

Evidence (Children and Special Witnesses) Amendment Bill 2020

Submission to the Tasmanian Department of Justice

16 April 2020

CONTENTS

Who we are	3
ALA submission	4

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au

ALA submission

1. The ALA is grateful for the opportunity to share its views of the Bill. The purpose of the Bill is to provide for a witness intermediary scheme.
2. The ALA as an organisation is committed to the rule of law and ensuring that hard-won liberties are not unfairly eroded. The Tasmanian branch of the ALA committee myself as President, Cameron Scott as Secretary, and Greg Barns as National criminal justice spokesperson. We each practise at the Bar almost exclusively in criminal law. We collectively have approximately 8,500 hours' experience in the conduct of trials before juries in Australian courtrooms. We do not oppose such a scheme but unless there are major criminal procedure reforms in Tasmania the scheme will not work.
3. The use of witness intermediaries has been a feature of the UK criminal justice system for some years.
4. The introduction of the scheme in NSW and Victoria in recent years has also been generally speaking without controversy. However, what is key in those jurisdictions is the fact that there are criminal procedure laws that ensure the prosecution makes available, in a timely fashion (well before a committal or trial), all disclosure. This means that when a ground rules hearing is held in which questions are asked of the intermediary about the questioning of a vulnerable witness, the defence has all statements and any other evidence relevant to the vulnerable witness.
5. In Tasmania the disclosure process is a shamble. There is no proper criminal procedure legislation and in many cases defence lawyers are provided with disclosure relevant to a witness very shortly before, or even during a trial. This of course necessitates adjournments and sometimes witnesses having to be recalled.
6. Given the point of the intermediary scheme is to reduce the exposure of a witness to complex questioning, it can only work if the defence has all materials well prior to that questioning taking place.
7. Finally we note that many defendants are themselves very vulnerable. Acquired brain injury, mental illness, poor literacy and comprehension skills are common among defendants. There is no reason why they too should not be allowed to have an intermediary so that they better understand the legal process. In the UK a number of courts have indicated that defendants

should be entitled to an intermediary. In *R v Walls* [2011] EWCA Crim 443, Lord Justice Wallace observed:

There are available to those with learning disabilities in this age, facilities that can assist. Consideration can now be given to the use of an intermediary under the court's inherent powers...Plainly consideration should be given to the use of these powers or other ways in which the characteristics of a defendant evident from a psychological or psychiatric report can be accommodated with the trial process so that his limitations can be understood by the jury, before a court takes the very significant step of embarking on a trial of fitness to plead.

8. The ALA also recommends that the amendment be reviewed after three years to monitor the effect of the amendment.



Fabiano Cangelosi

**Tasmanian President and State Director
Australian Lawyers Alliance**