Discussions about Child Witness Interviews during Australian Trials of Child Sexual Abuse

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Abstract

In many jurisdictions, child witness interviews are pre-recorded and played in court as complainants' evidence-in-chief in cases of child sexual abuse (CSA). The present study examined whether and how legal professionals discuss child witness interviews in the course of CSA trials. The trial transcripts of a sample of 85 child sexual abuse complainants (aged 6-17 years; 19 males) from three Australian jurisdictions were examined. Thematic analysis of all discussions between legal professionals about the child witness interview was conducted. Interviews were discussed for the majority (95.3%) of complainants. Three themes were identified: (1) problems with using the interviews as evidence-in-chief, (2) legal issues around the admissibility of interview topics and judicial directions, and (3) trial planning including availability of interview transcripts for jurors and the loss of recorded interviews. These results highlight the potential downstream effects that child witness interviews can have in CSA trials.

Keywords: child witness interviewing, child sexual abuse, child sexual abuse trials, Australia

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Child sexual abuse (CSA) is a global issue that affects millions of children. The United Nations Children Fund (UNICEF) estimated that worldwide, about 120 million girls and 73 million boys have been victims of sexual abuse involving some form of physical contact (UNICEF, 2014). Although child sexual abuse is a crime both under Australian domestic and international law, and is also a crime in all countries that have ratified relevant treaties such as the *UN Convention on the Rights of the Child*, it is one of the most difficult to prosecute (Australasian Institute of Judicial Administration, 2012). There are a number of reasons for this difficulty, beginning with a child's initial decision about whether to report the abuse (see Cashmore, Taylor & Parkinson, 2019, for an overview of the points of attrition of CSA cases from the criminal justice system). Further, there are rarely eyewitnesses to the abuse and corroborating forensic evidence is generally absent (Australasian Institute of Judicial Administration, 2012). In most cases, therefore, the complainants' evidence is crucial to a successful prosecution (Hoyano & Keenan, 2010). This evidence usually takes the form of a pre-recorded investigative interview; it must be elicited as accurately and reliably as possible (Oates, 2007).

Pre-recorded child witness interviews were introduced in Australian trials (as well as some overseas jurisdictions including New Zealand and the UK) as part of a host of reforms designed to improve vulnerable complainants' experiences at trial (G. Davies, 1994; Hamlyn, Phelps, Turtle, & Sattar, 2004). These interviews are conducted by trained investigative interviewers as soon as possible after the initial report to police, and are video- and audio-recorded (ALRC, 2010). Initially, the interviews aid police in the investigation of the case (Christensen, Sharman, & Powell, 2014), but if the case proceeds to trial, these pre-recorded interviews usually form all or part of the complainants' evidence-in-chief.

Prior to accepting a case for prosecution, prosecutors consider the competence, credibility and reliability of witnesses, and will accept a case only if there are "reasonable prospects of conviction" (ALRC, 2010). For child complainants, this decision is based partially on their child witness interview, which is often the prosecution's key piece of evidence. Prosecutors have immense discretion in making this decision (Alderden & Ullman, 2012) and, as a result, not much is known about the factors on which they base their decisions (Lievore, 2005). Interviews for cases that are accepted for prosecution are usually edited prior to trial, to remove any inadmissible evidence (Freckelton & Selby, 2013). At trial, before or after the interview is played to the jury, prosecutors may also choose to ask additional ("supplementary") questions of the complainant if certain necessary evidentiary details are absent from the child witness interview (Australasian Institute of Judicial Administration, 2012; Freckelton & Selby, 2013).

When pre-recorded interviews are used, complainants no longer have to give their evidence live in court in front of the alleged offender (ALRC, 2010). Currently, only complainants under the age of 18 years can pre-record their interview, but if they have turned 18 by the time of their trial, they may still be permitted to use their earlier interview as their evidence. Given that Australia has an adversarial criminal justice system, however, complainants' evidence still needs to be tested through cross-examination. This usually takes place in front of a jury, although in CSA cases complainants are typically cross-examined via CCTV (ALRC, 2010; Cossins, 2009).

Research has shown this measure has numerous benefits, including a reduction in the stress and trauma that complainants experience in court (Eastwood & Patton, 2002; Hamlyn et al., 2004), preserving evidence by recording the complainants' accounts closer to the time of the abusive incidents (E. Davies & Hanna, 2013; Hanna, Davies, Henderson, Crothers, & Rotherham, 2010), and reducing the need for complainants to tell their story numerous times

(La Rooy, Lamb, & Pipe, 2009). Pre-recorded evidence also allows prosecutors and defence to better prepare their cases (Burrows & Powell, 2014b; Cashmore & Trimboli, 2005), and enables the court to edit out inadmissible evidence and thus reduce the chance of a mistrial (E. Davies & Hanna, 2013; Hanna et al., 2010).

Despite these many advantages of pre-recorded child witness interviews, issues remain with their use in court. First and foremost, the quality of the interview (and evidence) is dependent on the skills of the interviewer (E. Davies & Hanna, 2013; Lamb, 2016), and studies have shown that the quality of interviews is often poor. For example, legal professionals (including both prosecutors and defence lawyers) have expressed concerns that interviews are frequently too long and include irrelevant and excessive detail (Cashmore & Trimboli, 2005; McConachy, 2002). Such interviews are fatiguing for a jury to watch, and difficult for a child to be cross-examined on (Burrows & Powell, 2014a; E. Davies & Hanna, 2013).

Interviewers typically employ poor questioning techniques, asking few open-ended questions (e.g., "What happened when…?") and many specific questions (e.g., "What was he wearing?", "when did that happen?"), contrary to best-practice guidelines (Luther, Snook, Barron, & Lamb, 2015; Wolfman, Brown, & Jose, 2016). Memory research has demonstrated that open-ended questions elicit more accurate information than closed questions (e.g. Lamb, Orbach, Hershkowitz, Horowitz, & Abbott, 2007), and a high proportion of open-ended questions is one of the key markers of a good interview (Benson & Powell, 2015b). However, concerns about the question types employed in interviews have chiefly emanated from psychological researchers; indeed, one interviewing expert has recently queried why legal professionals have not criticised the generally poor quality of investigative interviews, and demanded a change in line with best-practice interviewing principles (Lamb, 2016). It is possible that, as Lamb concluded, these professionals cannot recognise a "good quality"

interview, and do not know how much information children can provide when questioned appropriately. Furthermore, legal practitioners may not be aware of best practice principles, so are not equipped to tell whether compliance with these principles was achieved in child witness interviews. However, it is also possible that what is considered problematic from a psychological perspective (i.e., interviews not adhering to best-practice principles) is not the same as what is problematic from a legal perspective, and the issues that are raised in the interviewing literature are not those of most concern to legal professionals. Examining discussions between legal professionals about interviews in court should provide some insight into whether such differences in perspectives exist.

One final disadvantage of the use of pre-recorded interviews in court is the high rate of technological problems, such as equipment failure (Plotnikoff & Woolfson, 2009) and the poor sound and visual quality of interviews (Burton, Evans, & Sanders, 2006; Cashmore & Trimboli, 2005). Given that jurors consider demeanor and expression in assessing the veracity of complainants' accounts (Fisher, 2015), poor quality recordings are likely to affect their judgments (Burrows & Powell, 2014b). Indeed, some studies have indicated that mock jurors perceive children's evidence to be more credible when delivered live in court than via CCTV or pre-recorded interview (e.g., Eaton, Ball, & O'Callaghan, 2001; Goodman et al., 1998, 2006; although see Ross et al., 1994; Wilson & Davies, 1999).

To date, most of the problems that have been identified with child witness interviews have come from examinations of interviews themselves or from discussions with prosecutors and other stakeholders (Burrows & Powell, 2014b; Powell, Wright, & Hughes-Scholes, 2011). Some observational studies noted technological issues with interviews during court proceedings (Burton et al., 2006; Cashmore & Trimboli, 2005). The aim of the current study was to more directly examine whether and how legal professionals discuss child witness interviews during CSA trials, with a particular focus on the usefulness of the interviews as

evidence-in-chief. It is important to identify whether such discussions occur as they highlight the long-reaching effect that child witness interviews can have. Given that there are a number of opportunities for issues to be addressed prior to trial (e.g., before charges are laid, when deciding to prosecute, and during pre-trial hearings), any issues that are discussed in court should represent those that are the most pervasive.

Method

Trial Transcripts and Transcripts of Child Witness Interviews

Relevant ethical approval to access transcripts of CSA trials and child witness interviews was obtained. Prosecution files (including trial transcripts and child witness interviews) for 156 cases were obtained under notice or summons issued by the Royal Commission into Institutional Responses to Child Sexual Abuse ('RC') for a mixture of 'historic' cases (where the alleged abuse occurred before 2010 and the trial occurred after 2010)[1] and 'contemporary' cases (where the alleged abuse occurred after 2010). The cases were obtained as part of a larger project which investigated the use and effectiveness of a broad range of special measures in child sexual abuse cases (Goodman-Delahunty, Lee, Powell, & Westera, 2017; Powell, Westera, Goodman-Delahunty, & Pichler, 2016).

Three Australian states provided 54, 51 and 51 cases respectively. A subsample of these cases was selected from this broader dataset semi-randomly to include 40 child (aged 6–12 years at trial), 40 adolescent (aged 13–17 years at trial) and 40 adult (aged over 18 years at trial) complainants from each of the three jurisdictions. From this dataset, 35 complainants were excluded on the basis that their evidence-in-chief did not consist of a child witness

[1] Although there are many different definitions of "historic" cases of CSA, the current definition was used to be consistent with the definition used in other Royal Commission studies (see Powell, Westera, Goodman-Delahunty, & Pichler, 2016).

interview. Except for two teenagers aged 16 and 17 years who gave evidence via CCTV, the rest of these excluded complainants were adults (n = 33).

The final sample comprised 85 complainants from 73 trials conducted between 2011 and 2015, of whom 19 (22.4%) were male and 66 (77.7%) were female. Complainants ranged in age at their first child witness interview from 6 to 17 years *(*M = 11.78*,* SD = 3.09), and from 7 to 19 years when they were cross-examined (M = 13.56, SD = 3.34). The date of the complainant's cross-examination was chosen as a time-point instead of the date of trial as some complainants (n = 36) pre-recorded their entire testimony (including their cross-examination, which was pre-recorded at a special hearing prior to trial) and were not present at trial. Thus, the time complainants were cross-examined most accurately represents their last involvement in the prosecution process. The study sample included 40 child (aged 6–12 years), 38 adolescent (aged 12–17 years) and 7 adult (aged over 18 years) complainants.

Child witness interview questions were coded as open-ended, specific, or leading. Categorising interview questions into these three categories is the standard measure of interview quality employed by most interviewing evaluations (see e.g., Benson & Powell, 2015b; Cederborg et al., 2013; Lamb et al., 2009). Open-ended questions were defined as any questions that encourage an elaborate response, but do not dictate what specific information is required (e.g., "What happened next?"). Specific questions were defined as questions that focus the child's attention on previously disclosed aspects of an event or details and specify what precise information should be reported. These included cued recall questions (i.e., who, what, when, where, why, or how questions), "can you" questions (e.g., "Can you remember what happened next?"), forced-choice questions (e.g., "Was it his left hand or his right hand?"), and "low-risk" yes/no questions (i.e., yes/no questions that ask the child for additional information about a particular category, but do not contain specific details, e.g., "Was anything said?"). Leading questions were defined as questions that presume or include

a specific detail that was not previously mentioned by the child. “High-risk” yes/no questions were included in this category (i.e., yes/no questions that include at least one specific detail that the child had not previously mentioned, but do not suggest a desired answer, e.g., “Did he have a beard?”). The total number of questions asked in each interview was tallied, and the percentage of open-ended, specific, and leading questions calculated. One person, who had previously obtained high interrater reliability with a second coder (Cohen’s Kappa = 0.96), coded all transcripts.

Complete interview-related data was not available for all cases. The child witness interviews for 11 complainants were missing, and information about interview length (in minutes) was missing for a further 14 cases. Although discussions about the interviews in these cases could still be analyzed from the trial transcripts, the following descriptive data are based on those cases for which interviews were available (n = 74). Complainants had a mean of 1.42 child witness interviews (range 1-4, Mdn = 1), and ranged in age at the time of their interviews from 6 to 18 years (first interview M = 11.78, SD = 3.09; last interview M = 12.14, SD = 3.11). On average, interviews lasted approximately one hour (M = 58 mins, SD = 36 mins) and consisted of a high percentage of specific questions (M = 78% of the total questions asked, SD = 10%). An average of 9% of questions asked by interviewers were leading (SD = 7%). Only a small percentage of the questions were open-ended (M = 13%, SD = 8%). Research suggests that well-trained interviewers utilize between 40 and 70% open-ended questions (a key marker of interview quality); therefore, the lower percentage of open-ended questions asked in the present interviews were comparable in quality to interviews conducted by untrained interviewers (see, e.g., Lamb, Hershkowitz, Orbach, & Esplin, 2008; Powell et al., 2016). The majority of interviews (60 of the 74 interviews; 81%) were edited prior to being played at trial as the complainant’s evidence-in-chief, and prosecutors asked complainants additional questions in 71 of the 74 cases (96%).

Data Management and Analysis

Trial transcripts were read and any discussions between legal professionals concerning the child witness interview were extracted for further analysis. The data were then subjected to open coding (Strauss & Corbin, 1990), which involved a line-by-line analysis of the discussions (i.e., reduction) and identification of topics or issues raised therein. Discussions concerning similar topics were grouped together. The transcripts were then re-examined for statements that supported the identified topics and issues. The transcripts were read thoroughly and two of the authors met frequently to discuss emerging themes and resolve any disagreements. Thus, the identification of core topics helped to reduce the large volume of data into meaningful and discrete units of analysis (Miles & Huberman, 1984). Open-coding was chosen as the technique generates themes that are grounded directly in the data, and thus encourages researchers to examine multiple perspectives, rather than limiting themselves to pursuing a single idea (Strauss & Corbin, 1990).

To ensure trustworthiness of the data, Lincoln and Guba's (1985) reliability procedures were applied. This included prolonged engagement with the data to ensure the context of the data was understood and peer debriefing (by which the themes found in the data were discussed with another researcher, thereby highlighting any biases or assumptions of the first researcher). To ensure transferability of the current findings, "thick" (or detailed) descriptions of the data have been provided, allowing the reader to determine the extent to which the current findings are applicable to other contexts (Fishman, 1999).

Results

Prosecutors, defence counsel and judges discussed the child witness interviews for the majority of complainants (81 of 85 complainants; 95.3%). Given that these interviews form the complainant's evidence-in-chief, it is not surprising they attract significant discussion in court. These discussions occurred in the absence of the jury, and arose in three different

contexts. First, interviews were discussed in terms of their usefulness as evidence-in-chief. Second, interviews were mentioned during legal discussions about judicial directions and the admissibility of evidence. Third, interviews were referred to in the context of planning and organizing the trial. As the first context was the primary focus of the study, the second and third contexts are only briefly described.

Usefulness of the Complainant's Child Witness Interview as Evidence-In-Chief

Discussions between legal professionals regarding the usefulness of the child witness interview as evidence-in-chief were held in 51 of the 85 complainants' cases (60%), and focused on three broad topics: interview procedure, technological issues, and the structure of the interview. All three topics were discussed for one complainant, two topics were discussed for 17 complainants, and one topic was discussed for 33 complainants. Thus, at least one topic was discussed for 51 complainants. The following section examines these topics in more detail, in order of the frequency of their occurrence.

Interview procedure. Interview procedure was the first broad theme that arose in trial discussions about the usefulness of the interview as evidence-in-chief. This theme arose for 29 of the 85 complainants (34.1%). Subthemes within this topic included interviewer questioning, and the behavior and actions of the interviewer and complainant.

Discussions about interviewer questioning included factual errors that were made by the interviewers, such as putting the wrong version of events to children during the interview, and mixing up details across incidents of abuse. Such mistakes often caused confusion for children during cross-examination, and cross-examinations were usually stopped to clarify children's responses or to highlight interviewers' errors. In one case, for example, the interviewer moved so rapidly between incidents of abuse that the child ended up stating that the accused did not tell her to "suck his rude part", even though this act had in fact constituted a charge. This culminated in the defence submission that the charge should be

dropped. In another case, the interviewer put a factually incorrect version of events to the child, which the child failed to correct. As a result, the defence challenged the child's reliability during cross-examination. After the cross-examination was stopped, the judge suggested that the interviewer was more at fault than the complainant, but the defence disagreed.

> ***Judge*:** When the police have put something to him that's wrong, he hasn't picked them up, so you say that reflects adversely on his reliability of recollection.
> ***Defence:*** When it's put to him twice in quite a short time frame…then that is of some concern.
> ***Judge:*** Well, it's a criticism of the child witness interviewer, more than a criticism of the witness, it seems.
> ***Defence:*** But it is also a criticism of the witness. The prosecution is putting up what is said in that interview and what's accepted by this witness in that interview as being the evidence for the prosecution, and in those circumstances if he does say something or he's unwilling to correct the police officer, then that is of concern. (Male complainant, age 15)

Another way in which interviewer questioning was discussed at trial was whether certain elements of the offence (e.g., penetration) had been established, and whether sufficient particularization or detail of an offence had been obtained. In at least one case, it was suggested that interviewers had used leading questions to obtain this information, which could not be edited from the evidence.

> ***Prosecutor:*** There are portions of the pre-recording where the interviewing officer almost seems to be trying to do a repair job, for want of a better expression, which includes leading statements. But the converse of that is that the defence can address the jury in that regard and tell them what a leading statement is, so that there's no real point in trying to edit that out [the officer's leading statement] because it's in. (Female complainant, age 10)

Judges also made comments about interviewers' behavior and the effect of this behavior on the child. For example, one judge mentioned that an interviewer interrupted a child's train of thought and moved to an irrelevant topic just after the child disclosed an act of abuse.

> ***Judge:*** If I can just direct your attention again to page 4 of that second interview; she says '…he did with his rude part to me. He told me to suck it first. I told him no. He forced me to.' Of course, this happens with these interviewers who want to continually interrupt the train of thought of a child, and so we have this question, 'Q. Tell us what your mother said. A. Well, [s]he said he mightn't go to jail because we don't have enough evidence to prove it.' (Female complainant, age 11)

In addition, legal professionals discussed the behavior of complainants. Children's actions and demeanor during an interview were often used to infer the veracity of their claims. In fact, when addressing the jury at the end of the trial, judges usually gave the instruction to consider the child's demeanor and behavior carefully to help the jury come to its decision. In a number of cases, however, children's behavior was used by the defence as a ground for arguing that a reliability warning should be given. Although warnings about children being unreliable witnesses as a class have been outlawed, reliability warnings may still be given about a particular child witnesses if deemed necessary on the facts of the case. Some of the circumstances which prompted the defence to request a reliability warning in this sample of cases included the manner in which children disclosed during the interview (giggling and laughing), and children's behavior during an interview break (playing with the interview equipment in the absence of the interviewer), as shown in the following examples.

> ***Defence:*** …the grounds [for the reliability warning] that I rely on are this…in the interview, in particular, [the complainant] smiles, she laughs, she giggles at different points, which might be seen as inconsistent with the substance of what

> she's disclosing, and also, ultimately, that the disclosure—or the event—is said to have happened when she's asleep, or sleepy or just been woken…
> ***Judge*:** Yes, well I'm not persuaded by…the argument about her demeanor… But in relation to the matters of inconsistency, I think that that's probably a matter that would go to highlight that the jury need to be cautious, and I'm happy to give them a warning in relation to exercising caution when viewing the interview, in the context of reliability and credibility. (Female complainant, age 11)

> ***Judge:*** …when the police officer went off to consult and came back to find, as we saw, a mischievous child playing with the equipment…You've got a child here who is technically savvy, on any view, and has no compunction about playing with equipment.
> ***Prosecutor:*** One ought not to attribute to the child that aspect in relation to his savvy-ness; the fact that he tinkers with a unit which is sitting beside him and which he's seen the police officer playing with.
> ***Judge:*** No, it's not just that. That he would do that in a police station and also at his own home…
> ***Prosecutor:*** That, Your Honor, doesn't necessarily lead to a fair and reasonable inference that he's the sort of person who will invent a story of this nature. (Male complainant, age 12)

Technological and transcription issues. Technological issues, such as poor sound and visual quality of videos, were discussed for 21 of the 85 complainants (24.7%). Consequences of technological issues included delays in court proceedings and difficulties in understanding children's testimony. Although difficulties in understanding children's testimony were often remedied by providing transcripts of the interviews to the judge and jurors, these transcripts contained errors in 5 of the 21 cases (24%) in which this remedy was applied, which exacerbated the problem. The following example is illustrative.

> ***Judge:*** There are a number of errors in the interview transcript that I have noted and I probably haven't got them all, but at p 11, question 121, 'So tell me more

> about Uncle; what do you guys do together?' rather than 'what do guys do together?' The word 'you' to my hearing was missing [from the interview] and that's a significant difference. (Female complainant, age 10)

The structure of the child witness interview. The structure of the child witness interview was another broad theme that arose in trial discussions about the usefulness of the interview as evidence-in-chief. This topic was discussed in relation to 20 of the 85 complainants (23.5%). Legal professionals were concerned about the lack of clarity in the interviews, which at times resulted in confusion for complainants and legal professionals during both cross-examination and discussions between legal professionals outside the presence of the jury (*voir dire*). Interviews were described as "very poorly structured" and "jumping from place to place". They were also criticized for not following any chronological order, not clearly relating to the charges in the indictment, and being overly long.

Trial transcripts showed that in some cases, the lack of structure in children's interviews led to objections and arguments over whether the necessary evidence had been gathered in the course of the interview. At other times, poorly structured interviews provided an opportunity for the defence to confuse children during cross-examination. The prosecutor in the following case illustrated the problem:

> ***Prosecutor:*** Your Honor, the to-ing and fro-ing in the questioning of the complainant in the particular interview is confusing in one sense, but, more importantly, to cross-examine based on a series of questions which in themselves are confusing—and to refer to those questions—adds unnecessary complication. And what I'd be submitting is, that for the purpose of cross-examination it's fundamentally important that the complainant understand an event and be able to give evidence about an event rather than criss-crossing the transcript by way of questions put by a police officer seeking to ascertain facts. It's fundamentally important, Your Honor, otherwise the witness becomes

> confused and it's patently obvious that that's what's happening. (Male complainant, age 12)

The trial transcripts also revealed that long and convoluted interviews created difficulties in some cases because children could not remember all of their evidence; thus, they could not be effectively cross-examined. In the following case, for example, the defence lawyer attempted to cross-examine the complainant on whether or not she put her clothes on a speaker, but she could not remember this aspect of her interview.

> ***Judge:*** I think the other problem is when she can't remember now - it's a long interview. To say, 'Do you generally remember the concept of participating in an interview?' 'Yes, I do, but the specifics of it, no, I don't' - and to be quite honest, even for an adult, if you said, 'Is there a reference in there to putting clothes on a speaker?' we'd all have to probably turn all of the pages to satisfy ourselves to make such a concession. I don't think she can remember what she did or didn't say, and that's the problem…. (Female complainant, age 10)

Long interviews were also seen as problematic because they resulted in witness and juror fatigue. For example, in the following case, a long interview led one judge to halt the complainant's evidence-in-chief because a juror was falling asleep.

> ***Prosecutor:*** [in opening address] You heard from his Honor that [complainant] participated in an interview where she gave her account of what happened. Now, that interview is rather lengthy and we'll spend most of today, if not all of today, watching that interview. It goes for about four and a half, five hours. …
>
> ***Judge:*** [To the jury during complainant's evidence] Ladies and gentlemen, as I said, this is more difficult than watching someone in the witness box so I think what we'll do is that we'll take an early lunch and we'll resume at two o'clock [the jury retired]. [To counsel] Just by way of explanation, one of the ladies was nodding off. (Female complainant, age 14)

Finally, legal professionals discussed the length of interviews in the context of trial organization. These discussions arose when deciding when interviews should be played, and

whether the complainant had had the opportunity to refresh his or her memory. Apart from interview length, factors taken into consideration when deciding when to play the interviews included the number of complainant interviews, when complainants would be cross-examined, and whether the jury would need a break while watching the evidence. When discussing the need to refresh complainants' memories of their interviews, legal professionals differed over what they deemed an acceptable time lapse after watching their interviews and giving evidence in court. In some cases, complainants watched their interview on the day of the trial; in others, they watched their interview a week or more earlier. There was no uniform view as to what time frame was ideal; some prosecutors expressed concern that too much time had passed since the complainant had watched his or her interview, while others deemed similar time frames (e.g., a week) completely acceptable.

Admissibility of evidence and jury directions

Child witness interviews were frequently discussed in the context of related legal issues, such as the admissibility of interview topics and the necessity of judicial directions. In terms of directions, the majority of discussions concerned directions about evidence of prior offences or other misconduct of the accused ("uncharged acts"), inconsistent statements, and reliability warnings.

The admissibility of topics raised in child witness interviews was usually discussed in the context of an application by the defence to edit out questions or sections of the interview. In most cases, edits were agreed between prosecution and defence, and judges were simply informed of them. The majority of agreed edits were made on the basis that they lacked relevance, and judges usually informed the jury of this fact. When prosecutors and defence counsel did not reach an agreement, judges were required to make a ruling on the proposed exclusions. Ensuing discussions of parts of the interview to be edited included evidence of

the accused's motive, tendency to act or think in a particular manner, relationship to the complainant, and competency testing conducted by interviewers.

In a number of cases, the defence made an application to cross-examine the complainant on prior or other child witness interviews, and a ruling had to be made as to whether these were admissible. The grounds on which defence contended that such interviews were relevant were the need to demonstrate the complainant's sexual abuse history (which might give rise to a reasonable doubt about the offender's identity), and the complainant's history of making complaints.

> ***Defence:*** Your Honor, the defence makes an application in relation to two prior complaints and the use of evidence from those when cross-examining the complainant in the matter…The defence position is that this particular young lady has a fascination about men and that there are increasing claims once she gets somebody's attention. What evidence do we say supports that? Well, in relation to the February complaint, we have the fact that there's a first interview about an occasion and then she comes back for a second bite of the cherry with a second interview. Now, in that second interview she does exactly the same as she does on this occasion. Right at the end of that interview, she then starts saying, 'It wasn't just the individual times that I've talked to you about. It was lots of times. We started having sex regularly several times a week'. There's this inflation of what she says on each occasion. (Female complainant, age 18)

Trial planning

The final context in which child witness interviews were discussed in court was trial planning. Much of the discussion on this topic centered on jury issues. Juries were provided with transcripts of the complainant's interview in nearly every case; however, some judges preferred to provide these before, and others after, the recording of the interview had been played in court. A more contentious issue was whether or not juries could watch the complainant's interview a second time, and, if so, whether they could take the recording into

the jury room. Whether or not this was allowed appeared to hinge on the circumstances of the case, as well as the inclinations of the presiding judge.

Discussions about child witness interviews in the context of trial planning revealed that some judges lacked knowledge or experience with the use of interviews as the complainant's evidence-in-chief. Other judges were unfamiliar with general procedures for vulnerable child witnesses in CSA cases.

> ***Judge:*** So what happens now? When you had these special hearings the judge used to speak to young complainants about horses and wigs and silly things like that; do we still do that? (Male complainant, age 16)

> ***Judge:*** Can I say at the outset that it has been a long time since we've done a trial with a [child witness interview] and a pre-trial—a special hearing—and the like, so I'll just need to be guided carefully through the various procedural requirements, Mr. [Prosecutor], if you don't mind, and Mr. [Defence].
> ***Defence:*** Mr. [Prosecutor] will be on top of it, Your Honor. (Female complainant, age 18)

The final way in which child witness interviews were included in courtroom discussions about trial planning concerned a number of cases (n = 3) in which records of the child witness interviews had been lost. The loss of these interviews caused delays in trials and concerns about the security of this highly sensitive material. In at least two trials there were issues with the use of a postal service to transport edited interviews. One judge expressed concern about the practice.

> ***Judge:*** Anyway, so the edited interview is coming back by…
> ***Prosecutor:*** Express Post.
> ***Judge:*** Express Post. Oh goodness, you're making me nervous now.
> ***Prosecutor:*** I know, but in [assistant's] long experience, it's never failed, he tells me. It can even be tracked by the internet.
> ***Defence:*** Almost never fails.

> ***Judge:*** …I'm a bit interested to hear about interviews going through Express Post... I wonder whether that's what should be happening. I know it's practical but they are what they are. They're pretty significant things to be entrusting to post. (Female complainant, age 16)

Discussion

The current study examined whether and how legal professionals discuss child witness interviews during CSA trials, and to determine whether problems highlighted in interview and observational studies are echoed by these professionals. The results showed that judges, prosecutors and defence lawyers discussed child witness interviews in three different contexts: usefulness as evidence-in-chief, while planning the trial and in relation to legal issues.

Discussions about the usefulness of the interview as evidence-in-chief were explicitly raised regarding the majority of complainants and addressed the structure of the interview, interview procedures, and technological issues. The issues raised suggested that child witness interviews had an impact on complainants' memory, credibility, and reliability. They also caused delays to proceedings, prolonged trials and created confusion for complainants and legal professionals alike. These disadvantages of using pre-recorded interviews as children's evidence-in-chief are consistent with those identified in past research (Benson & Powell, 2015a; Burrows & Powell, 2014a, 2014b). However, results of the present study offer further insight into the downstream effects of child witness interviews at trial.

For example, in terms of the first broad theme – interview procedure – research has shown that prosecutors are concerned with the reduced formality in children's interviews (Burrows & Powell, 2014b). Prosecutors in this study noted that many children in interviews were dressed in clothes that would be inappropriate in court, and that the children displayed oppositional behavior which prosecutors feared would negatively impact the jury assessments

of the child's credibility. Although the present study could not measure jury assessments of credibility, current results did support prosecutors' concerns in past studies by showing that reduced formality such as giggling or playing with recording equipment led the defence to seek a reliability warning regarding the child's evidence. Prosecutors in past studies were also concerned about interviewers interrupting a child's disclosure of abuse by asking irrelevant questions about contextual details (Burrows & Powell, 2014a, 2014b), concerns which were again echoed by legal professionals in the present study. Interviewers need to keep in mind that anything that is recorded during the interview - even during breaks in the interview - may be used in court by the defence to undermine the complainant's account.

The second broad theme that emerged about the use of child witness interviews as evidence-in-chief was technological problems when the interviews were played in court. Technological problems are not new, nor are they restricted to Australia (Burton et al., 2006; Eastwood & Patton, 2002; Plotnikoff & Woolfson, 2009). However, the fact that issues with technology emerged as a theme in the present sample of cases suggests that problems documented in earlier studies, such as poor sound and image quality of video recordings, have not yet been overcome. In addition, a non-trivial percent of cases in the current sample included errors in transcripts. Given that both poor audio and visual quality of pre-recorded interviews and errors in transcripts, may reduce the clarity of the evidence presented (Burrows & Powell, 2014b), rectifying these issues should be a priority.

The finding of the third broad theme – interview structure – was consistent with past research, which has also found evidence for this theme. For example, prosecutors have observed that child witness interviews are too long (Burrows & Powell, 2014a; Burrows, Powell, & Anglim, 2013). The results of the present study support their views as the length of child witness interviews emerged as one of the issues when the interviews were discussed in court. Lengthy interviews can be problematic because they may deplete children's cognitive

resources and provide more opportunities for errors and inconsistencies between statements (Benson & Powell, 2015a; Burrows & Powell, 2014b). Lengthy interviews may also fatigue jurors when played in court, as documented in the present study through a judge's discussion of a juror falling asleep at trial.

The results showed that legal professionals discussed the lack of clarity in child witness interviews, particularly because the questions did not follow a chronological order. This finding about lack of clarity adds weight to prosecutors' concerns that, to be useful, child witness interviews should be concise, relevant, and clear, with the evidence elicited in a narrative format (Burrows & Powell, 2014a). Such narrative accounts should be more persuasive and credible to a jury because they allow children to tell their story in their own words. The results of the present study demonstrated the confusion that can occur when children are cross-examined about what they did or did not say in the child witness interview. When the original interview was confusing, complainant's confusion in court during the cross-examination was exacerbated, which may have affected their credibility in the eyes of the jury.

The other two main contexts in which child witness interviews were discussed centered on legal issues and trial planning. The legal issues included discussions about judicial directions and admissibility of certain types of evidence. Discussions were also held about the admissibility of prior child witness interviews. Trial planning included discussions about jurors, such as when they should receive the transcript of the children's interviews and the number of times they could watch the video-recorded interviews. Although these contexts were not the focus of the current study, they are important to examine in their own right and should be a topic for future research.

Taken together, the results of the present study illustrate some of the downstream effects of child witness interviews and, in particular, the issues that can arise when presenting

these interviews as children's evidence-in-chief in court. The results reinforce past concerns about the quality of the interviews and technological issues that have emerged through examinations of child witness interviews and through focus groups with prosecutors (Burrows & Powell, 2014b; Powell et al., 2011). However, results also demonstrate that the issues that are raised by legal professionals do not directly align with those raised by interviewing professionals. That is, there were no discussions about question types (i.e. open, specific, or leading) or other aspects of best-practice interviewing (e.g., establishing rapport, ground rules) which form part of the evidence-based recommendations for interviewers (Lamb, 2016). This suggests that the aspects of interviews that are considered "problematic" by interviewing experts are not necessarily those that are considered most problematic at trial.

Nevertheless, there are at least three strategies that may assist with improving the quality of the interviews and technology, and improve their utility as complainants' evidence-in-chief. First, the quality of the interviews may be improved through interviewers' use of non-leading open-ended questions to encourage children to give coherent narrative accounts of the alleged abuse (Newlin et al., 2015; Powell & Cauchi, 2013). Although legal professionals did not specifically mention question types in their discussions, the increased utilization of non-leading open-ended questions may increase the coherence of children's accounts, which was an issue raised in court. Specific questions should then be used sparingly to follow up on forensically important information that was not mentioned in the narrative account (Benson & Powell, 2015a, 2015b; Lamb et al., 2008), and interviewers should not interrupt a child's narrative account (Powell & Thomson, 2001).

Second, the quality of interviews may also be improved through increased interdisciplinary communication and collaboration between legal professionals, police, and other professionals involved in child witness interviewing (McConachy, 2002; Victorian Law Reform Commission, 2004). Research has suggested that part of the reason for "overzealous"

questioning by interviewers is a misunderstanding of what is legally required for a successful prosecution, and a lack of feedback from legal professionals about the child witness interviews (Burrows et al., 2013, p. 269; Hoyano & Keenan, 2010; McConachy, 2002). Third, with regards to technological problems, the broader literature suggests that such issues are frequently due to insufficient testing and planning (Walsh, 2014).

One of the main limitations of the current study is that the trial is a very limited forum. It is possible some issues with interviews were raised before trial, and thus were not raised at trial. The current study also only examined issues that legal professionals explicitly discussed at trial, thus, the prevalence rates of discussions presented in this study likely underestimates the impact of the police interview at trial. This is specifically the case for technical issues, as these are often not recorded in transcripts. Finally, the discussions around the interview will have been (at least partially) determined by contextual factors. Thus, although the trial forum provides some insight into which problems of police interviews are most pervasive, the issues discussed here are not an exhaustive list.

In conclusion, the findings from the present study are largely consistent with those of previous research concerning the utility of using pre-recorded child witness interviews as children's evidence-in-chief in CSA trials. This study extended past findings by illustrating the potential downstream effects of child witness interviews in adversarial trials, and by highlighting the aspects of interview quality that currently cause issues at trial. Future research is necessary to quantitatively examine whether, or to what extent, interview quality influences both the conduct and outcome of CSA trials. This could involve a systematic analysis in a larger dataset, in which the influence of the themes found in the current study are quantitatively examined. Examining records of pre-trial discussions and interviewing professionals involved in the trials about out-of-court discussions could be considered in future studies to get a more accurate estimate of the presence of the themes found in this

study. The effect of other variables associated with interviews, such as complainant age, could also be examined. Finally, if possible, future research could examine what information is edited out of interviews prior to trial, and the reasons for this. Such research might involve a more legally-informed analysis, and thus provide more specific guidance for interviewers with regards to content in interviews that is problematic from a legal point of view.

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