



Criminal Justice report: Improvements for complainants in court

All of the recommendations in the criminal justice report are designed to improve the criminal justice system's response to victims and survivors of child sexual abuse.

If our recommendations are implemented, some of the key improvements for complainants in their experiences of giving evidence and participating in a prosecution will be as follows.

Improving investigative interviews by police

We recommend improvements in the way in which police conduct investigative interviews following reports of child sexual abuse, including:

- better training for specialist police so that they have a specialist understanding of child sexual abuse and the developmental and communication needs of children and other vulnerable witnesses and better skill development in planning and conducting interviews, including using appropriate questioning techniques
- refresher training for specialist police and expert review of a sample of their recorded interviews for quality assurance and training purposes and to reinforce best-practice interviewing techniques (*recommendation 9*).

Where the complainant in a child sexual abuse matter is still a child, the prosecution is generally allowed to use their prerecorded investigative interview, often conducted by police, as some

or all of the complainant's evidence in chief. The quality of the interview is crucial because it is likely to constitute most, if not all, of the prosecution's direct evidence about the alleged abuse.

Research we commissioned identifies that the way in which police ask questions and the sort of details they seek from complainants may make cross-examination much harder for complainants and may inadvertently damage their credibility. Better training in investigative interviews will enable police to obtain the evidence that is needed for the prosecution without exposing the complainant to unnecessary cross-examination about peripheral details.

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.



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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.

Improving victim impact statements

We recommend that the victims and survivors should be given better information about the role of victim impact statements in the sentencing process. They should be given information to better prepare them for making a victim impact statement, including in relation to understanding the sort of content that may result in objection being taken to the statement or parts of it.

Victims and survivors may face real difficulties and stress in preparing a victim impact statement which reflects the harm they feel they have suffered but does not contain material that goes beyond what an offender has been convicted of, particularly in circumstances where the conviction is the result of charge negotiation.