

Note 14:

Children and Young People

Being in court and giving evidence can be frightening for children and young people. Children and young people have vulnerabilities that can impact their communication skills and their effective participation in criminal proceedings. Further, many children involved in court proceedings have been repeatedly exposed to traumatic events, are in dysfunctional or fractured family situations, are subject to family violence and/or have parents who have been exposed to traumatic events.

A child's communication skills can be affected by:

- Developmental stage, which is different to age;
- Low socioeconomic status;
- Stress, fear, anxiety, hunger and/or fatigue;
- Adults not 'tuning in' or paying attention;
- Speech-sound disorders;
- Neuro-disabilities;
- Sensory disturbances, especially hearing loss;
- Forms of maltreatment;
- Disrupted schooling.

Speaking in court differs from a child's typical experience of conversation because:

- The adults are strangers;
- The physical surroundings are new;
- There is stress, confusion and anxiety present;
- It is not a conversation, but it sometimes resembles conversation;
- Adults are not trying to promote communicative success, as in typical everyday interactions between adults and children;
- Reliance on monologue(s) versus co-construction of a narrative is counter to most children's experiences;
- Children have few 'speaker rights'.

Common misconceptions

All children are suggestible.

Children are prone to giving false accounts.

Children are easily manipulated into giving false reports of sexual abuse.

Retraction and inconsistencies are evidence of lying.

Child sexual abuse can be detected by a medical examination.

Research shows:

- Even very young children can accurately remember and report things that have happened to them;
- Developmental differences may mean children do not report memories in the same manner, or to the same extent, as adults;
- An incomplete or inconsistent account does not necessarily mean the child is fabricating the account;
- There is no evidence that children tend to lie more than adults;
- Children under five years typically report less detail than older children or adults, but the information they recall is just as accurate;
- Children under five years can be more open to suggestion than older children, but they have difficulty remembering suggestions put to them after a short period;
- Children over five years are highly resistant to suggestions of abuse and it is difficult to make them give false reports.

For more information about the impact of trauma on adults and children see [Guidance Note 2 – Understanding Trauma](#).

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Key points to consider

Before a hearing

- Court staff or judicial officers can ask counsel about any issues that may affect a child's evidence;
- Consider the use of Ground Rules Hearings and intermediaries;

A Ground Rules Hearing in Action:

The College has produced a [best practice video](#) to equip judicial officers and practitioners with an understanding of how to conduct a Ground Rules Hearing, both with and without an intermediary.



- Arrange for children to give evidence early in the day when they are most alert;
- Minimise delays, adjournments and changes and maximise predictability;
- Consider limiting formality of court dress to make the child feel more comfortable in court;
- Schedule additional time for children giving evidence to allow regular breaks;
- Consider whether the child speaks English at home. Is an interpreter required? (see also [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#)).

During the hearing

Improving courtroom communication with child victims:

- Introduce yourself and others in the courtroom (including counsel and court staff). Explain your role and the role of others and outline the sequence of how the hearing will proceed:
 - For example, 'Mr X, the prosecutor, is going to ask you some questions. Then the defence counsel, Ms Y, is going to ask you some questions. Then Mr X might ask you some more questions';
 - For a special hearing, 'We are recording the hearing today, so hopefully you won't have to come back to give evidence again';

- Be conscious of demeanour and maintain eye contact with the child. Avoid multitasking when addressing child witnesses;
- Exercise reflective listening and avoid interrupting;
- Inform counsel how the hearing will proceed. For example, advise how often there will be breaks. Consider advising the child witness that it is ok to ask for breaks;
- Remind counsel to consider the age and developmental stage of the witness when asking questions;
- Instruct counsel to avoid speaking while the witness is speaking. An answer from a remote witness facility will not be transmitted if someone else is speaking at the same time;
- Enforce any Ground Rules and the advice of intermediaries;
- Disallow improper questions;
- Encourage counsel to signpost separate topics and avoiding switching between topics;
- Encourage counsel to ask questions about events in a logical sequence.

Modify the language used in the courtroom:

- Encourage counsel to use simple language, avoid jargon and ask for one thing in each question;
- Avoid non-literal language like metaphors and idioms ('getting the ball rolling', 'barking up the wrong tree', 'rocking the boat');
- Use the child's vocabulary to describe people, places, objects, actions and times:
 - 'What did you play at playtime?' instead of 'What did you do at recess?';
- Limit the use of pronouns such as 'he', 'she' and 'they' when referring to people:
 - In the question 'When Tom hit John, did he say it was okay?' it is unclear who 'he' refers to;
- Ask open questions and encourage additional open-ended questions to prompt a free narrative:
 - 'Tell me all about the party' and then 'What else can you tell me about the party?' or 'And then what happened?';
- Phrase questions in the active voice;
- Phrase questions positively;
- Avoid negatives and double negatives;
- Reword a question when repeating it;
- Provide context for questions;
- Avoid 'tag' questions which add a question to the end of a statement such as 'You went to school on that day, didn't you?';
- Avoid confrontational questions by limiting the use of 'why' at the start of questions.

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Assessing the evidence

When assessing the weight to be given to children's evidence, it is important to consider how the children were questioned.

- Were the questions open-ended or leading?
- Did this affect the child's ability to express themselves?

Successful questioning of children requires knowledge of developmental differences in language comprehension, questions that are developmentally appropriate and accurate interpretation of children's responses.

In criminal proceedings, it is possible to admit opinion evidence from people with specialised knowledge about certain types of victims and offences including specialised knowledge about sexual offences and child development and behaviour.⁷

In general:

- **Children tend to be literal**, which can affect how they understand and answer questions. For example, asking a child how many times they were touched may elicit a response about the number of touches, instead of the number of occasions when touching occurred;

- **Children can struggle to answer questions about concepts** such as time, frequency, duration, chronology, distance and size. These skills develop gradually in children.

Judicial officers and lawyers should explain what they mean by time, for example, the hands on a clock, or how often something happened.

They should avoid using actual times to describe events, particularly with younger children, and instead use descriptive terms to refer to times of the day, such as 'morning', 'afternoon', 'night', 'before school', 'after school' and 'after dinner'.

- **Children can struggle to place events in the correct sequence over time.** It is best to order questions to children chronologically, such as first asking about things that happened in the morning and then the afternoon;
- **Children find it easier to understand questions asked in the active voice and questions phrased positively rather than negatively;**
- **Children may interpret being asked to repeat an answer as an indication it was wrong.** This may prompt them to change their answer. Lawyers and judicial officers should avoid repeating questions if the child has already given a response. A question may need to be repeated if, for instance, it was misunderstood.

Child victims of sexual abuse

Child sexual abuse typically involves:

- An offender known or related to a child;
- Grooming by the offender over time to engage a child's trust and test reactions to non-sexual and sexual touching;
- A relationship of dependence, control or power between the child and the offender;
- No eyewitnesses to the sexual contact;
- Delayed complaint;
- No scientific evidence such as the presence of semen or medical evidence of penetration.

Because of these factors, criminal proceedings involving allegations of child sexual abuse tend to focus on a child's credibility, including assessments of their responses to the abuse and their relationship with the accused.

Research shows that there is **no single set of symptoms or behaviours** that all children who are or have been sexually abused display.

Depending on each child and their circumstances, some children may exhibit numerous symptoms while others exhibit none.

- Often victims of sexual abuse do not cry out for help, resist or escape from the offender.
- Some children may exhibit behaviours resulting from sexual abuse that are counterintuitive and may not appear to make sense to adults.
- Behaviours reported in the literature include:
 - delay in complaint for months or years (common response);
 - disturbed sleep patterns and/or nightmares;
 - bedwetting;
 - disturbed behavioural patterns;
 - learning difficulties;
 - fearfulness and general emotional upset;
 - retraction of the complaint;
 - sexualised behaviour;
 - ongoing contact with, and/or affection for, the alleged offender.

None of these behaviours, on their own, are diagnostic of sexual abuse.

⁷ See *Criminal Procedure Act 2009* s 388 and [Exception to the Opinion Rule: Opinions Based on Specialised Knowledge](#) in the Uniform Evidence Manual.

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Further resources

For more information about child witnesses, see [Children in the Victorian Criminal Proceedings Manual](#).

[Child Witnesses: Testing Competency and Questioning – A Practical Guide](#): The College developed this resource with the Child Witness Service to provide an accessible guide to the competency and questioning of children, including principles that relate to all child witnesses and age-specific sample scripts.

[Child Witness Service Factsheets](#): These factsheets include information about communication in early childhood (3-6 years), middle years (7-10 years) and adolescence (11-18 years), and about children with intellectual disabilities, autism spectrum disorders and learning difficulties.

[Bench Book for Children Giving Evidence in Australian Courts](#): Produced by the Australian Institute of Judicial Administration, this publication provides information about child development and communication across different age groups, child sexual abuse and children's experiences of the criminal justice system.

[Speech Pathology Australia](#): This website describes communication milestones for children aged between one and five years old.

[Institute for Human Services for The Ohio Child Welfare Training Program – Developmental Milestones Chart](#): This guide describes developmental milestones for children, and possible effects of maltreatment.

