

Can we reduce re traumatisation in child witnesses



Child Witnesses and Criminal Justice System

We work with children and young people with complex trauma in an adverse environment.

While the criminal justice system had introduced a number of special measures for child and other vulnerable witnesses these measures are still within an adversarial legal system.

This presentation is about the learnings from the CWS over 10 years- what works and what are the limitations

Background

- The Child Witness Service (CWS) was established as part of the raft of legislative and non legislative reforms in response to the 2003 Victorian Law Reform Commission (VLRC) report on Sexual Offences.
- In the Melbourne, the CWS host the remote witness facilities for child witnesses within a child-friendly environment. In regional Victoria the service is provided via outreach and the local Courts remote witness facilities are utilised.
- Commenced operation in June 2007 and received over 6000 referrals.
- Approximately one third of witnesses have been under 12 and the youngest child witnesses have been 3 years of age.
- As part of our governance structure established a Child Witness Advisory Committee.

CWS Objectives

- Help child witnesses understand the role of being a witness
- Support them through the legal process, to facilitate their participation in the criminal justice system
- Reduce trauma experienced by child witnesses as a result of their involvement in the legal process
- Facilitate effective communication between child witnesses and the legal team
- Provide professional and community education on the experience and needs of child witnesses.

Child and Family Friendly Environment





Host remote witness rooms off site



Trauma informed approach in Criminal Justice Setting

Key principles of trauma informed approach:

- Safety
- Trustworthiness
- Choice
- Collaboration and
- Empowerment

Need to be attuned to the person experience and dynamics of trauma and acknowledge, respect and validate that experience.

To implement these principles practitioners must have sound understanding of child development, communication and excellent communication skills.

Trauma informed approach to assist child witnesses

- Using a child-focused, trauma informed lens
- Staff who have experience in working with children and families that have experienced trauma and have a sound understanding of child development and impact of trauma.
- Early engagement with services and a seamless service system
- Psychosocial assessment:
 - what are the key issues for this child giving evidence, what are the facilitating factors and what are the barriers?
 - what are the specific issues and strategies for this child or young person leading up to court and giving evidence
- Working collaboratively with agencies external to the justice system that are supporting the child or young person.
- Providing the legal team with information about the child's or young person's specific needs in the criminal justice system.
- Timing court preparation to ensure that it is supportive and not intrusive.

Trauma informed approach to assist child witnesses

- Exploring any safety needs and concerns and having a plan to minimise the chance of running into the accused.
- Identifying witnesses' fears and what they have control over.
- Clear articulation of their role as a witness and our role.
- Clear understanding of what is going to happen and next steps.
- Honesty and expectation management about the process and possible outcomes.
- Debriefing and assisting reengagement with community services.

Limitations of trauma informed practice

- The nature of communication and questioning of children in court.
- Our system was created for high functioning adults and while we have made cultural and systemic changes with the aim of improving the experiences of child witnesses it is still a very adult environment.
- There has been a number of inquiries in recent years in relation to vulnerable witnesses, most recently the report on Criminal Justice from the Royal Commission into Institutional Responses into CSA, which have recommended the use of intermediaries.
- It is unrealistic to expect that a lawyer will have the requisite skills for communicating with child and eliciting best evidence.
- The development of multidisciplinary teams with Child Witness Services and other Witness/Victim Services, legal practitioners and police has enhanced every ones practice, as will intermediaries.

Giving children a voice

- As part of CWS quality assurance processes we introduced client satisfaction surveys
- In 2009, at the bequest of the CWS Advisory Committee a second survey was introduced in relation to young witnesses' opinions and experiences of giving evidence in criminal hearings/trials.
- The concept for the second survey came from the work of Joyce Plotnikoff who in 2009 reviewed the special measures in the United Kingdom for child witnesses by interviewing 179 child witnesses.

Service improvements informed by surveys

- Provide a voice to children in the criminal justice system and the findings are incorporated into professional development.
- Informs how we prepare children and young people for court
- Lead to the development of a range of tools and guidance.

Communication checklist

Children who did not have an obvious disability or learning difficulty were not being identified as having potential communication issues. This lead to poor quality evidence but more importantly extreme distress of the witness who could not understand the questions being asked of them.

Guidance for legal practitioners in relation to:

- child development and communicating in court
 - children with learning difficulties, intellectual disability and autism spectrum disorder
 - providing independent legal advice to children.
- Informs our practice and a trauma informed approach.

Survey feedback

- The surveys provide a snapshot of children and young people's experience of giving evidence (over 200).
- The nature of the feedback and issues raised has remained consistent.
- The actions of the judicial officer and defence receive the most feedback.
- In the main feedback in relation to the judicial officer, prosecution and police is positive.
- While some witnesses recognise that defence was doing their job and found cross examination okay (16%), the majority found difficulty with at least on aspect of cross examination.

Survey outcomes-defence

The following areas received the most feedback in relation to what it was like answering questions in cross examination:

- A significant number could not articulate what was difficult but found cross examination emotionally difficult (28%)
- Confusing (25%)
- Negative demeanour or tone (19%)
- Leading and controlling questions (10%)
- Repetitive questions (10%)
- Questioning their honesty or blaming them for what happened (6%)

Survey outcomes- defence

What they could do differently:

- Tone and demeanour could improve (28%)
- They could be clearer (25%)

"She was confusing how she asked questions. I understood them when she was asked to say them in another way. She was concentrating a lot (frowning) and cut me off when I was thinking and was about to say more she would move on to another question. I didn't understand why she made me read 24 pages about things I wasn't there for (in court for)."