

# Child Sexual Abuse and the Criminal Justice System: What Educators Need to Know

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## Abstract

There is widespread and ongoing agreement that children are disadvantaged in the criminal justice process in Australia (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, 1997). Despite a number of legislative and procedural reforms to protect child complainants of sexual abuse, the justice process too often results in trauma and further abuse for the child. This article examines the justice system from the perspective of child complainants in a study conducted across three jurisdictions (QLD, NSW and WA). An overview of the process is presented and consequences for the child are discussed. It is argued that educators need to be aware of the effects of the justice process on the child in order to address the child's needs, offer appropriate support and to facilitate educational outcomes during the child's involvement in the criminal justice process.

## Introduction

There is considerable evidence that child complainants of sexual abuse are at risk in the criminal justice system. By embracing a structure which was designed for adults, children taken an enormous risk that the system will 'work against them, rather than for them' (Smart, 1989, p 150). Recent research indicates that court experiences continue to be a source of severe disturbance for children up to 12-14 years after their involvement in the system (Ghetti *et al.*, 2000), particularly when an acquittal is the outcome of the case. The criminal justice system continues to present the government, courts, judiciary, legal profession and community with the particularly vexatious issue of encouraging child complainants of sexual abuse into a system which further traumatises and abuses the child (Eastwood, Patton & Stacy, 1998; Eastwood, Patton & Stacy, 2000; Queensland Law Reform Commission, 2000). Despite recognition that the child is disadvantaged in the justice process (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, 1997), and implementation of many legislative reforms in Australian jurisdictions, it can be argued the courts remain the legally sanctioned contexts in which the child is further abused (Eastwood *et al.*, 2000).

Sexually abused children are frequently involved as complainants in the criminal justice process during the crucial years of their education and cognitive, social, emotional, and psychological development. The consequences of such involvement are significant and can result in considerable trauma for the child (Eastwood & Patton 2002). Increasing recognition each state's responsibility for children and of its duty of care towards them, is articulated in the *United Nations Convention on the Rights of the Child 1989* and in recent legislation for example in the state of Queensland (*Child Protection Act 1999 QLD* ; *Commission for Children and Young People Act 2000 QLD*). Under the *UN Convention*, the right of children to be respected and valued is clearly expressed in the principle that the 'best interests of the child' are considered

paramount (Article 3, *UNCRC 1989*). The *Commission for Children and Young People Act 2000* (QLD) s (6) sets out the child's entitlement in the following terms:

- (i) to be treated in a way that respects the child's dignity and privacy; and
- (ii) to be cared for in a way that protects the child from harm and promotes the child's wellbeing; and
- (iii) to express the child's concerns and grievances and to have them dealt with in a way that is fair and timely and promotes the child's participation; and
- (iv) to receive information and help to enable the child to exercise the child's entitlements; and
- (v) to have access to services necessary to meet the child's needs.

The care and well-being of children is generally accepted as a responsibility of the state because 'children are a community responsibility and the price of not providing adequate care for them will be paid by the community in the long term' (Cashmore, 1999, p 155). It may be argued this responsibility includes a duty of care to ensure that reasonable care is taken of students (Stewart & Knott, 2000). Therefore, educators have a responsibility to be informed about the effects of child sexual abuse and the consequences of the justice process for the child. Educators are also in a unique position to offer appropriate support and to facilitate educational outcomes during the child's involvement in the criminal justice process.

## **Child Witnesses and the Criminal Justice System**

During the last twenty years, significant international knowledge has developed in relation to the needs of child witnesses (Cashmore & Horsky, 1987; Criminal Justice Service, 2002; Goodman, Rudy, Bottoms & Aman, 1991). As a consequence of these developments impressive gains have been made internationally to accommodate the needs of children in legal proceedings. Myers (1996) has argued that psychological research has also had a positive effect on legislative change including reforms relating to children's hearsay statements, competence to testify and the oath, support persons, closed courtrooms, video testimony, child advocates, the corroboration requirement and a range of ongoing reforms across jurisdictions (Myers, 1996).

Australian reforms have endeavoured to address the needs of child witnesses although every Australian jurisdiction has dealt with these issues in a variety of ways – some more effectively than others. Procedures and legislation vary considerably between jurisdictions in relation to complainants of child sexual abuse. However, in many jurisdictions it is evident that policies and management of child sexual abuse cases suffers from a lack of understanding of the developmental perspective of the child as well as the complex issue of 'centuries of disbelief and suspicion of children who accused adults of sexual crimes' (Kelly, 2002, p 364).

Despite legislative amendments, problems remain in the legal system both nationally and internationally for child complainants. There is a growing awareness and articulation in the literature, that substantial legislative and procedural reform is not enough (Easteal, 2001; Esam, 2002; Kelly, 2002). Cashmore (2002) argues that 'what is needed ... is a change in the way children are treated in the court process ... and to be treated with respect' (p 215). There is also increasing frustration that despite decades of reforms, children's experiences in court continue to be 'lessons in injustice, inhumanity and disrespect' (Kelly, 2002, p 368).

One of the most significant findings to emerge from the recent study (Eastwood & Patton, 2002) is that on the basis of their experience in the justice system, fewer than half of the children interviewed in both Queensland and New South Wales *would* report again if sexual abuse were

repeated. When asked if they would ever report sexual abuse again, only 44% in Queensland, 33% in New South Wales and 64% in Western Australia indicated they *would*. The higher response from children in Western Australia may be an indicator of the more child-friendly provisions that exist in that state. However, it should also be noted that the trial outcome is not necessarily a predictor of response to this question, as two-thirds of children who experienced convictions said they would *not* report sexual abuse again. The response from children is of concern and has the consequence of allowing the abusers to act with impunity (Eastwood & Patton 2002). It is evident from the findings that children initially disclose abuse through a desire to stop the abuse, to prevent it from happening to other children, or simply from a desire for justice. However, the way in which they are treated in the courts leaves many children damaged and disillusioned. Such a finding is indicative of the level of trauma inflicted on children during the court process. It is little wonder most children believe it is not worth it (Eastwood & Patton, 2002).

## **Believing**

Two decades ago, when the extent of sexual abuse was re-ignited in public awareness, the importance of 'believing' the child was established as a cornerstone of the child's psychological survival. Prominent researchers in the area (Berliner & Barbieri, 1984; Faller, 1984; Finkelhor, 1984; Jones & McGraw, 1987) emphasised the crucial importance of 'acceptance and validation' (Summit, 1983, p. 179) to the child. According to Kelly (2002) there was also an implicit assumption that the truth which children were struggling to tell would be self-evident in the legal system. This optimism rapidly diminished when it became clear that legal practices and procedures systematically disadvantaged children, and the extent to which defence lawyers would use their adult and professional status to intimidate the child. The strongest tactic was to undermine the child's credibility - and using the worst excesses of the adversarial court system, it became 'open season' on child witnesses. These abusive practices continue despite the fact that some of the well accepted practices in the adversarial systems would be unlikely to stand the test of the *UN Convention on the Rights of the Child* regarding preserving children's rights and dignity when they appear in court (Kelly, 2002).

Historically, myths such as Hales (1713) assertion that women and children are not to be trusted where matters of sexual offences are involved, and Freud's (1896 cited in Scutt, 1990) retraction of his theory that many women had been sexually abused as children, have contributed to societal beliefs that women either lie about sexual assault, or else they want to be raped. Also influential early this century were the views of Ellis and Bloch who maintained that sexual activity with children was not harmful (Scutt, 1990), or that somehow the victims of child sexual abuse were responsible (Bender & Blau, 1939; McGeorge, 1964). Unfortunately, such misconceptions have not been dispelled and have become entrenched in the theory and practices of law. Current judicial warnings, for example, in relation to convicting on uncorroborated evidence, are generally only required in cases of sexual assault and cast unwarranted doubt on the testimony of the child.

## **The Scope of Child Sexual Abuse**

There is widespread agreement in the literature that child sexual abuse spans all races, economic classes and ethnic groups (Finkelhor, 1993, 1994; Goldman & Padayachi 1997; Oates, 1990; Peters, Wyatt & Finkelhor, 1986). According to Bagley (1995), the majority of perpetrators are

male (in excess of 95 per cent) against male and female children. Around 80 per cent of the time, the offender is known to the child.

The prevalence of sexual abuse is so extensive that in 'no sub-group is it clearly absent or rare' (Finkelhor, 1993, p 67). Internationally, epidemiological studies estimate prevalence rates of 7 to 36 per cent for females and 3 to 29 per cent for males (Finkelhor, 1994) and confirm that sexual abuse of children is an international problem. It is estimated that females are abused at one and half times to three times the rate for males (Finkelhor, 1994).

Across all studies it is clear that only about half of the young victims disclosed the abuse to anyone (Finkelhor, 1994; Fleming, 1997). The reasons for the low rate of disclosure and reporting is attributed to failure by the child to recognise the activity as abnormal or abusive; feeling fearful, embarrassed or ashamed; lack of skills to communicate the abuse; and fear by the child they will not be believed (Qld Crime Commission & Qld Police Service, 2000). Further compounding the ability of the justice system to prosecute these cases is evidence that for every child who does report, three to five cases are not being reported (Finkelhor, 1991).

Australian literature confirms the magnitude of the problem in this country (Family Law Council, 1988; Fleming, 1997; Goldman & Goldman, 1988; Heath, 1985; James, 2000; Oates, 1990). The Goldman and Padayachi (1997) study involved 427 university students consisting of 140 males and 287 females. The study found that the figures for child sexual abuse in Queensland are within the upper range of percentages reported in other studies - 45 per cent for females and 19 per cent for males using a broad definition inclusive of non-contact abuse, and 39 per cent for females and 13 per cent for males using the more restrictive definition which excludes non-contact abuse. Girls were two to three times more likely to be abused than boys. In an Australian community-based study of 710 women, Fleming (1997) found 20 per cent of women had experienced childhood sexual abuse, with the age of onset of abuse being under the age of 12 years for 71 per cent of these women.

In summary, as the epidemiological findings from more countries become available, the evidence that child sexual abuse occurs in most places at most times is strengthened (DeMause, 1991; Snyder, 2000). Although complicated by varying definitions and sampling limitations, research indicates that official statistics seriously underestimate the true incidence of sexual abuse. It is estimated that 1 in 4 girls and between 1 in 7 and 1 in 12 boys are victims of sexual abuse (James, 2000).

## **The Effects Of Child Sexual Abuse**

The short and long-term effects described in the literature cover the entire range of emotional, behavioural, sexual, cognitive and physiological symptoms (Briere & Runtz, 1988; Browne & Finkelhor, 1986; Beitchman *et al.*, 1992). Although there are a variety of mediating factors that may impact on the development of negative symptoms, common emotional, behavioural and other problems continue to feature prominently in the research literature on child sexual abuse.

Emotional effects include depression, fear, anxiety, anger and shame (Beitchman *et al.*, 1992; Conte & Schuerman, 1987; Fromuth 1986; Peters, 1988). Behavioural problems include withdrawal, aggression and inappropriate sexual behaviour and increased sexual risk-taking (Ferguson, Horwood & Lynskey, 1997; McLeer, Deblinger, Henry, & Orvaschel, 1992).

Physical effects which may result from abuse include headaches, stomachaches and sleep disturbances (Peters, 1988). The effect of increased sexual risk-taking also makes victims of child sexual abuse more vulnerable to sexually transmitted diseases, HIV/AIDS, and teenage pregnancy

(Ferguson, Horwood & Lynsky, 1997; Mullen, Martin, Anderson, Romans & Herbison, 1996; Thompson, Potter, Sanderson, & Maibach, 1997).

Sexually abused children may also develop a distorted cognitive view of themselves and the nature of relationships (Finkelhor, Hotaling, Lewis, & Smith, 1989; Macfarlane, Cockriel, & Dugan, 1990). Effects include extreme distrust of others, self-blame, stigma, self-hatred and self-harming behaviours such as substance abuse, eating disorders, suicide and a subconscious attraction to and revictimisation by abusive partners (Browne & Finkelhor, 1986; Chandy, Blum, & Resnick, 1996; Coffey, Leitenberg, Henning, Turner, & Bennett, 1996; Harrison, Fulkerson, & Beebe, 1997; Mullen *et al.*, 1996; Welch & Fairburn, 1996).

Too frequently, disbelief and blame result in secondary assault to the child. Summit (1983) proposes the 'child sexual abuse accommodation syndrome' that offers a conceptualisation of how the child survives the immediate abusive environment and also isolates the victim from acceptance. By arguing that 'acceptance and validation are crucial to the psychological survival of the victim' (p 179), Summit's theory offers a significant insight into the manner in which disclosure to family, friends, and the justice system can often exacerbate the effects of abuse. Testing the child's evidence in the adversarial court environment effectively re-abuses the child through the expression of disbelief and by placing blame on the child. Combined with the effects of child sexual abuse, the problems for a child complainant of sexual abuse in the criminal justice system are considerable.

## **The Criminal Justice Process**

The decision to involve the criminal justice system is a complex one and both the child and the family may be reluctant to do so fearing further trauma to the child (Eastwood & Patton, 2002). However, criminal investigation and prosecution is seen by many as the most appropriate response to sexual offences against children (QCC & QPS, 2000). In reality however, prosecution occurs in only a minority of child sexual abuse allegations, primarily because of the substantial problems of non-disclosure and underreporting (QCC & QPS, 2000).

In Australia, although there is considerable variation in the process across jurisdictions, a broad overview of the process may be informative. After the defendant has been charged by police with the criminal offence/s, a preliminary examination or committal hearing is undertaken in the magistrates court. The purpose of the committal hearing is to determine whether the evidence is sufficient to proceed to trial and whether or not there is a *prima facie* case against the defendant. If the magistrate determines the case should be tried in a higher court, the accused is committed for trial. The District Court has jurisdiction to hear matters which have been committed by the Magistrates Court or matters which have proceeded directly without a committal by an *ex officio* indictment (QCC & QPS, 2000). The main court process involves trial by jury. The trial usually begins with the opening addresses by barristers for the prosecution and defence, followed by witnesses for the prosecution and then the defence. These witnesses, including the complainant, are required to present their evidence in chief, face cross-examination, and possibly re-examination. The manner in which the trial proceeds is largely at the discretion of the judge, especially concerning the admission of evidence and the directions given to the jury. If the accused is convicted, the jury verdict is followed by sentencing as the final stage of the court process (Cashmore & Horsky, 1987).

## **Purpose and Description of the Study**

In a major research study carried out from 2000-2002, Eastwood and Patton (2002) investigated *from the perspective of child complainants of sexual abuse*, the significant processes and consequences of involvement in the criminal justice system. The study involved 130 participants. The focus was on in-depth interview data gathered from sixty-three (63) child complainants (61 females and 2 males) aged 8 to 17 years (average 13.9 yrs) who sought justice through the criminal courts in Queensland (18), New South Wales (9) and Western Australia (36). Interviews were also conducted with 39 parents/guardians and 28 legal personnel (including crown prosecutors, defence lawyers, and judicial officers) across the three jurisdictions. Background data was provided by court support personnel.

A number of organisations acted as gatekeepers in gaining access to participants: Protect All Children Today (PACT) and the Office of the Director of Public Prosecutions in Queensland, the Victim Support Service in New South Wales, and the Child Witness Service in Western Australia. This enabled the child to feel free to decline to participate and ensured confidentiality.

Ethical considerations included written informed consent, procedures to ensure confidentiality, use of pseudonyms, the right to withdraw from the study at any time, and approval from the Queensland University of Technology Human Research Ethics Committee. Wherever possible, some degree of control was given to children at various stages of the research process and this was particularly so in the structure and content of the interview, modifications to transcripts, and seeking input in the discussion of analysis and findings. Over 250 hours of interviews were transcribed verbatim, and in conjunction with case notes, formed the base data.

## **Key Findings**

Children identified three major areas of concern as a result of their experiences in the criminal justice process. They perceived the greatest areas of difficulty were the extended wait for committal and/or trial; seeing the accused in the courtroom; and cross-examination at committal and/or trial. As some readers may not be aware of the difficulties faced by child complainants a more extended discussion of these three issues follows.

### **Waiting for Committal and Trial**

Child complainants waited between 8 and 36 months from their reporting of the allegations to trial. The average wait was 18.2 months. The delay between reporting and trial in Queensland was 20.8 months and 16.4 months in New South Wales. Although the delay was 17.5 months in Western Australia, one-third of complainants fully pre-recorded evidence months prior to trial.

Despite claims, for example, that best efforts are being made to prioritise children's matters in the courts as recommended by the ALRC & HREOC (1997), the situation shows little or no improvement. The waiting time and adjournments endured by most children, as evidenced in the current research, prevents the children from being able to move on with their lives and leaves many feeling that it is never going to be over. At a crucial stage of their emotional, social, and cognitive development the disruption caused by an eighteen-month wait may have significant consequences for their psychological well-being. One and a half years spent '*waiting and worrying*' represents a significant proportion of child's life at a crucial stage of their development. Combined with the fact there was little or no explanation offered to the child for such delays, the

child is further disempowered with the likely consequence that psychological recovery from the court proceedings, whatever the outcome at trial, will be delayed.

The psychological effects exhibited by participants during the wait for trial such as nightmares, suicide attempts, self-mutilation, self-hatred, fear of further victimisation by the offender, depression, inability to concentrate on schoolwork, fear of returning to court after committal experiences and fear of not testifying well at trial, were compounded by the long wait for trial. Children frequently reiterated that it was impossible to get on with their lives with comments that *'it was always on my mind'*; *'it seemed like it took forever'*; and *'the waiting is so hard because you feel like it is never going to be over and done with ... they just don't understand the pain that you go through'*. It is not surprising therefore, that there were detrimental effects on education for most children.

While delays are considered a problem for adult victims, the literature makes it clear that the effects upon children are more serious (Cashmore, 1995; Flin, Davies & Tarrant, 1988). Given the stress of waiting approximately one and a half years for trial, the detrimental emotional effects of awaiting trial after committal experiences, the effect on education and resultant possible long term consequences, and the need to remember and recall details of abuse during the waiting period, the present study substantiates the view that the psychological cost of delay to the child is significant.

### **Giving Evidence: Seeing the Accused**

The process of giving evidence was a key issue discussed by the children, parents and legal participants. It should be noted however, that legal participants did not reflect the perspectives of the child in many aspects. For example, for the children the issue of the use of CCTV was more about fear of seeing the accused than the purely evidentiary focus of the legal participants. All children who came face to face with the accused in the precincts of the court or in the courtroom commented on the disturbing nature of the encounter. *'I didn't feel nice seeing him – just remembering'* (Child 14yrs).

Within the courtroom, children may be protected from facing the accused through two means: the use of screens and the use of CCTV facilities. The use of screens in the eastern jurisdictions was sporadic and inconsistent. Many children in Queensland (30% at committal and 50% at trial), some as young as 10 years of age were refused the use of screens. Data gathered from complainants, parents and legal practitioners indicated the use of CCTV is virtually non-existent in Queensland, inconsistent in New South Wales, but standard practice in Western Australia.

Under Queensland legislation, CCTV and screens may be made available for 'special witnesses'. When a lack of facilities is combined with the reluctance of prosecutors to use CCTV, the nature of the discretion provided in the legislation, and the tendency of judicial officers to consider the measure unfairly prejudicial to the accused, the legislation is rendered virtually ineffective. Not one child in Queensland in the study was permitted to give evidence via CCTV either at committal or trial. The level of trauma to Queensland children who were required to give evidence in court, both at committal and trial, without CCTV, was particularly evident.

In New South Wales, child witnesses in a 'personal assault offence' proceeding have the right to give evidence using CCTV unless the court considers it is not in the 'interests of justice' to do so, urgency makes their use inappropriate, or the child chooses not to. 43% of the children were refused use of CCTV at trial, and at no time was this the child's choice.

The need for CCTV to be standard procedure for all children, thereby removing the uncertainty which surrounds the use of CCTV, is no better portrayed than in the comments of a New South Wales mother whose daughter had been threatened with death if she told anyone about the abuse.

I watched my daughter mortified at the prospect that she may have to face the offender in court, it nearly destroyed her – the fear of actually having to see this man again... I do not see what difference it makes to the court whether evidence is given by video, but it makes a huge difference to the victims. It gives them extra courage to carry on and also saves them the humiliation of being in a packed courtroom (Parent).

All children in Western Australia (except one child who chose not to) gave evidence via CCTV – 70% at trial and 30% fully pre-recorded their evidence months prior to trial. Therefore, complainants gave evidence only once. In Western Australia, the use of CCTV for an ‘affected child’ under the age of 16 years at the time of complaint, is mandatory where it is available, unless the child chooses to give evidence in court. Unlike Queensland and New South Wales, the choice is in the hands of the child, not the courts. In practice, CCTV facilities in Western Australia are of a very high standard and widely used. Children reinforced the level of protection offered to them by the use of CCTV. *‘It’s easier... because if someone is yelling at you through the TV, it’s not as bad as yelling at you from five feet away’* (Child 16yrs). Another child reported:

Defence counsel spoke very loud and it was like he was always having a go at me. But I just tried to stay calm and told him it wasn’t true... I was glad I wasn’t in the courtroom but on the CCTV for this (Child 14yrs).

The findings in Western Australia contrasted with the uncertainty and trauma suffered by children in eastern jurisdictions who faced the possibility or the reality they would give evidence in court in the presence of the accused.

The reasons why courts are reluctant to allow children the use of CCTV were presented by some legal participants in eastern jurisdictions with comments that use of CCTV erodes the rights of the accused, the child wouldn’t take giving evidence seriously, conviction rates would fall, or that the child is needed in court living out the trauma to get a result. There is also evidence where CCTV provisions are discretionary, that prosecutors may discourage the child from using CCTV in the belief that a conviction is more likely.

In contrast, prosecutors, defence lawyers and judges in Western Australia commented on the effectiveness of the legislation and the mandatory use of CCTV. Prosecutors reported it facilitated the child’s evidence because the child exhibits better concentration, is more attentive and less traumatised by the experience. Defence counsel in Western Australia noted it has not affected the rights of the accused, understood it was designed to prevent further damage to the child and believed its use does not affect conviction rates.

Only Western Australia allows the child, rather than the court, to decide whether or not to use CCTV. Children in other jurisdictions would benefit from similar legislation which protects the child from facing the accused in the courtroom.

## Giving Evidence: Cross-Examination

In recognition that abusive cross-examination does occur, all jurisdictions have enacted legislation to try to control the manner of cross-examination. Courts have always had inherent power, although limited, to control cross-examination. Queensland recently amended s 21 *Evidence Act 1977* to disallow an improper question that is offensive, intimidating, misleading, confusing, annoying, oppressive or repetitive. In New South Wales under s 41 *Evidence Act 1995*, questioning must not be unduly annoying, harassing, intimidating, offensive, oppressive or repetitive. The Western Australia legislation states the court may forbid a question which is considered indecent or scandalous, intended to insult or annoy or needlessly offensive (s 26 *Evidence Act 1906*).

Despite legislative attempts, there is overwhelming evidence from the children that unacceptable and abusive cross-examination continues.

Everyone in court was just watching me get all this. And making me feel worse. And I would cry and they wouldn't do anything or help me. I didn't have a support person, we had nobody. So I was in a court full of old people that just wanted to be grumpy at me. I didn't really want to be in there so I tried to answer the questions as quickly as I could so I could just get out of there (Child 16yrs).

Children described cross-examination that continued for hours or days, as horrible, confusing and upsetting. '*He was trying to get me to say all this stuff that wasn't true*' (Child 15yrs), and '*he made me angry and upset...he implied that I asked for everything*' (Child 16yrs). Being accused of lying was the most hurtful part of the process for children in all states. One parent commented that when the barrister called her child a liar, '*it nearly tore my child apart*'.

In a case study of a cross-examination carried out in one Queensland committal hearing, the crying child was repeatedly shouted at and asked more than thirty times to describe the length, width and colour of the penis of the accused. She was forced to draw the penis '*to scale*' although she said she couldn't draw. The child was repeatedly subject to intimidating, misleading, confusing, annoying, harassing, offensive and repetitive cross-examination. Despite successive warnings from the bench, defence counsel refused to act in accordance with the legislation. The child was subjected to further and ongoing abuse by an adult, and was not treated with respect, dignity, care or humanity

Children in Western Australia were cross-examined on one occasion only; for much shorter periods of time than those in the eastern jurisdictions; benefited from knowing with certainty prior to giving evidence that they would not see the accused; and appeared to be less intimidated with the degree of separation offered by CCTV.

Prosecutors and judicial officers in Queensland and New South Wales commented that cross-examination is often about intimidating the bench, junior prosecutors are frequently intimidated by senior counsel and committals are a big money earner for defence counsel. They also indicated that all too frequently children face a torrid time during cross-examination and a core of defence counsel use the committal to terrify the children and to '*belt them up*' prior to trial.

Because of the (committal) hearing I was really emotional until the trial. I was getting more tense... then I started having nightmares telling me to kill myself...Everyone was saying that it (the trial) is bigger than the hearing and

they'll be yelling at me more, and that kind of scared me because I don't like getting yelled at (Child 13 yrs).

In summary, every Queensland child was cross-examined in the courtroom at both committal and trial. Some children in New South Wales were required for cross-examination at both committal and trial. Every child in Western Australia was cross-examined once only. The use of intimidating and aggressive cross-examination at committal to unnerve children for trial – in the absence of a jury - seems to be a frequent defence tactic, and requires consideration of the call for abolition of committals (as in Western Australia) in cases involving child complainants. In recognition of the problem of repeated cross-examination, both the ALRC and HREOC (1997) and the NSW Standing Committee on Law and Justice (2002) recommend the child give evidence on no more than one occasion and advocate pre-recording the entire evidence of the child. The findings present considerable evidence that being subject to cross-examination at committal and trial is damaging for the child.

### **Effects on Education**

Earlier research identified the profound effect of the justice process on the child's education and the ensuing ramifications for long term career prospects. Eastwood *et al.*, (2000) found that more than three quarters of children sustained prolonged periods of absence from school due to disruption caused by the legal process. Harassment from defendants while at school, also contributed to school absences in a number of cases. Most children also described substantial effects on their ability to concentrate on schoolwork with resultant drops in grades. The responses of friends and teachers stigmatized the children as 'not normal' and also contributed to difficulties at school during the court process. Hostile responses of school mates who found out about the prosecution, focused on teasing them about being 'easy' and blaming the victims for the sexual abuse. Understandably the children expressed concern at not being believed and found these experiences extremely disturbing. Children also identified the often inadequate and inappropriate responses of teachers and administrators including refusal of school administrators to give special consideration for assignment due dates and exams for children involved in court processes. Other responses reported by children (who at the time were being treated for severe depression and self-harm) included teachers telling children to stop feeling sorry for themselves and teachers counselling children to simply pull their socks up.

The detrimental effects on education are reiterated by children and parents in the findings of Eastwood and Patton (2002). Two-thirds of children in Queensland and New South Wales and one-third of children in Western Australia reported harmful effects on their education. Both children and parents reported that school results went down markedly as the child found it difficult to concentrate during the wait for trial as reflected in children's comments. '*I was nervous and my marks went down*' (Child 14yrs). '*I was always thinking about going to court instead of my schoolwork*' (Child 15yrs). '*It was pretty hard to concentrate at school and I missed a lot*' (Child 16yrs).

It affected my schoolwork because I was usually high graded, high placed and I started to get low grades because I was scared and stuff. It was affecting my work. I was thinking about court and how it was going to end up (Child 14yrs).

A number of children failed to complete Year 10 Certificates and were forced to repeat while around ten percent of children dropped out of school altogether. Children repeatedly reported that they left school because of the stress of keeping up with schoolwork and difficulties with concentration. Some children maintained that they had to leave school because other children and teachers found out about the abuse and they '*just couldn't handle the stigma of all that*' (Child 17yrs). As summarised by one child, '*you can't function and have a normal life with this stuff going through your head*' (Child 12yrs).

Children also felt stigmatized and '*not normal*' as result of the sexual abuse and involvement in the court process. One child indicated that she '*was embarrassed when the police came to her school to speak with her*' (Child 13yrs). Another child lost a number of school friends and said '*their parents did not want them to associate with me...I'm so lonely*' (Child 15yrs).

In summary, children reported significant educational consequences of their involvement in the justice process. Difficulties in concentration, prolonged periods of absence from school, stigmatization, dropping out of school, deteriorating grades, lack of privacy and confidentiality as teachers and students become aware of the sexual assault combined with psychological problems such as depression, severe anxiety, self harm and suicidal tendencies to clearly identify the period between reporting and trial as a time of crisis for the child.

## **Conclusion**

In the end, if children do not report sexual abuse because of the damage done to them by the justice system, the abusers are allowed to act with impunity. A number of jurisdictions have endeavoured to address the problems for child complainants with legislative and procedural reform. For example, Queensland has recently introduced the *Evidence (Protection of Children) Amendment Bill 2003* which seeks to address the difficulties of the long wait for trial, seeing the accused and intimidating cross-examination.

Given the manner in which law traditionally sets itself apart – it is no easy task to persuade every Australian jurisdiction that nothing less than substantial legislative and procedural reform will prevent the abuse of children by the justice system. Without a concomitant paradigm shift in culture, beliefs, and attitudes – even legislated reforms will have limited effectiveness.

The implications for the child's education are of great concern and warrant consideration and action by educational authorities. For some complainants, the disruption is so significant, that it sets in motion a series of events which may have irrevocable effects on their lives. Effects on the standard of education attained, access to tertiary and further education and resulting consequences on future career options, financial security and self-esteem may be irreversible.

Given the detrimental effects of the criminal justice process, the need for counselling for child complainants is a crucial issue. However, the need for treatment raises the possible effects that treatment may have on the child's evidence and the potential use of treatment records for evidentiary purposes. It is argued that therapeutic counselling may contaminate a child's evidence and provide an opening for extensive cross-examination by defence counsel (NSW Standing Committee on Law and Justice; QLRC 2000). School's may be reluctant to become involved in providing counselling for child complainants to avoid allegations of contamination of the evidence which may be raised in court with the potential to compromise the legal process. Despite recognition that it is in the best interests of the child that there is access to counselling when needed rather than when the legal process dictates (ALRC & HREOC 1997), many jurisdictions have not enacted legislation which confers a legal privilege on all communications

between children and counselors for therapeutic purposes. For this reason, schools may continue to view the lack of protection as a deterrent to providing counselling for child complainants or may be limited in the manner in which counselling may be undertaken.

There are however, a number of steps educators can take to address the needs of the child and to facilitate educational outcomes. Educators can support child complainants by maintaining privacy and confidentiality; by being flexible in attendance and workload requirements; by allowing special consideration in assessment for child complainants; and by finding ways to encourage children to return to the education process even after prolonged absences due to the lengthy justice process. Most importantly, educators need to be informed about the scope and effects of child sexual abuse and the consequences of involvement in the criminal justice process so that they can provide children with understanding and care.

## Keywords

Child complainants; child sexual abuse; criminal justice system; educational consequences.

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