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A guide to

ENGAGING A COMMUNICATION PARTNER



Government of
South Australia

The South Australian Government is committed to ensuring people with complex communication needs are assisted to effectively communicate and participate in the judicial process.

The purpose of this guide is to provide general information about the relevant legislative framework and the role of a communication partner within the context of the South Australian justice system. As an engaging entity or person, it is your responsibility to provide specialised advice and information to the communication partner about the particular context in which the communication partner is engaged, but this guide does raise a few specific issues you may like to consider.

LEGISLATIVE FRAMEWORK

The *Evidence Act 1929 (SA)* ('Evidence Act') and *Summary Offences Regulations 2016 (SA)* ('Summary Offences Regulations') establish a scheme whereby a person with complex communication needs is entitled to receive communication assistance during certain interactions with the justice system.

Communication assistance can be provided through a communication device (such as a speak-and-spell communication device), a person approved by the interviewer or court, or a specialised communication expert known as a 'communication partner'.

A 'communication partner' is defined as a person or class of persons approved by the Attorney-General. See page 7 for more detail about who can fulfil this role.



Suspects

If an investigating officer proposes to interview a suspect for an indictable offence, and the officer believes the suspect may have complex communication needs, the officer must make arrangements for the suspect to receive communication assistance unless it is not reasonably practicable to arrange the assistance and the circumstances do not warrant postponing the interview until such arrangements may be made.

Pursuant to regulation 18(2) of the Summary Offences Regulations, a suspect is considered to have complex communication needs if the suspect has significant difficulty in communicating effectively with the interviewer, whether the communication difficulty is temporary or permanent and whether caused by disability, illness or injury, but not by intoxication.

Indictable offences are the more serious criminal offences. Further information about indictable offences can be found via the Legal Services Commission Law Handbook (lawhandbook.sa.gov.au).

Witnesses: interviews

Similar obligations apply when a person with complex communication needs is to be interviewed as a potential witness in relation to a serious offence against the person, such as murder, manslaughter, criminal neglect, a sexual offence, abduction, blackmail, unlawful threats to kill, and some other offences.

The interviewer must make arrangements for the witness to receive communication assistance unless it is not reasonably practicable to arrange the assistance and the circumstances do not warrant postponing the interview until such arrangements may be made.

As with suspects, pursuant to regulation 18(2) of the Summary Offences Regulations, a witness will be considered to have complex communication needs if the witness has significant difficulty in communicating effectively with the interviewer, whether the communication difficulty is temporary or permanent and whether caused by disability, illness or injury, but not by intoxication.

Witnesses: legal proceedings

In any legal proceedings, witnesses who are to give oral evidence and who have complex communication needs may be entitled to receive communication assistance to assist the witness to understand and communicate with the court. The court may make an order for the provision of communication assistance on an application by any party to the proceedings or on the court's own initiative.

In certain criminal proceedings and in certain circumstances, orders allowing for a witness to receive communication assistance *must* be made by the court. See, for example, section 12AB of the Evidence Act regarding pre-trial special hearings and section 13A of the Evidence Act regarding special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings. Further information can be found via the Legal Services Commission Law Handbook (lawhandbook.sa.gov.au).

Pursuant to section 4(2) of the Evidence Act, a witness will be taken to have complex communication needs if the witness' ability to give oral evidence during legal proceedings is significantly affected by a difficulty to communicate effectively with the court, whether the communication difficulty is temporary or permanent and whether caused by disability, illness, injury or some other cause.



THE COMMUNICATION PARTNER ROLE

Communication partners are communication specialists who are engaged to assess people with complex communication needs in order to identify ways in which people with complex communication needs may be supported to effectively communicate and participate in the judicial process.

The role of a communication partner is to assess people with complex communication needs in order to impartially facilitate communication between the person with complex communication needs and the interviewer, judicial officer or other participant in the justice process (as the case may be).

The focus of the assessment should be on how the person with complex communication needs is likely to manage the communication demands posed in an interview or court context. The assessment should explore the mechanisms that may be available to help the person with complex communication needs to communicate, for example, strategies that modify language, use of visual supports etc. A communication partner may be asked by the engaging person or entity to provide the assessment in writing in the form of a report, which may ultimately be used in the context of court proceedings.

It is important to understand the term “communication partner” is not a reference to there being a partnership between the person with complex communication needs and the professional engaged to perform the communication partner role. The professional must remain an impartial party; they are not an advocate nor a support person. The “partnership” exists between the communication partner and the justice system, in that the communication partner’s role is to ensure the justice systems’ participants are educated and advised about the most effective way to obtain the best evidence of the person with complex communication needs.

A communication partner must not enter into discussions, give advice or express opinions about the suspect or witness’ evidence. A communication partner is not a translator or interpreter.

THE ENGAGEMENT PROCESS

The first step to engaging a communication partner is to identify an appropriate qualified professional from the categories approved by the Attorney-General.

From 1 March 2020, the following class of persons are approved by the Attorney-General to perform the role of communication partner in South Australia:

- 1 speech pathologists with certified practising speech pathologist membership of Speech Pathology Australia;
- 2 registered occupational therapists;
- 3 psychologists with general registration status with the Psychology Board of Australia; and
- 4 developmental educators with full membership of Developmental Educators Australia Incorporated.

In addition to holding the relevant qualifications, the professional must have a minimum of five years' relevant experience working with people with complex communication needs and must have agreed in writing to comply with the Code of Conduct (see **Attachment A**).

Each of the above listed professions are represented by membership organisations. These organisations may be a useful point of contact when searching for an appropriately qualified and experienced communication partner. The membership organisations are as follows:

- Speech Pathology Australia (speechpathologyaustralia.org.au)
- Occupational Therapy Australia (otaus.com.au)
- Australian Psychological Society (psychology.org.au)
- Developmental Educators Australia Inc (deai.com.au).

Your responsibilities

It is the responsibility of the engaging entity or person to confirm that the professional sought to be engaged has the required qualifications and experience and has signed the Code of Conduct.

The requirement that communication partners have “relevant experience working with people with complex communication needs” is directed towards ensuring the communication partner has expertise and experience in working with the particular communication needs of the person the communication partner is engaged to assess. This may, amongst other matters, require an assessment of the communication partner’s ability to provide trauma responsive and/or culturally appropriate services, depending on the circumstances of the engagement.

Adequate instructions

Some communication partners may have limited knowledge of the justice system. It is the responsibility of the engaging entity or person to adequately inform and instruct the communication partner about the purpose of the engagement and the context in which the communication partner services are to be delivered. For example, what is required of a communication partner engaged to assess a person who is to be interviewed as a suspect of a criminal offence may be different to what is required of a communication partner engaged to assist a person who is to give evidence in a civil legal proceeding.

Ultimately, what is required of a communication partner will depend on the particular circumstances of the engagement and it is the responsibility of the engaging entity or person to explain those circumstances.

It will also be necessary to discuss any relevant confidentiality requirements with the communication partner prior to the communication partner commencing the engagement.

Compliance with other legislation

It is the responsibility of the engaging entity or person to ensure the terms of the engagement are compliant with any other legislation relevant to the service to be performed. For example, there may be a need for the communication partner to undergo a screening check. For further information about the screening checks see [screening.sa.gov.au](https://www.screening.sa.gov.au).

Procuring and fees

Communication partners will in all likelihood charge a fee for their services. The amount of this fee is to be determined between the communication partner and the engaging entity or person.

If you represent a government agency, the procurement of a communication partner must be undertaken in compliance with your agency's procurement, financial management and auditing processes and policies. Depending on the anticipated levels of usage, your agency may wish to consider parent agreements with communication partner/s to expedite the process of finding a communication partner each time the need arises. Similarly, agreements with communication partners must be developed and executed in compliance with your agency's processes and policies.

FURTHER INFORMATION

For an overview of the justice system in South Australia visit [lawhandbook.sa.gov.au](https://www.lawhandbook.sa.gov.au)

For more information about the support services available to witnesses in the context of the criminal justice system see dpp.sa.gov.au/was/witnesses/witness-assistance-service

For more information about the role of communication partners (also known as intermediaries in other jurisdictions) see theadvocatesgateway.org

APPENDIX A – CODE OF CONDUCT

COMMUNICATION PARTNER CODE OF CONDUCT



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PURPOSE

The Communication Partner Code of Conduct (the code) details the foundational behaviours required to provide communication assistance to persons with complex communication needs who are involved in the justice system.

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SCOPE

- a. The code applies to all communication partners as defined under section 4 of the *Evidence Act 1929* (SA).
- b. It is a requirement that the agency or individual procuring the services of a communication partner ensures that the communication partner reviews and signs the code prior to undertaking work.

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ELIGIBILITY

- a. The following class of persons are approved by the Attorney-General to perform the role of communication partner in South Australia:
 - i. speech pathologists with certified practising speech pathologist membership of Speech Pathology Australia;
 - ii. registered occupational therapists;
 - iii. psychologists with general registration status with the Psychology Board of Australia; and
 - iv. developmental educators with full membership of Developmental Educators Australia Incorporated.

- b. In addition to holding the relevant qualifications, the professional must have a minimum of five years' relevant experience working with people with complex communication needs and must have agreed in writing to comply with the code.

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OPERATIONS

- a. A communication partner is deemed to be a communication specialist. The primary responsibility of the communication partner is to assess a suspect's or witness' communication needs so as to impartially facilitate communication by and with the suspect or witness.
- b. Communication partners must:
 - i. Have a clear and comprehensive understanding of the responsibilities and duties of their role within the South Australian justice system;
 - ii. Only undertake work they are competent to perform by reason of their training, qualifications and experience. If it becomes apparent in the course of a matter that expertise beyond their competence is required, the communication partner must make this known to the procuring agency or individual;
 - iii. Operate in an impartial and neutral manner throughout their engagement so as to be without bias in favour of or against any person including but not limited to the person with complex communication needs, the party who has engaged or is remunerating the communication partner, or any other party to or person involved in the interview or legal proceeding;
 - iv. Immediately report any potential or actual conflicts of interest to the procuring agency or individual;
 - v. Have a clear understanding of the confidentiality obligations of the engagement.

Procuring agency:

Communication partner name:

Communication partner signature:

Date:
