



ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

STATEMENT OF WITNESS

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This statement, consisting of 11 page(s) signed by me is true to the best of my knowledge and belief.

I provide this statement in response to the questions set out in Schedule A to the letter from the Royal Commission dated 17 November 2016 on the basis of information provided by agencies of the South Australian government including South Australia Police ('SAPol'), Court Administration Authority ('CAA'), Attorney-General's Department ('AGD') and the Office of the Director of Public Prosecutions.

General

Question 1 - When did the *Statutes Amendment (Vulnerable Witnesses) Act 2015* commence?

1. The *Statutes Amendment (Vulnerable Witnesses) Act 2015*, which makes amendments to the *Evidence Act 1929* and the *Summary Offences Act 1953* and other Acts, commenced on 1 July 2016 together with the *Summary Offences Regulations 2016* and the *Statutes Amendment (Attorney-General's Portfolio) Act 2016*.
2. The *Statutes Amendment (Attorney-General's Portfolio) Act 2016* contains several consequential amendments to clarify aspects of the *Statutes Amendment (Vulnerable Witnesses) Act 2015*, notably to amend the *Evidence Act 1929* to provide a definition of the term 'complex communication needs' for when a vulnerable party is entitled to communication assistance. These amendments commenced on 1 July 2016.

3. The Communication Partner Service also commenced on 1 July 2016.

Question 2 - Have the Supreme Court or District Court of South Australia made any practice notes or practice directions to facilitate the pre-recording of evidence, the use of communication partners, or other measures introduced under the *Statutes Amendment (Vulnerable Witnesses) Act 2015*?

4. New Rules and Forms have been included in the Criminal Rules for the Supreme Court and District Courts and those Rules came into effect on 27 June 2016. These include:

Pre-trial special hearing rules:

- Rule 57A - Pre-trial special hearing, how to make the application, what information to include in the application and how to object.
- Rule 49(4)(b) - Written application is to be supported by affidavit.
- Form 13A 'Application for pre-trial special hearing' .
- Form 13B 'Notice of objection to pre-trial special hearing'.

Timeframe to make the application:

- Rule 51(1A) - 21 calendar days before first directions hearing.

Applications to vary or revoke orders made for a pre-trial special hearing:

- Rule 49(1)(ga) and Form 13 ('Application for Directions') with reference to Rule 49(1)(ga) as the endorsement for such application.

Admission of audio visual recording of evidence under section 13BA of the Evidence Act 1929:

- Rule 57B and Forms 13C (for audiovisual recording taken in a pre-trial hearing and Form 13D (audiovisual recording taken pursuant section 74EB of the *Summary Offences Act 1953*).

5. Magistrates Court Rule 29D sets out how to make an application for a pre-trial hearing. Form 23 ('Application for an Order of the Court') is to be used.

Question 3 - What additional resources, if any, have been allocated to the Office of the Director of Public Prosecutions, South Australia Police, the Legal Services Commission, victims services, and the courts to facilitate the implementation of the Act, including the use of communication partners and pre-trial special hearings?

6. The above agencies all have priority actions in the *Disability Justice Plan 2014-2017* and the Plan's funding is available to assist agencies meet their commitments including legislative reform. There have been no direct resources allocated to any of the above agencies for implementation of the *Statutes Amendment (Vulnerable Witnesses) Act 2015*. General training and information sessions on the new special measures in the Act have been provided to agencies under the *Disability Justice Plan 2014-2016* (usually at no cost) and include:
- Presentations at 2015 Judicial Development Days (2 November 2015 and 4 December 2015).
 - A general training day for legal practitioners from the Office of Director of Public Prosecutions and Legal Services Commission prior to the commencement of the Act on 26 May 2015.
 - The Law Society of South Australia held two information sessions on 1 June 2016 and 28 June 2016 on the *Statutes Amendment (Vulnerable Witnesses) Act 2015*.
 - Uniting Communities, the service provider of the Communication Partner Service, has presented on the new service to Office of the Director of Public Prosecutions, divisions within South Australia Police, Legal Services Commission, the District Court judiciary and the court registrars of the Magistrates Courts.
 - The Centre for Investigative Interviewing within Deakin University delivered a presentation on the training of investigative interviewers in South Australia to the National Conference of DPPs on 27 October 2016.
 - A training package for legal professionals including the judiciary is being developed by the Centre for Investigative Interviewing on best practice in investigative interviewing and the new Standard Interview Method protocol. The *Disability Justice Plan 2014-2017* intends to fund 50 places over two years and this aligns with

professional development Priority Actions in the Plan. The training is planned to commence in March 2017.

- Three Disability Justice Plan Symposium events have been held since the commencement of the Plan in June 2014. Keynote presentations and workshop sessions have been on special measures for vulnerable parties. Keynote speakers include Dr Terese Henning, Director of the Tasmanian Law Reform Institute, Eileen Baldry, Professor of Criminology from the University of NSW and Professor Martine Powell, Founding Director of the Centre for Investigative Interviewing within Deakin University. Disability Justice Plan Symposium events have been attended by legal practitioners, legal academics, judiciary, personnel from the Department for Correctional Services, SAPol, the disability sector and the general community.
7. In addition to the training listed above, following the commencement of the Disability Justice Plan in 2014, SAPol enhanced its victim management section within the Special Crimes Investigation Branch ('SCIB'). The unit grew from five specialist police officers to one supervising sergeant and ten specialised police officers. The Victim Management Section supports the *Disability Justice Plan 2014-2017* and its associated legislative changes by delivering services to vulnerable persons, including providing expert investigative interviewing and assisting with the management of vulnerable victim and witnesses.

Question 4 - How is the operation of the measures introduced under the *Statutes Amendment (Vulnerable Witnesses) Act 2015* being monitored or overseen? When will an evaluation be conducted?

8. There will be an evaluation of the *Disability Justice Plan 2014-2017* at the conclusion of the Plan in December 2017. It is anticipated that this will commence in 2018. The Communication Partner Service will be evaluated as part of the wider evaluation of the Plan. Under the Funding Deed, Uniting Communities is contracted to collect data that will inform the overall evaluation of the Plan.
9. Uniting Communities will conduct a process evaluation of Stage 1 of the Communication Partner Service to inform service improvement and the expansion of the service under Stage 2 (please see response to question 10 for an explanation of the two stages). This will not include an evaluation of the effectiveness of the scheme, which will occur as part

of the evaluation of the *Disability Justice Plan 2014-2017* referred to in paragraph 8.

10. The Specialist Training of Investigative Interviewers program will be evaluated as part of Deakin University's contract.
11. In addition, the Disability Justice Plan Advisory Group oversees the implementation of the *Disability Justice Plan 2014-2017* more generally and report annually on its progress. The Disability Justice Plan Advisory Group comprises of representatives from criminal justice agencies and the community disability sector.
12. The Communication Partner Service Working Group provides advice and oversight on the implementation of the new service within the criminal justice sector, and will take a practical approach to resolving any issues that arise in the establishment and operation of the service. The Communication Partner Service Working Group is not a sub-committee of the Disability Justice Plan Advisory Group but has a reporting relationship with the Group. A representative reports on the progress of the Communication Partner Service to the quarterly Disability Justice Plan Advisory Group meetings. The Communication Partner Service Working Group was convened in March 2016 upon approval of Uniting Communities as the service provider on 1 March 2016.

Communication partners

Question 5 - Which agency or agencies may request complainants be matched with communication partners?

13. The service is available to SAPol, Child Protection Services (which is located at Flinders Medical Centre and the Women's and Children's Hospital), Office of the Director of Public Prosecutions, the Legal Services Commission, the Courts and private legal practitioners.

Question 6 - At what stage of proceedings can requests be made?

14. Requests for communication partners can be made at various stages throughout the investigatory and trial process.
15. The current practice which has been adopted by the Victim Management Section within

SAPol since 7 September 2016 is to contact the Communication Partner Service on each occasion prior to conducting a police interview for every witness who may have a cognitive or communication impairment or other disability constituting a complex communication need, irrespective of the severity of their disability or the nature of the crime. The Victim Management Section member will provide relevant information about the witness and their disability to the Communication Partner Service. A consultation will take place with the Service to determine whether a communication partner is necessary to assist the witness in a 'rapport building' session (where it may also be determined that a communication partner is inappropriate or unnecessary for a particular case) or a police interview.

16. Requests for communication partners can also be made at pre-trial meetings, including for pre-trial special hearings for legal practitioners and the Court, as well as at the trial stage when witnesses are giving evidence in court.

Question 7 - How are complainants assessed in order to establish whether they have complex communication needs? Who assesses them?

17. It is important to note that the Communication Partner Service in South Australia is not limited to complainants. It is available to all victims, witnesses, suspects or defendants who may have complex communication needs.
18. Relevant agency personnel make the initial identification of a person's complex communication needs. Agencies are encouraged to consult the Communication Partner Service to determine if the participants in the process would benefit from the support of a communication partner. The Uniting Communities service manager and communication specialist work collaboratively with agencies to make a determination as to whether the agency should proceed with a communication partner. As the service matures it is anticipated that participating agencies will become more adept at identifying complex communication needs and the need for a trained, independent communication partner.
19. Of the relevant agencies, SAPol has had the most experience in identifying a person's complex communication needs. As noted at paragraph 15, the current practice adopted by the Victim Management Section within SAPol is to contact the Communication Partner Service on each occasion prior to conducting a police interview for every

witness who may have a complex communication need. In making a decision as to whether a person may have a complex communication need, SAPOL officers will draw upon their experience, training, available aide-memoires and advice from supervisors and internal or external agencies (for instance, Disability SA).

20. Many of the VMS officers have undertaken the specialist training program for investigative interviewers by the Centre of Investigative Interviewing at Deakin University. Module 13 concerns interviewing witnesses with complex communication needs. The provision of specialist training to South Australian investigative interviewers, alongside access to trained independent communication partners under the Disability Justice Plan provides holistic support to vulnerable parties as far as practicable.
21. In conducting an assessment as to whether a person has a complex communication need, SAPol officers have access to materials available on the SCIB intranet site, including the following:
 - ‘Guidelines for securing best evidence for investigative interviewers working with vulnerable witnesses’
 - ‘Factors to consider prior to interviewing a person with a complex communication need’

These documents are not intended to be exhaustive, but provide guidelines as to what may constitute a complex communication need necessitating the use of a communication partner.

22. The *Evidence Act 1929* and *Summary Offences Regulations 2016* also allow for a communication assistant to provide communication assistance in and out of court. A communication assistant will be someone known to the client and familiar with their communication style or an expert. A communication assistant can also be used when it not reasonably practicable to use a communication partner. This may include if a suitable communication partner is not available or is unable to meet the time requirements. The communication assistant’s role is limited to facilitating communication and does not include supporting criminal justice personnel to use adaptive strategies in communication or providing written recommendations for use in the court process.

Question 8 - What qualifications are communication partners required to have?

23. Communication partners are not required to have any formal qualifications. However, they must complete the Uniting Communities three day training program which was developed in consultation with the Communication Partner Service Working Group. Uniting Communities has developed a robust selection process and volunteers must demonstrate relevant knowledge, skills and experience of working with people with disability and/or working in the legal sector. All communication partners must pass a screening process that includes telephone screening and an interview before proceeding to the competency based training. Uniting Communities has conducted three training blocks and is continually monitoring the effectiveness of the training program. Upon completion of the training, volunteers undergo criminal screening checks and Working with Children Checks before they can commence in the role.

Question 9 - What is the role of the communication partner? What training are they provided with?

24. The role of the communication partner is to facilitate effective communication between people with complex communication needs, namely people with a disability and children, and criminal justice personnel, both in and out of court. The communication partner will support the giving of evidence in police interviews and court proceedings. They are required to be impartial and to swear or affirm in Court the impartiality and accuracy of their role. Communication partners do not provide emotional support or act as an advocate for the witness. In relation to training, please see paragraph 23.

Question 10 - Are communication partners available state-wide?

25. Communication partners are not currently available across South Australia, but the Communication Partner Service has been designed and established to be a state-wide service. The Communication Partner Service commenced operation in three geographical locations: metropolitan Adelaide, Mount Gambier and Port Augusta as Stage 1 of a staggered rollout of the state-wide service. The rationale for the locations was that Adelaide covers around 75 percent of the state's population and Port Augusta and Mt Gambier are major criminal justice pathways that are a long distance from Adelaide.
26. In Stage 1 the service is available to SAPol's SCIB and Local Service Areas and the

District Court for all major indictable matters (although, as acknowledged in paragraph 15, current SAPol's practice has been to contact the Communication Partner Service prior to conducting a police interview for every witness who may have a complex communication need regardless of the type of offence). Adelaide, Mt Gambier and Port Augusta are the three District Court locations in South Australia.

27. The service has been operating for 18 weeks since commencement on 1 July 2016 and there are currently 22 communication partners, 17 in the Adelaide metropolitan area, 5 in Mt Gambier and 2 pending (training to occur) in Port Augusta.
28. Stage 1 of the service is being implemented from July to December 2016 with a process evaluation to inform the next stage. Upcoming discussions between the Attorney-General's Department and Uniting Communities will focus on whether the service is mature enough to expand to other areas at the beginning of 2017 as originally planned. Recruitment for suitable volunteers in new areas will commence in early 2017 in anticipation of the service becoming operational in more locales as it moves towards state-wide implementation.

Question 11 - How many requests have been made to date? By which agencies?

29. Since commencement on 1 July 2016, there have been 16 calls to the service to request or discuss the support of a communication partner. 15 requests have come from SAPol, the majority from the Victim Management Section in SCIB. One call was for a suspect and came from SAPol's Adelaide Local Service Area. One request was made directly by a parent.

Question 12 - How many of those requests have been matched with a communication partner? If any requests have not been matched, why not?

30. There have been 16 calls to the service resulting in 11 attendances of a communication partner. All 11 attendances have been to SAPol. One call is currently pending and four calls did not result in the dispatch of a communication partner because the person either did not meet the criteria of complex communication needs or a communication assistant was deemed to be more suitable to facilitate communication. The determination by criminal justice personnel not to proceed with a communication partner was made in consultation with Communication Partner Service staff.

Pre-trial special hearings**Question 13 - Have any pre-trial special hearings taken place to date?**

31. No pre-trial special hearings have taken place to date. However, there has been an increase in pre-trial arguments in relation to admitting recorded police interviews as complainant/vulnerable witness evidence. These applications usually occur 4 weeks prior to trial at the call-over hearing and are usually heard at the commencement of trial.

Question 14 - Is pre-recording available state-wide?

32. Pre-recording is available at all the Courts Administration Authority courts where the higher courts sit, namely Adelaide, Mount Gambier and Port Augusta. It is also available in the Magistrates Courts in Adelaide, Mount Gambier, Port Augusta, Christies Beach, Elizabeth, Port Adelaide, Murray Bridge, Port Pirie, Whyalla and the Youth Court. Some Magistrates Courts such as Berri and Port Lincoln do not have this option.

Question 15 - How far in advance of the trial is pre-recording occurring or is it anticipated that pre-recording of evidence will occur?

33. No applications for pre-recording have been received. The application to conduct a pre-trial hearing in the Supreme and District Courts is to be filed with the court 21 days before the first directions hearing, and it is at that hearing that a timetable will be set by the presiding judge.
34. In the Magistrates Court arrangements for pre-recording would be made at the pre-trial conference. This is usually 6 to 10 weeks prior to the trial. The pre-trial recording would take place in that time period. It is possible for the prosecution to make an application for the pre-recording of evidence at an earlier stage of the process if they think appropriate.

Question 16 - Are hearings in the nature of ground rules hearings, as discussed in section 9.7.3 of the Royal Commission's Criminal justice consultation paper, being used, or are they intended to be used?

35. The judge presiding over the directions hearing in which the application for a pre-trial hearing is made will set the timetable and guidelines in which this hearing is to be conducted. Sections 13 and 13A of the *Evidence Act 1929* make provision for special arrangements for protection of witnesses. Section 13B of the *Evidence Act 1929* regulates the cross-examination of victims of certain offences.



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