

A day in the life of ...

# Colleen Kerr

WITNESS INTERMEDIARY



PHOTOGRAPHY: JASON MCCORMACK

Two floors below the courtroom in the John Madison Tower in Sydney sits a 15-year-old girl who is giving evidence via CCTV in a sexual assault case. Behind her sits Colleen Kerr, a usually smiley speech pathologist who looks very serious in court.

Kerr is the first witness intermediary used in court in NSW. Her job is to improve communication between all parties in court. As the complainant hesitates and turns around, Kerr raises her hand and Judge Kate Traill asks what the problem is.

"If a witness doesn't understand the questions from the prosecutor or defence, it's my job to let the judge know," says Kerr. "I have to be completely impartial and am not permitted to discuss any of the evidence. In fact when I first meet the witness I don't even know many of the details of the case."

The role is part of a revolution in how child sexual assault cases are dealt with in the Downing Centre and Newcastle District Courts. In August, the State Government appointed Judge Traill and Judge Jennie Girdham as specialist child sexual assault judges to deal almost exclusively with child sexual assault cases.

The Children's Champion program is the second part of the new approach. Kerr is one of 52 people trained for what is a three-year trial program.

"I had had some contact with the legal system with people with communication issues and I struggled with the fact that there was really no role that would facilitate communication in court," Kerr says. "Some people require more time or need a certain kind of questioning. Witness intermediaries can flag this with the judge to make the court system fairer."

Last year, 6,223 sexual offence incidents involving a victim aged 15 or under were reported to NSW Police, compared with 4,581 in 2006. Of those, about one third were cleared up within 180 days of reporting and criminal proceedings began in about half of these cases.

**JANE SOUTHWARD** reports.

"The role has two names: children's champion and witness intermediary. The *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot Act)* makes reference to the role of children's champion but it is also known as a witness intermediary. Personally, I favour calling it witness intermediary because children's champion can suggest we are acting as an advocate in some way and we most definitely are not.

The role is to facilitate communication between all parties in the court process. I am not in court to act as an advocate but I am there to identify any specific communication needs of the witness and to make sure the court process allows them to participate fully.

It may be my job to interrupt the questioning if the witness cannot understand the questions or is confused, for example by the legalese. I must seek permission from the judge to interject. I raise my hand and might say, 'Your Honour, the word 'nominate' is unlikely to be familiar to the witness, could counsel use plain language?'

A common problem for children who are witnesses in child sexual assault cases is the use of tag questions, such as 'X didn't do this, did he?' We are in an adversarial system, so by nature the defence does employ frequent tag questions. Open questions or direct questions with yes/no answers may be better as they are easier for children to understand. Counsel may not be happy with this recommendation because their intention is not necessarily to encourage elaborate responses.

The judge decides what is an acceptable recommendation and what is not. As everyone becomes familiar with the guidelines and potential communicative obstacles, it is likely that the judge, or counsel themselves, will begin to modify questions without the intervention of the witness intermediary.

The bottom line is the defendant has an entitlement to have a fair trial, as does the prosecution and the witnesses. I am there for all parties and that is the thing that takes a little bit of getting used to, particularly because I am positioned near the witness.

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It is going to take some time for defence to accept that I am actually there to assist them in phrasing their questions in a way that still extracts direct responses. It doesn't affect their ability to put their case.

As a witness intermediary, some of the work is done in court and some out of court. It starts with a referral through Victims Services. My expertise is working with adolescents and adults, so I won't see young children. If you receive a referral, you do an assessment before court or before the police interview.

Our job is to assess a person's entire communication profile in relation to giving evidence. I see this as quite a linguistic role, but we also need to consider attention, behaviour and how this may impact on communication.

If a child, for example, is quite a passive communicator, they may be completely unable to explain that they have not understood. I see this as part of the move to the use of plain language in many fields but, in this instance, to look at how the complex language structures used in the justice system will affect a child and particularly a child with a communication problem.

A NSW Parliamentary Joint Select Committee report released in 2014 found many child witnesses couldn't manage going to court – just 20 per cent of cases of child sexual assault reported to police proceed to court.

The report recommended use of pre-recorded evidence. Pre-recordings reduce trauma on the child and allows them to take breaks as required. The other recommendation was the establishment of a task force to investigate a model for a Child Sexual Assault Offences Specialist Court including involvement of specialised judges and potential use of children's champions.

The Children's Champion/Witness

Intermediary system under Pilot in NSW is based on the UK and Ireland experience which began in 2002.

At a mention before the trial, the witness intermediary goes to court and goes through the report with counsel to explain the nature of the communication issues and give examples of what kinds of questions might be problematic.

This is really difficult for the legal profession and it's something we are going to have to work hard at making work. It's a really hard process for anyone to get feedback about their communication style, let alone legal practitioners who have been working for many years in this area.

It's going to take a huge change. You are looking at people who may be advanced in their profession and have been asking questions in a certain style for 30 years, then someone dares to interject and say, 'Please ask that question in a different way'.

Hearing the kind of evidence that comes up in sexual assault cases is something that's new to me. If I had any trepidation about taking on the role on, that was it. I deal with trauma constantly – brain injury and fractured families as a consequence of neurological injury. I am confident about dealing with complex issues but I haven't worked first hand with sexual assault.

Witness intermediaries are prepared for vicarious trauma and we have established mentoring groups to provide peer support. We are also mandated to continue training at a minimum of 14 hours a year.

I have had to learn to turn off things I do in clinical work, such as nodding when I am listening and looking supportive, even smiling. You have to adopt a neutral persona. As far as the witness is concerned, I explain to them that I am not there to help them with their evidence, I am not there to even comment on their evidence. I am there to make sure they can understand the questions and that they are able to explain themselves properly. **LSJ**