



Specialist assessment and communication assistance  
for vulnerable people in justice contexts

## **Communication Assistants (Intermediaries)**

### **Structure, training and support – Lessons for New Zealand**

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## INTRODUCTION

Historically, New Zealand has led the way in accommodating the needs of vulnerable witnesses in the judicial system, undergoing a period of comprehensive legislative reform for child witnesses in the late 1980s. Since this time, those within the legal system have continually reviewed international approaches to assist in developing best practice models for vulnerable people within the courts and broader justice systems. The learnings from overseas, combined with legislation, has resulted in the adoption of court-appointed Communication Assistants (CA's) or Intermediaries. Since the first use of a CA as a specialist in New Zealand in 2012 the engagement of CA's has been on a referral basis to a handful of Speech Language Therapists with relevant expertise or experience.

This report will provide a comprehensive overview of the initial introduction of CA's into the judicial system in New Zealand, the progress made to date, the observations and lessons learned from international contexts, and present proposed methods of working moving forward. The results of a survey of experienced Intermediaries will also be discussed, providing the reader with critical information about the key competencies required as part of the role. A focus will be drawn to the experiences of the author in both New Zealand and the UK throughout the training and mentoring process, including the challenges faces in this initial stage of rollout.

Due to the significant progress that has been made in supporting the communication needs of vulnerable persons in the judicial system internationally (and particularly in the UK), lessons for training and the practical rollout of the utilisation of CA's in justice contexts, can be drawn from these differing jurisdictions and subsequently considered for application in the New Zealand context. These are considered both within their international contexts and in application to the New Zealand context at present. Future directions for learning and development of the role of a CA within New Zealand Courts are discussed and advice for best practice is shared.

## BACKGROUND

### The origins of Communication Assistants in New Zealand

The Evidence Act of 1989<sup>1</sup> saw New Zealand leading the way as the first common law country to introduce a comprehensive legislative package of reforms for child witnesses<sup>2</sup>. These reforms included the provision of the use of court room screens, or the use of video recorded forensic interviews as evidence in chief, then testifying via two way closed circuit television (CCTV). By the mid 1990's these modes of evidence were viewed as the normal modality rather than the exception to the rule<sup>3</sup>. Such modes of giving evidence have not been restricted to children only, but have been allowed for other vulnerable witnesses, for example individuals who are key witnesses in sexual violence cases. Despite these reforms, the significant progress made by overseas jurisdictions about the process of questioning vulnerable witnesses, has resulted in a

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<sup>1</sup> Evidence Act 1989

<sup>2</sup> Kirsten Hanna and others "Questioning Child witnesses in New Zealand's Criminal Justice System: Is Cross-Examination Fair?" (2012) 19 Psychiatry, Psychology and Law 530

<sup>3</sup> New Zealand Law Commission, 1996



change to international approaches, processes, and legislation from which New Zealand can learn. Emma Davies and others<sup>4</sup> discuss the use of an intermediary model (such as we see in the UK) and the benefits of this for vulnerable witnesses. They highlight that: *“Ensuring that all accused persons have a fair trial is critical to the quality of justice delivered by the courts. This includes obtaining the most accurate and complete testimony from witnesses.”* One of the barriers noted to be most significant was poor questioning practices, in particular in cross examination, further stating that *“questioning practices might be improved by training counsel and the judiciary, and by involving people with specialist skills in child language (“intermediaries”) to assist counsel to question children appropriately.”*<sup>5</sup>

Furthermore, on closer examination of the Evidence Act 1989<sup>6</sup> Section 80 clearly outlines the provision of communication assistance to vulnerable witnesses and defendants, allowing them to fully participate in the processes of the court and in giving their best evidence. See below for the full extract: It is important to note that within this section both defendants and witnesses are entitled to Communication Assistance.

### **Section 80 Communication assistance**

- (1) A defendant in a criminal proceeding is entitled to communication assistance, in accordance with this section and any regulations made under this Act, to—
  - (a) enable the defendant to understand the proceeding; and
  - (b) give evidence if the defendant elects to do so.
- (2) Communication assistance may be provided to a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge.
- (3) A witness in a civil or criminal proceeding is entitled to communication assistance in accordance with this section and any regulations made under this Act to enable that witness to give evidence.
- (4) Communication assistance may be provided to a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge.
- (5) Any statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury for the purposes of sections 108 and 109 of the Crimes Act 1961.

It is important to note that within this section both defendants and witnesses are entitled to communication assistance and that there is no differentiation made regarding the right for an individual (regardless of their role in the criminal proceedings) to receive such communication assistance. In addition, what should also be highlighted is the right to receive communication assistance for both an individual’s **understanding** of the proceeding (pertaining to their receptive communication skills) as well as for **communication** their evidence (pertaining to their expressive communication ability). The specifics of what is referred to as ‘communication assistance’ itself is described further in section 4 below:

**Section 4 communication assistance** means oral or written interpretation of a language, written assistance, technological assistance, and any other assistance that enables or facilitates communication with a person who—

- (a) does not have sufficient proficiency in the English language to—
  - (i) understand court proceedings conducted in English; or

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<sup>4</sup> Emma Davies and others “Questioning Child Witnesses: Exploring the Benefits and Risks of Intermediary Models” (2011) Auckland University of Technology

<sup>5</sup> At 531

<sup>6</sup> Evidence Act 1989



- (ii) give evidence in English; or
- (b) has a communication disability

Since the introduction of this legislation in 1989 there have been noted examples of “communication assistance” for some vulnerable witnesses and defendants, however, the provision of such assistance has always involved the engagement of a person known to the witness/defendant. Anecdotal information made available to the author from both crown and defence counsel has reported the use of a Teacher Aide, specialist teacher, or social worker in this role of providing communication assistance to a child or young person. Typically, this familiar person would appear alongside the child or young person at trial. While this may seem like a logical step to take in supporting the child’s/young person’s communication with the involvement of an adult with whom they are familiar, issues arose due to their lack of training and lack of specialist knowledge within the field of communication. Examples include the communication support person not intervening at all when communication difficulties were perceived, to interrupting proceedings, including speaking for the child/young person or asking them a different question before they had the opportunity to answer the one put by Counsel.

### Case Example

#### Non-specialist communication support person

It was observed in one case (where the CA was supporting the court alongside a vulnerable defendant), that the Teacher that was appointed to support a vulnerable complainant, and the evidence of this witness broke down. On presentation this 14-year-old wheelchair-bound young man had clear speech and was able to converse in sentences. In his special school setting, his communication skills would likely vulnerable witness as to how he would function in the court context. The role of the witness often requires them to recall an event in detail. This detail can include descriptions of places, including in this instance, colour, size, distance, proximity.

Despite being able to function as a competent communicator in his day to day interactions in his special school and at home, in “his context”, when these language demands were placed on him, it was evident he either did not have the vocabulary to describe and define and/or had specific word retrieval difficulties related to his diagnosis. As evidence progressed, his ability to answer questions decreased, shorted sentences, non-specific words “this thing.” “that” with increased signs of anxiety and stress, holding his head in his hands vocalising frustration “aaa”. On two occasions the presiding Judge looked towards the Teacher who was acting as CA alongside the defendant and raised his eyebrows, acknowledging that communication was breaking down. The Teacher intervened on two occasions, but her intervention was to ask the child a differing question than the one put by Counsel. The Judge called an end to questioning of this witness and thanked him for his time.

As an additional note, it was also interesting to see that the Teacher CA then sat with the complainant’s family in the court room for the rest of the trial, which does not suggest someone who accepts an impartial role.



## Development of the “Specialist” CA Role in New Zealand

### Case Background

The first recorded case of the use of a Specialist as an intermediary / CA in New Zealand, was in *R v Hetherington*<sup>7</sup> in 2012. This was the second trial for a matter where the defendant was convicted for indecent assault of a young person, rape and sexual violation by unlawful sexual connection. The complainant was a 13-year-old with Down Syndrome. It is the understanding of the author that within the first trial for this matter, where there was a hung Jury, communication assistance was provided by the young person’s Teacher Aide. On cross examination it was evident that the young person had ongoing difficulty comprehending the questions put to her. The Teacher Aide did not intervene on any occasion but remained in the CCTV room alongside the witness. Ultimately, in this first trial the Teacher Aide acted more akin to a “support” person rather than providing what would be considered as “communication assistance”.

When the re-trial was due before the Court, Crown Counsel (with agreement from the Court) engaged a local and very experienced Speech Language Therapist (SLT) (the author of this report), to act as a “Court Communication Expert”. The engagement letter to the SLT noted to undertake an assessment of the communication abilities of the witness, specifically outlining the young person’s linguistic abilities, any difficulties, and include recommendations regarding direction for questioning. The SLT was provided with a copy of the Registered Intermediaries procedural guidance manual<sup>8</sup>, as well as a sole chapter extracted from the work of Kirsten Hanna and others<sup>9</sup>. Although the SLT in question had over 20 years’ experience as a Speech Language Therapist, the only justice-specific “training” the SLT began this case with is that mentioned above. Reflecting on this particular case brings the phrase “thrown in the deep end” to mind with a feeling of being underprepared and having inadequate information with which to accept this role. Nevertheless, this engagement with the SLT profession and the first case undertaken by this particular SLT marked the beginning of expert communication assistance provision in line with the UK model within New Zealand. The title of Intermediaries in New Zealand has not evolved from what is described in Section 18 as “Communication Assistance” with the exception of more recent descriptions as “Court Appointed Communication Assistant”. However, this terminology may not be entirely accurate as the role progresses, in view of CA’s participation in other judicial contexts e.g. Police interview stage.

### Assessment and Special Measures

In the case referred to above, the results of formal SLT assessment found that the young person with Down Syndrome (aged nearly 15 years at the time of the CA assessment and 16 years at the time of the 2<sup>nd</sup> trial) presented with the following communication profile:

- Severely delayed communication,
- Language skills similar to that of a child younger than 5 years,
- Language processing delays

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<sup>7</sup> *R v Hetherington* [2015] NZCA 248

<sup>8</sup> Ministry of Justice (UK) *The Registered Intermediary Procedural Guidance Manual* (December 2015)

<sup>9</sup> Kirsten Hanna and others “Child Witnesses in New Zealand: A review of Practice and Implications for Policy” (2010) Institute of Public Policy, Auckland University of Technology



- Unintelligible speech sound production.

Following this period of formal assessment, the SLT provided Crown Counsel with a report of her findings, conveying the practical implications of these in the form of ‘special measures’. For this particular young person, the advised special measures were noted to include:

- 1) Use of simple single part questions,
- 2) Simplified vocabulary,
- 3) Use of open ended questions,
- 4) The CA able to interpret unintelligible utterances,
- 5) Providing frequent breaks and a shortened court day to match a school day.

Expanding on these five areas, it was agreed at Ground Rules Hearing that the CA was able to intervene when any of these special measures were not being adhered to. When the CA raised her hand, in line of sight of the camera (use of video link) the presiding Judge would ask the CA what was of concern. The CA would go on to state, for example “the use of the word ##### is too complex”. The Judge would then ask Counsel to rephrase their question. On a few occasions, when Counsel were struggling to phrase the question in a non-complex manner for this witness (bearing in mind her limited language abilities) the Judge asked the CA to provide a model of the question that could be asked. Counsel then re-put the question. It was also agreed that the CA could immediately interpret utterances that were unintelligible to other listeners, which resulted following the assessment determining that the vulnerable witness frequent produced utterances that were unintelligible due to speech sound errors.

E.g.: Witness: “*We in da tidsssin net da pidsss. Up on da benssss. Da man god no sssssird.*”

CA: “We in the kitchen. Next the fridge. Up on the bench. The man got no shirt.”

### Outcome of CA Provision

An appeal *R v Hetherington*<sup>10</sup> in 2015, was made on the basis that a miscarriage of justice occurred at this retrial due to continual interruptions, (by the CA). This was upheld due to the CA’s interruptions being determined to be made in accordance with the Judge’s directions and as they were necessary to ensure the complainant was able to present her evidence (as per the directions outlined in the Evidence Act 1989<sup>11</sup> discussed earlier in this report). Furthermore, unfair prejudice was avoided because of the Judge’s careful and firm directions to the Jury in his summing up.

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<sup>10</sup> *R v Hetherington* [2015] NZCA 248

<sup>11</sup> Evidence Act 1989





### Lessons Learned

Many lessons were learnt in this early case including the key learning from the appeal regarding the importance of pre-trial interactions with both Counsel. This was imperative in order for the CA to assist both Counsel in their preparation of questions to the level that the young person was able to comprehend, thus avoiding interruptions / interventions during trial. Despite the role of the CA designed to adopt a neutral position, initial engagement with the Crown put up some barriers towards the pre-trial input from the CA, and it emerged that both Crown and defence Counsel were unclear of the parameters of this impartial role. Consequently, the utilisation of clear ground rules noted within a pre-trial hearing were important for all to understand the special measures/accommodations that were agreed. Of greater significance, however, was the understanding of the necessity of a specialist assessment of a vulnerable person's communication abilities for all parties to fully understand the young person's functional communication abilities in a high stress environment.

It is necessary to acknowledge at this point that the expertise of the CA is not necessarily in "court communication" (the language of the court) but in assessing functional communication and then assisting all those who interact with the vulnerable person, to break down their language and questioning, in order for the individual to give clear and accurate evidence. This is supported by international best practice outlined in The Advocate's Gateway Toolkit 2

*"...the most significant factor in effective communication with a vulnerable person or somebody with communication needs is the questioner's ability to adopt an appropriate manner and tailor questions to the needs and abilities of the individual"<sup>12</sup>*

This suggests that the people around the vulnerable person need to adapt. The specialist skills described through the presentation of this particular case could not be provided by a Teacher Aide or even a Teacher known to the child, as there can be a bias in their perspective of the child's functional communication ability. An example given of this is a Teacher's Aide or Teacher would assume that a child can follow a long instruction such as "it's lunch time, go and get your bag, bring it to your desk, and don't forget to eat your sandwich first", as this is a direction that they have likely given their students each day and they have observed a child doing this in this familiar context. What they may not in fact realise is that with this known routine, the child would not need to listen to any of this instruction (significantly dense and with 7 information carrying words), all they would have to do is observe the classmates around them.

### **The Use of Communication Assistants in New Zealand**

Since the engagement of Specialist Communication Assistants, as in the case of the SLT discussed above, there have been ongoing cases throughout New Zealand. Two agencies have undertaken the majority (if not all) of these contracts with the Ministry of Justice. Moretalk Ltd (Company Director: Michelle Bonetti, SLT) and Talking Trouble Aotearoa NZ, TTANZ (Company Director: Sally Kedge, SLT). Statistics from both agencies

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<sup>12</sup> The Council of the Inns of Court *Advocate's Gateway Toolkit 2 General practices from research, policy and guidance: planning to question a vulnerable person or someone with communication needs* (November 2015) 1 at 4



have been made available to the author of this report to give a current “snapshot” of referral data to date. The statistics for Moretalk alone have then been broken down and analysed further.

Between June 2012 and Dec 2017 Moretalk has held 51 MOJ contracts as a CA, with TTANZ involved in 41 cases. Of Moretalk’s cases, 68% were to support the court with vulnerable witnesses, whereas for TTANZ, 71% of their case work is with vulnerable defendants (see Figure 1). TTANZ have had particular focus in youth courts and run a range of projects relating to addressing communication accessibility in related contexts, for example, Oranga Tamariki’s youth justice and care protection teams. Of the cases Moretalk has supported 54% of them were to assist the court with children and youth aged 4 to 17 years. TTANZ’s data reflecting this at 58% percent children and youth (see Figure 2).

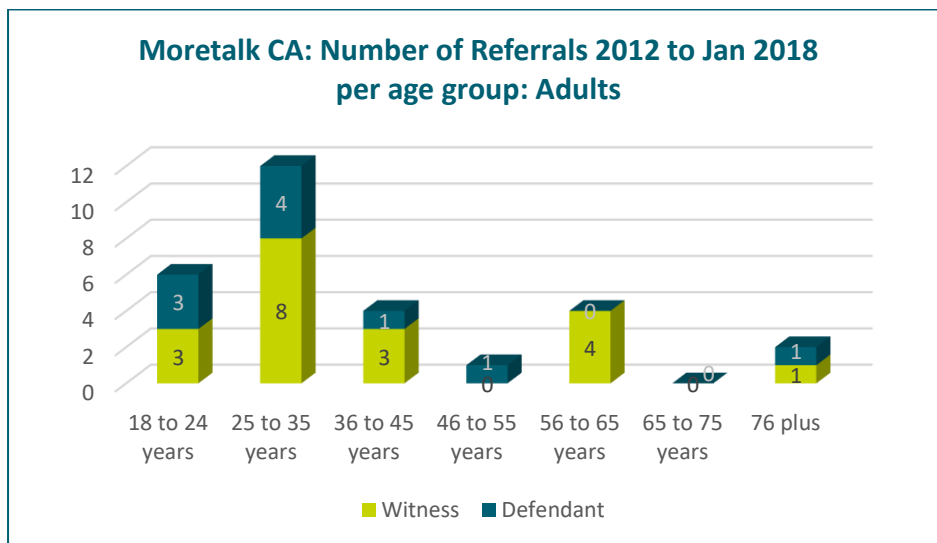


Figure 1. Moretalk CA: Number of referrals Jan 2012 to Jan 2018, calculated per age group adults aged 18 to 80 years.

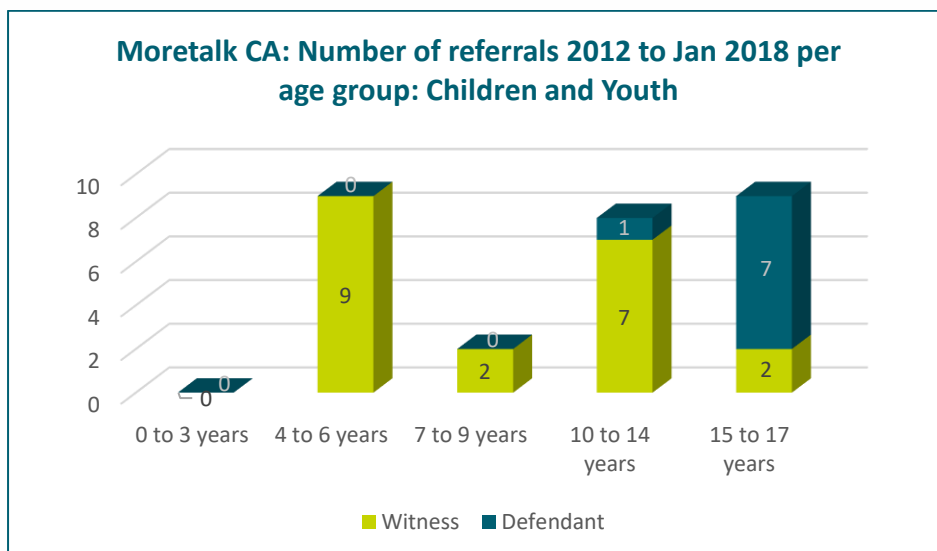


Figure 2. Moretalk CA: Number of referrals Jan 2012 to Jan 2018, calculated per age group children and youth 0 to 17 years.



Geographical information about the referrals showed that 50% of Moretalk’s referrals were in Whangarei (their base). Others included Kaitaia 1, Kaikohe 6, Auckland 2, Manukau 5, Bay of Plenty 7, New Plymouth 1 and Palmerston North 3 as well as 2 in Invercargill.

## ENGAGEMENT OF COMMUNICATION ASSISTANTS

### Outlining the Current Process

Current practice in New Zealand has not made restrictions on eligibility to CA referral, apart from what is outlined in the legislation<sup>13</sup> (Section 80) and as further described in Section 4, that is, (a) does not have sufficient proficiency in the English language to (i) understand court proceedings conducted in English; or (ii) give evidence in English; or (b) **has a communication disability**. Current practice has seen “communication disabilities” identified by differing professionals throughout the judicial process (as outlined in Figures 4 and 5). In earlier cases, CA’s were appointed on identification of difficulties in communication as noted in Clinical Psychology reports from expert witnesses. However, it is now becoming more common that professionals are identifying difficulties in communicating with vulnerable defendants and witnesses at an earlier stage, and with this referring directly for a CA assessment (with funding from Legal Aide or Crown).

The provision of a CA assessment and subsequent report clearly outlines the vulnerable persons’ communication abilities and disabilities, with a particular focus on analysing how they would function as a listener and talker in judicial contexts. Following a comprehensive description of the vulnerable person’s communication profile the CA would then note in detail any accommodations/special measures that would be required to be implemented to facilitate communication with this person in a Judicial context. It is after this report has been submitted to the Court that engagement by the Court for CA assistance in further processes is confirmed. The pathway through this process is conveyed in Figure 3.

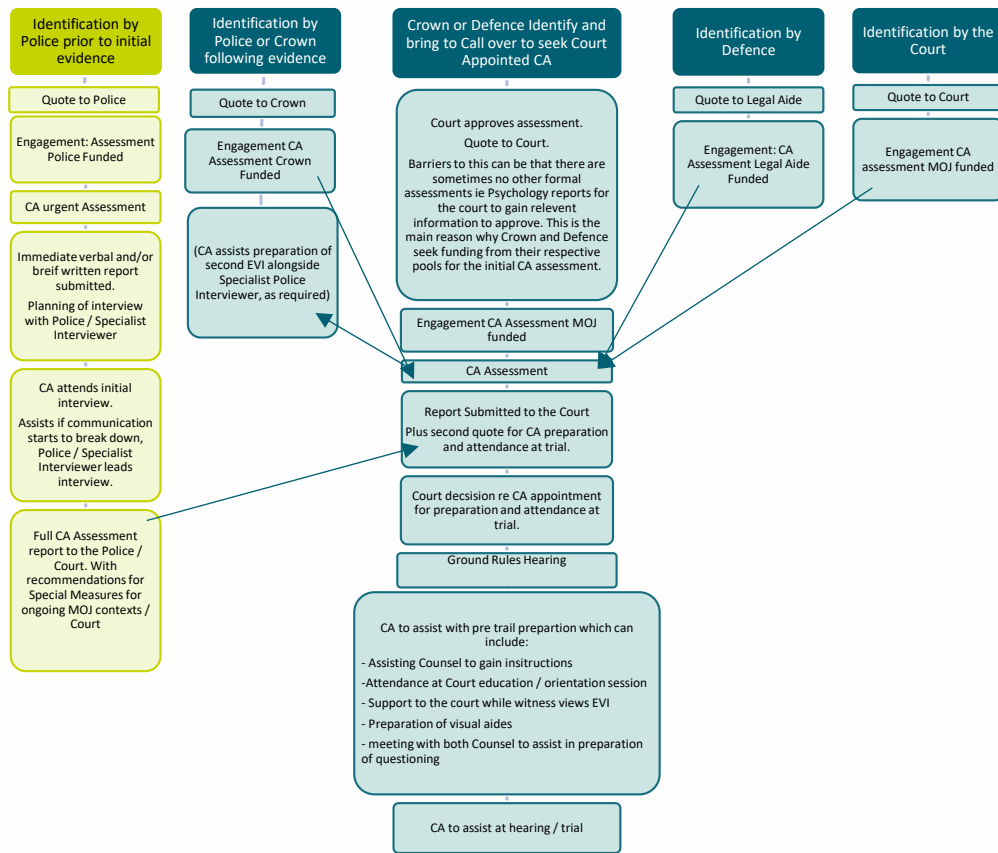
### Pathways of Engagement of Communication Assistants in New Zealand

Currently in New Zealand initial referrals for a Communication Assistant can come from many contacts in the Judicial process. The figure below (Figure 3) demonstrates the pathways followed and the currently practiced processes (as observed and experienced by Moretalk). While the initial cases that utilised a CA engaged with this service in an inconsistent way, over time adherence to the pathway displayed is increasing. Despite this, there are additional steps that would enhance the current pathway and that the author advocates should be integrated in future cases (shown in green).

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<sup>13</sup> Evidence Act 1989





Key: Not yet practiced in NZ Current practice in NZ

Figure 3. Moretalk analysis of Communication Assistant Pathways: Engagement to Intervention

In gathering further information for this report, the author, through Moretalk carried out an on-line survey<sup>14</sup> open for responses from the end of June 2017 to the end of October 2017. Invitations to the Survey were sent to UK Intermediaries via individual contact emails as well as publication on the online forum for Registered Intermediaries (RI's). Distribution was also made in Australia via the Children's Champion Witness Intermediary Scheme in New South Wales, and Australian Communication Partners in South Australia. The aim of this geographical distribution was to capture views from as many acting Intermediaries as possible in the UK and Australia (numbers in the workforce were not available to the author at the time). Number of responses from these different geographical areas are shown in Table 1.

<sup>14</sup> Moretalk "Intermediary Training and Support: Lessons for New Zealand" (2017)



**Table 1. Moretalk Online Survey to Intermediaries in the UK and Australia 2017 “Intermediary Training and support – Lessons for New Zealand”:** number of respondents

Distribution	Total Number of Responses	Percentage of total responses
United Kingdom	29	75
New South Wales	8	20
South Australia	2	5
TOTAL	39	

*Note: Invitation to complete survey sent via email link to Children’s Champion and Communication Partner service in Australia. To UK Registered intermediaries via their on-line forum “Registered Intermediaries Online (RIO)”. With the Northern Ireland Intermediary service contact unwilling to send the link to their sub-contracting Intermediaries.*

The completed responses obtained by Moretalk were compared to a recent survey of UK RI’s carried out by the Victim’s Commissioner<sup>15</sup> where views were gathered from 122 RI’s within an online survey. The rate of response of 29 UK Intermediaries by Moretalk compared to the Victim’s Commissioner report of 122, means that the survey undertaken by Moretalk reflects a smaller proportion (approximately 23%) however, information from Moretalk’s survey will be discussed in relation to relative results in this review.

### Engagement of a Communication Assistant Prior to Police Interview

Engagement of a CA prior to initial interview by the police has not yet been trialled in New Zealand. This may be due to the difficulty accessing appropriately trained CA’s and / or identification of a funding process for this step (as noted in orange in Figure 3 above). Although the police have not utilised the services of a CA to date it is important to note we should “...consider special needs the witness may have, for example, if an interpreter is required.”<sup>16</sup> Despite recognition that such a resource could be required for witnesses there is currently no provision for police funded CA involvement at initial interviews.

New Zealand can once again turn to our counterparts in the UK for guidance in this area as the early engagement of an Intermediary (CA) at police interview stage has become embedded in the UK system. Joyce Plotnikoff and Robert Woolfson<sup>17</sup> argue that interviews conducted without an intermediary may be subject to criticism at trial. A study of six police force areas found in particular for interview stage for very young children (under the age of 6), that there was “a tendency by some interviewers and their managers to over-estimate their own skills levels and/or underestimate the communication needs of vulnerable witnesses.”<sup>18</sup>

In the UK Intermediaries assist in several of the stages of interview, firstly by completing an assessment of the functional communication skills of the vulnerable person, and then in planning by providing advice on how questions should be sequenced and presented. Intermediaries are then able to intervene during the interview when communication breaks down, by assisting the interviewer to rephrase the question or by

<sup>15</sup> Helen Newlove *A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses* (January 2018)

<sup>16</sup> New Zealand Police “Investigative Interviewing Witness Guide” 1 at 6

<sup>17</sup> Joyce Plotnikoff and Robert Woolfson *Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants* (Policy Press: Bristol, 2015)

<sup>18</sup> Criminal Justice Joint Inspection (UK) “Achieving Best Evidence in Child Sexual Abuse Cases – A Joint Inspection (December 2014) 1 at 31



assisting in “interpretation” of unclear speech or communication provided through the use of an augmentative communication system. It is made very clear that the intermediary is there to assist communication and understanding, not to take on the role of the police interviewer/investigator.

Discussions with the Intermediary at the planning stage include the arrangements for leading the interview, legal and confidentiality requirements, and the exact role that the intermediary will take. The Intermediary is provided with information that is relevant to their role and will help to ensure interaction between the vulnerable person and the interviewer is maximised. For example, allowing the Intermediary an understanding of the specific context (vocabulary/information/concepts) the interviewer aims to elicit information about will enable the Intermediary to plan questions that are at the appropriate level for the vulnerable person.

Although at the current time New Zealand does not have Intermediaries, individuals who conduct specialist police interviews undertake specific training and carry out their work within strict protocols. Despite this, it has been noted that there continue to be challenges in interviewing those who are most vulnerable and that further adaptations need to be made<sup>19</sup>. Furthermore, a specific focus has been given to preschool children with a call made by Linda Cordisco Steele to observe them closely for signals that indicate “...understanding of a question, confusion and miscommunication”<sup>20</sup>, stating that the interviewer needs to “...adjust the question”<sup>21</sup>. It is the role that the CA holds in providing good questioning approaches that needs to be explored in the New Zealand system. The CA’s specialist assessment ensures that planning of forensic interviewing questions is specific to that vulnerable person and that context.

Within the Moretalk Survey<sup>22</sup> one Registered Intermediary respondent spoke about their experience and notes that “initially many police thought ‘we’ve been interviewing children for years, why do we need an RI?’ – so they needed to see what we had to offer to make their job easier and to show that it’s teamwork – they bring the investigative skills and we bring the communication skills.”

As the role of CA’s develop in New Zealand it will not only be important to ensure that there are enough CA’s trained in the role to have the capacity to take on immediate assessment and support to police interviewers at very short notice, but also quality in training to understand the police interviewing process. There would be a requirement to support Police on how best to conduct their interviews by providing specialist guidance regarding the adaptation to the particular needs of the vulnerable individual. Further discussion will demand a need to identify prioritisation, that is, who and when a CA will need to be engaged for our most vulnerable: e.g., children and youth, those with intellectual and communication disabilities, those with mental health disorders.

There is also future opportunity for experienced CA’s to work with police to assist them in the development of interview planning and forensic interview techniques and protocols. This has been successfully modelled with Triangle services in the UK, with successful specialist training, in “Forensic Questioning of Children (FQC)” and “Training in Advanced Communication Skills (TACS)” courses.

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<sup>19</sup> Linda Cardisco Steele and National Children’s Advocacy Center Do Forensic Interview Protocols Work for Preschoolers? (Huntsville, AL: National Children’s Advocacy Center, 2015)

<sup>20</sup> At 5

<sup>21</sup> At 10

<sup>22</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)



## Case Example

### Context:

Second EVI 5-year-old key witness in a High Court Murder trial

The Crown prosecution service received a clinical psychology report recommending that a young key witness should undertake a second EVI and pre-record their evidence. On receipt of this report the Crown prosecution service made a referral to a CA (the Author).

Initial assessment by the CA was held without knowledge of any substantive information about the case.

### Assessment noted:

-Chronological age 5 year 11 months but communication abilities similar to that of a four to four ½ year old.

-Limited expressive vocabulary

-Able to use some vocabulary to describe “place”, e.g. in, on. But had difficulty with more accurate descriptions.

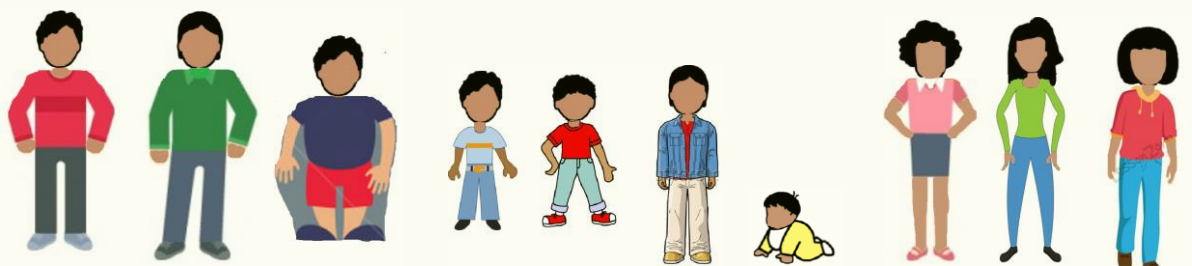
-Relative strength in understanding of basic concepts, but questions and instructions of increased length were not able to be understood.

Special Measure recommendations included the use of a CA in preparation for any future interactions related to the court context (e.g., interviews, court education, evidence), as well as specific communication requirements, including: use of simple single part, sequential questions; use of simple vocabulary, and the provision of “mini breaks”.

### Planning:

In order to gain completeness, consistency and accuracy in evidence, the Court agreed that this witness should undertake a second EVI and the CA was engaged to assist. The CA spent time alongside the specialist police interviewer in preparation and planning of the second EVI. This included a further brief 10-minute assessment with the witness to ascertain how the witness would respond to specific question types, for example: “what did you hear?” vs “what sound did it make?”, as well as determining the degree of vocabulary the witness had relating to actions and adjectives (established through play with a ball and a balloon).

Planning of questioning included the development of visual aids such as those shown below:



It was agreed that visual evidence (such as photographs) could be introduced, and these were enlarged to A3 size and laminated. The use of such tools allowed for the child to give greater accuracy in descriptions of people and their locations in the house and in specific rooms. For example (NB this is not a true script):

*Show me which one is you?* (the child wrote his own name on the leg of the picture)



*Which one is uncle z?*

*Which one is baby x?*

*Which one is your brother?*

*And what's his name? (the Interviewer wrote the names of the other people)*

*(The interviewer introduced the photos one at a time, from the outside of the house, then eventually to the room of the house that the witness had previously described as to where he witnessed the alleged crime)*

*Show me where uncle z was?*

*And where was baby x?*

*Where was brother?*

*And show me where you were.*

*(The interviewer also encouraged the child to voice out loud his actions after the "show me" commands)*

It was decided that the CA would not be in the room for the interview. No audio link (ear piece) system was available between the CA and the interviewer and with this the CA was not immediately able to intervene / give guidance of how to sequence or put a question.

Months later, following this second EVI. The CA also assisted in pre-recorded evidence. Both Counsel meeting the witness face to face in the CCTV room based at Oranga Tamariki the day before (assisted by the CA), before the child gave evidence via video link to a differing city Court the next day.

#### Outcome:

The second EVI gave confirmation of evidence in the 1<sup>st</sup>. It gave some further clarity to specifics of place and time.

*Please note: The CA involved in this case (the Author of this report), had at that time assisted in 15 MOJ CA contracts, but this case had the youngest witnesses to date. It was following this case that the CA made stronger investigation into "formal" training as an intermediary as she could see the value of working with the police in ensuring our most vulnerable were assisted to give their best evidence.*

### Who is Referred to a CA?

Contrary to what may be assumed, premorbid presence of a specific diagnosis is not a current requisite for referral for a Communication Assistant assessment post interview and prior to attendance at trial. That said, referral information gathered from professionals frequently note a reported diagnosis in those who have been referred to a CA to date. As is evident in Figure 4 below, for young children under 10 years, identification of their communication issues are often in relation purely to their age and their ability to be able to listen to and understand questioning, in order to give complete, coherent and accurate evidence. It is noted that for Youth Defendants that communication disabilities can be difficult to identify, and some





individuals who are referred do not necessarily have a prior diagnosis<sup>23</sup>. Professionals working with youth may note communication breakdowns and other “triggers” that prompt a referral such as young people with unidentified language deficits and “poor social skills (that) are likely to resort to monosyllabic responses, shoulder shrugging and poor eye contact”<sup>24</sup> which may portray as rudeness or indifference. Or minimalist responses e.g., “yep”, “na”, “dunno” or responses that indicate suggestibility or acquiescence.

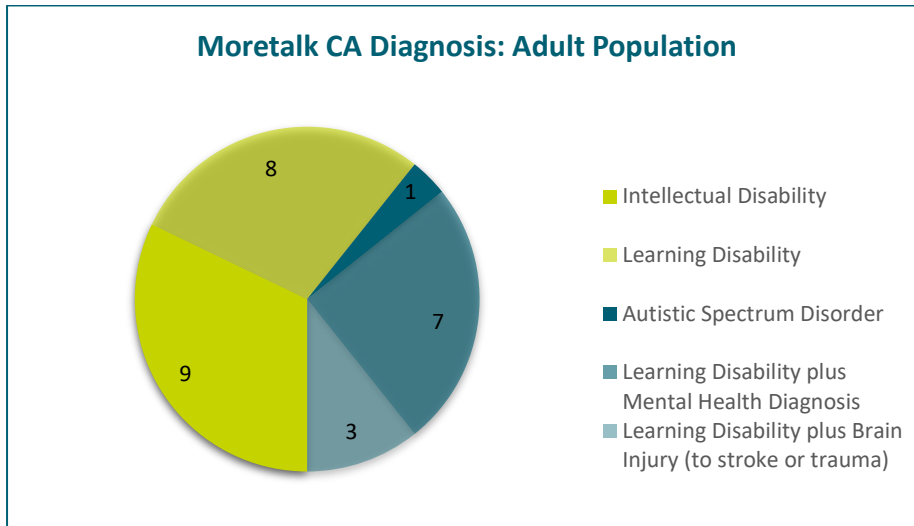


Figure 4. Diagnosis Breakdown for Adults Referred to Moretalk for CA Engagement.

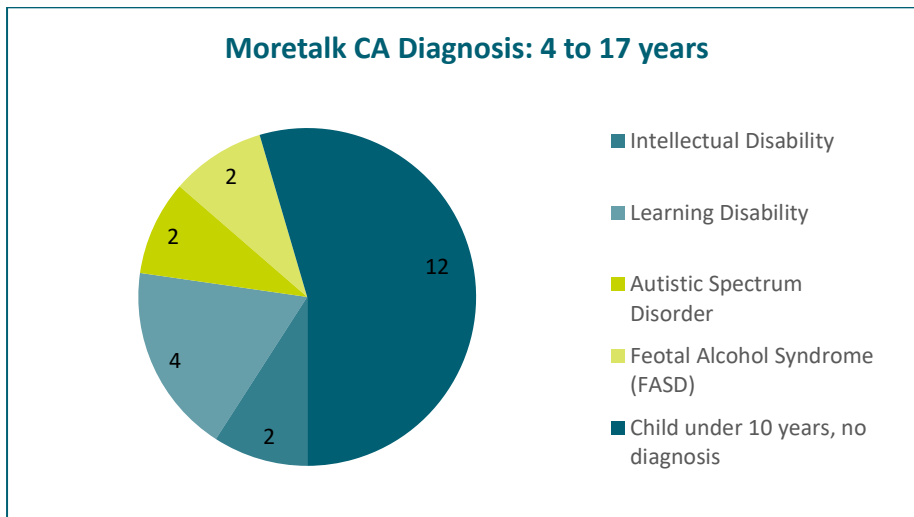


Figure 5. Diagnosis Breakdown for Children Referred to Moretalk for CA Engagement.

<sup>23</sup> Pamela Snow and Martine Powell “Oral Language Competence, Social Skills and High-risk Boys: What are Juvenile Offenders Trying to Tell us?” (2008) 22 Children & Society 16

<sup>24</sup> At 24



## MODELS OF PRACTICE

### Comparing New Zealand Models to other Jurisdictions

#### Accessing a CA

Currently, access and utilisation of CA's in the justice system in New Zealand is on an individual case-by-case referral basis. The Hon. Judge Tony Fitzgerald led early work in the Youth Court, in gaining approval for the use of CA's in the Northland and Auckland regions, with Moretalk and TTANZ recognised as preferred providers. However, engagement continues to occur on an individual case basis, with submission of quotes to the Court for approval prior to engagement to assess, then agreed engagement for further Communication Assistance to the court. It is the understanding of the author that Youth Courts Practice note, with guidance to Judiciary and Youth Advocates on engaging and working with CA's, continues to be developed.

Michelle Bonetti (Moretalk) and Dr Clare McCann (TTANZ) have also been involved as presenters at Sexual Violence Court Pilot (Northland and Auckland Regions) with focus on practical alternatives to conventional examination. Referrals in these regions have now expanded to other regions around the country as noted in the Bay of Plenty, Hawkes Bay, Manawatu as well as in Southland. The use of CA's has also not been restricted to the Criminal courts, with engagement of a CA in Family court processes for vulnerable parents on two occasions in Palmerston North (see Figure 6 below).

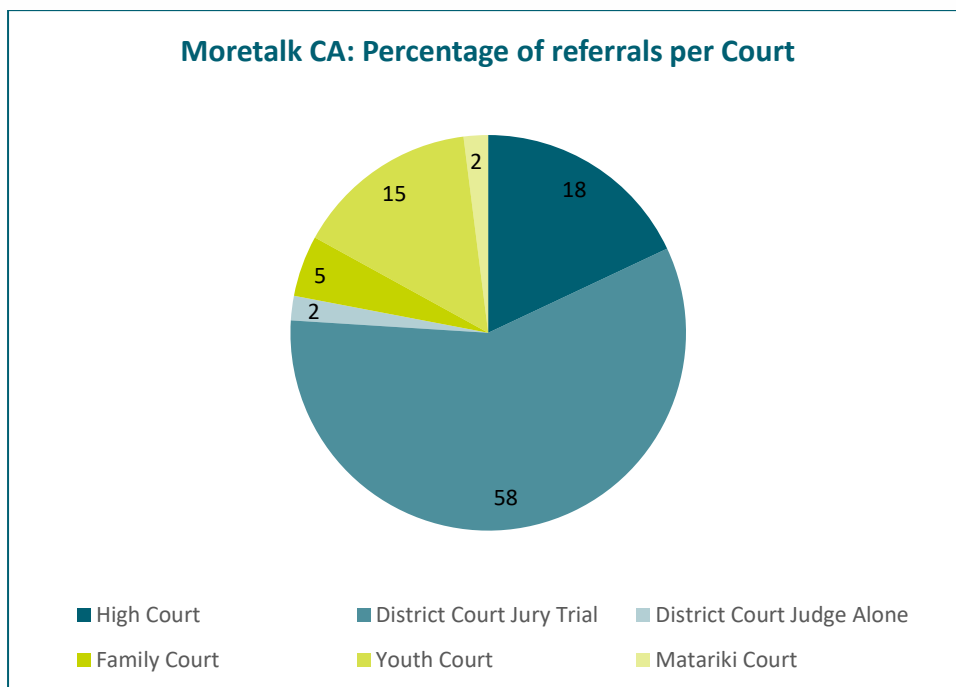


Figure 6. Moretalk Percentage of Referrals Received per Court.

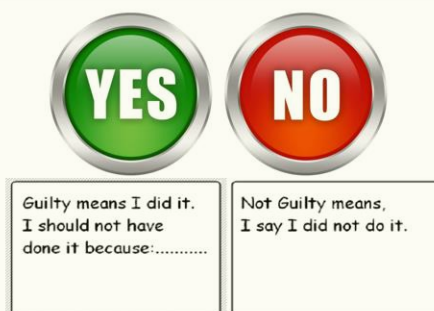


To date in New Zealand there have been no restrictions in specific diagnosis or age of a vulnerable person for eligibility to engage a CA. Also, there have been no restrictions as to the type of Court that can make use of a CA. Of the 5 experienced and 11 CA's in training (between Moretalk and TTANZ), most have been involved in providing assistance to the Court for both vulnerable defendants and vulnerable witnesses. It is important to note the New Zealand CA's are engaged not only to assist the Court for vulnerable defendants when they are giving evidence, but also for pre-trial preparation (facilitating communication with Counsel / Advocates in order to gain instructions) as well as during all judicial processes to assist the vulnerable person in understanding evidence and process of the court throughout hearings / the trial.

### Case Example

A CA was engaged to assess a vulnerable 30-year-old defendant. This defendant had two separate Psychology reports stating he was fit to plea and had an existing diagnosis of Bipolar Disorder with a noticeable presentation of learning difficulties. The assessment undertaken by the CA reported that the vulnerable defendant had verbal comprehension abilities noted to be in the 1<sup>st</sup> to 25th percentile for his age, similar to that of a child aged between 8 and 10 years. He had very limited vocabulary and would rush answers during interactions with inaccuracies in processing. The CA supported the defence Counsel to facilitate communication to gain instructions from her client. Evidence (including ESR) was explained to the vulnerable person. Counsel did her best to use simplified vocabulary and non-complex sentences as recommended by the CA. Despite his spoken language difficulties, the vulnerable person had a relative strength in reading, therefore each piece of evidence explained by his Lawyer was typed out in a brief phrase of key words and or drawn out in a diagram. The CA would then repeat what the Counsel had expressed breaking down any complex language further. Counsel would then ask the vulnerable person what he understood, for example stating, "tell me in your own words what we said?". Questions to gain instructions were also typed and repeated in order for the vulnerable person to respond. After 2 ½ hours in he turned to his lawyer and said, "well I might as well plead not guilty then and get this over with!"

For the next session this visual aid was developed:



Following two further (3 hour) sessions, with his Counsel working hard to ensure he understood all of the evidence and all of the charges, this vulnerable person was able to express his instructions to each charge "I'm guilty" "It means I did it" "It was wrong because he was weak." (His word for vulnerable). He could also voice what situations he needed to be in to be safe and others safe around him. The time in court to change his guilty plea? 5 minutes. 2 words, for 2 counts. "Guilty", "guilty".



### Northern Ireland

Of current international models practice, NZ reflects the Northern Ireland registered Intermediary scheme the most, with the same pool of Intermediaries contracted to work with both witnesses and defendants across all the courts. (from initial pilots in 2013 that at firsts restricted Intermediaries to in respect of offences that are triable only on indictment, more serious offences, before expanding to other courts in 2014). However, in the Northern Ireland model, Intermediaries are only engaged to support a vulnerable person “during police interview and when giving evidence at trial”, Intermediaries not engaged facilitating communication with vulnerable defendants for pre-trial preparation and understanding evidence at trial, which differs from the current New Zealand Practice in criminal and youth courts. This differs from New Zealand where CA’s are engaged to assist counsel in pre-trial preparation including gaining instructions, as well as alongside the defendant in court and other hearings to assist the court in ensuring the vulnerable defendant is understanding all content and processes. In 2017 Northern Ireland had 27 trained and registered intermediaries who all worked only on a case-by-case basis and carry other caseloads. If this model of contractors in each geographic region was compared to our population on a pro-rata basis, this would mean New Zealand potentially needs to train up to 100 part-time CAs. However, this is not an accurate number for New Zealand, due to the differences in the way in which CA’s support others to interact with vulnerable defendants in more steps in the judicial processes. Furthermore, the number of specialists working part time in a CA role, may impact on training of undergraduate specialists in the future. For example, at present, Speech Language Therapists are predominantly undertaking the role of CA’s, however, many do not have the capacity to take on additional work in this area due to their existing full caseloads. This has already been found to be the situation and Moretalk and TTANZ start to recruit, but as the demand for CA’s increases, the number of Speech Language Therapists will also need to increase accordingly.

### England and Wales

The Registered Intermediary Scheme in England and Wales initially (in 2004) covered six geographic areas until a positive evaluation pushed for a national roll out of the scheme<sup>25</sup>. In 2016 there were approximately 200 Registered Intermediaries on the MOJ register for England and Wales<sup>26</sup>. Requests for Registered Intermediaries managed by the Witness Intermediary Team, were restricted to witnesses only (the majority for prosecution), with a reported rate of 530 requests per month, for a population base of 56 million.

The Youth Justice & Criminal Evidence Act 1999<sup>27</sup> allowed for the provision of Intermediaries as a special measure in cases involving vulnerable witnesses, and the creation of the Witness Intermediary Scheme. Although this was afforded to vulnerable witnesses the UK legislation excluded defendants from using “Registered Intermediaries” (the terminology to which this role is referred). As noted in the Advocates Gateway Toolkit for effective participation of young defendants “...*apart from section 47 of the Police and*

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<sup>25</sup> Joyce Plotnikoff and Robert Woolfson *Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants* (Policy Press: Bristol, 2015)

<sup>26</sup> Felicity Gerry and Penny Cooper “Effective Participation of Vulnerable Accused Persons: Case Management, Court Adaptation and Rethinking Criminal Responsibility” (2017) 26 *Journal of Judicial Administration* 265

<sup>27</sup> Youth justice and Criminal Evidence Act 1999



*Justice Act 2006 which allows certain accused to giving evidence through a live link, there is no legislation in force which permits the use of special measures for defendants*<sup>28</sup>

Further explanation is made that there has been a growing number of occasions where judges have allowed defendants to be assisted by an intermediary, noting that this is typically where a violation of human rights may occur if not allowed access. It is also described that courts have issued operational guidance on the use of intermediaries for defendants. *“...a judge can use inherent powers to grant an intermediary for a defendant”*<sup>29</sup> Since October 2013 the UK Ministry of Justice reimburses individual courts for this expenditure<sup>30</sup>. “Non-registered Intermediaries” are now a growing practice in England and Wales with agencies like Communicort (West Midlands) and Triangle Services (Brighton) providing specialist training and support to employees and sub-contractors who are engaged in this work. Triangle services also provides a pool of skilled Intermediaries across the United Kingdom with specialism in children and young people up to the age of 25. They are considered to have specific expertise and provide training for others in working with very young and very traumatised children and / or children with a range of disabilities. Triangles training is discussed further later in this report.

UK Legislation in the form of the Coroners and Justice Bill 2009 contained further defendant intermediary provision. Recent research notes an opinion that the provision of a non-registered intermediary was considered insufficient to support the evidence of vulnerable defendants. *“Registered intermediaries are, at least perceived, to provide superior support to non-registered intermediaries, and should thus be available to vulnerable defendants who qualify for intermediary use”*.<sup>31</sup>

### Australia

Closer to home, in New South Wales, Australia, a witness Intermediary Pilot was initiated in March 2016, based on the UK model. The scope of this was to provide child witnesses with “Children’s Champions”<sup>32</sup>, which included the use of pre-recorded cross examination, and allowance for the appointment of specialist District Court judges trained in management of child sexual assault matters. An evaluation following the first year of the three-year pilot found that there was unanimous support for the objectives of the pilot<sup>33</sup>, with the role of witness intermediaries has being critically important in supporting the provision of evidence by child complainants and child witnesses.

Since July 2016, in South Australia a “Communication Partner” service has been offered. This has centred around the *Statutes Amendment (Vulnerable Witnesses) Act 2015*<sup>34</sup>, allowing a witness to be given communication assistance in certain circumstances, and includes the use of a communication partner and/or

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<sup>28</sup> The Council of the Inns of Court *Advocate’s Gateway Toolkit 8: Effective Participation of Young Defendants* (March 2017) 1

<sup>29</sup> At 4

<sup>30</sup> Communicort (2018)

<sup>31</sup> Samantha Fairclough “The Role of equality in the provision of Special Measures to vulnerable and/or intimidated Court users giving evidence in Crown Court Trials” page 134, PhD Thesis, University of Birmingham (UK) 2017

<sup>32</sup> Victims Services (New South Wales) “Children’s Champion (Witness Intermediary) Procedural Guidance Manual” (November 2016)

<sup>33</sup> Judy Cashmore and others “Evaluation of the Child Sexual Offence Evidence Pilot: Process Evaluation Report” (July 2017) Sydney: Social Policy Research Centre, UNSW Australia

<sup>34</sup> Statutes Amendment Vulnerable Witnesses Act (Australia) 2015



communication device. The Communication Partner Service provides independent, trained volunteer personnel to facilitate communication between vulnerable victims, suspects, witnesses and defendants with complex communication needs in and out of court. Communication Partners are required to write a report about each client to include recommendations for accommodations to be made to support communication.

The Victorian Government is currently introducing a pilot scheme within the criminal justice system, which will involve the recruitment of approximately 50 intermediaries. With the Pilot due to start in July 2018, the focus will be on child victims and adults with a cognitive impairment who are either victims in sexual offences or witnesses in homicide matters. Recruitment to the 5-day Intermediary training has been targeted to Speech Pathologists, Social Workers, Psychologists and Occupational Therapists.

Of final note in Australia, Tasmania also continues to investigate the use of Intermediaries with the release of a Tasmania Law Reform report in July 2016 noting little consistency between the current use of Communication assistants across the other states<sup>35</sup>. The use of intermediaries is also being explored in Western Australia.

## RECRUITMENT AND TRAINING OF COMMUNICATION ASSISTANTS

### Who is recruited to be trained to be an Intermediary / Communication Assistant?

Findings of the Moretalk 2017 survey<sup>36</sup> to 39 Australian and UK intermediaries notes professional or specialist backgrounds respondents worked in prior to working as an Intermediary. Respondents were able to tick more than one field or area of work with the results shown in Figure 7.

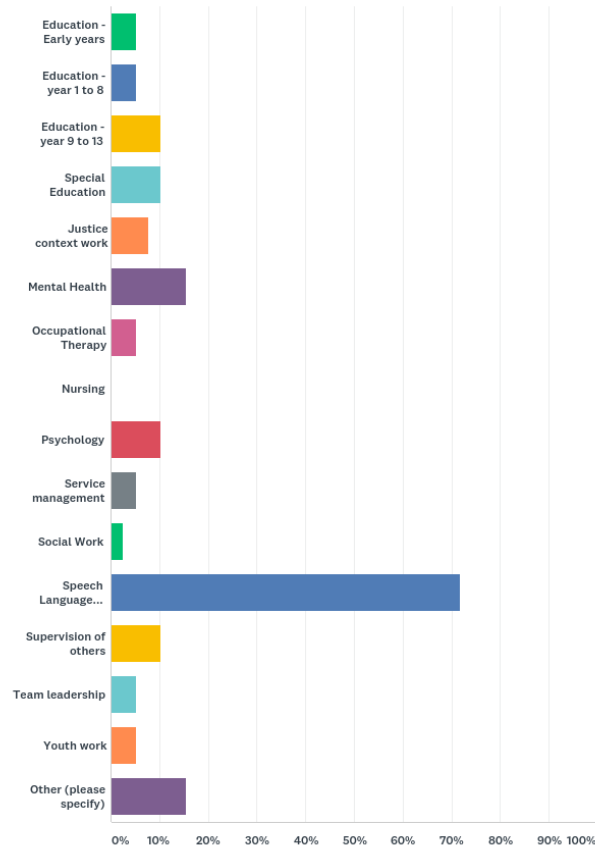
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<sup>35</sup> Tasmania Law Reform Institute “Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?” (May 2016) 22

<sup>36</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)



Q3 What area of work / profession did you work in prior to becoming an Intermediary that "matched" you to this role? (Please tick more than one box if applicable.)



Of those that stated "Other", their responses included: Play Therapist, Education 12 to 18 plus years, Learning Disability Services and Training and Disability Advocacy.

Figure 7. Moretalk Survey Results Showing Professional Backgrounds of CA's/Intermediaries.

It is interesting to note that 71% of Intermediary respondents were recruited to work as Registered Intermediaries from a background of Speech-Language Therapy / Pathology. In this area of expertise that is highly reliant on analysis of communication and immediate interventions for facilitation, it demonstrates that individuals with this background knowledge have been targeted successfully. Recruitment in the UK and in Australia has focused on backgrounds in "communication", however, most recently in Victoria applications for Intermediary training have been sought from broader backgrounds including Speech Pathology, but also wider to comprise Social Work, Psychology, and Occupational Therapy.

The UK intermediary scheme continues to "match" RI's to not only location, but also to "specialism", but these have been defined mainly around disability groups as seen in the figure extracted from the Victim Commissioners report below. Backgrounds of Psychology (10.53%), Education (20% total) and Mental Health



(15.79%) feature strongly in Moretalk’s survey<sup>37</sup>, but with respondents able to tick more than one field these may have been additional backgrounds to their main profession. Management of emotional state is an increasingly a large role for Intermediaries, including RI’s working with older children and adults “whose mental health needs impair their communication”<sup>38</sup>. It is acknowledged that “matching” an Intermediary to the specific presentation of the vulnerable person can be difficult. In the England and Wales scheme RI’s must list what “specialism” they have to are able to be successfully matched with a case. But even with this as a “Listed” description on the Witness intermediary scheme database, 28% of RI’s who took part in the VC survey state that they have previously been matched with a witness with communication needs they felt they were not qualified to support<sup>39</sup>. A very small percentage of RI’s note a specialism in Schizophrenia, Obsessive Compulsive Disorders, personality Disorders, and Mental Health issues (all less than 255).

Any CA recruitment in New Zealand will not only have to consider capacity to meet the demands in each court based on geographic location and population, but also ensure there is a spread of CA’s of differing specialisms that can provide appropriate assessment and CA provision to support police/courts to meet their needs.

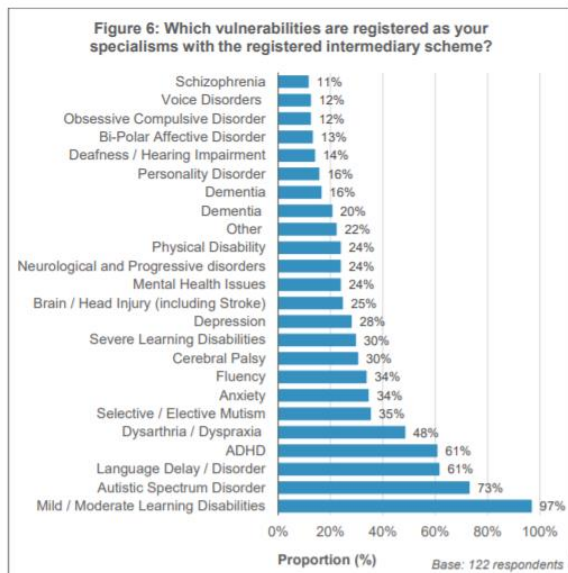


Figure 8. Extracted from the Victim’s Commissioner’s Report<sup>40</sup>

Within the Moretalk Survey<sup>41</sup> Intermediaries were asked how long they had held previous roles before working as an RI. 44% of respondents had more than 10 years’ experience in their previous professions, and

<sup>37</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)

<sup>38</sup> Helen Newlove A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses (January 2018) 1 at 11

<sup>39</sup> Helen Newlove A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses (January 2018)

<sup>40</sup> At 35

<sup>41</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)





21% had 7 to 10 years. The recruitment process for RI's in the UK scheme is described as a written application, written test, and panel interview but there is nothing noted as to what range or experience, competencies and qualities are required to successfully be recruited<sup>42</sup>. This report also notes that there have been focus groups calling for more targeted recruitment not only for specific geographic areas but also for RI's to work with vulnerable witnesses with mental health needs.

### The Current CA Recruitment Landscape in New Zealand

Currently in New Zealand Moretalk and TTANZ have 16 part time CA's between the two agencies. Of these only 5 individuals have managed multiple cases across differing courts, with the remainder being considered to be "in training". The current model of practice has the aim of a new CA initially observing all steps of CA involvement and walking through a case with an experienced CA. They would then progress to working jointly with the experienced CA, before going on to take the lead role in other cases. Mentoring at a distance is also being trialled with use of video link for planning and analysis sessions. To date, all of those recruited are experienced Speech Language Therapists (SLT's). SLT's involved in this mentoring training are also issued with relevant reading material pertinent to the role. Moretalk and TTANZ have to this point sought people who have at least 5 years of full time experience as an SLT in New Zealand. With current sporadic referrals recruitment has also considered the SLT's capacity to take on the role of CA at short notice. The majority of the CA's who are in training currently work in private practice. Areas of recruitment have included Kaitia, Whangarei, Auckland, Bay of Plenty, New Plymouth, Manawatu, Nelson, Christchurch and Dunedin.

### Competencies and Qualities of new CA recruits

Recruitment of professionals with the appropriate background and skills will be important for any model of practice for NZ Communication Assistants. Moretalk surveyed RI respondents (outside of NZ) to determine the "competencies and qualities" they brought into the role from previous experience compared to being taught through training or learnt on the job as an intermediary. It is clear from responses that competencies in assessment and analysis of communication skills were key elements to successfully undertaking the role of RI. Of the qualities and competencies noted % 85 to 100 of respondents say that they brought the following competencies and qualities with them from their previous experience:

- Collaboration and negotiation skills
- Active Listening
- Assessment of Functional Communication
- Ability to gather relevant information from key people
- Use of strategies to facilitate a vulnerable person's ability to engage and talk with others
- Understanding question types and complexity
- Ability to break questions and phrases to simpler language forms
- Confidentiality
- Time management

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<sup>42</sup> Helen Newlove *A Voice for the Voiceless: The Victims' Commissioner's Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses* (January 2018)



- Responsiveness
- Cultural competency

The following skills were also noted to be brought to the role or rated highly in skills brought to the role (75-84% of respondents)

- Authority, confidence and assertiveness
- Use of strategies to facilitate a vulnerable person's ability to understand others
- Up-skilling / training of others
- Report Writing skills
- Ability to command respect and present authoritatively in different contexts

It is apparent from the break down below that the competencies and qualities that rate more highly as being taught within initial training or gained on the job were:

- Assessment of state of arousal and strategies for that vulnerable person
- Non-directive facilitation
- Flexibility and ability to make changes "on the spot"
- Ability to maintain neutrality
- Recognition and respect of boundaries of practice, including engagement with work that matches your specialism.

## Intermediary Training Models

### England and Wales

In discussion of training of RI's in England and Wales, the Victim's Commissioner's report notes that a total of 385 RI's were trained between 2003 and 2015. It is stated in this report that

*"RI's are all professionals in communication skills, so their training is not in facilitating communication for the vulnerable witnesses, the training relates to understanding the role of RI's in the Criminal Justice system, and relevant procedures"*<sup>43</sup>

Registered Intermediaries in this scheme are trained by Barristers either in London (City Law school, City University) or with the same course offered in Manchester. This 5-day initial intermediary training is compulsory in order to be on the RI register.

It is a requirement of RI's to undertake a minimum of 8 hours continuing professional development (CPD) per year. Logs are submitted to the Quality assurance board. Many RI's (25%) report that the the Witness Intermediary Scheme could be improved through Ministry of Justice, UK support of CPD. Specific support requested includes better and ongoing training, mentoring, and availability of post-qualification training.

Funded mentoring in the UK Witness Intermediary Scheme is described as a fairly new innovation since the last 2015 RI recruitment. Each new RI receives 3 funded sessions of mentorship with an experienced RI. This was also extended to RI's returning from extended leave (eg maternity leave, leave from the profession). There is concern in the UK that this scheme will not continue for further intakes. Many RI's (25%) spontaneously identified that ongoing mentoring was a way in which the WIS scheme could be improved.

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<sup>43</sup> At 56



## Australia

Leadership in the UK training course has been provided by Professor Penny Cooper (Barrister) since 2003, which subsequently lead to her engagement in the training of “Children’s Champions” in New South Wales, Australia in 2017. The 5 days of training and assessment (written exam, coursework and oral exam) was described to cover:

- Criminal Justice System procedure as it relates to the role – focus on cross-examination
- Working with JIRT, assessing the witness, advising the police interviewer
- Assessment report writing (disclosed and used when application for appointment made)
- Being part of the case management discussions
- Witness familiarisation
- Facilitating communication at court

([https://www.judcom.nsw.gov.au/publications/benchbks/sexual\\_assault/articles/Cooper\\_childrens\\_champions\\_witness\\_intermediaries.pdf](https://www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/articles/Cooper_childrens_champions_witness_intermediaries.pdf))

Training of volunteer “Communication Partners” in South Australia is a three-day programme. This training is described to focus on the role of Communication Partners; the code of conduct and competency framework; report writing guidelines; self-care and professional boundaries; working with culturally and linguistically diverse clients; and meeting the communication needs of clients. The training also involves people with disability sharing their experiences of contact with the justice system. Within the respondents of the Moretalk Survey<sup>44</sup> there were 2 respondents who worked as Communication Partners and had received training. One came from a SLT background and the other from a Social Work background. Results from the survey indicates that the areas of development listed were all brought into the role prior to becoming a Communication Partner, with the exception of “assessment of functional communication.” As quoted by the survey participant identified from a Social Work background.

## Responses from Practicing Intermediaries Regarding Training

It is not possible to obtain a full understanding of the Registered Intermediary Training and Children’s Champion training as the content of this is not available to New Zealand CA’s. The Moretalk survey<sup>45</sup> approached the question of content of training by posing the question as to what is important to be included in initial intermediary training. Respondents noted the following as displayed in Table 2 below. There is consistency in responses as to what was identified as important areas within training. Understanding of receptive and expressive language development and how to assess this was noted as skillsets that most respondents thought should be brought into the role. It must be recognised however that over 70% of these respondents were from a SLT background.

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<sup>44</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)

<sup>45</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)



**Table 2. Proposed Training Content for Intermediaries (as identified by Moretalk survey respondents)**

Should bring into the role from previous experience (%85 of Intermediary respondents indicated)	Should be taught in initial training (%85 of Intermediary respondents indicated)
Understanding Child Language Development.	Introduction of the Intermediary Role
How to assess language understanding/ verbal comprehension.	Understanding of Legislation that allows the use of an Intermediary.
How to assess verbal expression.	How to carry out an assessment as an Intermediary.
Developmental and communication disorders: ASD, ADHD, FASD	How to write an Intermediary report.
(%73) Cultural competencies: Understanding relationships and protocols within other culture in my community.	Understanding ABE (Achieving Best Evidence, video recorded forensic interview)
	The Trial Process
	Overview of the different types of Courts
	The role of all professionals in the Courts
	Understanding Court Jargon and Acronyms
	Identification of Question types and problematic questions in justice contexts
	Ground Rules Hearings: What is it? Role Play practice.
	Role play of intervening when acting as an Intermediary in the witness box.
	Where to get support and guidance
	Use of Visual aides (props)
	Understanding and assessing state management. (%67 state this should be brought into the role)
	Understanding Memory Development (%59 say should bring into the role)
	How to simplify Language / Questions (%62 say this should be brought into the role)
	The effects of Trauma (%41 say this should be taught in initial training while %47 say it can be taught later)
	The effects of Stress and anxiety, general strategies to overcome. (%35 say this should be bought into the role, %54 state it should be in initial training with %40 stating it can be taught at a late date)

Please note 56% of respondents stated that “counselling of victims of trauma” was not a necessary topic for Intermediary training. 21% felt it was a topic that could be taught at a later date.

Intermediary respondents of the Moretalk survey<sup>46</sup> then go on to express that other topics in training that they perceive are vital in order to carry out the role of Intermediary:

<sup>46</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)



### **Communication assessment and analysis:**

*“I feel the most important thing is understanding language / communication difficulties and development of language”*

*“non verbal communication / non directive communication techniques”*

*“Examples of assessment materials and how an assesment is carried out with a couple of different age groups”*

### **Understanding of the language of judicial contexts:**

*“Strategies use in police questioning of children”*

*“Police / Forensic Interview process, from referral to interview.”*

*“Cover the different challenges/ processes when working in a youth court v adult court, and working with a victim/witness Vs the Accused”*

### **The “How to” of the role:**

*“How to address pracicalities eg how to address the judge, when to sit/stand in court, how to assess communication sissed specific to the legal process”*

*“To discuss modicifications that HAVE been allowed in previous cases so the Intermediary can feel more confident in suggesting different ways of doing things”*

### **Ongoing mentoring and support to maintain best practice:**

*“Need to be aware of your management of stress and trauma”*

*“getting support and mentoring after the course to ensure sustainability”*

*“How and where to access ongoing support and assistance and a thorough grounding in professional etheics and code of practice”*

Within the recent Victim’s Commissioner’s report<sup>47</sup> 39% of the 122 Registered Intermediaries surveyed identified that RI training could be improved (48% were dissatisfied / very dissatisfied with the training provision for RI’s). It is noted that the improvements suggested by respondents of the VC report included “further” oportunities for ongoing training, improvements of training for new RI’s, more targetted training on specific aspects of the criminal justice system. Comments regarding improving initial training of RI’s include:

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<sup>47</sup> Helen Newlove A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses (January 2018)



*“Improve training of new RI’s to reduce strain as a mentor having to “teach” RI’s how to assess”*

*“Better recruitment and initial training with much more input from experienced RI’s”*

*“The training is a real weakness I think – it does not prepare you adequately for the role at all and in hindsight I’m surprised its run by barristers (who have never worked as intermediaries from what I understand”*

### Intermediary “Provider” Model

There is another model of recruitment and training that can also be viewed in learning lessons for New Zealand. English Intermediary Service Providers (agencies) have been established from the growing number of “Non-registered” Intermediaries that are being sought by Judges to allow for assistance of vulnerable defendants in the UK. (Since October 2013 the Ministry of Justice reimburses individual UK courts for this expenditure. NB It is understood that rate of remuneration of a Non-registered Intermediary is substantially lower than that of an RI)

Communicourt (West Midlands) describes that they recruit Speech & Language Therapists with an interest in the legal system, with relevant specialist knowledge and experience. Induction includes a 5 day training programme with written and oral examination.

Triangle Services (Brighton) also supply in house training for Intermediaries. Recruitment to this training is open to many backgrounds and professions. Those accepted to undertake the 5 day initial training, must pass a series of assessments, both written and practical before being contracted to work as a non-registered intermediary. Triangle then foster a plan of mentoring new intermediaries in the role. As Triangle Intermediary skills develop then contractors / employees apply for the registered intermediary training and once successfully trained and assessed, work on the witness intermediary scheme.

#### My Triangle training story:

##### (5 day Introduction to Intermediary Training, Triangle Services, Brighton UK April 2017)

It was with nervousness that I sat and waited for my turn to introduce myself and my “Specialism” to a room full of 15 prospective new intermediaries. How would this NZ intruder be greeted? It was to my surprise that I was only one of two Speech Language Therapists in the room. From backgrounds including a couple of psychologists, an early childhood teacher, a special needs teacher, a youth worker, to a magistrate, each person presented a “specialism” which cleverly pin pointed the type of vulnerable person they were geared to work with from their past experiences.

Triangle attempt to purposefully capture people from a wide range of experiences, moving away from the traditional recruitment of Speech Language Therapists in order to meet the needs of what they specialise in: *“We have particular expertise with very young and very traumatised children and with children and young people with learning disability, autism, brain injury, ADHD, mental health difficulties* information, but observation by trainers and support people in how trainees interact with others (especially children) during assessment tasks, quietly evaluating if they have the “Triangle way”.



It was a nervous wait to see if I had passed the intensive assessment tasks, that not only involved written (test and report) tasks, but mock interactions in all parts of the role as an intermediary. I passed (pew). But did I to start to establish my practices in the “Triangle way”? After watching multiple DVD clips of Triangle intermediaries in action, and role plays modelled by our trainers, I am not surprised to catch myself not only using skills such as non-directive facilitation, but channelling a “Ruth Marchant” interaction style of “careful watching” and “speaking softly”, but all with confident authority as recently described in 17.02.18 article of the guardian (“Helping Child witnesses: One girl gave evidence with a hamster on her lap)

Did others adopt this way of practice? It is great to see on the website 3/15 trainees smiling in photos, presumably now working with Triangle services as intermediaries. Is this rate of retention after training the usual? With pass rates, “matching” to roles, and also more often than not the trainee’s capacity to take on new work being factors, I was not surprised to see there were only a few that continued their journey at this time.

NB It is understood Triangle offer this introductory to intermediary training numerous (up to 5) times per year. The demand for quality intermediaries is high.

## FUNDING AND REMUNERATION

### Processes for CA / Intermediary Services

In the UK the Witness Intermediary Scheme (WIS) matching service is run by the National Crime Agency (NCA). Following identification and Police, (Counsel or the Court) contact the WIS matching service to action a referral for an Intermediary. Intermediaries are “matched” by necessary skills and experience (specialism) to match the witness’s apparent needs, geographic location and availability to conduct the work on the dates required. *“This process is undertaken in an auditable manner that ensures a fair rotation of RI’s being offered work for which they are suitable and available to conduct.”*<sup>48</sup>

From this point the independent RI contractor deals with that “end user”. Funding is provided by that “end user”, that is, the Police of that region, or the individual court. With reference to the RI Guidance Manual, RI’s work independently in all aspects of the case including invoicing for remuneration from the “end user”. Police fund some parts of the service (assessment and assistance at Achieving Best Evidence ABE videoed interview) while the CA’s involvement in the court process is funded by the MOJ. This results in each independent RI managing many interactions and relationships, sometimes with billing delays of up to 3 to 4 months before payment, resulting in a significant amount of lost time in their time spent as RI’s<sup>49</sup>.

Funding for the use of CA’s in New Zealand currently comes from 3 streams: 1) legal aid (for assessment of vulnerable defendants), 2) Crown Law (for assessment of vulnerable complainants or crown witnesses), or 3) the MOJ itself (Court directed assessments, pre-trial preparation and attendance at trial / hearings). Current processes include the CA providing a quote to these “end users” prior to approval for engagement. Each

<sup>48</sup> Ministry of Justice (UK) *The Registered Intermediary Procedural Guidance Manual* (December 2015) 1 at 22

<sup>49</sup> Helen Newlove *A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses* (January 2018)



individual referral opening a new point of contact in either the crown or the court dependent on which registrar is the key contact for that case. This is a time consuming and sometimes confusing process in response to travel components of the role and “splitting” quotes to pieces of work. As noted earlier in this report, there is currently no identified funding for CA’s to be engaged by police prior to evidential interviewing.

## FUTURE DIRECTIONS WITHIN NEW ZEALAND

The original aim of writing this report was to understand and evaluate the training and accreditation practices of Intermediaries/CA’s in other jurisdictions. In gathering information on this topic, it was clear that access to the content and topics of Registered Intermediary and Children’s Champion training courses was not readily available. The opportunity to attend these courses is also not available to New Zealanders. Fortunately, however, the Author was able to gain first-hand experience of an introductory course to Intermediary training with Triangle services (in the UK), sometimes described for “non-registered intermediaries” (in view of the fact that the only recognised course for registered intermediaries in the UK is provided by City Law in London for the Witness Intermediary Scheme). The Author attended the 5 day Triangle course with a background in management of 20 referrals as a Communication Assistant in New Zealand. She had experience as a CA both with defendants and witnesses, with referrals presenting with a wide range of ages and disabilities.

What did the Triangle course content cover?

- Criminal Justice System procedure as it relates to the role – including a focus on cross-examination.
- Working within justice contexts, assessing the witness, advising the police interviewer / judge and Counsel.
- Assessment report writing.
- Being part of the case management discussions.
- Witness familiarisation.
- Facilitating communication at court.

The topics outlined above have been outlined in the Children’s Champion Training. Across the 5 days spent undertaking Intermediary training at Triangle, all of these topics, and more, were covered. In light of this, the question of whether there can be more than one path to becoming a “trained” Intermediary must be asked? If the content, structure, and pass criteria of Intermediary courses can reflect each other, is there room to look at the model of an Intermediary curriculum and course accreditation? A model where each provider can also have additional training content that gears their trainees to specialise in working with specific vulnerabilities/populations?

As alluded to earlier, the precise content of Registered Intermediary training is not published or easily accessed. Nevertheless, the Moretalk survey undertaken in 2017<sup>50</sup> provides insight into the training undertaken by Registered Intermediaries. Feedback provided by Registered Intermediaries themselves, in addition to the responses presented in the Victims’ Commissioner’s report<sup>51</sup> are valuable not only to learn

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<sup>50</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)

<sup>51</sup> Helen Newlove *A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses* (January 2018)





about aspects of training, but also in formulating effective recruitment, retention, and the systems for CA's overall.

New Zealand can learn a great deal from the many years that the UK have in the successful roll out of the Intermediary scheme. It is crucially important to reflect on feedback from people who have worked in that system. Of particular note is that when asked the question:

**Please provide any further comments regarding what else you think is important for New Zealand to understand / know in order to effectively recruit. Train and support intermediaries:**

Responses within themes occur:

**Appropriate Recruitment:**

"I think it is essential that applicants show evidence of current, relevant skills that they can bring to the role"

"make sure applicants have a good understanding of child development and can assess communication as it gets challenged in "recruit intermediaries from a wide range of professions and cultural groups"

"I strongly feel that allied health professionals should be recruited as these qualifications render the skill set required for the role" "(those) allied health professionals from a cultural background relevant to NZ populations would be an asset"

"this can be a stressful job, dealing with mostly sexual abuse of vulnerable people. You need to be resilient"

**Availability / capacity**

"It is a job where a flexible timetable is the norm"

"try to recruit people who will do this work as their main or only employment – (court/ police timetables lack flexibility)"

**Assessment processes as an RI**

"RI must assess communication and realise that it is for a specific purpose and not an SLT assessment, newly qualified RI's often over assess"

"In England we were well trained, but it was assumed we would know how to assess already. This I believe was mistaken"

"A one size approach to assessment etc does not fit all due to the heterogenous nature of "vulnerable" witnesses"

**Training content to include**

"time to visit the courts... become familiar with the jargon"

"Plenty of opportunity to practice interventions; change questions that might be put in cross examination; how to assist in an ABE interview"

"It is important to involve people from different professional backgrounds in the delivery of the training i.e.: judicial officer, barrister, police officer, witness assistance, as well as people who have acted in the role of Intermediary"

"More in-depth training would be preferable (compared to how RI's are trained in the UK at present)...There are lots of UK RI's that learn "on the job"



### Mentoring and support

“have a support system/ mentoring scheme in place”

“Having an online forum is very useful if you need help, as we usually work alone”

“ensure there are networks of RI’s in place and that RI’s can access advice”

“To share resources and materials from the beginning”

“We have a retention problem in the UK because our scheme does not offer a supervision structure and therefore RI’s burnout, lack confidence and get overwhelmed by the work”

“Supervision should be mandatory in the first year to allow RI’s to build confidence and to ensure work is of sufficient quality”

### Training and relationships with others in the system

“Train end users- police officers, judges, barristers, courts staff about RI’s and communication”

“continue to have overlapping links and training between intermediaries, legal practitioners, and researchers”

### Systems

“we are supported extremely well from victim services and the NSW justice department... I would suggest this is integral in a successful programme”

“Be registered by a body.”

“try as best to spread the workload so everyone has a chance to learn and grow”

“Cited problems (of retention issues - sic) include: difficulties being paid, no clear oversight of the scheme by MOJ, and lack of CPD opportunities.”

### Communication Assistance in New Zealand: Proposals for Models of Training and Management

Although many lessons can be learned from our colleagues in other Jurisdictions, especially the years of experience in England and Wales, it is of utmost importance to give careful consideration to the unique New Zealand landscape of rural and metropolitan populations, remote geographic regions, and cultural diversity. Outside of the role of CA in New Zealand, allied health professionals typically become “generalists” due to the lack of opportunities for employment in specialist roles (e.g., working for an Autism Centre alone). Our population is small, thus, allied health professional must know how to work across multiple different areas, even though they may also foster areas of passion within their caseloads that have some focus. This can be both an advantage in recruitment to CA roles in that New Zealand Allied health professionals are experienced in a range of developmental, health and disability presentations, but also a disadvantage because it would be difficult to recruit a communication specialist working in Mental Health, for example. The implications for this suggest that recruitment and training of CA’s in New Zealand will need to take into consideration that some CA’s will be very capable of being “generalists” and managing cases of a diverse range of diagnostic presentations, where others would need to take on a more specific specialism. Regardless of being generalist or specialist they must be conscious of meeting the needs of the police and courts both in metropolitan and regional outreaches. The Victims’ Commissioner’s report has noted a



concern aligning to this discussion within the current UK Witness Intermediary Scheme “*I am concerned this implies that access to a RI may be becoming a postcode lottery*”<sup>52</sup> in relation to the availability of Intermediaries within regions.

### Future Funding Directions

Currently in New Zealand CA’s must submit quotes and then invoices the specific lawyers (legal aid or Crown), or specific courts who have engaged their services. This process can then be expanded to the Ministry of Social Development for those CA’s working with Youth defendants for attendance at Family Group Conferences outside of the Court. In addition, the police may also enter into this pathway of engagement, resulting in an extremely complex series of relationships that the CA must attempt to manage. In some instances, this is becoming incredibly challenging.

Funding for the use of Communication Assistants in New Zealand could come from a number of sources but perhaps be managed by a central agency to ensure that there is a more streamlined management of the service. This would allow for a seamless approach to the management of a case from initial police interview through to trial. Lessons have been learnt from the UK intermediary model, with CA time wasted in seeking remuneration from a number of “end users”, which has impacted on retention.

In this scenario outlined in Table 3. an independent CA contractor would need to provide quotes for service then invoices to 3 different services for just one case.

**Table 3. Example case outlining the funding source for engagement of a CA in each step of the Judicial process for a vulnerable witness.**

Case example CA role in Police and Judicial Process for a vulnerable complainant	Time estimate + or -	Funding Source
Initial pre-interview CA assessment	1 hour	Police
Verbal (and possibly written interim) report and planning of Police interview	3 hours	Police
Attendance at police interview	3 hours	Police
Further assessment (if necessary) and CA report to the court (CA then usually appointed by the Court)	6 hours	Crown
Ground Rules Hearing	1.5 hours	MOJ (Court specific)
Pre-hearing preparation which may include: - attendance education / orientation session - Support to the court while witness views EVI - Preparation of visual aides - meeting with both Counsel to assist in preparation of questioning	4 hours (plus)	MOJ (Court specific)
Attendance to support the court with Communication Assistance at hearing / trial	From 4 hours to Days.	MOJ (Court specific)

<sup>52</sup> At ii



A centralised Communication Assistant agency would go a long way to ensure that structure, governance, recruitment, and training has a national overview and continues to be governed to the same high-quality standards for each referral. This centralisation would not necessarily mean management of individual independent CA contractors as is discussed in the presentation of differing models below.

### Proposed Models of Practice

#### A: “Centralised Communication Assistant Service”

This model closely reflects what has been recommended in England and Wales within the Victim Commissioners report (2018) “the entire provision of RIs to vulnerable victims and witnesses in England and Wales should be undertaken by a centralised national service, situated in one agency.”<sup>53</sup> The CA service is managed by a national agency, who provide all steps in governance and management, with individual contractors carrying out the day to day work.

**Table 4: Model A**

	Scope	MOJ Central Agency	Preferred CA Provider	Individual CA contractor
Structure, governance, recruitment and training	Governance of the CA scheme.	■		
	Definitions of parameters and development of the CA scheme.	■		▒
	Dissemination of key information of the CA scheme to other professionals. <ul style="list-style-type: none"> <li>Practice notes</li> <li>Toolkits</li> <li>Training</li> </ul>	■		▒
	Development of quality measures of the scheme. <ul style="list-style-type: none"> <li>-including accredited content of the initial CA training course</li> <li>-CA code of conduct</li> </ul>	■		▒
	Recruitment of CA’s <ul style="list-style-type: none"> <li>-position description</li> <li>-recruitment criteria</li> </ul>	■		
	CA Initial training course	■		
	Quality management systems in order for CA’s to maintain their role.	Matching CA to case	■	
Mentoring systems for new CA’s				▒
Supervision of CA (for professional development and quality practice)		■		▒
Performance / Line Management of the CA		■		
Remuneration structure		■		
Provision of the CA service				■
Payroll		■		
Continual Professional Development <ul style="list-style-type: none"> <li>-Including development of specialist “modules”</li> </ul>		■		▒
Research and development		■		▒

KEY: ■ Manages

▒ Provides work towards

<sup>53</sup> At 8



*The benefits of this model with regards to training and support of CA's:*

- “Same same”. It would be easy in many ways for the New Zealand Ministry of Justice to ascertain and follow the current practice and processes of the UK system. For example, this could involve contracting a UK provider to deliver every initial CA training so that consistency is maintained from the UK service to New Zealand.
- Initial Training Courses managed by a central agency could be developed more rapidly.

*The pitfalls of this model:*

- Initial training courses for CA's would occur infrequently and could be prescribed to follow predefined curriculum rather than tailored to a specific recruit.
- CA's work in “silos” as independent contractors with limited “rub shoulder” benefits of working alongside other CA's in view of supervision and mentoring.
- Management of CA's is from a central agency for which the Police and MOJ may not have the resources to carry out this function. It has been reported to the Author that the Ministry of Justice has had recent experience of managing contracting of a “new service” with independent Lay Advocates in the Youth Court, and that there has been challenges in this.
- Capturing “best practice” to guide research and development may be disjointed with all independent operators.

#### B: “Centralised Governance with accredited CA Trainer and Provider”

It is important to point out here that there are no identified preferred providers of Intermediary services in the UK, however there are agencies that have been developed which identify their own specialist areas. These agencies (e.g., Triangle, Communicort) provide internal structure and processes for CA's to manage their roles as noted in the areas noted in light grey in the table below. They also provide initial training described as targeting “non-registered intermediaries”. This training, however, is not recognised for “registration” into the Witness Intermediary Schemes.

At the present time in New Zealand there is some recognition of agencies as preferred providers, however, this is possibly due to the early stages of engagement with CA's in the country. Current training is internal and mainly managed with a sequence of on the job observations to provide mentoring into the role. This structure discussed in this section would give responsibility of initial training of CA's to the MOJ, but the processes of matching, supervision, mentoring and the day to day “practice” of CA's to the preferred provider.

This model relies on the MOJ / Police to clearly outline what accreditation criteria an initial CA training course must contain. It is the responsibility of the preferred provider to recruit to the initial training course and provide the initial training to meet the criteria.



**Table 5: Model B**

	Scope	MOJ Central Agency	Preferred CA Provider	Individual CA contractor
Structure, governance, recruitment and training	Governance of the CA scheme.	■		
	Definitions of parameters and development of the CA scheme.	■	▒	
	Dissemination of key information of the CA scheme to other professionals. <ul style="list-style-type: none"> <li>Practice notes</li> <li>Toolkits</li> <li>Training</li> </ul>	■	(contracted) ■	▒
	Development of quality measures of the scheme. <ul style="list-style-type: none"> <li>-including accredited content of the initial CA training course</li> <li>-CA code of conduct</li> </ul>	■	▒	▒
	Recruitment of CA's <ul style="list-style-type: none"> <li>-position description</li> <li>-recruitment criteria</li> </ul>	▒	■	
	CA Initial training course		■	
Quality management systems in order for CA's to maintain their role.	Matching CA to case		■	
	Mentoring systems for new CA's		■	
	Supervision of CA (for professional development and quality practice)		■	▒
	Performance / Line Management of the CA		■	
	Remuneration structure	■	▒	
	Provision of the CA service		■	■
	Payroll		■	
	Continual Professional Development <ul style="list-style-type: none"> <li>-Including development of specialist "modules"</li> </ul>	▒	■	▒
Research and development	■	■	▒	

KEY:     Manages ■  
Provides work towards ▒

*The benefits of this model with regards to training and support of CA's:*

- With New Zealand's small population where recruitment to the CA role may be problematic (especially within the regions), this model allows for preferred providers of CA training to be adaptive to the needs of new CA recruits. For example, the CA trainee would not necessarily need to wait for a MOJ "intake" to a centralised training course but would be able to complete a series of "training modules".
- Allows for not only early identification of "specialisms" in new CA recruits, but also areas of weaknesses that a preferred provider needs to develop further in order for a CA to pass all accreditation criteria. Accreditation criteria may also be stepped to allow, for example a "team" approach to provision of CA services.



### Hypothesised Case Example

A referral of an adult defendant with lifelong learning / intellectual disabilities plus a mental health diagnosis is referred. The preferred provider then “matches” the case with two specialists to meet the defendant’s presentation e.g., specialists with background in SLT and Mental Health to assess the defendant together. The CA with the Mental Health background may to this point have reached accreditation criteria to support the court with a vulnerable defendant in state management and following the content and process of the court, but not supporting the VP to give evidence (under cross-examination). The CA with the SLT background (who has passed this accreditation criteria) would therefore assist at this point in the case.

- Allows preferred providers to develop “specialist modules” within continuing professional development (CPD), not only for CA’s but for other professionals in justice contexts. An example of this is evident in the work that Triangle services in the UK have done through their development of specialist courses in “Forensic Questioning of Children” and “Training in Advanced Communication (un-dressable figures)” which is a closed course for Police officers and Intermediaries (and possibly Barristers).
- In New Zealand preferred providers could be supported to work in specialist areas, for example TTANZ are already developing CPD opportunities for professionals working with vulnerable youth in justice contexts. This model can also be adapted to allow CA’s to be employed by agencies or remain as independent contractors.
- Competition between providers may lead to issues in CA provision for all populations. The success of ensuring a CA service is provided to all regions and all courts will be reliant on independent CA contractors being able to be contracted by more than one agency. For example, if a contractor based in Kaitia completes initial training with one provider (e.g. Moretalk) who has developed specialist skills in working with young children, but is also engaged in work with TTANZ to assist with youth defendants – supported by them to complete further training in this.

#### *The pitfalls of this model:*

- The time it will take to develop accreditation criteria.
- The cost of training, including mentoring, may be difficult to calculate and manage.
- Accredited providers would need a process of ongoing evaluation. That said, other Government agencies such as ACC have worked in this model of accredited provider for a number of years, and existing processes could be drawn upon.

#### C: “Central CA Governance and Training Body plus contracted Preferred Providers”

This is a hybrid of the two models with the central agency responsible to recruitment and training of CA’s, but engagement of preferred providers to carry out the day to day management systems in order for CA’s to maintain their roles. The MOJ Central CA agency not only governing and providing the accreditation pathway for training of new CA’s, but delivering this training service.



### Career Pathway:

With a more fluid training provision i.e. Initial training and then modules of training to meet the needs of developing CA's, there is also opportunity to create a career pathway for CA's. Job profiles can reflect qualities, competencies and skills. This allows for recruitment of differing allied health and education professionals from a range of backgrounds that bring differing strengths to the role. All recruits accepted to the programme must pass the "Initial CA Training" before being taken on in the role of a Trainee CA. Key competencies will need to be reached in a process of shared case work and mentoring, before a Trainee CA is able to take on case work independently. There could however be the opportunity for CA's to take on independent responsibilities in stages. For example a CA, who has demonstrated competencies in assessment and skills in supporting facilitation of a defendant understanding the content of listening to evidence at trial, would be accredited to this level, "CA Process" (table 6 line 2). However not until they had demonstrated competencies in assessment and facilitation of supporting the court with a witness, would they be accredited or appointed to this level "CA Court Process and Evidence".

**Table 6: Proposed CA career pathway**

Accreditation Level	Title	
1	Trainee CA	Has undertaken initial training. Currently being mentored into the role. Mentor gives responsibility to different roles as evaluated to have achieved competencies to manage parts of the case.
2	Communication Assistant	There could be levels of accreditation in this level. For example: <b>CA Process</b> Defendants (understanding judicial process and content) <b>CA Court Evidence</b> Witnesses and defendants when giving evidence at court. <b>CA Forensic Evidence</b> Witnesses and defendants during initial police interview.
3	Senior CA	Undertakes all aspects of the CA role as described above. Supervises and mentors other CA's. Participates in quality assurance measures and capturing best practice.
4	Lead CA	Identified to lead in training of other professionals and be part of national working groups. For example: assisting in governance, leading research and development of the role.





## Recruitment of CA's

### Focusing on Qualities and Key Competencies:

A focus on recruitment, initial CA training, mentoring and then training modules thereafter should concentrate on key competencies required in order for the CA to effectively manage their role. The career pathway of levels of accreditation will allow for recruitment of professionals from a range of backgrounds and experiences. Kirsten Hanna and others, in exploring skills of intermediaries' state, "*the primary reason for introducing intermediaries into the court system is to enhance children's ability to provide best evidence. Hence a core skill required of intermediaries will be a grasp of how children's communication works.*"<sup>54</sup> Those with specialist skills in assessing and intervening when communication breaks down e.g. Speech Language Therapists may come into the role with advantages in learning competencies for CA court evidence and CA forensic evidence with their specialism, but other professions are not excluded from these roles as these skills can be developed and subsequently assessed. The following lists are by no means comprehensive but reflect responses from the Moretalk Survey<sup>55</sup> discussed throughout this report, when asked about the key competencies and qualities required.

Qualities and competencies sought as minimum in recruitment to NZ CA initial training:

- Collaboration and negotiation skills
- Active listening
- Ability to gather relevant information from key people
- Assessment skills - in particular assessment of a person's communication abilities
- Report writing skills
- Use of strategies to facilitate a vulnerable person's ability to engage and talk with others
- Knowledge, understanding and experience in working with people with communication issues in relation to specific disability groups (e.g.: ASD, FASD, ADHD, brain injury, mental health) i.e. bringing a "specialism" to the CA role would be desirable
- Confidentiality
- Time management
- Responsiveness and flexibility
- Cultural competency
- Authority, confidence & resilience
- Undergraduate degree (or equivalent) or higher

The Author recommends initial recruitment of individuals who work in Allied Health professions e.g. Speech Language Therapists, Psychologists, Specialists in Mental Health (Occupational Therapy or Nursing background) or those with a background in education e.g., Specialist Teachers in Autism. Professionals with 5 or more years' experience in these roles would be likely to have proven competencies in the above skills identified by participants of the Moretalk survey<sup>56</sup>. Furthermore, experience in a New Zealand based specialist role would be desirable, as this not only brings knowledge and skills in working within our unique culture but also an understanding of government and other services e.g. for people with disabilities.

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<sup>54</sup> At 45

<sup>55</sup> Moretalk "Intermediary Training and Support: Lessons for New Zealand" (2017)

<sup>56</sup> Moretalk "Intermediary Training and Support: Lessons for New Zealand" (2017)



Specialists with a background of leading or managing others may also bring skills and qualities in communicating authority and confidence.

### Content of Initial Communication Assistant Training

The content of initial training for CA's should look to teach and assess many different areas. Training of CA's should be delivered by presenters with a range of backgrounds including CA's themselves, Lawyers and if possible the judiciary. Foundational skills such as written and oral assessment will also be important to demonstrate knowledge and skills.

The use of recorded and assessed "practice" sessions targeting specific CA "on the job" skills are vital. These include: assessment, speaking to the assessment at ground rules hearings, appropriate CA intervention while the witness is giving evidence. Such sessions would need to be carefully planned to ensure there are enough assessors, as well as people to take on the role of the vulnerable person, the police or lawyers, and the judge. The use of child volunteers and or adults with disabilities being engaged in being assessed and then "interviewed" (retelling of a neutral event) is a strategy adopted by Triangle Services in the UK, that could be evaluated further with a view to implementation.

A comprehensive list of the content proposed for initial training of CA's is provided below:

- Introduction of the Intermediary Role
- Understanding of Legislation that allows the use of an Intermediary.
- The Trial Process
- Overview of the different types of Courts
- The role of professionals in justice contexts (Police, Courts, MOJ, Oranga Tamariki, Probation) Working in partnership (reflecting on principles of the Treaty of Waitangi)
- Understanding Court Jargon and Acronyms
- How to carry out an assessment as an Intermediary with a vulnerable person in relation to functional communication when:
  - a. Understanding process and content of a trial (defendant)
  - b. Giving evidence in court (and Cross examination)
  - c. Giving evidence to the Police (EVI)
- How to write an Intermediary report, including special measures / accommodations of the above. (understanding special measures that have been adopted)
- Understanding EVI (Evidential Video Interview)
- Identification of Question types and problematic questions in justice contexts
- How to simplify Language / Questions
- Ground Rules Hearings: What is it? Role Play practice.
- Role play of intervening when
  - a. acting as an intermediary in an EVI
  - b. acting as an Intermediary in the witness box.
- Use of Visual aides
- Understanding and assessing state management. (The effects of Stress and anxiety, general strategies to overcome.)
- The Mentoring process and where to get support and guidance



Other areas of Training (CPD training modules) could include:

- Understanding Memory Development
- The effects of Trauma
- Forensic Questioning of Children
- Advanced use of visual aides in forensic questioning for sexual/violence case work.
- Working as a CA with very young children
- Working as a CA with Youth offenders (including working with Oranga Tamariki)
- Working as a CA in the Family Court
- Working as a CA in Matariki, Rangatahi and Pacifica courts
- Working as a CA with vulnerable people with mental health diagnosis.

Continuing Professional Development could be evaluated and tracked as part of performance appraisals of the CA career pathway, with remuneration to reflect this.

### Ongoing Mentoring, Supervision and Performance Management

It is clear from Moretalk survey feedback<sup>57</sup> and the Victims Commissioner report<sup>58</sup> that there is a high level of dissatisfaction in the ongoing mentoring and supervision of Communication Assistants. Currently in New Zealand the only path for training into the CA role is an experienced Speech Language Therapist walking through joint case work before taking on aspects of future cases “mentoring” in the role. However, there is no remuneration structure for this, and current CA providers pay trainee CA’s out of the income received for their own case work.

When a Trainee CA completes initial training, there needs to be some form of remuneration structure accessible to the “Mentor” until the trainee demonstrates competency to manage case work as an independent CA. In the New Zealand context mentor funding formulas for trainee CA’s in regional locations will need to be developed. For example, for a trainee in Invercargill, where the nearest mentor is located in Christchurch. Where exactly the central agency funding for mentoring finishes and the CA takes their own responsibility to manage ongoing “clinical” supervision, is a question that needs further evaluation. Furthermore, working alongside other CA’s, peer review of CA assessment reports, and case discussions will continue to be vital elements in striving to provide a quality service. Independent CA’s or preferred providers providing evidence that these steps are in place would be important measures and assist in performance review. An annual performance review could be managed well in the preferred provider models (B & C) with ongoing contracts reliant on reporting of this but would need systems developed for a centralised CA service (A).

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<sup>57</sup> Moretalk “Intermediary Training and Support: Lessons for New Zealand” (2017)

<sup>58</sup> Helen Newlove *A Voice for the Voiceless: The Victims’ Commissioner’s Review of the Provision of Registered Intermediaries for Children and Vulnerable Victims and Witnesses* (January 2018)



## CONCLUSION

This report has discussed the recent development of the use of Communication Assistants in justice contexts in New Zealand. Models of training and practice of the use of Intermediaries in the UK, Northern Ireland and Australia have been explored through research and with an online survey to practicing Intermediaries.

New Zealand is in its infancy stages of the development of a CA practice with use of CA's in justice contexts on a case by case basis. Since 2012, two main providers, contracting experienced Speech Language Therapists, have been involved in mentoring specialists into the role, but there is no formal training, supervision and mentoring process. Over 90 referrals have received specialist CA assessments and support to Family, Youth and (mainly) Criminal courts for both vulnerable witnesses and defendants with "Communication Disabilities", aged 4 to 80 years. Current CA engagement in New Zealand has seen "Court appointed Communication Assistants" funded by legal aide, the Crown, and the MOJ (via the specific court), but there has only been one case of a CA engaged with what was a second Police evidential interview (Crown funded).

The question of training and support of Communication Assistants in New Zealand cannot be addressed in isolation without recommendations on the structure of the service as a whole. Lessons learnt from other jurisdictions, in particular England and Wales, show us that the development of centralised Communication Assistant agency would ensure that structure, governance, recruitment, and training has a national overview and will continue to be governed to the high-quality standards. Management of work systems for CA's however, could be addressed through differing models of practice. Centralised Governance with accredited CA Trainer and Provider would allow for the development of specialisms from preferred providers, that could influence not only CA practice, but development of all professionals working with vulnerable people in justice contexts.

A training system that allows for providers to teach in modules would suit the parameters of our smaller population. However, it would be beneficial to have at least one face to face intake per year for expediency. Recruitment into CA training should include a thorough process evaluating qualities and skills sets, with a focus on knowledge and abilities to assess and facilitate communication. Initial CA training must contain key content, be delivered by a range of professionals, this should front mentoring into stages of the role. A career pathway for CA's reflecting competencies in the role.

To ensure a quality CA service that takes into account our unique New Zealand context, but lessons learnt from our overseas colleagues, the following steps are recommended to be managed:

### A. The establishment of Central governance of the CA scheme to develop:

- Definitions of parameters and development of the CA scheme, including criteria for access.
- Dissemination of key information of the CA scheme to other professionals. (Practice notes, Toolkits /guidelines, Training)
- CA code of conduct
- Remuneration structure (not relying on ongoing quote system)
- CA Recruitment criteria (job profile)
- Accredited content of the initial **CA training**
- **Mentoring** system for CA Trainees (including funding formula for regional CA's)



- Focus on research and development of working with vulnerable people in justice contexts (including the CA scheme)

Development of systems should draw on knowledge of our UK counterparts but rely on the experience of those working in the New Zealand system – Judiciary, Lawyers, MOJ, Police and Communication Assistants. The foundational CA training could call on CA experts from overseas to aide in development of a New Zealand focused course. Training of CA's needs to be focused on understanding processes in Judicial systems, and how professionals / the court interacts with vulnerable people. Specific competencies of assessment / report writing and use of accommodations / special measures in those differing contexts is essential, ensuring that the communication process is as complete, coherent and accurate, as possible.

### B. Quality management systems in order for CA's to maintain their role.

The Central governance group to work with Preferred providers to ensure:

- Matching CA to cases
- Performance and line management
- Supervision and continual professional development

The development of the role of Communication Assistants in New Zealand continues to be a vital component of ensuring **equal access** for all in the Justice System. Provision of a comprehensive, coordinated national Communication Assistant service is needed, to ensure that best practice is captured, developed and delivered to safeguard that communication with vulnerable witnesses and defendants is complete, coherent and as accurate as possible. **Targeted recruitment and accredited training** (of professionals with a background in working with people with communication difficulties) is the foundation of the development of this service.



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