

# Advocacy – The Child Witness

“Children are works in progress — they continue to be works in progress even up to the age of seventeen and eighteen.”

Dr Anne Graffam Walker

**Fortunately for most of us the need to lead evidence from a child or to undertake the cross-examination of a child is not a common experience. However, the need does arise on occasion. When that occurs special care is required in preparing for the evidence of the child witness and in dealing with the witness in the courtroom.**

The approach you take to a child witness will vary depending upon the nature of the case and, importantly, upon the age and maturity of the child. Obviously a child of thirteen or fourteen years of age will require quite different considerations from a child who is seven or eight years old. The younger the child the greater the need for care.

It is important to bear in mind the differences between children and adults. Depending upon the child he or she may have an inadequate grasp of numbers and time. If there is a course of conduct over a period of time there may be a problem with establishing the correct sequence of events. The witness may have a different or unusual view of what is important when giving evidence. He or she may employ unusual descriptions of objects or everyday matters. The use of language will be different.

If you are to lead evidence from a child there is an obligation upon you to do all that you can to ensure that the evidence of the child is given in as clear and forthright a manner as possible. You will need to take steps to ensure that the child is not overwhelmed by the circumstance of giving evidence. This will involve doing your best to explain, at a level that the child can understand, what is to occur in the courtroom, who each of the players are, the importance of telling the truth and, in general terms, letting the child

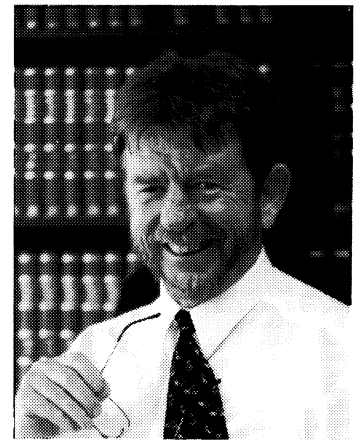
know what is expected of him or her. Remember the child is likely to be in a room full of adults who are strangers or, at least, in the unusual circumstances of a vulnerable witness. You should endeavour to ensure that the child is comfortable with you as the advocate and that you have an understanding of each other and, if it is possible, a rapport with each other. You will need to spend time with the child.

It is important to remember that you are dealing with a child whose level of experience and level of understanding is likely to be quite different from that of yourself and all other persons in the courtroom. Indeed the younger the child the greater is likely to be the gulf between the position of the child and the position of other persons in the courtroom.

Whether you are leading evidence from a child or cross-examining a child you should be conscious of the need to formulate your questions in language that can be readily understood by the child. It is preferable that each of your questions deals with one issue and that the question be phrased in simple terms using ordinary words which a child of that age can readily understand. It is necessary to choose your language carefully and to avoid convoluted questions.

When dealing with a child witness it is necessary to take special care to avoid being at cross-purposes with the child. It is easy for confusion to arise and for misunderstandings to occur. Doctor Anne Graffam Walker gives an example of a young child at a childcare centre complaining that a person had been “touching my privates”. Subsequently the “privates” turned out to be toy soldiers. You should listen carefully to the answers provided by the child witness to ensure that misunderstandings are avoided.

In cross-examining a child you should, in almost all cases, avoid direct confrontation. You should certainly avoid expressions of anger or exasperation and any conduct of your own which may lead



*Hon Justice Riley*

the tribunal of fact to be concerned that you are in some way unnecessarily pressuring or intimidating the witness. Conduct that would normally be quite acceptable in relation to an adult witness may have a quite different impact with a child witness. A cross-examination that causes unnecessary distress to a child witness, especially a young child witness, is likely to be an ineffective cross-examination. Indeed it is likely to have adverse consequences for your case. You should be patient with the witness. There is no reason why you should not be firm with the witness but that firmness should be reflected in questions which require an answer without a situation of open confrontation between counsel and the witness arising.

In cross-examination it is important to ensure that the child and yourself understand each other. It is of no use to you to conduct what you regard as an effective cross-examination only to have the child explain in re-examination that he or she understood a word used by you in a quite different sense from that which one would expect. If there is any doubt as to the child understanding what is being put or as to the meaning the child is seeking to convey in his or her answers, you should explore the matter further to avoid that doubt.

Often with young witnesses there is a concern on the part of the cross-examiner that the child has been coached by an adult in preparing for the giving of evidence. It is most unlikely that any legal practitioner would undertake such an exercise. However parents or guardians or adult friends may do so. If you are counsel who is to lead evidence from a

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child witness you should take very great care to ensure that you do not influence the child in any way that will lead the child to express himself or herself in a way which misrepresents the impact of their evidence. You should endeavour to ensure that no-one else influences the child in such a way.

Cross-examining counsel may wish to explore with the child witness the issue of the influence of others. In many cases ideas are planted by trusted adults. Those ideas may be deliberately planted in order to obtain some advantage. In other cases the adult may plant the ideas without consciously intending to do so or in the belief that something "must have" happened and in an endeavour to ensure the "truth" emerges. An exploration of the discussions a child witness has had with others may prove a fruitful source of challenge to the reliability of the witness.

Dealing with child witnesses requires a great deal of sensitivity and care. It is important to remember that children fall within a special class of witness and need to be treated accordingly.

## NT LEGISLATION

**Legislative changes in September 2000, notified in the NT Government Gazette.**

### New Acts

1/2000 Law Of Property Act 2000 (1.12.00)

2/2000 Land Title Act 2000 (1.12.00)

44/2000 Crown Lands Amendment Act 2000 (1.12.00)

45/2000 Land Title (Consequential Amendments) Act 2000 (1.12.00)

46/2000 Law Of Property (Consequential Amendments) Act 2000 (1.12.00)

### New Regulations

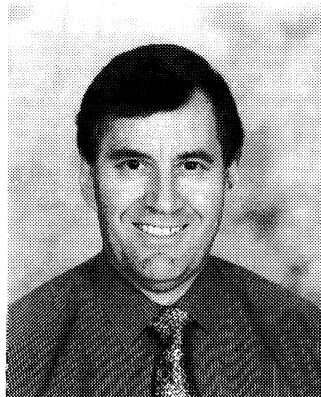
47/2000 Electricity Reform (Safety And Technical) Regulations (13.9.00)

## CORRECTION

*Around the NT Bar* in the September 2000 edition of *Balance* incorrectly stated Mr Tippet joined the bar in 1988. Mr Tippet joined the bar in 1985.

# AROUND THE NT BAR

**These profiles are the first in a series contributed by the NT Bar Association featuring barristers in the Northern Territory. Both the following barristers work at William Forster Chambers in Darwin.**



Ned Aughterson

### Ned Aughterson

Ned was first admitted to practice as a barrister of the Supreme Court of Queensland in 1977. He moved to the Territory in 1986. He has two degrees of LL.B (Hons), LL.M and PhD from the University of Queensland.

Ned has a strong background in tertiary legal education. In 1979 he took up an academic appointment at the University of Queensland. He was Foundation Dean of the Faculty of Law and now holds the position of Foundation Professor of Law at Northern Territory University. He has been a visiting scholar at the University of Essex in England and at the Max-Planck Institute for Foreign and International Criminal Law at Freiburg, Germany.

He has a number of publications in the areas of property law, criminal law and international law, including the book *Extradition: Australian law and procedure*, LBC, 1995.

He joined William Forster Chambers as a barrister in April 1999. He has been a member of the NT Council of Law Reporting, the NT Legal Practitioners' Admission Board and the NT-Indonesia Legal Cooperation Council. He is also an accredited mediator.

Ned is married and has three sons. His

interests include theatre, literature and tennis.

Ned's area of practice includes: extradition law, commercial law, common law, equity, property law, building and construction law, alternative dispute resolution, insurance law, administrative and constitutional law.

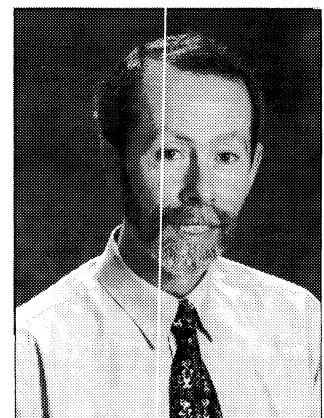
### Peter Barr

Peter was admitted as a solicitor in NSW in July 1976. He moved to the Territory in October 1976 to take up the position of employed solicitor with Cridland & Bauer (now Cridlands).

From 1979 to 1991 Peter worked as a sole practitioner. During the period 1986-89 Peter was a member, then Deputy Chairman and Acting-Chairman of the NT Planning Authority.

Peter started practice at the Independent Bar in January 1993.

Peter has been an RAN Specialist Reserve



Peter Barr

Legal Officer since 1977. He acts as a part-time Chairperson of the Northern Territory Disciplinary Appeal Board (for the public sector). He has held the honorary position of Consul for Belgium since 1989.

He speaks French fluently and some Italian.

Peter's area of practice includes: commercial and general litigation, personal injury, workers compensation, professional negligence (including medical negligence), Trade Practices and town planning. He is also available to do coronial appearance work.