



# The Australian Advocacy Institute

## Advocacy and the Vulnerable Witness

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**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 Aims of this Program:**

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

In this context, the AAI has 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.

### **In this document:**

#### **The Vulnerable Witness Program:**

<b>Stage 1 - Your pre-workshop preparation</b>	<b>Page 2</b>
<b>a. The Vulnerable Workshop Videos</b>	
<b>b. The Case Study</b>	
<b>Stage 2 - Your pre-workshop analysis and submission of questions</b>	<b>Page 2</b>
<b>Stage 3 - The Saturday WORKSHOP TIMETABLE</b>	<b>Page 3</b>
<b>Advocacy and the Australian Advocacy Institute</b>	<b>Page 5</b>
<b>Case Study: “Regina v Chris Johns”</b>	<b>Page 8</b>
<b>Evaluation Sheet</b>	<b>Page 32</b>

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# 1. The Vulnerable Witness Program

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## Stage 1 – Your Pre-workshop preparation

You will find all the material you require for this program on the AAI Vulnerable Witness Portal webpage at: <http://www.advocacy.com.au/vwprog2.html>

This is a secure site. The password for access is: ‘adv432’ This access will expire on 30 June.

### a) The Workshop Videos

You are required, over the period before the Saturday Workshop on 2 June 2018, to view the following 5 videos which have been specially prepared as part of this program:

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 (Jane Goodman-Delahunty, Academic)
5. Principles of Questioning a Vulnerable Witness (Grant Brady SC)

You should allocate approximately one hour to view all 5 videos.

### b) The Case Study

A Case Study “*Regina v Chris Johns*” is included at page 8 of this document.

**NOTE:** Evidence in chief requires you to ask questions to adduce the evidence from the witness. We will not, for good reasons, simply be tendering the interview as the evidence in chief. It is important that your preparation reflects this.

## Stage 2 - Your pre-workshop analysis, submission of questions and preparation.

### a) Analysing the case study “*Regina v Chris Johns*”

### b) Submitting Questions in Cross Examination

- You are required to submit a written cross-examination of the Complainant “Abby” in the case study (1 page maximum).
- Please start your written submission with a short, one paragraph summary describing the essential submission you would make to the jury about Abby, in the context of your drafted cross-examination.

This **must be emailed** to the AAI [[aai@advocacy.com.au](mailto:aai@advocacy.com.au)] no later than

**Wednesday 29 May, 2018. Submission of your cross-examination questions is a compulsory component of this program.**

### c) Preparation of your TASKS at the workshop.

- The following timetable sets out performance tasks for each participant within each session, identified by your participant number. Please check the Participant Allocations to find your number.
- There is a time limit on each task, however you should prepare to present the task in full, even though you may not reach the end. You will be reviewed on only that part you complete.
- No preparation time is included in the timetable. You are required to prepare to present each allocated task between now and the commencement of the workshop.

**Stage 3 – The Saturday Workshop – Saturday 2 June 2018**  
**PARTICIPANT GROUP AND NUMBER ALLOCATIONS**

	<b>RED GROUP</b>	<b>BLUE GROUP</b>	<b>GREEN GROUP</b>
1	Miiko Kumar	Lara Gallagher	Morgan Hunter
2	Virginia Morgan	Michael Clark	Jacob Tate
3	Clare Hurley	Jane Krippner	Nerissa Keay
4	Justin Peach	Joanne Smith	Kristy Mulley
5	Liam Shaw	Cecilia Curtis	Cassandra Hurford
6	Sara Gul		

## Timetable

**Saturday 2 June 2018 – Family Court of Australia, 99 Goulburn Street, Sydney.**

<b>SESSION 1 9.00 to 9.30 am (30 mins)</b>	
General Session	Introductory Session

<b>SESSION 2 9.30 to 10.30 am (60 mins)</b>	
Group Session	<p><b>LEADING EVIDENCE AND CROSS EXAMINATION</b>  <b>Case Study: Regina v Chris Johns</b>  <b>Complainant 1:</b>  <b>TASK:</b> Present Evidence-in-Chief of ‘Abby’      PARTICIPANT: 1  <b>TASK:</b> Cross Examine ‘Abby’      PARTICIPANT: 2  <b>TASK:</b> Present Evidence-in-Chief of ‘Abby’      PARTICIPANT: 3  <b>TASK:</b> Cross Examine ‘Abby’      PARTICIPANT: 4  <b>TASK:</b> Present Evidence-in-Chief of ‘Abby’      PARTICIPANT: 5  <b>TASK:</b> Cross Examine ‘Abby’      PARTICIPANT: 6</p> <p><i>The role of the witness Abby is to be played by a participant, changing for each set of EIC and XX. Participants should be ready to step into this role when requested by the instructor.</i></p> <p>Performances in Group      <b>4 minutes per task</b>  Review in Group      <b>5 minutes per task</b></p>

<b>MORNING TEA 10.30 to 10.45 am (15 mins)</b>	
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<b>SESSION 3 10.45 to 12.00 midday (75 mins)</b>	
General Session	<b>Techniques in Questioning a Vulnerable Witness</b> <b>The Intermediary and the GRH</b>

<b>SESSION 4</b> 12.00 to 1.00 pm (60 mins)	
<b>Group Session</b>	<p><b>LEADING EVIDENCE AND CROSS EXAMINATION</b></p> <p><b>Case Study: Regina v Chris Johns</b>  <b>Complainant 2: Using the Witness Intermediary...</b></p> <p><b>TASK:</b> Present Evidence-in-Chief of ‘Atticus’      PARTICIPANT: 6  <b>TASK:</b> Cross Examine ‘Atticus’      PARTICIPANT: 5  <b>TASK:</b> Present Evidence-in-Chief of ‘Atticus’      PARTICIPANT: 4  <b>TASK:</b> Cross Examine ‘Atticus’      PARTICIPANT: 3  <b>TASK:</b> Present Evidence-in-Chief of ‘Atticus’      PARTICIPANT: 2  <b>TASK:</b> Cross Examine ‘Atticus’      PARTICIPANT: 1</p> <p>The role of the <b>witness ‘Atticus’</b> is to be played by a participant, changing for each set of EIC and XX. Participants should be ready to step into this role when requested by the instructor.</p> <p>The role of the <b>Witness Intermediary</b> is to be played by a participant, changing for each set of EIC and XX. Participants should be ready to step into this role when requested by the instructor.</p> <p>Performances in Group      <b>4 minutes per task</b>  Review in Group      <b>5 minutes per task</b></p>
<i><b>LUNCH</b> 1.00 to 1.30 pm (30 mins)</i>	
<b>SESSION 5</b> 1.30 to 2.45 pm (75 mins)	
<b>General Session</b>	<ul style="list-style-type: none"> <li>• <b>Analysing Case Theory and the Vulnerable Witness</b></li> <li>• <b>Communication and the Vulnerable Witness</b></li> </ul>
<b>SESSION 6</b> 2.45 to 3.30 pm (45 mins)	
<b>Group Session</b>	<p><b>LEADING EVIDENCE AND CROSS EXAMINATION</b></p> <p><b>Case Study: Regina v Chris Johns</b></p> <p><b>Part 1: 2.45 to 3.00</b>      Participants to individually revise their performance preparation in light of earlier reviews and theory sessions.</p> <p><b>Part 2: 3.00 to 3.30</b>      <b>REPEAT PERFORMANCES</b></p> <p><b>Participants must use a witness intermediary</b></p> <p><b>Participants will choose a performance to repeat, first stating the review point from that earlier performance.</b></p> <p>Performances in Group      <b>3 minutes per task</b>  Review in Group      <b>2 minutes per task</b></p>
<b>SESSION 7</b> 3.30 to 4.00 pm (30 mins)	
<b>General Session</b>	<b>DISCUSSION AND CLOSING SESSION</b>

## **2. ADVOCACY AND THE AUSTRALIAN ADVOCACY INSTITUTE**

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### **THE CRUCIAL ROLE OF THE ADVOCATE**

In the adversary system, the parties are responsible for the conduct of the litigation, subject to the court's procedural rules and case management.

The independent judge or jury has no investigative role and no position on the merits of the case until the evidence and submissions are presented by the parties.

The court's role is to decide the case on what it finds to be the facts established by the evidence and the legal consequences which flow from such facts. Ultimately, after evaluating the evidence and argument, the court makes its decision by asking the question: whether or not the party making the allegation or claim has proved their case to the required standard.

The system depends on each party presenting its best case on the understanding that "truth is best discovered by powerful statements on both sides of the question".

The advocates' role is crucial because they decide how to conduct their case, what evidence to present and what arguments to put. Their role is not to judge but to present and argue consistently with their clients' instructions, their ethical obligations and in their clients' best interests.

In the adversary system, where in contested cases there are often different versions of events, each side contends for its version of the true facts upon which the decision should be based.

The advocates' responsibility is to deal with the facts and submissions skillfully and ethically to persuade the court to accept the version of events and legal consequences which best suit their clients' cases.

### **ADVOCACY TRAINING**

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For centuries there was a wide spread belief that advocacy could not be taught. Lawyers who wanted to practice as advocates relied on observation, trial and error, and experience to learn their art. All this was often done at the expense of the client and without any defined standards or assessment of even minimal competence in advocacy.

This was not a professional approach. Advocacy is a specialised activity for lawyers which requires developed disciplines and skills. A competent advocate must be more than someone performing "to the best of their skill and ability". A minimum standard of competence should be required.

The Australian Advocacy Institute (AAI) was established by the Law Council of Australia in 1991 in response to the ever growing demand by the Australian legal profession for advocacy training. The AAI is now an independent, not-for-profit, non-commercial body that conducts Advocacy Training Workshops across Australia and in the UK, The Hague, Hong Kong, Singapore and Malaysia.

The AAI is now recognised as a world leader in advocacy training. The teaching method is based on the combination of concepts and practical skills. Its application is comparable to 'coaching' rather than lecturing and is the accepted teaching method worldwide.

## **THE AAI AIMS AND TEACHING PHILOSOPHY**

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The aims of the Institute are to:

- improve the standards of advocacy skills
- provide a forum in which ideas and experience in advocacy training can be shared and developed
- design and develop methods and materials for training lawyers in advocacy.

The AAI teaching philosophy is based on the following principles:

1. Competent advocacy is essential to serve the best interests of clients, the interests of the community, and the interest of justice.
2. Advocacy is characterised as the art of persuasion. All advocates must have the basic understanding of good advocacy and the ability to perform the essential skills of an advocate.
3. The practice must be in accordance with professional ethics and etiquette.
4. Advocacy consists of identifiable disciplines, skills and techniques which can be taught, learned and developed.
5. Effective court room communication skills are essential to advocacy.
6. Advocacy skills are best taught and learned by the workshop method of instruction, demonstration, performance and review.
8. The focus of teaching is on methods of preparation, analysis and performance, enabling advocates to develop individual style and approach, free of fundamental error. The aim is to help pupils to improve, rather than find faults in their performance.
9. The disciplines, skills and techniques taught are generic and cross jurisdictional.
10. Experience alone does not ensure competence. The AAI approach to preparation, analysis and performance helps advocates to learn from their experience and develop their skills.
11. The emphasis in teaching is on:
  - complete familiarity with factual and legal materials
  - a method of analysis of those materials to produce a consistent case theory
  - a method of preparation for the performance of specific advocacy tasks
  - development of skills in:
    - i. legal argument
    - ii. opening and closing addresses
    - iii. evidence in chief and re-examination
    - iv. cross-examination
    - v. written advocacy
    - vi. communication skills.
12. The instructors are experienced and competent advocates, trained in the skills method of teaching by the AAI in accordance with its philosophy.
13. The AAI is committed to the pursuit of excellence in advocacy by:
  - encouraging advocates at all levels to continue learning and developing their skills
  - equipping advocates to analyse their work and critically assess their performance
  - identifying and training members of the profession as potential instructors.

## **EDUCATION, TRAINING AND RESEARCH BY THE AAI**

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The work of the Institute includes:-

- Researching and developing advocacy techniques and advocacy training methods.
- Developing workshop materials.
- Providing general advocacy skills workshops open to all lawyers who have a right of audience in courts and tribunals.
- Designing and conducting in-house workshops for law firms and institutions such as Offices of the Director of Public Prosecutions, Government Solicitor and Legal Aid Services.
- Conducting advanced and specialised workshops in appellate advocacy, expert evidence, advanced cross-examination techniques, vulnerable witnesses and jury advocacy.
- Providing teacher training workshops for Australian, English, Scottish, Hong Kong, Singaporean and South African advocacy teachers according to the AAI method.
- Giving advice and instruction in advocacy training to the Advocacy Training Council (UK), College of Law (London), the English Inns of Court, the Scottish Bar, the Singapore Bar, the Oxford Institute, and the Hong Kong, Malaysian and South African professions.
- Structuring and providing workshops in conjunction with Monash, Melbourne and Bond Universities, ANU, University of Hong Kong and the Leo Cussen Institute.
- Training of war crimes prosecutors in The Hague and Tanzania.
- Supporting undergraduate and post graduate courses at universities.
- Supporting and teaching at the bar readers' courses in Australia.
- Presenting seminars and demonstration sessions at national and international conferences.
- Conducting international conferences on advocacy and advocacy training.

The AAI is recognised as a world leader in advocacy training. Its work would not be possible without the contributions of the AAI board members and instructors whose ideas and teaching have enabled the philosophy of the Institute and the teaching of advocacy to develop.

### **Contact the AAI**

General Manager : Scott Wallace  
 Phone: 0418 473 303  
 Email: [aai@advocacy.com.au](mailto:aai@advocacy.com.au)

# CASE STUDY

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## AUSTRALIAN ADVOCACY INSTITUTE Regina v Chris Johns

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### INTRODUCTION

#### **Charges**

The accused, Chris Johns, who is 16 years old, is charged with three offences: two counts of committing an act of indecency towards a person under the age of 16 years and one further count of inciting a person under the age of 16 to an act of indecency.

The first charge alleges an act of indecency towards ‘Abby’ a child aged 6 on 1 January two years ago. It is alleged that the accused pulled his pants down and exposed his bottom towards Abby.

The second charge alleges inciting Abby to an act of indecency on the same date. It is alleged that the accused, after pulling his pants down and exposing his bottom towards Abby, told Abby to kiss him on the lips.

The third charge alleges an act of indecency towards ‘Atticus’ a child aged 11, sometime before 1 January two years ago. It is alleged that the accused on a separate occasion, exposed his bottom towards Atticus.

#### **Background**

Abby and Atticus live with their parents Margaret and Rodger Davis in a three-bedroom house. The home has a front yard with a driveway. It has a large backyard which is almost completely covered by grass.

In January three years ago, Chris came to stay with Margaret, Rodger, Abby and Atticus in their home. Rodger’s brother, Paul, married a lady, Tracey, who had a son, Chris. Things weren’t going too well for Chris in the new household so Rodger volunteered to have Chris come and stay for a time.

On 1 January two years ago, Margaret asked Chris to watch Abby and Atticus while she went to the shop. Rodger was mowing the backyard lawn. When Margaret left the house, Chris, Abby and Atticus were in the lounge room watching a movie on television. She was away from the house for about 30 minutes.

When she arrived home with lunch, Abby ran up to the car in the driveway. She was smiling and partially covering her mouth with her hand. They had a conversation.

Margaret put Abby in the car and went inside and got Atticus. She saw Atticus in the lounge room. She went out to the back yard and spoke with Rodger. The family drove directly to their local police station to report what Abby had said. Chris was left at home. Senior Constable King interviewed Abby right away. For reasons unknown, Atticus was not interviewed at this time.



Later that day, police spoke to Chris and took him to the police station. He participated in an interview with Senior Constable King in which he denied doing anything wrong. Chris did not return to live at that home.

About a week later, Atticus told Margaret that Chris also exposed himself to him while the two boys were alone in Atticus's bedroom. As a result, Atticus was interviewed by Senior Constable King. Before he was interviewed, Margaret told Senior Constable King that Atticus has a mild intellectual disability.

### **Legal Matters**

The charges against Chris are to be heard together. A separation of counts argument was unsuccessful. In preparation for the trial, witness intermediary reports have been prepared in relation to Abby and Atticus.

In relation to Atticus, the trial judge has ruled at the Ground Rules Hearing that questioning is to be conducted consistently with the Witness Intermediary Report (WIR).

In relation to Abby, an extract of the transcript of the Ground Rules Hearing (GRH) is included in the materials. The trial judge has ruled that questioning is to be conducted consistently with that transcript.

### **Index of Materials**

Enclosed are the following brief materials:

1. Indictment;
2. Statement of Margaret Davis;
3. Statement of Senior Constable King;
4. Relevant portions of Senior Constable King's recorded interviews with Abby, Atticus and the accused;
5. Further instructions from the accused;
6. Witness intermediary reports for Abby and Atticus;
7. Extract of the transcript of (that part of) the GRH concerning Abby.

MOCK

# INDICTMENT

## NEW SOUTH WALES

On \_\_\_\_\_, the Director of Public Prosecutions on behalf of  
Her Majesty charges that

### CHRIS

- 1 on 1 January two years ago, committed an act of indecency towards Abby, a person then under the age of 16 years, namely 6 years.

*S 61N(1) Crimes Act 1900 Law part code 294*

**AND the Director of Public Prosecutions FURTHER CHARGES that**

### CHRIS

- 2 on 1 January two years ago, incited Abby, being a person under the age of 16 years, namely 6 years, to commit an act of indecency with Chris.

*S 61N(1) Crimes Act 1900 Law part code 295*

**AND the Director of Public Prosecutions FURTHER CHARGES that**

### CHRIS

- 3 between 1 January three years ago and 1 January two years ago, committed an act of indecency towards Atticus, a person then under the age of 16 years, namely 11 years.

*S 61N(1) Crimes Act 1900 Law part code 294*

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**Crown Prosecutor**  
**On Behalf of the Director of Public Prosecutions**

## STATEMENT OF MARGARET DAVIS

My name is Margaret Davis. My husband is Rodger, and together we have two children – Atticus who is 11 and Abby who is 6. Atticus has an intellectual disability.

Our house is a small three-bedroom one. The children each have their own room which are directly opposite one another. There is a front yard and a driveway. We have a big backyard.

Sometime a few years ago, Chris, who is the son of Rodger's brother's partner, came to stay with us in our home. I found Chris, initially, to be a positive addition to our family home – he helped around the house, cleaned up after himself and was always willing to help look after Atticus and Abby. Over the last twelve months he has become lazy and doesn't do as much as he used to. He also eats a lot of food and we don't make a lot of money so that has made things hard. His parents don't give us any money to pay his board.

While he stayed with us, Chris initially slept in Atticus's bedroom, although after some time he began sleeping on the couch in the lounge room. Atticus's bedroom door is always left open at night because he is afraid of the dark and we keep a night light on for him in his room. Chris mentioned that he preferred to sleep in the lounge room because the night light made it hard for him to fall asleep.

On New Years' Day this year, I went down to the corner shop to buy fish and chips for lunch. When I left, Rodger was mowing the lawn, Chris and Atticus were sitting on the couch in the lounge room watching a movie and Abby was sitting on the rug just in front of them playing with something, possibly her dollies but I'm not 100 percent sure. I don't remember which movie they were watching. I remember that Atticus was excited to be watching it.

I was away from the house for about 30 minutes. When I arrived home, Abby came running out through the front screen door and up to my car window. She was holding one of her dolls and was smiling and partially covering her mouth with her hand.

I said:                    *"What's so funny darling?"*

Abby said:                *"Chris pulled down his pants and showed me his moon!"*

I said:                    *"What? Where is dad?"*

Abby said:                *"I don't know. I think he is with Chris. Chris tried to kiss Atticus."*

She was giggling as she said this.

I immediately became anxious. I told Abby to get into the car which she did. I went inside and got Atticus who was in the lounge room. I went out the back and spoke to Rodger. He had finished mowing the lawn and was near the back of the house watering our vegie patch. Together the four of us went to the police station to report what Abby had told me. We left

Chris at home. I did not speak to him at all. I was disgusted. I took Abby into the police station and spoke to Senior Constable King who then interviewed Abby.

About a week later I decided to talk to Atticus and Abby about why Chris wasn't staying with us anymore. For several days Abby had been talking about what had happened and I wanted to speak to them both together about the situation.

During my conversation with the two of them, I asked Atticus whether Chris had ever done anything inappropriate towards him and he told me that he had and more than once.

Atticus said: *"It was late at night and everyone was sleeping. Chris came in and I woke up. He asked me if I wanted to see his bum cheeks and I said no but then he showed me his bum cheeks anyway. He pulled down his pants and I just ignored him. I didn't say anything before because I didn't want to get into trouble."*

I said: *"Has he done that more than once?"*

He said: *"Um, I think so."*

I said: *"More than 5 times?"*

He said: *"Yes mum."*

I didn't know what else to say to Atticus as I was very upset. I just assured him that he hadn't done anything wrong and I took him to see Senior Constable King and he was interviewed.

I have not seen Chris since New Years' Day and never want to see him again.

**STATEMENT OF SENIOR CONSTABLE KING**

My name is Senior Constable King.

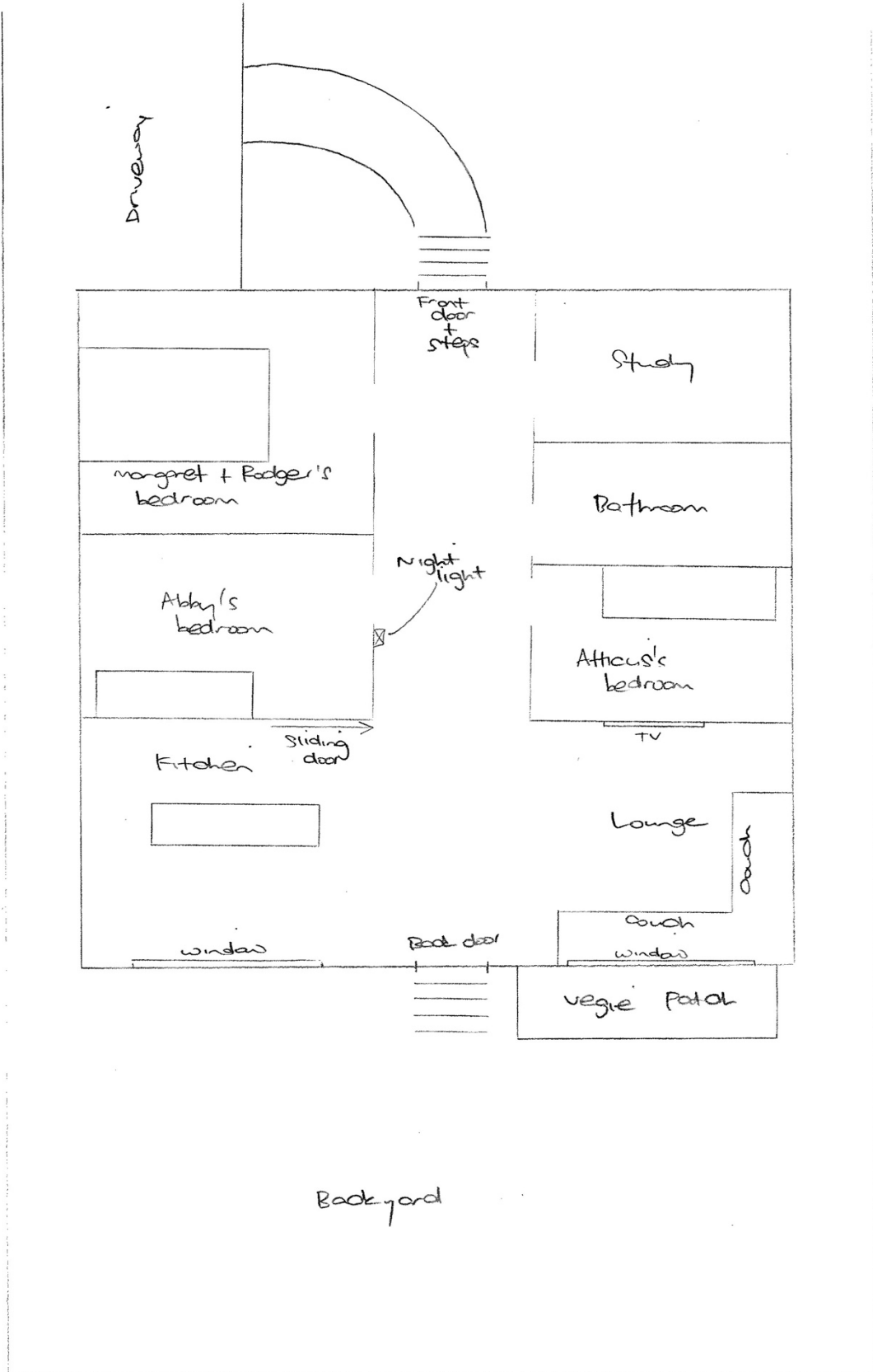
On 1 January at about 3:00 pm, Margaret Davis brought her daughter Abby to the police station to see me. Margaret told me something and as a result I interviewed her daughter Abby.

Later that day, the young person Chris Johns was brought into the police station. After being properly advised of his rights, he was offered the opportunity to be interviewed and he accepted. I conducted an interview with Chris, in the presence of a support person, about the allegations that had been made about him by Abby. He was later allowed to leave but did not return to live with Margaret and Rodger Davis.

A couple of days later I attended Margaret and Rodger's house and prepared a rough sketch of the floor plan of their home.

I now produce a copy of my floor plan sketch. (over page)

On 9 January, Margaret brought her older son Atticus into the police station. Because of some things Margaret told me I interviewed her son Atticus. Before I did so, Margaret told me that Atticus has a mild intellectual disability.



**EXTRACT OF SENIOR CONSTABLE KING'S INTERVIEW WITH ABBY**

Q.1 OK. The time now is 3:30 pm on 1 January. My name is Senior Constable King and I'm here with Abby and Abby's dolly [*Abby is holding a dolly*].

A --

Q.2 Abby, how old are you?

A Um, I'm six.

Q.3 Six, OK great. Abby is it alright if I speak to you today without your mum?

A Uh-huh.

Q.4 Abby, would you like to tell me why you're here today?

A Because Chrissy showed me his moon.

Q.5 Who is Chrissy?

A Chrissy is my big brother. He stays with us sometimes.

Q.6 OK. Now I wasn't there when Chrissy showed you his moon, so why don't you tell me everything that you remember about that.

A Well, Chrissy was talking and then I was talking and mum and dad had gone to the shop to buy lunch, fish and chips. And we were in the lounge and I was on the floor and Chrissy was on the floor and Chrissy got up and pulled his pants down and showed me his moon and it was funny. He said hey Abby look at this, it's a moon, and I was like that's rude but it was also a bit funny. And then I told mum what happened and now I'm here. Oh, and, oh yeah, I almost forgot, he said Abby kiss me on the lips, Abby kiss me on the lips, and I said gross, cos it's gross to do that. He went to try and kiss me on the lips [*Abby motions to the dolly that gesture*].

Q.7 OK. When did this happen Abby?

A Today.

Q.8 Do you remember what time today?

A Um – 20 o'clock.

Q.9 OK. Well, was it daytime or night time outside?

A It was nearly dark outside.

Q.10 Nearly dark outside.

Q.11 Now Abby when you say moon do you mean bottom?

A Um --

Q.12 Do you mean –

A This [*pointing to the bottom on her dolly*].

Q.13 What do you call that Abby?

A Bum moon.

Q.14 OK. Was anyone else there when Chrissy showed you his bottom?

A I don't remember.

Q.15 Were you on your own when Chrissy showed you his moon?

A Chrissy was there.

Q.16 What about Atticus?

A Atticus had gone somewhere and I was playing. But then Atticus came back but I didn't say anything to Atticus. It was funny.

Q.17 Where was your dad Rodger?

A Daddy was watering the back window.

Q.18 Why didn't you say anything to Atticus?

A I don't know.

Q.19 What were you, Atticus and Chrissy doing while your mum and dad were away?

A We were watching the tv.

Q.20 What were you watching?

A I think it was Jumanji.

Q.21 Jumanji, OK. Now you said that Chrissy was talking, do you remember what he was saying?

A Chrissy was talking about my dollies.

Q.22 Were you playing with your dollies were you?

A No.

Q.23 You said that you were talking, do you remember what you were saying?

A I don't remember.

Q.24 How long have you known Chrissy for?

A About a day.

Q.25 When Chrissy pulled his pants down which way was he facing?

A Um –



Q.26 Which way was he –

A I could see his bum, I could see Chrissy's bum and moon and it was rude. Like nudie rudie.

Q.27 What do you mean like nudie rudie?

A Like nudie rudie in the bath, nudie rudie everywhere, that's my favourite book. Mummy and daddy read me that book every night before bed time.

Q.28 Now Abby do you remember you also told me that Chrissy asked you to kiss him on the lips?

A I don't remember.

Q.29 Tell me about when Chrissy said kiss him on the lips?

A It happened the first time not the second time. It was first time. He said hey Abby kiss me on the lips like in the movies and I said that's gross Chrissy. But that happened the first time.

Q.30 You've mentioned there a first time and a second time and that Chrissy asked you to kiss him on the lips on the first time, when was the second time?

A The second one was the moon. His face looked like a tomato.

Q.31 Right –

A I don't want to do this anymore.

Q.32 What do you mean?

A Can I go back to my mum now?

Q.33 Soon Abby. Now, is there anything else that you can tell me?

A I don't want to do this anymore, I want to see mum [*gets up and walks towards the door to the interview room*].

Q.34 OK. We might just end the interview there --

END OF INTERVIEW

**EXTRACT OF SENIOR CONSTABLE KING'S INTERVIEW WITH ATTICUS**

Q.1 OK Atticus. The time is now 10:00 am 9 January. My name is Senior Constable King and I am going to ask you some questions. Do you understand?

A Yep.

Q.2 Atticus, how old are you?

A 11.

Q.3 Who is Chris?

A He is a brother I think. He is dad's boy or friend. Mum doesn't like him. Dad likes him but.

Q.4 Atticus I'm going to start by asking you some questions about New Years' Day OK?

A OK.

Q.5 Atticus do you remember on New Years' Day when your mum went out and left you and Abby with Chris?

A Yep. Mum went to get dinner.

Q.6 OK. Now what can you tell me about what you did while your mum was out?

A Nothing much. We watched telly.

Q.7 Is there anything else that you can tell me?

A I don't think so.

Q.8 Do you remember going to the toilet at all?

A Oh yeah I remember I went to the toilet to do a wee. But that was before --

Q.9 How long were you in the toilet for?

A About 10 minutes probably.

Q.10 After you finished in the toilet, where did you go?

A I would have gone to the lounge room. But I'm not too sure if I went to the toilet before or after mum left. I think that it was after mum left.

Q.11 OK. Did you go back to the lounge room did you?

A Yes.

Q.12 When you got back to the lounge room where was Abby?

A She was on the floor with her dolls. She likes her dolls.

Q.13 Where was Chris?

A He was sitting on the lounge where he always sits.

Q.14 Did you notice anything about Abby?

A Just normal I suppose.

Q.15 What do you mean by normal?

A I mean, I don't know, normal.

Q.16 Did you notice anything about Chris?

A He was watching the telly, we were watching Jurassic World which is one of my favourite movies. I love that movie.

Q.17 What happened after that?

A Well Abby went somewhere. I didn't see. She didn't say anything, she just went. And then the next thing was that dad came in and told me to go out and get in the car so I did.

Q.18 OK. Now, do you know why you're here today?

A Yep because Chris showed Abby his bum cheeks and he showed me too.

Q.19 How do you know that Chris showed Abby his bum cheeks?

A Because that's all she's been saying every day for the past week at least. She's been running around the house saying things like, I saw Chris' moon just like nudie rudie. It's been pretty annoying. Then I told mum that Chris showed me as well. It was like before.

Q.20 What do you think Abby meant when she was talking about a moon?

A His bum or the dolly's bum.

Q.21 Have you ever heard Abby use the word moon for bum before this week?

A No. I don't think so.

Q.22 And you mentioned that you told your mum that Chris had exposed himself to you. Tell me about that?

A I just told her. I told her that one night he came into my room and he woke me up and he had a towel around him and he turned around and dropped his towel and he wiggled his bum cheeks at me. And he was laughing but I screamed. He would always do it. He'd laugh sometimes and sometimes wouldn't say anything. He got close to me. He is smelly.

Q.23 How was it that you told your mum this?

A I just told her. I think she was talking to Abby about lunch. We were at home and it was just me and mum and I decided to tell. That's it. I didn't like when he'd do it.

Q.24 OK. You mentioned that Chris woke you up, how did he do that?

A Oh he just like moved me like that [*indicating that he was pushed to the front of his shoulder*] and I woke up straight away.

Q.25 How could you see him?

A I saw him.

Q.26 OK Atticus. Now, if I show you these pictures [*body diagrams front and back*] can you circle what part of Chris you saw when he pulled down his towel and wiggled his bum at you?

A [*Draws a circle on one of the diagrams ... copy of diagram attached*]

Q.27 OK great. And I'll just get you to write your name on that. Thanks.

Q.28 Now Atticus, when this happened, where were your mum and dad?

A They were asleep in bed, I think.

Q.29 Where was Abby?

A I don't know.

Q.30 And what time was it?

A I don't know.

Q.31 When did this happen?

A It happened, um, at Christmas time. I don't know. When did it happen?

Q.32 Now, Atticus, you said earlier that this would always happen. What do you mean by that?

A Just like be annoying. Abby is annoying too but.

Q.33 What happened after Chris did that?

A Well he just said like don't tell anybody about what I just did because we'll both get in trouble and then we went to sleep in our beds.

Q.34 OK. Did you ever talk to Chris about what happened?

A No.

Q.35 Did you tell your mum or dad about it?

A Yeah, I told mum today because like, it happened to Abby so –

Q.36 Did you tell anyone else about it?

A No.

Q.37 So, you hadn't said anything about this to anybody until you spoke to your mum today?

A Yep but I told mum today so –

Q.38 And you obviously spent time with Chris after this happened?

A Yep. He was living with us. I saw him every day pretty much.

Q.39 OK I'm going to suspend the interview now --

END OF INTERVIEW



Attain's

**EXTRACT OF SENIOR CONSTABLE KING'S INTERVIEW WITH CHRIS JOHNS**

Q.1 OK. The time is now 10:30 pm on 1 January and I am conducting an interview with Chris Johns. Chris, it is alleged that earlier today you exposed yourself to Abby while her parents were out of the house, did that happen?

A No, I didn't do that. I would never do that. I don't think their mum likes me. Rodger's alright.

Q.2 Well, it has been alleged that after Abby's mum Margaret went to buy lunch, you were in the lounge on the floor with Abby and you got up and pulled your pants down and exposed your bottom to Abby and you said hey Abby look at this, it's called a moon.

A Not true. I mean, Margaret did go to the shops to buy us fish and chips, and I was in the lounge room watching a movie, and Abby was there but that other bit about me exposing myself to her isn't true. Atticus was home as well. He was in the lounge with us the whole time. I thought Rodger was out the back. Did he go to the shops as well?

Q.3 Why don't you tell us your side of the story.

A Well there's nothing to tell really. Margaret told me that she was going to go down to the shop to buy us all some lunch and asked if I could watch the kids, which was fine with me because we were going to watch a movie anyway. Atticus wanted to watch Jurassic World so that's what I put on. Abby wasn't interested in it but she played on the floor with her dolls so that's what we did. And then next thing I know Rodger came in and grabbed Atticus and I was left in the house on my own.

Q.4 Did you notice Abby leave the lounge room at any point?

A No, I didn't notice that. But I guess she must have because when Rodger came in and got Atticus she wasn't there.

Q.5 OK. At some point did Atticus get up and leave the lounge room?

A I don't think so.

Q.6 It has also been alleged that you told Abby to kiss you on the lips –

A That's not true either –

Q.7 And that you then tried to kiss Abby –

A Not true.

Q.8 Is there anything else that you'd like to say?

A I'm just trying to think why Abby might be saying this. All I can think of is that she always takes the clothes off her dollies. The ones that had clothes you could take off, she would take them off –

Q.9 OK –

A And like her favourite book is this book called rudie nudie or nudie rudie or something like that, one of those. Her parents read it to her every night. I mean she also runs through the house without clothes on all the time yelling nudie rudie, it's just how she is. She does it to Atticus.

Q.10 Right.

A And I did get a bit angry with her while we were watching Jurassic World because she was talking loudly and rolling around and I told her to shut up.

Q.11 Have you ever heard her use the word moon before?

A No.

END OF INTERVIEW

**FURTHER INSTRUCTIONS FROM THE ACCUSED**

Chris instructs that in relation to the complaint that was subsequently made by Atticus, that it is also untrue – he didn't expose himself towards Atticus in his bedroom.

He only slept in Atticus's bedroom for a night or two when he first began sleeping at the home but then slept in the lounge room because Atticus's night light kept him awake.

Chris says that in the last twelve months he hasn't got on with Margaret at all. It's like she is jealous of him.

He also babysat Abby and Atticus several times before 1 January.



## **WITNESS INTERMEDIARY REPORT - ATTICUS**

### **Section 1: Summary of qualifications and experience**

- 1.1 I am a Victims Services accredited Witness Intermediary. I am a qualified Speech Pathologist specialising in working with children with speech and language difficulties.
- 1.2 I assessed Atticus' communication abilities at the Police Station with Senior Constable King. Atticus' evidence was not discussed during the assessment. I also watched Atticus' interview from 9 January.

### **Section 2: Witness Communication Needs Assessment**

- 2.1 Atticus was 11 years at the time of assessment.
- 2.2 Atticus has a mild intellectual disability. He has an IQ of 68.
- 2.3 My assessment indicates that Atticus has a language profile that falls well below his chronological age. I have assessed Atticus' intellectual functioning to be that of a five-and-a-half year old. His language inefficiencies involve receptive skills (comprehension) and expressive skills (his ability to retrieve words and explain ideas).
- 2.4 Atticus has a slow speech style associated with his expressive language issues, and some minor articulation difficulty. Atticus' overall presentation is one of delayed information processing.
- 2.5 Despite these communication challenges, I anticipate that Atticus will be able to give evidence if provided with well-planned supports and appropriately structured questions. Atticus was a very compliant participant in my assessment – and he participated well during police interview. This degree of participation is likely to be replicated at court if communication supports are available.
- 2.6 Atticus may have difficulty identifying and verbalising his own communication and attentional needs and in my opinion a witness intermediary will facilitate his communication at court. I have established some rapport with Atticus and have insights into his communication and attentional needs that would be beneficial to the court at the time of questioning.
- 2.7 I have outlined a series of adaptations that will assist Atticus' communication during the trial process. I recommend that these adaptations are implemented and suggest that inclusion of myself as a witness intermediary at the time of trial will facilitate this process for the court. My specific recommendations for questioning are outlined below.

### Section 3: Conclusions and Recommendations

#### 3.1

<b>Questioning Recommendation</b>	<b>Advice for Questioner</b>	<b>Rationale</b>
Use simple open forms at the outset of questions	Commence with less linguistically challenging open questions (who, what, when, where etc.)	Atticus will comply well with simple open questions while familiarising himself with the situation.
Avoid tag questions	‘He didn’t say X did he’ is better phrased directly. ‘What did he say?’	Atticus does not understand negatively phrased tag questions.
Avoid questions containing comparatives	‘Did X happen before Y’ is better asked as a direct question. ‘ <i>What happened first? Ok, what happened next?</i> ’	Atticus does not reliably understand before than/after than; bigger/smaller etc.
Use words with which the witness is likely to be familiar	If unsure about familiarity with vocabulary, ask for an explanation e.g. “ <i>I want to talk about X. Can you tell me what X means?</i> ”	Atticus is not always likely to indicate if he does not understand a key word or phrase.
Use reference to life experiences in discussing dates and locations. Consider provision of visual references (photos, drawing materials)	If word finding for places/times appears to be problematic, ask for a life-event e.g. ‘was this close to your birthday?’	Atticus has difficulty with names of suburbs/streets and will need these referenced to his experience. Atticus made good use of drawing to explain some locations during interview.
Pause before posing next question to ensure the response has been completed.	Maintain active listener eye contact and wait to see if there is a continued response	Atticus can be slow to respond and will not always say if he has finished.

3.2 **Other Recommendations:** The role of the witness intermediary will be to draw the court’s attention to any potential misunderstandings as soon as practicable. I would suggest beginning any intervention by the witness intermediary raising their hand and addressing the judge saying “Your Honour”, followed by asking if Counsel can rephrase or ask a different question. For example: “Your Honour, can Counsel please not use tag questions?”. Where requested by the judge, the witness intermediary can also suggest a solution, for example: “Ask a direct question”.

3.3 I recommend the court adjourning for a break every 30-45 minutes.

3.4 I recommend Counsel share the working of their proposed questions with the witness intermediary so they can offer advice on the structure of these questions if and where required. This will likely minimise the need for intervention in court.

Declaration, date and signature etc

## **WITNESS INTERMEDIARY REPORT - ABBY**

### **Section 1: Summary of qualifications and experience**

- 1.1 I am a Victims Services accredited Witness Intermediary. I am a qualified social worker with a Bachelor of Social Work with a specialty in trauma. I have extensive experience in working with complainants in a variety of Court systems.
- 1.2 I assessed Abby's communication abilities at the Police Station with Senior Constable King. Abby's evidence was not discussed during the assessment. I also watched Abby's interview from 1 January.

### **Section 2: Witness Communication Needs Assessment**

- 2.1 Abby is 6 years old. Socially and developmentally, Abby presents as typical for her chronological age.
- 2.2 Abby is a good communicator and was able to maintain concentration during the interview with Senior Constable King.
- 2.3 Abby had her dolly with her during the interview with the police. This gave her some comfort and allayed her anxiety. The dolly was also used by Abby to demonstrate relevant body parts.
- 2.4 Abby can be prone to spontaneous outburst when she is under stress or is unsure. She is unlikely to recognise the signs and might need more regular breaks. She would also be assisted by reminders of the rules of communication, for example, if she doesn't know the answer she can say "I don't know".

### **Section 3: Conclusions and recommendations**

3.1

<b>Questioning Recommendation</b>	<b>Advice for Questioner</b>	<b>Rationale</b>
Remind Abby of the communication rules	Abby would benefit from being reminded not to guess, to say if she doesn't understand, if she doesn't know and if she can't remember	Abby feels anxious in stressful environments and may feel she has to answer all questions even when she is unsure
Allow short breaks in the remote room when necessary	Abby is prone to spontaneous outbursts when she is under stress. She might not be able to recognise the signs or articulate how she is feeling.	A child who is experiencing stress may function at a lower level. This may impact on the accuracy of her evidence
Allow the use of her dolly to assist Abby in feeling less anxious and to point out body parts	Have the dolly in the remote room with Abby	This helps her feel less anxious. She also used it to put out relevant body parts.

- 3.2 It is recommended that the Court uses a witness intermediary to assist with Abby's evidence. This will allow the witness intermediary to more readily identify signs that Abby is becoming stressed or anxious and to request a break.
- 3.3 The witness intermediary should sit next to Abby so they can see her face and any signs of stress she might be showing.
- 3.4 It would help if Abby could be shown the remote room and the court before her evidence so she is familiar with the environment before she starts answering questions.

Declaration, date and signature etc

**Extract of the transcript of (that part of) the GRH concerning Abby.**

KATE WILSON Witness Intermediary, AFFIRMED

*HER HONOUR*

Q. For the record, your name is Kate Wilson and you have prepared a witness intermediary assessment report and recommendations in respect of Abby and that report is dated 2 April and I'll have that report marked MFI 1.

*MFI #1 INTERMEDIARY ASSESSMENT REPORT*

Q. Can you please take us through the main recommendations and anything else that's pertinent to Abby?

A. I'll refer to the table with the recommendations.

Q. Yes?

A. So the first recommendation is to remind Abby of the communication rules. If Abby is under stress she can sometimes have an outburst of anger, so remind her that she is able to say things like "I don't know" and allow appropriate breaks within the AV room when she shows signs of distress or anger.

Q. Do you expect her to get angry or distressed?

A. Yeah. If she shows signs of becoming angry or distressed, we can deal with them pretty quickly, if we have some short breaks in the room.

Q. Thank you. So, what do you recommend?

A. I will look out for any signs.

Q. And let me know. All right?

A. Allow use of communication aids. Abby had her dolly with her in the interview and during the assessment that I did with her. This made her more comfortable but was also a tool for her to be able to point out relevant body parts. She has it with her here today.

*HER HONOUR:* Madam Crown, are there any questions?

*CROWN PROSECUTOR:* No, thank you, your Honour.

*EXAMINATION BY DEFENCE COUNSEL*

Q. You had a discussion with Her Honour about using the doll?

A. Yeah.

Q. And you mentioned her pointing out body parts – if I ask her direct questions about her body parts should the doll be used every time or could I use a body map?

A. I tested out the use of the doll not the body map with her so I don't know. She seemed comfortable with that.

Q. If she becomes angry or you get that sense, how will you let us know?

A. How do you want me to – what if I raise my hand and say that 'a break might be needed'?

....

*Australian Advocacy Institute*  
**Advocacy Skills Workshop**  
**VW Program #2 – 2 June 2018**



## EVALUATION SHEET

**Please print these two pages and bring to the workshop**

It will greatly assist the Institute in assessing this workshop if you can (anonymously) complete this Evaluation Sheet at the end of the workshop, when they will be collected.

1. How many years experience do you have? (Please tick response)

- |    |                              |         |     |
|----|------------------------------|---------|-----|
| a) | in legal practice:           | Under 5 | [ ] |
|    |                              | Over 5  | [ ] |
|    |                              | Over 10 | [ ] |
| b) | in making Court Appearances: | Under 5 | [ ] |
|    |                              | Over 5  | [ ] |
|    |                              | Over 10 | [ ] |

2. What were your expectations of what you would learn at this workshop **before** it started?

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3. Were these expectations met **during** the workshop? Yes [ ] No [ ]

Comments: \_\_\_\_\_

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4. What were the three most important skills you have learned from this workshop?

1. \_\_\_\_\_

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2. \_\_\_\_\_

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3. \_\_\_\_\_

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5. Did you find the exercises: Well designed: **Yes** [ ] **No** [ ]  
 Clear: **Yes** [ ] **No** [ ]

If **No**, why? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. How do you rate the:
- |                                | Excellent | Good | Fair | Poor |
|--------------------------------|-----------|------|------|------|
| a) Introductory Session        | [ ]       | [ ]  | [ ]  | [ ]  |
| b) Performance/review Sessions | [ ]       | [ ]  | [ ]  | [ ]  |
| c) Overview Sessions           | [ ]       | [ ]  | [ ]  | [ ]  |

7. What do think of the way the Instructors handled the:
- |                                |     |     |     |     |
|--------------------------------|-----|-----|-----|-----|
| a) Introductory Session        | [ ] | [ ] | [ ] | [ ] |
| b) Performance/review Sessions | [ ] | [ ] | [ ] | [ ] |
| c) Overview Sessions           | [ ] | [ ] | [ ] | [ ] |

8. At the start of the workshop, did you believe you had prepared sufficiently?  
**Yes** [ ] **No** [ ]  
 If YES - now the workshop is complete, do you still believe you had prepared sufficiently?  
**Yes** [ ] **No** [ ]

9. Any suggestions towards improving the workshop?  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Any further comments generally?  
 \_\_\_\_\_  
 \_\_\_\_\_  
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11. Do you have any suggestions or ideas, particularly for workshops, seminars which the Institute could undertake?  
 \_\_\_\_\_  
 \_\_\_\_\_

**This form will be collected at the end of the workshop.**