

An intermediary's court report informs a directions hearing.

The court may give directions about the giving of evidence by the witness that the court considers appropriate for the fair and efficient conduct of the proceeding: s 21AZS.

Not listed in s 21AZS(2) but of note: the court may direct how and in what circumstances an intermediary can intervene while a witness is giving evidence. The direction will ultimately depend on how the presiding judge wishes to manage their court. Further, it is the decision of the judge whether or not to uphold an intermediary's intervention.

### *Jury directions*

If the evidence of a witness is given under an order in s 21AZT(2)(a) or (b), the jury must be instructed in accordance with s 21AZU(2) that –

- (a) they should not draw any inference as to the defendant's guilt from the use of the intermediary; and
- (b) the probative value of the evidence is not increased or decreased because of the use of the intermediary; and
- (c) the evidence is not to be given any greater or lesser weight because of the use of the intermediary.

However, the judge must not give an instruction under subsection (2)(b) or (c) if the judge is satisfied it would not be in the interests of justice to give the instruction: s 21AZU(3).

The failure to comply with the mandatory requirements of s 21AZU(2) is likely an error of law. The failure to comply with similar mandated requirements at s 21A(8) of the *Evidence Act 1977* (Qld) resulted in an error of law in *R v Bisht* [2013] QCA 238, [49] and *R v Little* [2013] QCA 223, [24].

### *Other considerations for jury directions*

It may be that a witness for whom an intermediary is appointed will also be a special witness or an affected child witness.

Trial judges will need to tailor a direction about the witness's evidence which takes into account as required, in addition to the requirements of s 21AZU(2), the requirements of -

- (a) s 21A(8) of the *Evidence Act 1977*, for a special witness;
- (b) s 21AW(2) of the *Evidence Act 1977*, for an affected child witness.

### **63A.3 Suggested Direction**

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**An intermediary was used for the evidence of the witness [name witness].**

**You must not draw any inference about the Defendant's guilt from the use of the intermediary.**

**(If in the interests of justice to do so (see 21AZU(3)) add):**

**Nor is the probative value of the witness' evidence increased or decreased because of the use of the intermediary.**

**Nor is the witness' evidence to be given any greater or lesser weight because of the use of the intermediary.**