



The Australian Advocacy Institute

Handbook for Vulnerable Witness Advocacy Instructors

**A ready reference to the
AAI method of advocacy instruction as part of the
AAI Vulnerable Witness Advocacy Program.**

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INTRODUCTION

The AAI Vulnerable Witness Program has been developed by the Australian Advocacy Institute to promote an awareness of the relevant issues and improve the standards of advocacy of lawyers dealing with vulnerable witnesses. The teaching method employed in this program mirrors the AAI teaching method used in an AAI General Skills workshop, it is only the focus of the skills being taught that sets this program apart.

1. The Aims of the Program

The initial focus of the Program is on advocates practising in the criminal law.

In this context, we have three fundamental goals:

- Improving the quality of evidence that is available to the court;
- Ensuring the advocate is fair to the vulnerable witness; and
- Ensuring fairness to the accused in the trial process.

Our approach is a positive one. Positive in the sense of encouraging advocates towards a greater understanding of the relevant issues and an improvement in their advocacy skills. As distinct from an approach that emphasises how advocates have dealt with vulnerable witnesses in the past.

A hallmark of the AAI is our ability to improve advocacy skills. It is important that we use this to drive this Program, but in the context of the examination of the vulnerable witnesses.

2. The AAI Vulnerable Witness Program

There are three stages to the Program. Each participant will be required to complete each individual stage before proceeding to the next stage.

Stage 1: Video Presentations

Five workshop videos have been produced by the AAI and are to be watched by the workshop participants in the period before a practical Saturday workshop:

1. Introduction by Craig Smith SC, Director of the Program
2. The Role of the Court (Judge Girdham SC, District Court of NSW)
3. The Witness Intermediary (Jane Wolf, Registered Witness Intermediary, NSW)
4. Memory Research (Professor Jane Goodman-Delahunty, Academic)
5. Principles of Questioning a Vulnerable Witness (Grant Brady SC)

The five videos will be watched through a secure webpage on the AAI website, accessible only by password. Those videos will require approximately in total one hour to view. Over time they will evolve and be updated. Others may be added as necessary.

Stage 2: Analysing the case study and submitting questions

A specific Vulnerable Witness Case Study has been drafted and this will be made available to each participant approximately 3 weeks before the Saturday workshop.

Each participant will be required to submit a written cross-examination of one of the complainants in the case study (1 page maximum) one week before the Saturday workshop.

Stage 3: The Saturday Workshop

The Saturday workshop will be conducted under the usual AAI method of performance and review. Hours will be approximately 9.00am to 4.00pm. There will be no introductory, mid-week or Friday-evening Session.

3. The Saturday Vulnerable Witness Workshop - Format

3.1 The AAI Instructing Faculty

Faculty for the Saturday workshop will consist of members of the AAI teaching faculty who have been specifically trained as part of this Vulnerable Witness Program. A breakdown of the teacher training process for this program follows later in this document.

3.2 The AAI Teaching Method

The teaching method employed in this program mirrors the AAI teaching method used in an AAI General Skills workshop, it is only the focus of the skills being taught that sets this program apart.

A summary of the AAI teaching method has been set out later in this document and is detailed in full in the AAI publication “*The AAI Handbook for Advocacy Instructors*” available separately.

Skills

1. The Program concentrates on skills relating to the examination of vulnerable witnesses. Very good advocates will already be executing these skills when they examine any witness. Our teaching points in this Program will often be, but not always, similar to points that arise in any workshop.
2. We must ensure however, that in this Program each point that is selected for review is a point relevant to the examination of vulnerable witnesses.
3. Later in this document is a ‘List of Skills’ which is designed to assist teachers in identifying points which might commonly arise for review. It is not intended to be exhaustive.

3.3 Requirements for all instructing faculty before the workshop commences

1. All members of the workshop instructing faculty are required to have viewed each of the 5 workshop videos in the weeks leading up to the Saturday.
2. “Teacher’s Notes” for the Case Study “*Regina v Chris Johns*”, together with a template cross-examination of each complainant, have been prepared. This can be found as a chapter later in this document. All instructors are required to be totally familiar with the case study and these documents before the Saturday workshop.
3. All instructors are required to be completely familiar with the “List of Skills” detailed later in this document.

4. Structure and Content of the Saturday Workshop

The Saturday Workshop is modelled on the Timetable of an AAI General Skills Workshop with some changes.

The workshop will have the following structure:

- | | |
|--------------------|-----------------------------------------------------------------------------------------------------|
| ▪ General Session: | Introduction |
| ▪ Group Session: | Evidence in chief and cross-examination (complainant one) |
| <i>Morning Tea</i> | |
| ▪ General Session: | A. Techniques in questioning vulnerable witnesses.
B. The Witness Intermediary and the GRH |
| ▪ Group Session: | Evidence in chief and cross-examination (complainant two)
* See note below |
| <i>Lunch</i> | |
| ▪ General Session: | A. Communication and the Vulnerable Witness.
B. Analysis: Case Theory and the Vulnerable Witness |
| ▪ Group Session: | Repeat Performances (with WI) |
| ▪ General Session: | Closing Session |

4.1 Workshop Group Sessions

Group Sessions deliberately include roles requiring participants to ask questions in evidence in chief. This is so notwithstanding in the usual course that much of the evidence in chief of vulnerable witnesses is adduced through recordings. Our focus is to improve the skills in this area.

***The Group Session** immediately preceding the lunch break and concerning the examination of complainant two, will use a mock intermediary. You will choose one of the participants to act as the intermediary. Just like when we put a participant in the position of the Judge, the mock intermediary will not speak or interject. The aim is to give everyone different perspectives of that role. It is anticipated that the participant acting as the mock intermediary will hear questions in a particular way, in the context of our teaching, which will be of direct benefit to their own performance.

Repeat performances

Repetition is an important part of learning skills.

Advocates should be told that they will have an opportunity to do a repeat performance. A short time to reflect and prepare is included at the start of this session.

The advocate should be instructed that:

- they may choose to repeat any part of their performance;
- they may choose to deal with a matter of substance or style;
- before performing they must be able to identify what it is (i.e. one thing relating to the examination of vulnerable witnesses) that they will do differently as a result of the earlier review received;
- they will have a limited time – up to three minutes.

In reviewing the repeat performances, the instructor should:

- review only that which the advocate identified and tried to improve;
- be positive and constructive. Any improvement should be acknowledged.

4.2 Teaching as a team

There are two methods of working with two instructors in a group.

1. By alternating reviews where each of the two instructors takes a turn at doing the whole review.
2. Two instructors alternating in giving a first and second review to each advocate:
 - a. The first reviewer selects one topic and does a review.
 - b. The second reviewer must be ready to pick a different but usually less time-consuming topic to review. In the group both points must be of substance not style.
 - c. The two reviewers should not go over each other's ground or contradict each other.
 - d. The total review time must not exceed the time allocated in the timetable.
 - e. The second reviewer need not demonstrate if there is insufficient time.

Method one will be used unless otherwise indicated.

4.3 Workshop General Sessions

1. The **Introduction session** which will emphasise the purpose of the course and the structure of the day. There will be appropriate re-emphasis of some of the portal materials.
2. The **Skills session** will be a modified Techniques session to emphasise the skills to be used when questioning vulnerable witnesses. This session will be taught consistently with Video 5: "Principles of Questioning the Vulnerable Witness" (Grant Brady SC).
3. The **Intermediary session** will focus on the appropriate use of the intermediary, the intermediary's report and the Ground Rules Hearing. It is hoped that we will have a 'real' intermediary present for this session which will include an examination of a complainant in the presence of the intermediary.
4. The **Communication session** will be a modified version of the usual session to discuss relevant issues in the context of vulnerable witnesses. It will also pick up on relevant themes from the Memory and Related Research (video 4) which is relevant to improving information for juries and the profession.
5. The **Case Theory Session** will be a modified version of our usual case theory session. It will reinforce the importance of case theory generally. There will be emphasis on the efficient execution of the case theory - the vulnerable witness is only to be examined on areas which are relevant, and significant to the execution of the case theory. Such a practice is consistent with minimising the time of the witness giving evidence and hopefully, the possibility of distress.
6. The **Closing Session** will be as it always is, but will emphasise the aims of the program as outlined on page 1.

Because we do not have legislation which is uniform across Australia, the Program has been designed in general terms that will allow it to be taught in all jurisdictions.

A particular organisation (e.g. a State DPP) may wish to follow up the Saturday course with a sixth video or document which is particularly relevant to the legislation and pertinent issues of that State or Territory.

5. The Workshop Portal Materials

Access to the Workshop Portal Materials

Five workshop videos, a case study and appropriate teaching documents have been produced by the AAI. These will be made available to participants before the Saturday workshop through a secure, password protected website.

5.1 The Videos

1. Introduction by Craig Smith SC, Director of the AAI Vulnerable Witness Program
2. The Role of the Court (Judge Girdham SC, District Court of NSW)
3. The Witness Intermediary (Jane Wolf, Registered Witness Intermediary, NSW)
4. Memory Research (Professor Jane Goodman-Delahunty, Academic)
5. Principles of Questioning a Vulnerable Witness (Grant Brady SC)

5.2 The Case Study

The case study “*Regina v Chris Johns*” concerns indecent acts allegedly committed by a young accused against a brother and a sister in the family home. Each complainant has particular vulnerabilities. The accused has been deliberately made young.

The case study has been drafted to:

- involve more than one complainant;
- be less, rather than more, graphic;
- include extracts of an Intermediary’s report and of a Ground Rules Hearing;
- include materials which will be relevant for use in the examination of vulnerable witnesses (e.g. body maps etc...); and
- to include a young accused (because the accused may become the subject of examination in one of the group sessions in future workshops).

Teacher Notes and a template cross-examination of each complainant are available for teacher-use only. (See next chapter.) These are not a substitute for your own independent preparation.

5.3 Document: “Vulnerable Witness Workshop Materials [Year XXXX]”

A pdf bundle will be produced for participants to download and will contain:

1. The Workshop Timetable, detailing all session times and allocating group members and their performance tasks at the Saturday Workshop;
2. An outline of the aims of the Vulnerable Witness program;
3. A short introduction to the Australian Advocacy Institute, its history, aims and philosophy;
4. A description of the pre-workshop requirements for each participant, including how to access the Portal Materials and the importance of Stage 1 (videos) in the Program;
5. A description of the requirements of Stage 2 (the case study and submission of a one-page cross-examination);
6. A “Workshop Evaluation Sheet” to be printed out then completed and handed-in by each participant at the conclusion of the Saturday Workshop.

5.4 Workshop Handouts for Participants – to be distributed at close of workshop.

1. An outline of “10 Principles in Questioning a Vulnerable Witness” session
2. An outline of “The Witness Intermediary and the Ground Rules Hearing” session
3. An outline of “Communication and the Vulnerable Witness” session.

5.4.1 10 Principles in Questioning a Vulnerable Witness

Preparation

1. Focus
 - Think carefully about whether the topic, and the single question, you are considering is needed. If it is not, do not use it.
2. Ground Rules Hearing
 - Use the GRH effectively.
 - Once the rules are made, comply with them.

Examination

3. Single, simple question
 - One fact per question; simple language, using the words, names or labels of the witness.
 - Do not use ‘do you remember’ questions.
4. Signposting
5. Chronological
6. Pace
7. Clarity
 - Ask yourself ‘will the witness understand this question?’.
 - No pronouns; use the names and labels that the witness uses.
 - Think about how to properly use ‘time’ in your questions.
 - Can I use an aid to help the witness understand my question?

Cross-examination

8. No Tag questions
9. Behaviour
10. No Repetition

5.4.2 The Witness Intermediary and the Ground Rules Hearing

The Witness Intermediary

- Role: facilitate communication between a witness and the questioner.
- Impartial. Not a support person.
- The aim is to improve the quality of evidence available to the court.

Their Report

- A summary explaining how the witness communicates and identifying the unique needs of that individual witness.

- It will likely include the questioning recommendation, the suggestion for the questioner (i.e. the way to do it) and why it should be done that way (the rationale).

The Report - some practical matters that might arise

- Where the intermediary should sit.
- When the witness might need a break.
- Whether a communication aid is needed (for example a body map, stress ball or doll).
- How the intermediary will intervene.

Preparing for the GRH

- Be completely across the report. Plan how it will change the way you will ask questions of the witness.
- Consider contacting the intermediary to discuss the report and your questions.
- Consider especially those matters you may want to raise, or object to, at the GRH.

5.4.3 Communication and the Vulnerable Witness

The Royal Commission into Institutional Responses to Child Sexual Abuse

The Criminal Justice Report sets out many recommendations relevant to our work generally. Particularly relevant to this Program are Recommendations from the Final Report - Recommendations 52-63 and 67. Those Recommendations include:

- i. Full prerecording of the evidence of the witness: Recommendation 52
- ii. The establishment of intermediary schemes: Recommendation 59
- iii. The use of Ground Rules Hearings to maximise the benefits of these initiatives: Recommendations 54 and 60
- iv. The improvement of information (e.g. understanding child sexual abuse and relevant research) for the profession and jurors: Recommendations 67-71
- v. Regular training and education for the profession: Recommendation 67.

5.5 The Memory and Related Research

- **Memory** is not a fixed video-recording.
- **Three cognitive processes** affect memory reporting: encoding, consolidation and retrieval.
- **Questioning** by advocates tends to influence the information retrieved from memory.
- **Suggestibility:** People, and particularly children, are less suggestible than is often assumed.
- **Labels:** using clear and consistent labels in questioning will likely improve the quality of the evidence of the witness.
- **Temporal location memory:** concepts of time and calendars are difficult. Adapt your questions.
- **Reduction in delay:** earlier evidence means the memory can be fresher, may make questioning less stressful and reduce memory susceptibility.
- **Special Measures:** their use is designed to improve the quality of evidence available to the Court.

6. Case Study “*Regina v Chris Johns*” – Teacher’s Notes

Prosecution Case Theory

Chris committed each of the offences against Abby and Atticus. Both children should be believed. Their core complaints are consistent and ring true. Abby made an immediate complaint to her mother. Chris is trying to give the impression that this is the result of Margaret’s animosity towards him and an effort to get him out of her house and also that Abby is not to be believed.

The prosecution case theory may emphasise:

As to Abby

- Abby is a reliable witness and her evidence should not be discounted because of her manner at the time of the complaint to her mother, during the interview or evidence. Her presentation, and any inconsistencies in her evidence, are explained by what we know about her vulnerabilities.

As to Atticus

- Explain that Atticus did not witness the incident between Abby and Chris as he was in the toilet at the time.
- Rely upon what really is a plausible and relatively spontaneous disclosure of misconduct by Chris. The circumstances of it occurring are believable and supported (e.g. sleeping arrangements, night light and pressure not to tell anyone).
- Explain the late complaint and minor inconsistencies as understandable given his vulnerabilities, not a result of any prompting or encouragement by his mother and the memory research.

As to Margaret

- She is a responsible parent (even if she feels frustrated by Chris’ presence) doing her best.
- She took Chris in, is protective of her children and communicated openly, if not perfectly, with her children following Abby’s disclosure.

Defence Case Theory

The defence case theory is that the allegations made by Abby and then her brother Atticus are untrue.

The defence case theory may emphasise:

(In relation to Abby)

- That she did not initially complain about the second count; and her initial complaint about this was inconsistent i.e. “*Chris tried to kiss Atticus*”; her subsequent complaint about the second count in her interview may also raise the possibility of it having occurred on a different occasion (i.e. “*the first time*”).
- Atticus may not have left the lounge room; and he didn’t see (or notice) anything wrong with Abby.
- That Rodger was nearby in the backyard (“*Daddy was watering the back window*”).
- That Abby said nothing to Atticus.
- That her initial complaint was made immediately after being told off by Chris for misbehaviour.

(In relation to Atticus)

- He did not say anything about the incident with Chris at the time of the incident; the first time he said anything about it was a week or so after Abby’s complaint (over two years later).
- He lived with Chris for more than two years after that and saw him every day.
- His complaint was in response to his mother’s suggestion and in the context of Abby’s constant discussion during the week about what she says happened to her.
- He is easily suggestible generally.
- His complaint has not been consistent (i.e., “*pulled down his pants*” v “*dropped his towel*”).
- Chris only slept in Atticus’s bedroom for a week or two before he moved to the lounge room because of Atticus’s night light.
- Atticus’s bedroom door is always left open; and it is directly opposite Abby’s bedroom door and near to Margaret and Rodger’s bedroom – had he screamed at the time of the incident (with Chris a new arrival in the home and sleeping in Atticus’s bedroom) someone is likely to have heard and responded.

Model of some possible cross-examination

Abby

I want to ask you some questions about your dolly.

- If you don't understand me can you please tell me?
- Do you have your dolly there with you?
- Do you like playing with your dolly?
- Do you have a book called nudie rudie or something like that?
 - Is that a book that mum and dad read you?
 - Do they read it to you every night?
 - Is that because it's your favourite?
 - Is that a book about people having their clothes off?
 - Do you like to pretend you are the people in nudie rudie?
- Do you like to take the clothes off your dolls?
- Do you like to take your clothes off too?
- Do you run around your house with your clothes off?
- Do you do that because its fun? Is it a little bit silly?
- Do you yell out nudie rudie?
- Do you do this to Atticus?
- Does it make him look cranky?
- Do you see people's bottoms in your nudie rudie book?
- Do they call their bottoms moons in your book?

I'm now going to ask you about the day you said Chrissy did something:

- Was that a day when mum had gone out?
- Was dad still at home?
- Was he out the back?
- Doing some watering?
- Was he watering the back window?
- Can you please have a look at this drawing?
- Is this a drawing of what your house looks like?
- Where is the window that dad was watering?
- Can you please put a cross there on the drawing? Write 'dad' next to the cross?
- When mum went out were you playing with your dollies?
- Was that in the lounge room?
- Can you point to the spot where you were playing with your dolls?
- Can you please put a cross and write your name next to it?

I'm just going to ask you about the movie that was on.

- Were Chrissy and Atticus watching a movie?
 - Were they sitting on the couch?
 - Were you playing with your dollies?
 - Were you talking to the dollies?
 - Were you playing nudie rudie with your dolls?
 - Did Chrissy get angry with you?
 - Did he tell you that you were being too noisy?
 - Did he tell you to shut up?
 - Did you think he was being a bit mean?

I'm just going to ask you about when mum came home.

- Did you hear mum come home?
- Did you go out to see her?
- You told her Chrissy showed you his moon?
- Did you say that because you thought it was funny?
- Did Chrissy really do that?
- Did you want to get Chrissy into trouble?

7. The Vulnerable Witness Teacher Training Workshops

The workshops will be conducted over two, consecutive mid-week evenings (5 to 6.30pm). The workshops will be modelled on normal AAI Teacher Training Workshops but will be shorter.

The First evening will have the following structure:

- Session 1: A. Introduction (the Course, the Saturday session and the method).
 B. Skills relating to the handling of vulnerable witnesses.

- Session 2: Reviews demonstrated by Moderators.
 Only teaching points relating to vulnerable witnesses will be used.

The Second evening will have the following structure:

- Session 1: Short introduction. Instructors perform. Moderators review.
 Only teaching points relating to vulnerable witnesses will be used.

- Session 2: Overview and closing discussion.

To be able to undertake this teacher training it is essential that the participants have completed the normal AAI Teacher Training workshop. It is highly desirable that they are experienced teachers.

8. Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017)

The Criminal Justice Report sets out many recommendations relevant to our work generally. Particularly relevant to this Program are Recommendations from the Final Report - Recommendations 52-61 and 67-71.

The relevant Recommendations are set out in **Annexure 1** at the end of this document.

The full set of Recommendations can be seen at:

<https://www.childabuseroyalcommission.gov.au/recommendations>

Those Recommendations include:

- a. Full prerecording of the evidence of the witness. (*Recommendation 52*);
- b. The establishment of intermediary schemes. (*Recommendation 59*);
- c. The use of Ground Rules Hearings to maximise the benefits of these initiatives. (*Recommendations 54 and 60*);
- d. The improvement of information (e.g. understanding child sexual abuse and relevant research) for the profession and jurors. (*Recommendations 67-71*);
- e. Regular training and education programs for the profession. (*Recommendation 67*).

Part of a Facts Sheet published with the Royal Commission's Criminal Justice Report facilitates a quick understanding of relevant themes. That part is reproduced as **Annexure 2** at the end of this document.

As teachers in this Program we must know ourselves what the relevant recommendations are and what issues provided the basis for those recommendations.

9. Links and Future Development

There are many other materials that we could access and read to help improve our knowledge. Instructors are encouraged to bring any materials they find relevant to this Program to the attention of either the Program Director or the AAI General Manager.

The United Kingdom is well ahead of Australia in the implementation of special measures for the examination of vulnerable witnesses. Both of the following websites provide publicly accessible material which is relevant.

The Advocates Gateway: <http://www.theadvocatesgateway.org/>

The Inns of Court College of Advocacy: <https://www.icca.ac.uk/advocacy-the-vulnerable>

10. Table of Skills relating to the examination of a Vulnerable Witness

List of Skills	Why the skill is important?
Preparation (Prep)	
<i>Prep:</i> Identifying the vulnerability	Understanding the particular vulnerability or vulnerabilities informs the conduct of the case and the questioning of the witness.
<i>Prep:</i> What does the vulnerability mean for our questions	The questioning style may change because of the particular vulnerability. Research it. Adapt.
The Witness Intermediary Report (WIR)	
<i>WIR:</i> What does it say	Read it. Understand it. Ask questions about it.
<i>WIR:</i> What does it mean I have to do	Both before the pre-recording of evidence (asking questions of the WI and others) and in it (compliance and skills)
<i>WIR:</i> Should I speak to the Witness Intermediary (WI)	Think about it. Actually do it.
<i>WIR:</i> Show the WI my questions	Think about it. Why wouldn't you do it?
The Ground Rules Hearing (GRH)	
<i>GRH:</i> Preparing the mention to make it work for me	What will: be said about the WIR?; I be asked?; the WI be asked?; I ask?; I submit?; the rules be that I want?; I do to get them?
<i>GRH:</i> Ground rules set, now re-evaluate what it means for me	Go back to my prep. What do I have to change? What questioning skills are in play?
<i>GRH:</i> Compliance with GRH	Essential and always. This promotes fairness.
<i>Pre-record:</i> How do I want the recording to fit into the whole trial	Think globally. How do I want this to look and sound? End-point thinking.
Evidence in Chief (EIC)	
<i>EIC:</i> Words of the witness	Always use their words.
<i>EIC:</i> Their story not your view of it	It is always their story not yours. Help them tell it in the way that is best for them.
<i>EIC:</i> Get all of their story out	Complete the story. Prep of all the dot points you need out.
<i>EIC:</i> Listening to the answers	Always. Complements the preceding, three skills.

List of Skills	Why the skill is important?
Examination Generally – Chief, Cross and Re-examination (E)	
<i>E:</i> Chronology	Essential and always. This promotes fairness because it allows the witness to follow a logical, chronological order.
<i>E:</i> Structure	Essential and always. This promotes fairness because it allows the witness to follow a logical order.
<i>E:</i> Headlining	Essential and always. This promotes fairness because it allows the witness to know what topic you are about to begin, or move on, from.
<i>E:</i> Use of aids	Think how can I help the witness understand my question – by the use of the relevant aid.
<i>E:</i> Use of aids given the WIR	Understand what the aid is. See it. Feel it. Ask the WIR how I can use it better.
<i>E:</i> Consistency with WIR/GRH	Everything is done consistently with the GRH.
<i>E:</i> One proposition per question	Essential and always. This promotes fairness because the witness knows to answer one specific question.
<i>E:</i> No tag questions	Vulnerable witnesses are misled by tag questions. One proposition per question. No tag – ever.
<i>E:</i> Ask questions, don't make statements	Our job is to question.
<i>E:</i> Slow, steady pace	Essential and always. This promotes fairness.
<i>E:</i> A decent, fair tone (rapport)	Essential and always. This promotes fairness.
<i>E:</i> Respectful body language	Essential and always. This promotes fairness.
<i>E:</i> Lose “ <i>Do you remember</i> ”	Ask what happened, not “ <i>Do you remember if it happened.</i> ”
<i>E:</i> Careful with the use of the names of people	Essential and always. This promotes fairness because it makes issues witness-specific.
<i>E:</i> Careful with the use of names of places	Essential and always. This promotes fairness because it makes issues witness-specific.
<i>E:</i> Relate examination to specific names or specific places	Essential and always. Link the specific name to the question. This promotes fairness because it makes issues witness-specific.

List of Skills	Why the skill is important?
<i>E</i> : Consistency in using names or labels	Always use the name or label the witness uses. Consistently do that.
<i>E</i> : Consistency between interview and evidence	Try to use the names or labels the witness used in the police interview.
<i>E</i> : Relate examination on times to specific categories or specific places	Essential and always. This promotes fairness because it minimises confusion over times and helps link times to relevant events.
<i>E</i> : Monitor the witness if a break is needed	Essential and always. This promotes fairness. This is just about being decent.
<i>E</i> : Complainant evidence	Use the name/label used by the witness before asking what they told them.
<i>E</i> : One question at a time	Essential and always. This promotes fairness.
Cross Examination (XX)	
<i>XX</i> : Short	Essential and always. This promotes fairness.
<i>XX</i> : Get straight into it	Essential and always. This promotes fairness.
<i>XX</i> : Don't repeat things	Essential and always. This promotes fairness. Why do you need to?
<i>XX</i> : Simple words	Essential and always. This promotes fairness. Use the words of the witness where possible.
<i>XX</i> : Careful on <i>Browne v Dunn</i>	What is the simplest way to do it? Is there agreement on how it will be done? Does there need to be a direction on the issue?
<i>XX</i> : Conversation not "cross" examination	Essential and always. This promotes fairness.
<i>XX</i> : Lose putting labels (no "put it to you", "suggest to you" and "that's correct isn't it", etc...)	Essential and always. This promotes fairness.
<i>XX</i> : Sit down when finished	Don't go back and repeat.

11. A Summary of the AAI Review Process

Six Steps to an Effective Review:

- 1. Identify the topic.**
- 2. Repeat what the advocate did.**
- 3. Explain why it should be done differently.**
- 4. Describe how it can be done differently.**
- 5. Demonstrate how it can be done differently.**
- 6. Deconstruct the demonstration.**

Before the workshop:

- 1. Know the materials.**
- 2. Understand the issues.**
- 3. Analyse and develop a Case Theory.**
- 4. Anticipate the likely problems and consider solutions.**

During the Advocate's Performance:

- 1. Assess the advocate's level of advocacy.**
- 2. Analyse the advocate's performance.**
- 3. Note precisely what the advocate is doing.**
- 4. Identify areas for improvement.**
- 5. Select a topic to review.**

Topic Selection Criteria:

- 1. One topic only from what the advocate did.**
- 2. Substance not style.**
- 3. That which will most help the advocate to improve.**

Please refer to the AAI publication “*A Handbook for Advocacy Instructors*” available directly from the AAI.

Annexure 1.

The Final Report: Relevant Recommendations

Reproduced below is an extract from the “Final Report: Recommendations” published by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Evidence of victims and survivors

Prerecording

52. State and territory governments should ensure that the necessary legislative provisions and physical resources are in place to allow for the prerecording of the entirety of a witness’s evidence in child sexual abuse prosecutions. This should include both:
 - a. in summary and indictable matters, the use of a pre-recorded investigative interview as some or all of the witness’s evidence in chief
 - b. in matters tried on indictment, the availability of pre-trial hearings to record all of a witness’s evidence, including cross-examination and re-examination, so that the evidence is taken in the absence of the jury and the witness need not participate in the trial itself.
53. Full prerecording should be made available for:
 - a. all complainants in child sexual abuse prosecutions
 - b. any other witnesses who are children or vulnerable adults
 - c. any other prosecution witness that the prosecution considers necessary.
54. Where the prerecording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.
55. State and territory governments should work with courts to improve the technical quality of closed circuit television and audio-visual links and the equipment used and staff training in taking and replaying pre-recorded and remote evidence.

Recording

56. State and territory governments should introduce legislation to require the audio-visual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness’s evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a pre-recorded hearing.
57. State and territory governments should ensure that the courts are adequately resourced to provide this facility, in terms of both the initial recording and its use in any subsequent trial or retrial.
58. If it is not practical to record evidence given live in court in a way that is suitable for use in any subsequent trial or retrial, prosecution guidelines should require that the fact that a witness may be required to give evidence again in the event of a retrial be discussed with witnesses when they make any choice as to whether to give evidence via prerecording, closed circuit television or in person.

Intermediaries

59. State and territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution. Governments should ensure that the scheme:
1. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses
 2. provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial
 3. makes intermediaries available at both the police interview stage and trial stage
 4. enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.
60. State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a pre-recorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.

Other special measures

61. The following special measures should be available in child sexual abuse prosecutions for complainants, vulnerable witnesses and other prosecution witnesses where the prosecution considers it necessary:
- a. giving evidence via closed circuit television or audio-visual link so that the witness is able to give evidence from a room away from the courtroom
 - b. allowing the witness to be supported when giving evidence, whether in the courtroom or remotely, including, for example, through the presence of a support person or a support animal or by otherwise creating a more child-friendly environment
 - c. if the witness is giving evidence in court, using screens, partitions or one-way glass so that the witness cannot see the accused while giving evidence
 - d. clearing the public gallery of a courtroom during the witness's evidence
 - e. the judge and counsel removing their wigs and gowns.

Improving information for judges and legal professionals

67. State and territory governments should support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.
68. Relevant Australian governments should ensure that bodies such as:
1. the Australasian Institute of Judicial Administration
 2. the National Judicial College of Australia
 3. the Judicial Commission of New South Wales
 4. the Judicial College of Victoria

are adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.

Improving information for jurors

69. In any state or territory where provisions such as those in sections 79(2) and 108C of the Uniform Evidence Act or their equivalent are not available, the relevant government should introduce legislation to allow for expert evidence in relation to the development and behaviour of children generally and the development and behaviour of children who have been victims of child sexual abuse offences.
70. Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given. The National Child Sexual Assault Reform Committee's recommended mandatory judicial directions and the Victorian Government's proposed directions on inconsistencies in the complainant's account should be the starting point for the consultation process, subject to the removal of the limitation in the third direction recommended by the National Child Sexual Assault Reform Committee in relation to children's responses to sexual abuse so that it can apply regardless of the complainant's age at trial.
71. In advance of any more general codification of judicial directions, each state and territory government should work with the judiciary to identify whether any legislation is required to permit trial judges to assist juries by giving relevant directions earlier in the trial or to otherwise assist juries by providing them with more information about the issues in the trial. If legislation is required, state and territory governments should introduce the necessary legislation.

Annexure 2.

The Criminal Justice Report: Improvements for complainants in court.

Reproduced below is part of a 'Facts Sheet' published by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Better informing complainants about giving evidence

We recommend that each state and territory government should facilitate the development of a standard document for complainants and other witnesses to better inform them about giving evidence. Development of the material should be led by the Directors of Public Prosecutions, in consultation with Witness Assistance Services, public defenders and legal aid services and representatives of the courts (*recommendation 38*).

A witness in Case Study 46 referred to a survivor who described the criminal justice system as a 'conspiratorial system' rather than an adversarial system, because along with the jury, the complainant is the only person in the courtroom who does not know what is going on.

Complainants would benefit from having more information about what to expect in court in relation to giving evidence and particularly in relation to cross-examination. We consider that many survivors would be assisted by being given an explanation of various matters such as:

- the purpose of giving evidence in chief and the purpose of cross-examination;
- the detail in which they are likely to be required to give their evidence;
- the obligation on defence counsel to challenge their evidence on some or all grounds;
- particularly difficult forms of questions that might be used in cross-examination.

Complainants may not be given this information currently because the prosecution may fear being accused of 'rehearsing' or 'coaching' their evidence. However, lawyers with any experience in criminal law would understand these matters, yet it would not be suggested that, for this reason, a lawyer giving evidence as a complainant in a criminal trial has been rehearsed or coached.

Helping complainants to give their best evidence

We recommend a number of reforms designed to ensure that the complainant is given a good opportunity to give their 'best evidence', meaning the most complete and accurate evidence the complainant is able to give. These reforms include:

- full prerecording of the complainant's evidence, including cross-examination, so that it can be completed as early as possible and without subjecting them to lengthy delays and repeated rescheduling (*recommendations 52-55*);
- recording evidence given by complainants, including evidence given live in court, so that they need not give evidence again in any subsequent trial or retrial unless they wish to do so (*recommendations 56-58*);
- establishing intermediary schemes to help complainants who have communication difficulties, both at the police interview and trial stage, and to assist the court on how best to communicate with the witness (*recommendations 59-60*).

The long-term benefits of an intermediary scheme are likely to extend beyond assisting in the provision of accurate evidence in individual cases. The frequent exposure to the assistance that can be provided by an intermediary should assist in generating cultural change throughout the legal profession regarding appropriate courtroom questioning, particularly in relation to children and people with disability.