IMPROVING THE EVIDENTIAL QUALITY OF CHILD WITNESS STATEMENTS ABOUT SEXUAL ABUSE

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Abstract

Child sexual abuse (CSA) cases are often not prosecuted because of poor evidential quality of the visually recorded investigative interview, the central plank of CSA investigations and prosecutions. Prior literature providing detailed feedback about interviews has focused on the interview process from the perspective of experts in child language and memory development. The aim of the current thesis was to examine prosecutors’ perceptions of interviews and to take a constructive approach to determine how the evidential quality and usefulness of interviews could be improved.

Five studies are presented in this thesis. The purpose of the first two studies was to elicit detailed and constructive feedback from prosecutors about the evidential quality and usefulness of interviews, and suggestions for improvement. These studies were based on in-depth phone interviews held with 19 trial prosecutors (from one particular Australian jurisdiction) shortly before and after CSA trials. Study 1 sought prosecutors’ feedback about the strengths and limitations of child witness interviews, along with suggestions for how the interviews could have been improved. Thematic analysis revealed that the prosecutors’ primary concern was overzealous questioning in interviews. Three broad areas for improvement emerged: the need for tighter focus on the elements of the offence; better clarification of inconsistencies and ambiguities in the child’s account; and greater consideration of how the child may present in the eyes of the jury. The focus of Study 2 was prosecutors’ perceptions about the challenges in using electronically recorded interviews (as opposed to a live witness) as evidence-in-chief at trial, and suggestions for how these challenges may be addressed. Thematic analysis revealed concerns in a number of areas: (a) the quality
of questioning in interviews, (b) the jurors’ engagement with the witness, (c) the sense of formality and solemnity of evidence, (d) the clarity of the evidence, and (e) the child’s preparedness for cross-examination.

A solution-based approach was employed in Studies 3 and 4 to generate practical and constructive guidance about how child witness interviewing techniques could be improved to accommodate prosecutors’ suggestions. In particular, the purpose of Studies 3 and 4 was to address prosecutors’ concern that interviews often include unnecessary questioning which risks damaging the evidential quality of interviews. Both studies utilised a focus group of nine Crown prosecutors, representing every Australian state and territory (with the exception of one small jurisdiction). Study 3 sought guidance from prosecutors about when and how interviewers should clarify details about sex acts alleged by a child in an interview. Analysis of the focus group discussion indicated that, from a prosecution perspective, three factors need to be considered before asking clarifying questions about sexual acts: whether the detail already provided by the witness would be clear to juries; the developmental age of the child; and the strength of the evidence available to support the allegations.

When describing sex acts, many children use colloquial terms to describe genitalia. Given that the meaning of these terms was often a source of specific questioning in interviews, Study 4 sought prosecutors’ perceptions about the level of clarity in genitalia terms required from a legal perspective, and the manner in which such clarity can be achieved. Thematic analysis revealed that, from the prosecutors’ perspective, questioning about genitalia terms was unnecessary in most cases. Specifically, where a lay person would understand a genitalia term used by a child,
then for the purpose of prosecution, the term was sufficiently clear. Clarity about the child’s meaning for a term could typically come from the context provided by the child’s narrative account, or from another source, rather than via specific questioning in the interview.

Overzealous questioning in interviews may be attributable to a mismatch between interviewers’ and prosecutors’ understandings of the legal requirements of an interview. The fifth and final study in this thesis therefore aimed to determine whether differences in the evidential qualities that are perceived as important by prosecutors and interviewers could be reduced through simple instruction. Five prosecutors and 33 interviewers completed a written exercise wherein participants were required to identify what aspects of information required follow up in five hypothetical narrative accounts of abuse. Twenty of the interviewers had (prior to completing the exercise) received prosecutor instruction on the requirements of interviews in terms of the elements and particulars of sexual offences, and the manner in which necessary information is best elicited in an interview (from a legal perspective). The responses to the exercise of interviewers who had and had not received prosecutor instruction were compared. The results indicated that interviewers who had received instruction were more consistent with prosecutors in their responses to the exercise.

Overall, the prosecutors’ primary concerns related to overzealous specific questioning on the part of interviewers and inadequate consideration of how the child and the interview will present in the eyes of jurors. Suggestions for improving the evidential quality of interviews centred around the need for narrative-based interviewing that elicits the child’s account of abuse in his or her own words, with a
focus on the interview content required for prosecution (i.e., the elements and, to a lesser extent, the particulars of offending), and the presentation of the interview as formal and solemn evidence. Providing interviewers with simple instruction to this effect appears to be beneficial in changing interviewers’ perceptions of interview requirements. The implications of these findings for legal policy makers, researchers, and investigative interview trainers and protocol developers are discussed.
CHAPTER 1 – INTRODUCTION

Child sexual abuse (CSA) is a global problem that affects millions of children worldwide (World Health Organisation, 1999). Estimates of the prevalence of CSA in developed countries typically range from 20-36% (Price-Robertson, Bromfield, & Vassallo, 2010). CSA cases, however, are difficult to prosecute and are more than twice as likely as other offences to be declined for prosecution (Cross, Whitcomb, & De Vos, 1995). Overall, less than 9% of cases reported to police result in a conviction (Community Development and Justice Standing Committee, 2008). Feedback from prosecutors across the globe has indicated that low CSA prosecution rates are due in large part to the poor evidential quality of children’s investigative interviews (Office of Director of Public Prosecutions (ACT) & Australian Federal Police, 2005; Success Works, 2011). Physical and other corroborative evidence is not common in CSA cases and child witness interviews, therefore, form the main evidence available to secure convictions (Powell, Fisher, & Wright, 2005). This is particularly the case in jurisdictions where children’s interviews are visually recorded and available for use as evidence-in-chief at trial (Office of Director of Public Prosecutions [ACT] and Australian Federal Police, 2005; Powell & Wright, 2009; Success Works, 2011).

To improve the evidential quality of child witness interviews, research is needed in three related domains. First, research is needed to understand child development and how limitations in language, memory, and social skills can be addressed to maximise the accuracy and detail of children’s accounts of abuse. Second, research is needed into human learning in order to determine the most effective ways of training interviewers to
adhere to interview protocols designed to account for children’s developmental limitations. Finally, research is needed to evaluate and improve the usefulness of recorded interviews as evidence-in-chief in order to ensure that interviews are sufficient to establish the state’s case and prove the elements of CSA offences beyond reasonable doubt.

To date, most research has addressed the first two domains: child development and human learning. In terms of child development, research has established that children as young as 3 years of age are capable of providing accurate and detailed accounts of their experiences (e.g., Agnew & Powell, 2004; Bruck & Ceci, 1999; Ornstein, Gordon, & Larus, 1992). However, children’s limited social skills, and cognitive and linguistic capacities, can impact on their ability to remember details, understand questions, and provide reliable answers (see Powell, Garry, & Brewer, 2009). In particular, children, more so than adults, are vulnerable to suggestion (Bruck & Ceci, 1999) and may provide certain responses out of a strong desire to please the interviewer (Bruck, 1999).

A large body of work now defines best-practice interviewing from a child development perspective (Dale, Loftus, & Rathbun, 1978; Dent & Stephenson, 1979; Ornstein et al., 1992; Sternberg, Lamb, Davies, & Westcott, 2001; Sternberg et al., 1996). This research has established that the detail and accuracy of children’s statements is maximised when interviewers adhere to non-leading open-ended questions (questions that encourage elaborate recall but do not dictate what precise information is required), rather than using closed or specific (e.g., who, what, where, when) questions, which have been found to increase the risk of error in children’s accounts (see Lamb, Orbach, Hershkowitz, Esplin, & Horowitz, 2007). Contemporary interviewing protocols, therefore, tend to recommend that interviewers exhaust the child’s free narrative using open-ended questions before asking specific questions.
In the second domain, research has shown that adherence to open-ended questioning is challenging for interviewers and is usually not achieved. Interviewers around the globe typically do not persist with open-ended questions to elicit a free narrative, relying instead on specific, closed, and/or leading questions (for example Aldridge & Cameron, 1999; Lamb, Sternberg, & Esplin, 2000; Powell et al., 2005; Powell & Hughes-Scholes, 2009; Sternberg, Lamb, Esplin, & Baradaran, 1999). Research has now established that maintaining open-ended questioning requires extensive training that includes a highly structured questioning procedure, regular practice, and ongoing supervision and feedback (see Powell, 2008a; Powell et al., 2005). Training that does not meet these requirements is unlikely to facilitate interviewer adherence to a narrative-based approach (Powell et al., 2005).

In relation to the best way to conduct investigative interviews that are useful as evidence-in-chief, research is still in its infancy and to date has merely highlighted broad concerns. In evaluations seeking legal experts’ feedback about child witness interviews, the overriding conclusions have been that (a) interviews are most effective when they contain a cogent, chronological narrative (as proposed by child developmentalists) that complies with the rules of evidence, and (b) interviews generally do not achieve this requirement on a consistent basis (Guadagno, Powell, & Wright, 2006; S v. The Queen, 1989).

For example, in the 2009 evaluation of Video and Audio Taped Evidence (VATE) conducted by Powell and Wright for Victoria Police, the authors presented an analysis of individual in-depth interviews with a diverse group of 25 stakeholders (police officers, prosecutors, solicitors, defence lawyers, and members of the judiciary) about the VATE system, with particular focus on the usefulness of the interviews in
stakeholder practice. While the findings revealed unanimous support for electronic recording of witness statements, the stakeholders perceived that the effectiveness of the system was impeded by several characteristics of the interviews, including a lack of coherency and detail needed to prove offences and an inability to scrutinise questions asked prior to the interview (to ensure disclosures made during interviews were not the result of suggestive or leading questions posed beforehand). Overall, legal professionals were concerned that interviews were long, lacked clarity and relevant detail, and included leading questions. Importantly, the core concerns of the legal professionals in Powell and Wright’s 2009 VATE study are generalisable across jurisdictions (e.g., Davis, Hoyano, Keenan, Maitland, & Morgan, 1999; Hoyano & Keenan, 2010; McConachy, 2002) and are shared by various professional groups including magistrates, prosecutors, and child development experts (Powell & Wright, 2009; Powell, Wright, & Hughes-Scholes, 2011) as well as juries (Westcott & Kynan, 2004).

Prior research suggests that poor evidential quality of interviews can be accounted for by a mismatch between interviewers’ and prosecutors’ understandings of the legal requirements of an interview. Police officers perceive that highly specific details (such as the location, date, and time of the offence) are essential for particularising offences (Guadagno et al., 2006). Particularisation is the legal requirement that each act of abuse be identified with reasonable precision with reference to time, place, or some other unique contextual detail (although the exact time and place of the offence is not required), such that it is clear which act(s) forms the basis of each charge (S v. The Queen, 1989). Police officers also believe that maximising the number of separate offences, as well as the specific details about each offence, increases the chance of successful prosecution (Guadagno et al., 2006). In contrast, prosecutors
perceive that the primary goal of the police should be to elicit a free-narrative account of
one or more offences, and that reliance on specific questions may have a negative impact
on the child’s credibility by contaminating the evidence (Guadagno et al., 2006).

The strong implication from prior work is that prosecutors need to play a much
more integral role in investigative interview protocol development, which to date has
been guided primarily by academics with expertise in child development and human
language and memory (Powell, 2012). In order to maximise the evidential quality of
interviews, interviewers need to know exactly what they need to achieve in an interview
from a legal perspective, how they will achieve it, and the reasons why they need to
interview in the recommended way (Powell, 2008a).

The aim of this thesis was to examine prosecutors’ perceptions of investigative
interviews of child witnesses and to take a constructive approach to determine how the
evidential quality and usefulness of interviews could be improved. The purpose of this
thesis was not to test the quality of interviews as evidence, but rather to generate
recommendations for improving the evidential quality of interviews. To this end, five
studies are presented. The first two studies used in-depth individual interviews
conducted with trial prosecutors (from one particular Australian jurisdiction) shortly
before and after CSA trials to elicit detailed and constructive feedback about the
evidential quality and usefulness of interviews, as well as broad suggestions for
improvement. Study 1 sought prosecutors’ feedback about the strengths and limitations
of child witness interviews, along with suggestions for how the interviews could have
been improved. Study 2 elicited prosecutors’ perceptions about the challenges in using
electronically recorded interviews (as opposed to a live witness) as evidence-in-chief at
trial, and suggestions for how these challenges may be addressed.
A solution-based approach, using a focus group methodology, was employed in Studies 3 and 4 to generate practical and constructive guidance about how child witness interviewing techniques could be improved to accommodate prosecutors’ suggestions. In particular, Studies 3 and 4 sought to address prosecutors’ concern that interviews often include unnecessary questioning which risks damaging the evidential quality (Studies 1 and 2). Prosecutors representing every Australian jurisdiction (with the exception of one small jurisdiction) participated in the focus group with the purpose of formulating practical solutions which would be applicable across Australia. Study 3 elicited prosecutors’ perceptions about when and how interviewers should clarify details about sex acts alleged by a child in an interview. When describing sex acts, many children use colloquial terms to describe genitalia. Given that the meaning of these terms was often a source of specific questioning in interviews, Study 4 sought prosecutors’ perspectives about the level of clarity required in genitalia terms and the manner in which such clarity could be achieved.

Finally, Study 5 examined the extent to which the feedback elicited from prosecutors throughout this thesis would be effective in changing interviewers’ perceptions of interviewing requirements. Overzealous questioning in interviews may be attributable to a mismatch between interviewers’ and prosecutors’ understandings of the legal requirements of an interview, and Study 5 aimed to determine whether differences in evidential requirements perceived to be important by prosecutors and interviewers could be reduced through simple instruction. Prosecutors and interviewers completed a written exercise wherein they identified what aspects of information required follow up in five hypothetical narrative accounts of abuse. A portion of the interviewers had, prior to completing the exercise, received prosecutors’ instruction on the requirements of
interviews from an evidential perspective. The responses to the exercise of interviewers who had and had not received prosecutors’ instruction were compared.

The structure of this thesis is as follows. Chapter 2 briefly explains the process of investigating and prosecuting alleged cases of CSA in Australia. The focus of this chapter is the conduct and use of the investigative interview in Australia and (briefly) abroad. Chapter 3 provides a critical review of the literature relating to the evidential quality and usefulness of interviews. Original research (i.e., Studies 1, 2, 3, 4, and 5) is presented in Chapter 4 through 8 with one study presented in each consecutive chapter. At the completion of the studies, conclusions are drawn regarding the nature and potential use of the prosecutors’ perspectives on interviewing. Specifically, Chapter 9 summarises the findings and discusses the implications for researchers, legal policy makers, and investigative interview trainers and protocol developers.
CHAPTER 2 – A BRIEF OVERVIEW OF THE PROCESS AND USE OF CHILD WITNESS INTERVIEWS

Traditionally in common law jurisdictions, police took written statements from children who alleged abuse and if and when the matter went to court, children gave their evidence in its entirety live at trial (Community Development and Justice Standing Committee, 2008). Child witnesses, however, may be severely disadvantaged due to their limited language and inferior social and cognitive status. These factors heighten the risk that such witnesses (when asked inappropriate questions) will provide responses that are misunderstood, incomplete, or contain errors of commission or omission of details (see Ceci, Powell, & Principe, 2002; Waterman, 1986).

To increase the reliability of child witness evidence and reduce the negative impact of the courtroom environment on children’s credibility and psychological wellbeing, numerous reforms have been implemented over the past few decades. One of the most widely implemented reforms across English-speaking countries is the electronic recording of children’s investigative interviews and use of these interviews as evidence-in-chief at trial. Video recording of children’s evidence was introduced for two primary reasons. First, video recording minimises trauma to the child of the investigation and prosecution process. The recorded interview protects the child from having to repeat their account of abuse (see for example Corns, 2001; Richards, Morris, Richards, & Siddall, 2007). Second, a video-recorded interview can maximise evidential quality as the statement is captured while the memory of the incident is still relatively
'fresh’ in the mind of the child and there has been less opportunity for memory loss or distortion (e.g., Corns, 2001).

The purpose of this chapter is to describe the process of investigating and prosecuting child sexual abuse (CSA) matters in Australia. It provides an overview of the key elements of best-practice interviewing, and briefly explores research relating to interviewers’ adherence to best-practice guidelines. This chapter is not intended to provide a comprehensive review of research on these topics. Rather, it aims to provide context for the empirical work presented in Chapters 4 through 8 of this thesis.

2.1 Investigating and prosecuting child sexual assault

In Australia when concerns of child abuse arise, specially trained interviewers (police or social workers) conduct and electronically record an investigative interview with the victim. The interview occurs as soon as possible after the abuse disclosure. Typically, when the child arrives for their interview, the interviewer spends time introducing themselves and explaining the interview process to the child. The interview is then conducted, usually in a purpose-built room equipped with specialised recording equipment. Another investigator may, where possible, monitor the interview from an adjacent monitoring room and provide guidance to the interviewers about the nature of information required from the child. While the preference in Australian jurisdictions is to minimise the number of interviews in which the child participates, in some cases, more than one interview may be conducted with the child where further information is
necessary or new evidence comes to light (Community Development and Justice Standing Committee, 2008).

Where the investigating police officer decides there is sufficient evidence to continue with the investigation, the interview is compiled with any other available evidence, such as any photos, medical evidence, and written statements from persons of interest into a brief of evidence (Powell, 2008b). The police decide whether to refer the case to prosecution based on whether the brief constitutes prima facie evidence to support the charges and whether legal requirements have been met (Brereton & Cole, 1989; Powell, 2008b). Where the decision to prosecute is made, the Magistrates Court receives the evidence and commits the defendant to trial at the most appropriate court. Many Australian jurisdictions require preliminary (or committal) hearings at which the evidence is presented and tested by prosecution and defence counsel. These hearings have, however, been abolished in numerous Australian jurisdictions in order to preserve court resources and protect witnesses from unnecessary cross-examination (Community Development and Justice Standing Committee, 2008).

The Office of the Director of Public Prosecutions (ODPP) assumes responsibility for the matter once the case is committed for trial. The ODPP\(^1\) is an independent authority responsible for prosecuting all serious offences committed against state criminal law. Each case committed to trial is assigned to an ODPP prosecutor who decides whether to prosecute based on three factors: the strength of the evidence; the prospects of conviction; and the public interest (Community Development and Justice

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\(^1\) There is some variation across Australian states and territories in the title given to this legal practice. For example, in Victoria, the practice is referred to as the Office of Public Prosecutions (OPP). For consistency, the title ‘the Office of the Director of Public Prosecutions’ (ODPP) will be used throughout this thesis.
Standing Committee, 2008). Where prosecution will continue, the prosecutor files an indictment (a written charge of the indictable offences which permits the court to proceed) and a trial date is set. At any point before or during the trial, the defendant can plead guilty or the ODPP can choose to discontinue prosecution based on the three factors listed above.

An adversarial trial procedure is adopted in Australia whereby advocates represent opposing parties and present their evidence in turn. The case outcome is decided by an impartial party; a jury or judge. Prosecution and defence begin by presenting, in turn, their opening address to the jury. In Australian CSA trials, the prosecutor may then choose to play one or more recorded interviews as all, or part of the child’s evidence-in-chief (see Criminal Procedure Act 1986 [NSW], s. 306S; Criminal Procedure Act 2009 [Vic], s. 367; Evidence Act 1906 [WA], s. 106 HB; Evidence Act 1929 [SA], s. 13A; Evidence Act 1977 [Qld], s. 21A; Evidence Act 2013 [NT], s. 21B; Evidence (Miscellaneous Provisions) Act 1991 [ACT], s. 40F). The recorded interview is admissible as if the evidence was given orally in the court proceedings in accordance with the usual rules and practice of the court. Typically, the child must be available for cross-examination and re-examination at trial.

After the interview is played to the court, the prosecutor may lead additional evidence-in-chief from the child who is then cross-examined by defence counsel, and (usually) re-examined by the prosecutor. The prosecution and defence then respectively present the remainder of their evidence and witnesses, if any, and the opposing parties test each other’s evidence through examination. Finally, each side offers a closing address before the jury retires to determine the outcome. The child does not usually appear live in the courtroom, but rather gives their evidence via CCTV. Legislation in
several jurisdictions also provides for ‘pre-recorded hearings’ at which the child’s evidence in its entirety (i.e., evidence-in-chief, cross-examination and re-examination) is recorded prior to trial; the recording is later played to the jury at trial (e.g., Criminal Procedure Act 2009 [Vic], s. 370; Evidence Act 1906 [WA], s. 106I; Evidence Act 1977 [Qld], s. 21AK; Evidence (Miscellaneous Provisions) Act 1991 [ACT], s. 40S). In most cases, investigative interviewers would not attend court and would therefore be unaware of the case outcome or use of the interview at trial (Powell, 2008b).

2.2 Jurisdictional variation in the use of recorded interviews as evidence

Across Australian jurisdictions, there are some minor differences in the legislation that governs the use of recorded interviews in court. For example, there is some variation in the class of witness for whom the provisions are available. In Western Australia, any witness to a sexual offence, irrespective of age, may give evidence via video-recorded interview (Evidence Act 1906 [WA], s. 106HB), while in Victoria, the provisions are somewhat narrower and the use of recorded interviews as evidence is limited to witnesses to a sexual offence who are under 18 years old or suffering from impaired mental functioning (Evidence Act 1958 [Vic], s. 366). Consistent across all Australian jurisdictions, however, the provisions are available to children (usually defined in the legislation as being under the age of 17 years old), and adults with a mental impairment.

Overseas, many western adversarial jurisdictions employ a procedure similar to Australia’s system for investigating and prosecuting CSA offences. Video-recorded
interviews are admissible as evidence at trial in New Zealand (Evidence Act 2006 [NZ], ss. 103, 106, 107), the United Kingdom (Youth Justice and Criminal Evidence Act 1999 [UK], ss. 21, 27), Canada (Canadian Criminal Code 1985, s. 715), and in some states of the USA (see Hoyano & Keenan, 2010). There are some notable differences around the globe in the permitted use of recorded interviews. Legislation in some countries prescribes that the interview may only be used as evidence at the discretion of the court, decided on a case-by-case basis, while in other jurisdictions there is a legal presumption that the interview will be used. For example, in contrast to the more flexible provisions in Canada, New Zealand, and Australia, in the United Kingdom, there is a presumption that the recorded interview will be played as evidence (except under express request of the child and with approval of the court) and the prosecutor is restricted in leading supplementary evidence-in-chief from the child only on matters not addressed in the child witness interview (Coroners and Justice Act 2009 [UK], ss100, 103; Youth Justice and Criminal Evidence Act 1999 [UK], s. 27).

There is also variation internationally in the class of persons permitted to conduct child witness interviews. In some jurisdictions, interviews are exclusively conducted by police officers, however, in most jurisdictions (including Australia) a more inclusive, joint approach is employed, whereby interviews may be conducted by either social workers from a relevant government department, or police from a relevant unit (Powell, 2008b). Guidelines are broader still in the USA where a wide range of individuals may conduct forensic interviews (see for review Hoyano & Keenan, 2010). Legislation or policy in most countries where recorded interviews are used as evidence requires interviewers to complete a specialised training program, although the nature of training differs markedly between jurisdictions.
Beyond the recorded investigative interview, a collection of other special measures for child witnesses have been introduced around the globe (measures such as CCTV and protective screens for children giving evidence), and the majority of the aforementioned jurisdictions allow some, if not all, of them in addition to the use of recorded interviews. Pre-recorded hearings are common in Israel and inquisitorial jurisdictions such as France, and technical provisions exist for pre-recorded hearings in England and Wales (see for review Hanna, Davies, Henderson, Crothers, & Rotherham, 2010).

2.3 Best-practice guidelines for interviewing children

The remainder of this chapter provides a brief description of the research underpinning best-practice interview protocols (or guidelines), as well as the findings on interviewer adherence to such protocols. From an investigation perspective, the role of the interviewer is to establish what, if any, criminal offence(s) have been committed, to elicit a clear picture of what happened and to maximise the accuracy, scope, and clarity of the information obtained in order to generate potentially useful leads that enable police to gather corroborative evidence (Fisher & Geiselman, 1992; Poole & Lamb, 1998). Children are capable of providing detailed and accurate accounts and the onus rests on the interviewer to maximise the quantity and quality of information that a child may provide (Powell et al., 2005). A large body of work has been dedicated to defining best-practice questioning from a child development perspective and while numerous
Interview protocols have been developed, fundamental to most is a focus on eliciting a free-narrative account from the child using open-ended questions.

Open-ended questions are those that encourage elaborate responses but do not specify what information is required and do not contain information that has not been previously reported by the child (Powell & Snow, 2007). Specific questions, in contrast, generally start with ‘Who’, ‘When’, ‘Where’, or ‘How’, and are more focused in nature. They include cued-recall questions, which indicate a specific aspect to be addressed, as well as closed questions that tend to elicit a one word answer (Powell & Snow, 2007). Most contemporary interview protocols recommend that interviewers begin the substantive phase of the interview by eliciting from the child a free-narrative account of the abuse alleged. A free-narrative account is a description of an event in the child’s own words and is usually elicited when the interviewer uses open-ended questions and refrains from interrupting (Fisher, 1995; Poole & Lamb, 1998). Free-narrative accounts typically commence with an open-ended question such as “Tell me everything that happened from the very beginning to the very end”. The initial free narrative provided by the child can be followed up with further open-ended questions to elicit a greater breadth of information (e.g., “What happened then?”, “What else happened”), or to invite further elaboration about an aspect of the account (e.g., “Tell me more about the part when…”). All prominent interview protocols recommend that interviewers exhaust the child’s free narrative using open-ended questions before resorting to any specific questioning.

From a child developmentalist perspective, the primary benefits of open-ended over specific questions are threefold. First, compared to specific questions, open-ended questions are likely to elicit responses that are longer and more detailed (e.g., Fisher,
Geiselman, & Amador, 1989; Lamb & Fauchier, 2001; Lamb et al., 1996; Sternberg et al., 2001; Sternberg et al., 1996). For example, Sternberg et al. (1996) analysed 45 field interviews of young children recounting abuse. Children’s responses to interviewers’ open-ended questions ($M = 26.98$ words, $SD = 50.85$) were significantly longer than their responses to specific questions ($M = 5.63$ words, $SD = 9.37$). Further, the mean number of details provided in response to open-ended questions was significantly greater ($M = 10.71$, $SD = 21.74$) than the mean number of details provided in response to specific ($M = 1.64$, $SD = 3.76$) and leading ($M = 1.83$, $SD = 3.33$) questions. Detailed responses are advantageous in exposing poor comprehension compared to responses to specific questions where the child can adopt strategies to mask their limitations (Aldridge & Wood, 1998; Poole & Lindsay, 1995).

Second, open-ended questions are likely to elicit more accurate responses than specific questions (e.g., Dale et al., 1978; Dent & Stephenson, 1979; Goodman, Bottoms, Schwart-Kenney, & Rudy, 1991; Lamb & Fauchier, 2001; Lamb, Orbach, Hershkowitz, Horowitz, & Abbott, 2007; Orbach & Lamb, 2000). The heightened accuracy of responses to open-ended questions has been demonstrated in laboratory settings (e.g., Dent & Stephenson, 1979; Fisher, Falkner, Trevisan, & McCauley, 2000; Hutcheson, Baxter, Telfer, & Warden, 1995) as well as in field interviews (Lamb, Orbach, Hershkowitz, Horowitz et al., 2007). Lamb, Orbach, Hershkowitz, Horowitz, et al. (2007) explored the effect of question type on children’s accuracy by examining which details provided by children in investigative interviews about abuse were confirmed in interviews with those suspected of abusing them. Results indicated that information that was elicited via open-ended rather than specific questions was more likely to be accurate (i.e., confirmed in the suspect’s interview). It may be that responses
to open-ended questions are more accurate and detailed because deeper, more elaborate memory retrieval occurs when the child is required to tell the story in their own words, or because the retrieval process is less influenced by the interviewer (Powell et al., 2005).

Third, where conducted at the child’s own pace, open-ended questions allow both the child and interviewer time to collect their thoughts. Responding to a series of specific questions is likely to be taxing on the witness’s mental resources and may distract the child and impair their ability to recall the event in detail (Kahneman, 1973; Powell et al., 2005; Wade & Westcott, 1997). Engaging in specific questioning is similarly demanding on the interviewer who has to think about their next question and is thus less able to actively listen to the child’s response (Powell et al., 2005).

As well as an emphasis on open-ended questioning, there are three other characteristics common to most contemporary interview protocols: building rapport with the child; establishing ground rules for the interview; and maintaining an open mind about what may have happened. Rapport building, usually by discussing neutral events with the child, typically constitutes the initial stage of interview protocols (e.g., Home Office, 2011; Lamb, Orbach, Hershkowitz, Esplin et al., 2007; State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011). Establishing good rapport is considered crucial for maximising interview outcomes as a child who feels comfortable in the interview setting is more likely to be willing to share their experiences (Fisher & Geiselman, 1992; Kebbell, Milne, & Wagstaff, 1999; Poole & Lamb, 1998; Shepherd & Milne, 1999; Yuille, Marxsen, & Cooper, 1999). Indeed, laboratory studies have shown that the detail and accuracy of information provided is maximised when the interviewee feels relaxed and
free to respond without pressure (Collins, Lincoln, & Frank, 2002; de Quervain, Roozendaal, Nitsch, McGaugh, & Hock, 2000; Saywitz & Nathanson, 1993). Protocols typically suggest that interviewers develop rapport by demonstrating acceptance of the child and their account, being non-judgemental, and engaging in active listening (e.g., Home Office, 2011; Lamb, Orbach, Hershkowitz, Esplin et al., 2007). Empirical research, however, provides little guidance on achieving good rapport in investigative interviews, largely because it would be unethical for researchers to manipulate an interview environment to cause the child to feel uncomfortable or intimidated (Powell et al., 2005). The primary contribution of research relating to rapport has been in finding that open-ended questioning in the rapport phase of an interview promotes more elaborate responses in the substantive phase (e.g., Roberts, Lamb & Sternberg, 2004; Sternberg et al., 1997; Sternberg et al., 1999; Sternberg et al., 1997).

Sternberg et al. (1997), for example, compared the effectiveness of two different rapport-building techniques in eliciting information from children in interviews about abuse. One rapport-building technique used open-ended questions (such as “Tell me about your holidays”), while the other involved many specific questions (such as “What is your favourite TV show?”, “Who is your best friend at school?”). Children who had been asked open-ended questions in the rapport-building phase provided 2.5 times as many details in their free-narrative account of abuse as children in the specific-question rapport-building condition (Sternberg et al.). Children’s narrative accounts of events are also more likely to be accurate where open-ended, rather than specific, questions are used during the rapport phase (Roberts et al., 2004). Open-ended questioning during rapport building also provides the interviewer with the opportunity to assess the child’s language competency (Saywitz & Camparo, 1998) and creates the expectation that the
child, rather than the interviewer, will do the majority of the talking throughout the interview (Ceci & Bruck, 1993).

Following the rapport-building phase, most interview protocols suggest that interviewers establish the ground rules of the interview with the child (e.g., Home Office, 2011; Lyon, 2005; State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011; Wilson & Powell, 2001). The interview is a very different type of interaction than the child is likely to be familiar with (Siegal, 1991). As a result of their everyday interactions, children are likely to assume that adults are more knowledgeable than they are about the topic in question (Demorest, Meyer, Phelps, Gardner, & Winner, 1984). Child witnesses are also likely to attempt to answer questions even when they are uncertain about the response, given that in most circumstances in a child’s life, it is acceptable (or even expected) that the child will guess when they are unsure (Hughes & Grieve, 1980). Children are unlikely to understand that, in contrast to everyday interactions, the interviewer does not know what happened and requires the child to provide a detailed and accurate account.

Explaining to the child the ground rules of the interview potentially minimises the risk of error and misunderstanding (Lyon & Saywitz, 1999; Sternberg et al., 1997). Across protocols, various ground rules are recommended, such as “Remember, I wasn’t there and I don’t know what happened, so it’s important to tell me everything you can remember”, “If I make a mistake, it’s important to tell me”, “If you’re not sure about the answer to a question I ask, it’s okay to say so”, and “If I ask you a question you don’t understand, just say ‘I don’t understand’” (see for example Home Office, 2011; Lamb, 2007).

2 Other interviewing protocols suggest that ground rules should be provided prior to rapport building (e.g., Lamb, Orbach, Hershkowitz, Esplin et al., 2007).
Orbach, Hershkowitz, Esplin et al., 2007; Lyon, 2005; State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011).

There is some contention in the literature about the usefulness of ground rules in maximising the detail and accuracy of children’s narratives (e.g., Ellis, Powell, Thomson, & Jones, 2003; Teoh & Lamb, 2010). While some studies have found that the provision of ground rules improves the accuracy and detail of children’s accounts (e.g., Cordón, Saetermoe, & Goodman, 2005; Teoh & Lamb, 2010), others have found no such effect (e.g., Ellis et al., 2003; Moston, 1987). Ellis et al. (2003), for example, tested the benefit of instructing child interviewees that it was important not to guess during recall, and that it was acceptable to say “I don’t know”, and to correct the interviewer. Providing such instruction immediately prior to children’s recall of a staged event was found to have no impact on the proportion of correct or incorrect responses. It may be that providing ground rules to children decreases their confidence, or causes them to be overly-cautious in recounting what they remember. Irrespective of the effect on accuracy, ground rules are likely to highlight to the child that they are a valued informant who will be heard and not judged (e.g., Agnew, Powell, & Snow, 2006). To maximise the effectiveness of ground rules in conveying the child’s role in the interview, one suggestion that has emerged in the literature is that (prior to the substantive phase) interviewers provide opportunities for the child to practice adhering to ground rules, for example, practice correcting an interviewer’s mistake, or saying “I don’t know” (Ellis et al., 2003; Nesbitt & Markham, 1999; Saywitz & Moan-Hardie, 1994).

The substantive phase of the interview usually begins following rapport building and the provision of ground rules. The third characteristic common to most investigative
interview protocols is the emphasis on the importance of the interviewer maintaining an open mind during the substantive phase (e.g., State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011; Wilson & Powell, 2001). Interviewers often receive case information prior to the interview and as a result they may have a pre-existing hypothesis or bias about what has happened. Biased interviewers may, unintentionally or otherwise, seek to confirm their theory or belief about what happened to the child. They may overlook or ignore important information provided by the child (Ceci & Bruck, 1993; Loftus, 1975), reinforce certain responses by their body language or tone of voice, or shape the witness’s account by using misleading, or closed questions which restrict possible responses (Thompson, Clarke-Stewart, & Lepore, 1997; White, Leightman, & Ceci, 1997).

Interviewer bias may be detrimental in any interview but particularly when the interviewee is a child. Children, more so than adults, are susceptible to suggestion and more likely to provide responses that they think will please the interviewer (e.g., see for review Ceci & Bruck, 1993; Crossman, Scullin, & Melnyk, 2004). Suggestive questions are those which introduce information that has not yet been provided by the interviewee. These questions are widely known to reduce children’s accuracy (see for review Ceci & Bruck, 1993) and this effect is likely to be even greater when the interviewer is not only suggestive, but biased in their approach (Garven, Wood, Malpass, & Shaw, 1998).

To avoid any bias contaminating children’s evidence, interview protocols typically encourage a hypothesis-testing, rather than a hypothesis-confirming, approach (e.g., State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011; Wilson & Powell, 2001). Non-leading open-ended questions are recommended to reduce the risk of contamination by the interviewer
Interviewers should be open to any possibility about what may have happened to the child, and gently explore different possible explanations by, for example, clarifying the child’s meaning, reviewing what the child has said, and pursuing rather than ignoring unusual claims (Wilson & Powell, 2001).

2.4 Interviewer adherence to best-practice interviewing guidelines

Adherence to best-practice interviewing is usually measured by tallying the number of non-leading open-ended questions posed by the interviewer. Research from around the globe using both mock and field interviews demonstrates that interviewers have difficulty persisting with open-ended questioning, relying instead on specific, closed and/or leading questions (for example, Aldridge & Cameron, 1999; Lamb et al., 2000; Powell et al., 2005; Sternberg et al., 2001; Sternberg et al., 1999). Interviewers typically omit or rush through the free-narrative phase and as a result, on average, less than 25% of the information provided by a child witness is elicited through open-ended questions (e.g., Cederborg, Orbach, Sternberg, & Lamb, 2000; Davies, Wilson, Mitchell, & Milsom, 1995; Sternberg et al., 2001). Cederborg et al. (2000) examined the types of questions posed in child witness interviews and found that interviewers primarily asked option-posing and suggestive-questions. Only 6% of questions were open-ended. It may be that interviewers have difficulty persisting with open-ended questions because they
feel pressured to seek clarification or are anxious because the interview may be used as evidence (e.g., Wright & Powell, 2006).

The ineffectiveness of most training programs at increasing adherence to open-ended questioning has been widely demonstrated (e.g., Aldridge & Cameron, 1999; Warren et al., 1999). For example, Warren et al. (1999) found that a 10-day interviewer training program only improved interviewers’ declarative knowledge of best-practice and failed to significantly increase the proportion of open-ended questions interviewers asked. Recently, however, research has highlighted three key elements that, where incorporated into a training program, may be effective in increasing interviewers’ adherence to best-practice guidelines (e.g., Lamb et al., 2002; Orbach et al., 2000; Powell et al., 2005; Stewart, Katz & La Rooy, 2011). The first key element is the adoption of a structured interview protocol. Sternberg et al. (1999) compared child witness interviews conducted before and after a structured protocol was implemented and found that adherence to the protocol significantly increased the use of open-ended questions and decreased the use of specific and suggestive prompts. The authors concluded that the provision of a scripted interview protocol assists in adherence to best-practice interviewing.

Second, to maximise adherence to open-ended questioning, interviewer training programs need to provide ongoing practice opportunities (e.g., Davies, Marshall, & Robertson, 1998; Rischke, Roberts, & Price, 2011). Research has long since established that intensive learning over a short time period is unlikely to result in long-term retention of knowledge or skills (Bellezza & Young, 1989; Young & Bellezza, 1982). Rischke et al. (2011) demonstrated the usefulness of regular learning and practice in interviewing by providing interviewers with a 2-day intensive training workshop,
followed up with bi-weekly practice opportunities and a ‘refresher’ course. Use of open-ended questioning increased significantly only after the ongoing learning and practice, rather than immediately after the initial intensive training. It follows that to promote adherence to best-practice questioning, training should be ongoing and include regular practice.

The third key aspect of training is the provision of expert feedback. Having interviewing experts offer interviewers feedback about their individual interviews has been found to be effective in encouraging best-practice interviewing, particularly when feedback is combined with ongoing practice (e.g., Powell, Fisher, & Hughes-Scholes, 2008). Indeed, by comparing the outcomes of different training methods, Lamb et al. (2002) demonstrated that adherence to best-practice is maximised when training incorporates all three characteristics described above; a highly structured questioning procedure, intensive, ongoing supervision and feedback, and multiple practice opportunities (see also Powell, 2008a; Powell et al., 2005).

### 2.5 Summary and conclusion

Recorded investigative interviews are used as evidence-in-chief in CSA cases throughout Australia and in many jurisdictions around the world. The recorded interview is the primary (and sometimes only) evidence available to secure a conviction. Much research has been dedicated to defining interviewing best-practice from a developmental perspective, and has highlighted the importance of open-ended questioning to elicit a detailed and accurate account. To date, despite the essential role of the interview as
evidence, prosecutors have had very little opportunity to contribute to interview protocol development. The limited research that has previously been conducted on the evidential quality and usefulness of interviews is explored in the following chapter.
CHAPTER 3 – A REVIEW OF THE LITERATURE ON THE EVIDENTIAL QUALITY AND USEFULNESS OF CHILD WITNESS INTERVIEWS

Investigative interviews with alleged victims form the central plank of evidence in the prosecution of child sexual abuse (CSA) because in these cases, there are rarely eyewitnesses or physical or other corroborative evidence (Office of Director of Public Prosecutions (ACT) and Australian Federal Police, 2005; Powell & Wright, 2009; Success Works, 2011). As illustrated in Chapter 2, the majority of research on child witness interviewing has been conducted from a developmental perspective with a focus on exploring interviewing techniques that are most likely to elicit detailed and accurate accounts from children, and evaluating interviewer adherence to best-practice guidelines. However, given that the interview forms the main evidence at trial, the persuasiveness and usefulness of the interview as evidence-in-chief also needs to be considered if just case outcomes are to be achieved. That is, the quality of any investigative interview must be determined not only by how well the interviewers adhere to best-practice, but by how useful the interview is in the prosecution of the offences.

There is currently a paucity of research on the evidential quality of interviews. Prosecutors’ perspectives have been given little consideration in the literature on child witness interviewing despite the important foundation they provide for improving interview process and justice outcomes. The (albeit limited) prior work on the quality of interviews from an evidential perspective has typically been broad and qualitative in

nature, and has merely highlighted general concerns of legal professionals, rather than providing specific feedback or constructive direction.

The aim of this chapter is to review the findings on the evidential quality and usefulness of child witness interviews and to describe the research (as well as the case law) that has underpinned them. Four overarching findings have emerged from the prior research on the evidential perspective of interviewing. First, electronically recorded interviews are more useful as evidence than traditional written statements. Second, the evidential usefulness of interviews is often limited by excessive interview length and irrelevant content. Third, the questioning process in interviews is typically inappropriate for use as evidence, and finally, the recording medium itself minimises the usefulness of the interview as evidence. The remainder of this chapter elaborates on these findings and the underlying research.

_Electronically recorded interviews are more useful as evidence than traditional statements_

Police interviewers traditionally took written statements from children who alleged abuse and if and when the matter went to court, children gave their evidence in its entirety at trial. In those jurisdictions where a system of using pre-recorded child witness interviews as evidence has been adopted and subsequently evaluated by eliciting the perspective of prosecutors, support has been unanimous. There are several perceived benefits of using pre-recorded interviews rather than having the child give their entire evidence at trial. First, recorded interviews improve the accuracy and completeness of children’s statements because they capture the evidence closer in time to the complaint, while the events are fresher in the child’s memory (Bala, Lindsay, & McNamara, 2001;
Burton, Evans, & Sanders, 2006; Cashmore & Trimboli, 2005; Davis et al., 1999; Hanna et al., 2010; Home Office, 1998; McConachy, 2002; Washington Association of Prosecuting Attorneys, 2006). Bala et al. (2001), for example, reviewed Canadian legal professionals’ responses to a survey about their experiences with ‘testimonial aids’ including video-recorded interviews. Ninety-five per cent of the Crown prosecutors surveyed believed that interviews were useful as evidence because they provided the court with the most comprehensive account of the alleged abuse. A video-recorded statement made close to the time of the complaint also safeguards the child’s evidence against memory decay, and captures the child’s body language and demeanour at the time of disclosure, facilitating a more vivid and compelling account which may result in an increase in guilty pleas (Powell & Wright, 2009).

Second, the process of pre-recording child witness interviews is perceived to reduce the emotional burden of testifying for child witnesses (Davies et al., 1995; McConachy, 2002; Powell & Wright, 2009; Richards et al., 2007). As part of their evaluation of video-recorded interviews, Richards et al. (2007) conducted two panel discussions with legal professionals. During discussions, prosecutors welcomed the use of recorded interviews as evidence, perceiving them to be in the best interests of the child. Using a recorded interview as evidence-in-chief minimises the child’s exposure to the courtroom, and spares the child from having to repeat their evidence numerous times, including at trial and at any subsequent hearings or re-trials (Corns, 2001). Third, recorded statements assist prosecutors with trial preparation and decision making by enabling them to better determine the appropriate charges, assess the strength of the case, and evaluate the child’s ability to give evidence (Corns, 2001; Richards et al., 2007; Scottish Executive Central Research Unit, 2002; Washington Association of
Prosecuting Attorneys, 2005). Finally, pre-recorded child witness interviews are advantageous in the sense that they enable scrutiny of the interview process, thereby promoting improvement in interview quality and providing a basis for prosecutors to rebut claims that the interviewer used coercive and leading questions (McConachy, 2002; Washington Association of Prosecuting Attorneys, 2005).

**Excessive length and irrelevant content limits the usefulness of interviews**

When reflecting on the quality and usefulness of interviews about alleged child abuse, a prominent concern of prosecutors relates to interview length and relevance of interview content. For example, Powell and Wright (2009) evaluated the investigative interview process in Australia by conducting semi-structured interviews with 25 stakeholders including police officers, judges, magistrates, solicitors, defence barristers and prosecutors. Participants were asked to reflect generally on the investigative interview system, and then asked to consider the current and ideal use of recorded interviews, how useful the interview is in assisting vulnerable witnesses, the standard of questioning in interviews, and recommendations for change. While legal professionals reported that investigative interviews were far more useful than a written statement, they expressed concern that interviews were often long and unorganised accounts which included material that was irrelevant from an evidential perspective, although the nature of information that is and is not relevant was not articulated.

Concerns about excessive interview length and the inclusion of irrelevant information have been reported across Australia (e.g., Cashmore & Trimboli, 2005; McConachy, 2002; Powell et al., 2011; Victorian Law Reform Commission, 2004) and abroad, including in the United Kingdom (e.g., Criminal Justice Joint Inspection, 2012;
Stern, 2010), and New Zealand (e.g., Hanna et al., 2010; Westera, Kebbell, & Milne, 2013a). Australian courts have also echoed prosecutors’ concerns about interview content and length. In the case of Horan v. Ferguson (1995), for example, Judge Demack, in allowing the appellant leave to appeal findings of guilt on nine charges of assaulting children, commented at length on the poor quality of the five video-recorded child interviews that were used as evidence at trial. His Honour criticised the interviews for their inappropriate focus on topics such as the children’s likes and dislikes and their opinions on the appellant. Judge Demack concluded that child witness interviews often contained irrelevant and prejudicial material and that such inclusion may be a strong reason to completely reject the interview from being played as evidence-in-chief.

In terms of the nature of information required in child witness interviews in CSA cases, only limited and general guidance has been provided. The case of S v. The Queen (1989) clarified that the child’s evidence ought to provide some specificity around the sexual acts that constitute the charged offences. The appellant in this case sought leave to appeal convictions on three counts of incest on the grounds that the complainant, in her evidence, had only spoken about the alleged abuse in general terms (alleging that abuse occurred regularly over a three year period) and the prosecution had failed to identify the individual incidents of abuse that amounted to the three charges. The High Court allowed the appeal and stated that, when prosecuting sexual offences, it is necessary for each criminal act charged to be ‘particularised’, that is, each act must be identified with reasonable precision with reference to time, place, or some other unique contextual detail, such that it is clear which act forms the basis of each charge. Insufficient particularisation would deny the defendant the opportunity to adequately defend himself. The lack of reference to any particular act would also threaten the
integrity of the verdict and undermine the court’s ability to reach an appropriate sentence.

More recent research suggests that confusion persists among interviewers about the content required in interviews (e.g., Criminal Justice Joint Inspection, 2012; Guadagno et al., 2006). Particulars (i.e., details such as time, place, or context of offending) are among the topics that prosecutors believe interviewers unnecessarily pursue with questioning, thereby contributing to inappropriate interview length and content, and undermining evidential quality (Guadagno et al., 2006). Prosecutors (and judicial officers) also believe that unnecessary questions are often asked during the rapport-building phase (Criminal Justice Joint Inspection, 2012; Horan v. Ferguson, 1995; Mckenzie, 1993) and when interviewers attempt to establish whether the child understands the concepts of truth and lies (Criminal Justice Joint Inspection, 2012).

A mismatch between interviewers’ and prosecutors’ understandings of the legal requirements of an interview has been suggested as responsible for the inclusion of irrelevant content in interviews. Guadagno et al. (2006), for example, compared police and legal professionals’ perceptions of particularisation. Semi-structured interviews with police and prosecutors sought to elicit feedback about the particularisation requirement, specifically, what information is required for particularisation to occur and how particularisation is best achieved in investigative interviews. Guadagno et al. found that police officers tend to perceive that highly specific details (such as the location, date, and time of the offence) are essential for particularisation to occur, and that maximising the number of separate offences and specific details about each offence increases the chance of successful prosecution. In contrast, the prosecutors perceive that the primary
goal of the police officers should be to elicit a free-narrative account of one or more offences.

The strong implication arising from the above research, and highlighted in several guides for reform (e.g., Hanna et al., 2010; Powell, 2012; Powell et al., 2011), is that prosecutors need to play a much more integral role in the development of interviewer training guides. To date, interview protocol development has largely been left in the hands of experts (e.g., clinicians and academics) in child development, language and memory. If prosecutor concerns about inappropriate content and excessive length of interviews are to be addressed, guidance is also required from prosecutors to establish the material that needs to be covered in the interview and the manner in which details are best elicited from a prosecution perspective (Powell et al., 2011).

**The typical questioning process in interviews is inappropriate for use as evidence**

The quality of questioning appears to undermine the evidential usefulness of child witness interviews. Consider for example, the study by the Criminal Justice Joint Inspection (2012) who conducted a broad evaluation into the treatment of young victims and witnesses in the criminal justice system in the United Kingdom. The evaluation employed a mixed-methods approach, part of which involved eliciting feedback from legal professionals about the usefulness of child witness interviews as evidence-in-chief.

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4 There has been some incorporation of legal professionals’ expertise into interviewing protocols in the UK. The ‘Memorandum of Good Practice’ (1992) was drafted for the government by a psychologist and a law professor, and the recent revision, ‘Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and using Special Measures’ (Home Office, 2011), included members of the Crown Prosecution Service on the writing team.
The evaluation revealed that prosecutors, as well as members of the judiciary, found that children’s accounts of abuse were often unclear and difficult to follow due to an over-abundance of specific questions. Legal professionals reported that children often provided clear accounts of abuse initially in their interview, but that each aspect of their account was then ‘dissected’ with numerous specific questions. Rather than clarifying ambiguous points, this rapid question-and-answer approach was perceived to create confusion and repetition.

Legal professionals across Australia, as well as overseas, have expressed concerns about interview questioning quality, in particular the use of specific and leading questions (e.g., Davis et al., 1999; Hanna et al., 2010; McConachy, 2002). These concerns are consistent with the research in child development and memory (described in Chapter 2) which shows that, compared to open-ended questions, specific questions decrease the detail and accuracy in children’s accounts (see for example Dent & Stephenson, 1979; Orbach & Lamb, 2000; Sternberg et al., 1996). Leading questions are of considerable concern to legal professionals, irrespective of the presence of error in the child’s account, and constitute the majority of objections to interviews in court, as well as being the source of many successful appeals against CSA convictions (Criminal Justice Joint Inspection, 2012; Davis et al., 1999; Hanna et al., 2010; Powell & Wright, 2009; R v. Knigge, 2003; Richards et al., 2007; Victorian Law Reform Commission, 2004).

Interviewers tend to assume that specific questions are necessary to facilitate clarity in the child’s account. Guadagno, Hughes-Scholes and Powell (2013) examined the topics that triggered interviewers to ask specific questions. Twenty interviewers completed mock child witness interviews throughout which they were stopped by a
researcher and asked to reflect on why they had asked specific questions. Interviewers
deviated from open-ended questions when it came to topics including the nature of the
sexual act, the identity of the offender, and children’s obscure terms for body parts.
Interviewers perceived that clarification through specific questions was necessary for
prosecution. Whether prosecutors share this perception remains to be seen.

Prosecutors, like academics in child witness memory, tend to highlight the
importance of open-ended questions (Powell & Wright, 2009; Powell et al., 2011;
Westera et al., 2013a). From an evidential perspective, open-ended questions are
perceived to have various advantages such as eliciting persuasive and clear evidence
(Guadagno et al., 2006). Responses to open-ended questions also assist in establishing
the reliability of the complainant’s account because for verbal evidence to be persuasive,
it needs to be elicited in the person’s own words, and in narrative format using open-
ended questions (Westera et al., 2013a). Responses to open-ended questions can enable
juries and other decision makers to see events through the witness’s eyes and to establish
‘an essence of criminality’ (i.e., the nature of the acts committed). The following quote,
provided by a prosecutor and reported by Guadagno et al. (2006, p. 257), illustrates this
well.

“I think what we really want to do is facilitate the voice of the child in a way that
enables them to describe as accurately as they can their experiences. This is the
best way of understanding the nature of the criminality alleged…We can become
too overly focussed and lost in the minutiae...You’ve got to look at the child’s
experience as a whole…If the headset of the interviewer is ‘I need to know X, Y,
and Z’ well then they may not realise they’ve already got what they need in the
narrative.”

What the prosecutor was referring to in this quote was the coherence of the information
presented, which is facilitated by story-telling, as opposed to disconnected event details in
response to focused questions (see Klettke, Graesser, & Powell, 2010 for discussion of the impact on the trial process).

Prosecutors also believe that focusing on eliciting the child’s complete story in narrative format helps jurors to understand the offending ‘relationship’; how the relationship developed and progressed into offending (Darwinkel, Powell, & Tidmarsh, 2013). There is currently major incongruence between people’s expectations of how victims would or should respond during and after an incident of sexual assault and what actually happens in reality (Bouffard 2000; Frazier & Haney 1996; McLean & Goodman-Delahunty, 2008). For example, two common misconceptions among community members and professionals are that victims will report abuse immediately to authorities and they will put up a physical struggle (Suarez & Gadalla 2010; Ullman 2010). As prosecutors are aware, victims whose behaviour is not consistent with these misconceptions are perceived as less credible. Therefore, the court needs to hear details about the relationship within which offending occurred in order to understand counter-intuitive victim behaviour (see Westera, Kebbell, & Milne, 2013b).

Case-flow analyses provide practical evidence for the usefulness and persuasiveness of statements elicited through open-ended (rather than specific) questions. Pipe, Orbach, Lamb, Abbott, and Stewart (2008) compared the outcomes of CSA cases before and after a narrative interviewing approach was introduced. Following the introduction of the narrative-based protocol, cases were 1.52 times more likely to result in acceptance for prosecution and as a result, more likely to result in conviction. A narrative approach is evidently preferable from a prosecution perspective. It appears, however, that the usefulness of the interview as evidence is not determined solely by interviewer adherence to best-practice. A recent study found an absence of any
significant relationship between a broad measure of adherence to a narrative-based protocol and prosecutors’ decisions to proceed with a case referred to them by police (Hagborg, Strömwall, & Tidefors, 2012).

The interview recording medium limits the usefulness of interviews

Perhaps the most commonly reported concern prosecutors have with child witness interviews relates to the recording medium itself. Three limitations associated with using recorded evidence (rather than a live witness) have been noted. First, prosecutors have reported problems associated with poor technical quality of recordings. Indeed, Cashmore and Trimboli (2005) reported that the technical quality of recorded interviews was often so poor that the interview could not be played as evidence. Prosecutors were concerned that when the recording was played in court, the image was too small to enable the jury to observe the child’s demeanour whilst recounting abuse (Cashmore & Trimboli, 2005). Prosecutors have also expressed concern that jurors are often unable to adequately evaluate the evidence because of poor audio quality of the recordings. Specifically, prosecutors have commented that the child’s voice is often muffled, or cannot be made out because the volume of audio recorded on the tape is so low (e.g., Richards et al., 2007; Washington Association of Prosecuting Attorneys, 2005). Concerns with the technical quality of recorded interviews have been voiced across jurisdictions, including Australia (e.g., Cashmore & Trimboli, 2005; McConachy, 2002; Powell & Wright, 2009), Canada (e.g., Bala et al., 2001), the United Kingdom, (e.g., Burton et al., 2006; Criminal Justice Joint Inspection, 2012; Stern, 2010), and the United States (e.g., Washington Association of Prosecuting Attorneys, 2005).
A second limitation prosecutors have perceived with using pre-recorded evidence is that in some situations, recorded interviews may not be as compelling to a jury as a witness giving evidence live in court. McConachy (2002) found that prosecutors in New South Wales, Australia, rarely used interviews as evidence-in-chief because they believed that it was beneficial to the state’s case for the jury to see the child give evidence in person. McConachy conducted an evaluation of the electronic recording of children’s evidence to explore whether interviews were being used in court and why. Specifically, the evaluation sought to determine whether interviews increased the quality and completeness of children’s evidence, and whether using interviews as evidence made appearing in court less stressful for children. Various methods were adopted to evaluate recorded interviews, including case tracking, court observation, and interviews with various stakeholders such as children and their parents, counsellors, and police. Legal representatives \((N = 74)\) provided feedback about the use of recorded interviews as evidence-in-chief. A questionnaire elicited their perceptions of the benefits and limitations of recorded interviews, and their confidence about, and support for, the use of interviews as evidence-in-chief.

Forty per cent of lawyers surveyed reported that playing a video-recorded interview as evidence could be detrimental because, compared to live evidence, the video format distanced the child from the jury, and made it difficult for the jury to assess the child’s credibility. Prosecutors across the globe have expressed similar concerns about the persuasiveness of recorded evidence and some have stated that they believe that using interviews as evidence increases the likelihood that jurors will acquit the accused because interviews have less impact than a live witness in the courtroom (e.g., Criminal Justice Joint Inspection, 2012; Davies et al., 1995; Westera et al., 2013b). The
perception that recorded evidence is less persuasive to juries than a live witness has persisted despite evidence to suggest that juror decision making is unaffected by the mode of evidence presentation (e.g., Davies, 1999; Taylor & Joudo, 2005) and research indicating that accounts given in interviews tend to be more complete than those given in the courtroom due to the less formal and stressful nature of the interview environment (see for review Davies, 1994). Whilst overall, prosecutors did not deny that interviews are useful, they voiced concerns that need to be addressed about the persuasiveness of interviews in some situations.

A third limitation that prosecutors have perceived with using pre-recorded interviews as evidence-in-chief is that children may be disadvantaged when they are called for live cross-examination (Bala et al., 2001; Burton et al., 2006; McConachy, 2002). Burton et al. (2006) conducted a broad evaluation to determine the effectiveness of special measures available for vulnerable witness, including children, in England and Wales. Mixed methods were employed including agency surveys, practitioner interviews, case file tracking, and court observations. Prosecutor feedback about the quality of interviews was gathered through surveys ($N = 42$) and interviews ($N = 4$). While prosecutors acknowledged the benefits of using recorded interviews rather than leading a live witness in evidence-in-chief, they voiced various concerns about interviews. Prosecutors reported that children whose evidence-in-chief is given via a recorded interview had little or no opportunity to become familiar with the court’s ‘question and answer’ process prior to cross-examination. Children may therefore be under-prepared for cross-examination and perform poorly.
**Summary and conclusion**

Overall, prosecutors who have been involved in the prior research on child witness interviewing have supported the use of recorded interviews as evidence-in-chief, but they have generally held considerable concerns about the evidential quality of interviews. These views have been widespread over the past two decades and across jurisdictions. The prior literature has identified broad factors that limit the usefulness of interviews as evidence-in-chief: excessive interview length and irrelevant content; overzealous questioning; and the interview recording medium itself. Research to date has been largely qualitative in nature, eliciting retrospective feedback and broad criticisms from prosecutors, rather than articulating how interviews could be improved. Repeated calls in the prior work for further guidance from prosecutors (e.g., Davis et al., 1999; Guadagno et al., 2013; McConachy, 2002; Powell et al., 2011; Victorian Law Reform Commission, 2004) highlights the need for a constructive approach, more specific feedback, and an investigation of the present relevance of previously reported concerns. To maximise the evidential quality of interviews, interviewers need to know exactly what they need to achieve, how they will achieve it, and the reasons why they need to interview in the recommended way (Clarke & Milne, 2001; McConachy, 2002; Powell, 2008a; Victorian Law Reform Commission, 2004).
This chapter presents the first study of this thesis. It seeks to extend prior research regarding the evidential quality of child witness interviews by articulating more precisely the nature of prosecutors’ concerns about interviews as well as their suggestions for improvement. The study arose from the need to address the paucity of research on the best way to conduct interviews that serve the requirements of evidence-in-chief. That is, to improve the quality of interviews, research is needed in three domains: child development (in order to discern interviewing techniques that account for children’s limitations in language and memory); human learning (to determine the most effective ways to train investigative interviewers); and the quality of interviews as evidence-in-chief (in order to develop techniques to maximise the usefulness of interviews). To date, most research on interviewing has focused on the first two domains. Prior work has determined that (a) the detail and accuracy of interviews is maximised when interviewers adhere to non-leading open-ended questioning, and that (b) interviewers across the globe struggle to do so (see for review Chapter 2). In relation to the quality of interviews as evidence-in-chief, however, research is still in its infancy and has merely highlighted broad concerns.

In evaluations seeking feedback about interviews from legal professionals, the overriding conclusion has been that interviews are most effective when they contain a coherent narrative account of abuse that complies with the rules of evidence, but that

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interviews generally do not achieve this requirement on a consistent basis (Guadagno et al., 2006; *S v. The Queen*, 1989). For example, Powell and Wright (2009) evaluated video-recorded evidence for the Victoria Police by analysing in-depth interviews with a diverse group of 25 stakeholders (including interviewers and prosecutors) about the usefulness of the system of video-recorded evidence. While the findings revealed unanimous support for electronically recorded statements, legal professionals were concerned that interviews were long, lacked coherency and clarity, and included leading questions. Importantly, these core concerns reported by Powell and Wright (2009) are generalizable across jurisdictions (e.g., Davis et al., 1999; Hoyano & Keenan, 2010; McConachy, 2002) and across professional groups including magistrates, prosecutors, and child development experts (Powell & Wright, 2009; Powell et al., 2011).

Prior research indicates that limitations in the evidential usefulness of interviews may be attributable to a mismatch between interviewers’ and prosecutors’ understandings of legal requirements (Guadagno et al., 2006). Police officers perceive that highly specific details (such as location, date, and time of the offence) are essential for particularising offences, and that maximising the number of separate offences, as well as the specific details about each offence, increases the chance of successful prosecution (Guadagno et al., 2006). In contrast, from the perspective of prosecutors, the primary goal of police interviewers should be to elicit a free-narrative account of one or more offences, and to minimise specific questions which are likely to contaminate the evidence and negatively impact the child’s credibility (Guadagno et al., 2006). The strong implication from this mismatch in perceptions is that prosecutors need to have greater involvement in interview protocol development.
The purpose of the present study is to understand the needs of the interview as evidence-in-chief. A unique contribution of this study is its focus on determining how the evidential quality and usefulness of interviews could be improved. While the process in which investigative interviewers should elicit narrative detail has been addressed extensively by child developmental experts (e.g., Lamb et al., 2007; Powell & Snow, 2007), another unique contribution of this study is its focus on the practical application of interview techniques.

The need for constructive feedback from prosecutors about the evidential quality of interviews has been highlighted consistently over the past two decades and across jurisdictions (e.g., Davis et al., 1999; Guadagno et al., 2013; McConachy, 2002; Powell et al., 2011; Victorian Law Reform Commission, 2004), however, it was prosecutors in one particular Australian jurisdiction who took the initiative to instigate and drive the present study. Considerable time was invested in consultation with prosecutors in this jurisdiction (which cannot be identified for ethical reasons) to explore what research questions needed to be answered, as well as the most appropriate research methodology. The study ultimately took a novel approach, eliciting prosecutors’ perceptions about specific child witness interviews shortly before and after child sexual abuse (CSA) trials (when the prosecutor’s memory of the case was fresh in their mind) with a focus on determining the precise nature of concerns and perceptions of how they could be addressed.
Method

Participants

The participants were prosecutors of the Office of the Director of Public Prosecutions (ODPP) located in one jurisdiction of Australia. These prosecutors were recruited with the assistance of the Director of Public Prosecutions (DPP) and the Manager Prosecution Support. Once a month, the manager provided the researcher with a list of upcoming trials for CSA matters where there was a child witness. The trial lists were de-identified but for the names of the prosecuting counsel. The prosecutors on the list were invited to participate. Forty-one invitations to participate were issued to 29 prosecutors (one invitation for every eligible trial between the months of August 2011 and March 2012). Eleven invitations were declined for reasons such as an absence of an investigative interview, the trial being discontinued before the prosecutor had reviewed the interview, or time constraints of the prosecutor.

The final sample consisted of 19 prosecutors (12 male, 7 female). Prosecutors had, on average, 9.2 years of experience as a prosecutor (range = 5 to 17 years). Most of the professionals prosecuted CSA cases regularly, making up an average of 54% of their workload (range = 10 to 95% of cases they prosecuted). More specific information regarding the profile of these professionals has not been provided (for ethical reasons) to ensure anonymity. The final sample size was determined by data saturation, that is, when no new information was being obtained about the topics of inquiry (see Sim & Wright, 2000).
Procedure

For each case of child abuse, two telephone interviews were arranged, where possible; one shortly before and one shortly after trial. Interviews were held as close as possible to the date of trial (usually within a few days). This meant the investigative interview was at the forefront of the prosecutor’s mind and they could provide contemporaneous and case-specific feedback. A semi-structured interview schedule was employed. Each interview commenced with an introduction explaining that the research was concerned with the admissibility and sufficiency of the child witness interview. The prosecutor was then invited to give feedback about the quality of the investigative interview conducted in that case. Specifically, the prosecutor was invited to give feedback about the following: the strengths and limitations of the interview; the skill of the interviewer; the evidential quality; and the overall usefulness of the interview from the prosecutor’s perspective. Finally, the prosecutor was invited to provide suggestions for how the interview could have been improved from a prosecution perspective. To meet the researcher’s ethical obligations, prior to each interview, the prosecutor was asked to use a generic name for any person (such as ‘child’ or ‘accused’) and not to reveal any identifying case information.

Steps were taken to ensure each prosecutor had the autonomy to direct the discussion toward concerns that were personally relevant. The interview schedule was kept broad in nature to enable the prosecutors to raise any concern or suggestion. The researcher was a largely passive interviewer of the prosecutors, using broad open-ended

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6 On 9 occasions, interviews with the prosecutors were held posttrial only because the prosecutor didn’t have time in the lead up to trial, or because the trial had occurred before the research had begun. On 3 occasions, interviews were held pre-trial only because the trial was discontinued.
questions and minimal encouragers to promote further elaboration. Additionally, a recursive style of interviewing was employed to allow the researcher to pursue any lines of inquiry raised by prosecutors. In total, 36 interviews were conducted with prosecutors, averaging 28 minutes in duration (range = 5 to 79 minutes). The project was approved by the Deakin University Human Research Ethics Committee and the Director of Public Prosecutions in the jurisdiction being examined.

**Cases and investigative interviews**

The 36 interviews with prosecutors related to 22 CSA cases. Some cases included more than one investigative interview, in which case feedback was sought about each interview. As outlined in Chapter 2, in Australian jurisdictions (including the jurisdiction in which this study was conducted), the trial prosecutor chooses whether to admit one or more recorded interviews as evidence-in-chief, and may supplement the interview with further questioning. Of the cases that proceeded to trial, in all except one (where the audio quality was too poor) the interview was played as the witness’s evidence-in-chief, or part thereof. In 33% of the cases, the accused was convicted on at least one charge. In 52% of the cases the accused was acquitted of all charges, and the remainder of cases were discontinued (such case outcome rates are comparable to those reported in broader Australian literature, see for example, Fitzgerald, 2006).

The CSA cases most often involved female complainants and male defendants, and allegations typically involved ‘contact’ sexual abuse (e.g., touching under or over clothes, or penetration) perpetrated by a person familiar to the child (usually a member of the child's extended family, or the current or past partner of the child's mother) in the home of either the child or the defendant. Complainants were aged 5 to 16 years. This
profile is relatively consistent with CSA incidence data from various jurisdictions (see, for example, Brereton & Cole, 1989; Wundersitz, 2003). Also consistent with other jurisdictions, the investigative interview usually represented the prosecution’s entire evidence. The investigative interviews were conducted by specialist trained child interviewers from metropolitan or regional centres. Most of the child interviewers were not the investigating officers and in most cases two interviewers were present in the room with the child. Their task was not only to interview, but also to take detailed notes.

In terms of the interview protocol, this included a rapport-building phase (using open-ended questions), followed by an introduction of the topic of concern via a question such as “Tell me why you’ve come to talk to me today?” and (after disclosure) the elicitation of a free-narrative account using questions designed to elicit elaborate responses without dictating what specific information was required. In reality, however, the interviewers adhered to a format typically reported in prior research which consisted mainly of specific cued-recall and closed questions (e.g., Who, What, Where, When questions) rather than open-ended questions (see Chapter 2, Powell et al., 2005; Powell & Hughes-Scholes, 2009). Like other jurisdictions, the interview protocol also required that offences be identified and particularised.

Data management and analysis

The interviews with the prosecutors were audio taped and transcribed verbatim, and the transcriptions double-checked for accuracy. The in-depth interviews yielded over 600 A4 pages of interview transcription and were analysed using an inductive, methodical coding process to identify themes arising within the data (Browne & Sullivan, 1999). Data collection and analysis occurred simultaneously and the coding
process was collaborative in nature. The researcher and her primary supervisor read each transcript thoroughly and met regularly to discuss and debate emerging themes. A stepwise procedure of qualitative text reduction was employed (see for review Jovchelovitch & Bauer, 2000). First, passages of transcript were paraphrased into summary sentences. These sentences were then further paraphrased into key words or phrases. In practice, a spread sheet of three columns was created, the first column containing the transcript, the second column containing the first reduction, and the third column containing keywords. Ultimately, common keywords or phrases emerged, representing the key themes of participants’ responses. The prosecutors’ recommendations for improving interviews fell within three overarching themes described in the next section.7

Results

The overriding theme to arise from all the interviews with prosecutors was the importance of child witness statements being concise, relevant, and clear (i.e., unambiguous). Witness evidence was perceived most useful when it was elicited in story (narrative) format through carefully selected open-ended questions, particularly questions that directed the child to focus on the offending (i.e., what happened and who did it). The narrative format was perceived to be important because it gave the child the opportunity to tell their story in their own words, which is most persuasive to a jury (i.e., it gave the jury an opportunity to assess the child’s truthfulness and reliability).

7 For presentation purposes, quotes have been amended for grammar and brevity. Identifying details have been removed to protect the anonymity of prosecutors and individuals.
On an evidentiary basis, one of the best things from a jury perspective is having the kids come out with that initial explanation of what happened - unprompted or undirected. That very natural, free-flowing narrative that describes what happened to them on that particular day. It seems more truthful and it gives the interview an authenticity that it wouldn’t necessarily have if it was broken up constantly into questions and answers which I think often makes it seem as if the child is being pushed in a certain direction. I think that’s fine if that happens after the initial narrative, but if that happens beforehand it gives the interview a very different flavour, one which I would not be as positive about if I were a juror.’

The relevance of the information elicited was as important to prosecutors as the interview format. Good questions were perceived to be open-ended ones that identified a particular issue and invited the child to expand on it. However, good questions were also perceived to be those that made it clear to the child what information was requested. They directed the child enough so that (s)he did not go off on tangents. Broad open-ended questions that elicited elaborate and lengthy details about aspects that were irrelevant to the offending were deemed just as problematic as highly specific and closed questions that didn’t elicit any narrative detail at all.

‘One form of question that often gets used is, “Tell me everything about…”’. That can be problematic when it is non-directive, for example, “Tell me everything about George”. Children get confused by questions that are open-ended without being focused.’

According to prosecutors, there were three detrimental effects of interviews that were long or included questions about irrelevant information. First, these interviews were likely to fatigue the child, thus compromising the evidential quality of the interview. A fatigued witness was considered more likely to make errors or be inconsistent, which may provide opportunities for attack by defence counsel. Importantly, defence counsel is entitled to cross-examine the child on anything the child
has said, regardless of its relevance to the offending. Therefore, errors or inconsistencies, even about irrelevant and/or minute details, can be used by defence to cast doubt on the reliability of the child’s entire account. For example, one boy was asked about, and recounted, the colour of the bed linen in the room where he was abused. Defence later showed that he was incorrect in his response about the colour of the linen. Defence used this error, along with similar minor errors, to discredit his entire account of abuse.

A fatigued witness may also have reduced witness credibility in the eyes of the jury. A fatigued witness is more likely to be distracted and irritable and the prosecutors were concerned that a jury may perceive such a witness as less reliable. The relationship between the child’s demeanour and jury decision making will be explored in greater detail in another section of this study. The prosecutors identified another detrimental effect of witness fatigue, being that a child fatigued from continuous questioning may be dissuaded from engaging in the interview.

‘Tedious and endless questions about what you were wearing, what he was wearing, and the orientation of a room, these are details that are hard to get right. I find that children can sometimes guess answers because they feel obliged to give a response. Other times they become non-responsive because they’re bored or frustrated by the questions.’

‘If you ask for irrelevant detail, it allows my learned friend to cross-examine the child at great length and depth on issues which are not really germane to the central issue. This inhibits the state’s prospects of conviction because the inconsistencies are used to cast doubt on the evidence. In essence, defence try to show that the child is a liar so they throw lots of inconsistencies at the jury and say, well, not only did she get this wrong, but these things too.’

‘Sometimes I’ve received copies of interviews where the interviewers have engaged in a process of asking questions which delve too far into the minutiae of the complaint. In some, the interviewee has actually expressed frustration and fired back. For example in this interview the child said, “I’ve answered that
question. You keep asking me these questions but you’re not telling me what you want.” Other times, the child gets stroppy. These responses don’t reflect well on the witness; the jury start thinking here’s this jumped up 14 year old telling these two detectives how to run their interview and start to distance themselves from her. But it’s not really the fault of the interviewee that she began to feel frustrated and responded the way she did.’

Long interviews are not only likely to fatigue the child at the time of the investigative interview, they are also likely to fatigue the child when, at a later date shortly before trial, the child has to watch the interview in its entirety to refresh their memory about its content. The child may become tired whilst watching the interview and fail to adequately attend to it. This may affect the quality of subsequent evidence the child gives (i.e., further examination-in-chief and cross-examination) by, for example, increasing the chance that the child will say something at trial inconsistent with their interview.

The second perceived detrimental effect of lengthy interviews with irrelevant details is that they create jury fatigue, which subsequently impairs the jury’s ability to come to a fair decision. The interviewers’ pursuit of irrelevant details could also give the jury the impression that these irrelevant details are important and that they should be considered when making their decisions.

‘Anything we do at trial has to be directed at getting the jury’s attention and keeping their attention, because, at the end of the day, they’re the ones who have to decide the verdict. Keeping the interviews relatively short is good because it doesn’t put the jury to sleep.’

‘I worry about jury fatigue. I’m acutely aware of the expectations that we all have on juries of being alert and focused for hours on end. I sometimes think that we don’t really take account of the more likely reality which is, like the rest of us, they kind of drift in and out of the zone. When they’ve got to sit there and listen and concentrate in the hope that something relevant is going to come up, they switch off and the child’s account loses meaning. I think it runs the risk of people being acquitted when they ought not to be.’
‘When there is irrelevant stuff, you lose the detail of the offence and it distracts the jury. We had two or three pages of transcript, four or five minutes of police trying to work out the timing of the offence which perhaps makes a jury think, “Well, maybe that's really important, the day, maybe we need to be satisfied beyond reasonable doubt about that detail”. It creates the impression in the mind of the jury that that's more important than it really is... In reality, none of that really matters.’

Prosecutors could apply to the court to edit irrelevant material from the tape; however, this was not considered ideal because it may create doubt in the jury’s mind.

‘When the jury see the interview, obviously they won’t see the edited-out bit, but what they will see is the tape jumping around. They’re told that’s standard practice and it’s irrelevant material, but for practical purposes people will be wondering, “Well, hang on, we’ve just seen the tape move 5 or 10 minutes - what was spoken about?”’

Finally, long interviews with irrelevant detail and ambiguities undermine the quality of the prosecutors’ trial preparation, as the prosecutors must invest considerable time and effort wading through the interviews to determine what the offences are.

‘In terms of preparing an indictment, for me to try and wade through all of that and pick out what the offences were, was quite difficult. So I think it’s really important for the interviewers to perhaps get a brief overview of where they need to go, but then quickly move to trying to get the offences.’

The prosecutors were aware of the immense challenges placed on interviewers and witnesses in providing concise and relevant interviews, especially given that these interviews are held early in the investigative stage and have the dual purpose of eliciting evidence to guide an investigation as well as serving as evidence-in-chief at court. The investigative interview is usually the first point of contact that the police have with the child. Charges that will be laid (if any) and details needed to prove these charges may
not be evident at this early stage. However, the prosecutors perceived there was considerable room for improvement in interview technique; particularly in making interviews more concise, relevant and clear.

The areas for improvement recommended by prosecutors included the need to (a) focus on eliciting the elements of the offence, (b) clarify inconsistencies and ambiguities, and (c) consider how the child will present in the eyes of the jury. Each of these areas and the prosecutors’ specific suggestions are now described in turn.

Focus on eliciting the elements of the offence

The prosecutors stressed the importance of interviewers focusing their questioning on the ‘elements’ of the offence. The legal elements of an offence refer to those aspects which the legislation and case law explicitly dictate must be proven for the offence to be established. For example, in the jurisdiction of this study, the law defines the elements of sexual penetration of a child as (1) a person, (2) sexually penetrates, (3) a child. Thus, the prosecution is required to prove who the offender is, and that the offender sexually penetrated the child (the fact that the victim was a child can be proved through a birth certificate or similar). Similar elements exist for all sexual offences against children. That is, the prosecution must prove what the offence was (i.e., what actually happened) and who did it. Questioning in the interview ought to focus (where possible) on eliciting these elements, and these elements ought (where possible) to be obtained at the outset of the interview. However, too often disclosure of these elements in the investigative interview was interrupted by unrelated questions about peripheral contextual detail that is far less useful, if at all, for establishing the prosecution case.
‘A big weakness is interjecting during crucial bits of evidence like [child says], “He put his penis in my such-and-such”, and the interviewer says, “Okay, what was the size of the bed?”, and, “Did they have any bed sheets on? What type of bed sheets were they? Did they have any patterns on? What colour were they?”, instead of saying, “Okay, so he put his penis in your such-and-such…”. The pivotal bit of information about the offence is lost in the irrelevancies. By the time you get back to the offence, you’ve lost what she [the witness] said initially and whether it’s consistent.’

A failure to adequately focus on offending and appropriately structure the interview was attributed to several aspects: limited understanding (on the part of the interviewer) of precisely what information is required for investigative and prosecution purposes; poor interview planning (e.g., not watching prior interviews or eliciting background information from informants prior to conducting the interview); and poor engagement or active listening skills of the interviewer. Some prosecutors suggested that auxiliary interview techniques such as children’s drawings could be useful in clarifying offence details in the interview and refreshing the child’s memory of these details at trial. However, drawings were a contentious issue among the prosecutors who were not all in agreement that drawings would help clarify details of the offending. Some of the prosecutors believed that drawings may divert attention away from, rather than toward, the issue of offending.

The prosecutors explained at length their concern that interviewers appeared to have limited understanding of precisely what information was required for prosecution purposes. Too much emphasis was said to be placed on acquiring particulars such as where the offence happened and when. While these specific details powerfully enhance credibility when they occur spontaneously as part of the child’s narrative, where these details are directly sought through specific questions, they may compromise the interviewer’s relationship with the child, the conciseness of the interview, and the
accuracy of the content. The prosecutors were concerned that many of the investigative
interviewers’ questions about time and specific contextual details were beyond what a
child could reasonably be expected to remember.

‘How can the child reasonably be expected to remember the precise times of
offences? And how relevant is it anyway? It doesn’t assist with whether the event
occurred or not. All we really need to know, given that he can’t tell us when it
occurred precisely, is that it actually occurred. I think a jury can probably well
understand that he just doesn’t know when it occurred.’

‘Date doesn’t matter at all, it could have happened anytime in the last two years.
It does have to be pinned down to individual incidents, but we don’t care so
much about the date, we don’t care so much even about the place. I mean, if you
can narrow it down, that’s obviously better. It’s fairer to the accused. But I think
the police place too much emphasis on that… The interviewers could have said,
“Can you give us some idea of when it was?”, “Oh, it was when I was five years
old”. Well, that will do. As long as we know roughly what dates it occurred
between, that’s really all that matters. Don’t spend 5 or 10 minutes trying to work
out timing.’

Three common principles were raised by prosecutors in relation to eliciting
particulars. First, contextual details (e.g., what else was happening in the child’s life
around the time of offending) were more useful and reliable than precise temporal
details. The only exception to this was in those jurisdictions where a certain charge is
dependent on the age of the child (e.g., charges may differ depending on whether the
child is under or over 13 years of age) and the child was close to critical age at the time
of the offence. Second, where the identity of the offender has been established, finely
tuned descriptions of details peripheral to offending were considered unnecessary from a
prosecution perspective. Prosecutors were frustrated by the pursuit of details such as the
layout of furniture, the colour of clothing and fine details about body positions that did
not go to the heart of the offending. These details are not elements of any offence and do
not contribute to establishing whether an offence occurred. Indeed, direct questions about these details could damage the prosecution case by making the interview longer and, given the difficulty in recollecting these details, providing more fodder for defence during cross-examination.

‘I've had one incident dragged out for over two hours, and you're hearing about the curtains and the colour of everything. This is their bedroom they sleep in every night, so why are we going down this path? Where the child says, “It's my grandfather”, pursuit of details of the precise address and details of the room is not necessary. Where it is a stranger in a house they haven’t been in before, pursuit of precise details is necessary.’

‘If you have been traumatised by some old man groping you, how and why would you remember minute detail such as where his leg was when he touched your penis? ...I don’t know that it’s necessary to have every particular movement documented. For example, to know that he used his right hand, how he was sitting, or which direction his leg was at the time. I just can’t see that all of that detail is relevant, necessary or helpful. All we need to know, surely, as a member of the community, is that this bloke touched the kid in an inappropriate way.’

‘I suppose the interviewers go into so many specifics because they think if the kid’s got a detailed recollection we can be more certain that the abuse occurred in the way [the child] said it did. But the risk, surely, is that if he doesn’t have a good recollection, we actually damage the prosecution case, and that means in turn that we may indeed damage the prospects of justice. In short, if you ask for too much irrelevant detail, you tend either to obscure what you’re on about, or run the risk of the child being cross-examined for hours on this stuff, for no apparent purpose.’

The third common principle raised in the interviews with prosecutors in relation to eliciting particulars was as follows: if in doubt and the detail does not relate to the elements of the offence, err on the side of caution. Prosecutors can lead supplementary questioning on finer details (where necessary) at the time of the trial. Information about the elements of the offence, however, are difficult for the prosecutor to lead; significant disclosures to the prosecutor about what happened and who was responsible that come
well after the police (investigative) interview carry far less weight. Indeed, defence counsel may argue that the disclosure constitutes a ‘prior inconsistent statement’ if the child discloses new information that was not in their police interview.

**Clarify inconsistencies and ambiguities in the account**

The second area for potential improvement reported by the prosecutors relates to the need to minimise and follow up inconsistencies, or details that could be perceived as implausible or ‘fanciful’, in the child’s account. Whilst acknowledging that investigative interviewers should not cross-examine or put pressure on children, prosecutors perceived that it is better for inconsistencies in children’s accounts to be clarified at the time of the interview in the child’s own words (e.g., “You've told us X the first time, now you're telling us Y this time, can you explain that?”). If inconsistencies are not addressed in the interview, they are likely to be raised at trial during cross-examination in a less developmentally appropriate manner where propositions are ‘put to’ the child and used to discredit the child who, after the lapse of time and the pressure of the situation, may be inclined to agree with the false propositions.

Sometimes ambiguities in the child’s account were obvious, yet other times they were less so. One area where ambiguities in the account were often overlooked by the interviewers relates to the need to identify incidents (separate offences) and distinguish them from other incidents of the same type so those specific incidents can form the base of criminal charges on the indictment. As one prosecutor explained, prosecutors need a specific incident to be ‘distilled from this mass of generality’. For example, what happened to one complainant needs to be separated from what happened to another by redirecting the child away from speaking in plural tense (e.g., when the child says, “It
happened to us”, the interviewer should say, “Just tell me what happened to you for now”). The consequences of not separating such an account include a significant loss in the quality of the evidence if reference to another complainant must later be removed due to the charges relating to the other complainant being dropped. Another example of the need to better identify incidents occurs where the child has been subject to repeated abuse. Here, children should be re-directed away from speaking about what an offender would ‘usually’ do to what the offender did on a particular occasion. Otherwise, the child may appear inconsistent and potential charges may be lost. The prosecutors explained that interviewers need not be hesitant in referring the child to a particular occasion of abuse after the child has recounted abuse. It is not leading to direct the child’s attention to detail they have already said. Interviewers should make it clear which incident they are referring to when they pose questions.

Knowing when an interviewer should follow up an answer or term raised by the child was not always obvious and suggestions by the prosecutors were not clear cut. It was generally held that ambiguous responses to direct questions, such as ‘mmm’ and ‘I don’t know’, should usually be clarified by interviewers.

‘I think they could have done more to get an explanation from her. Like, say, “When you say you can’t explain it, why? What do you mean?” Whereas they do a lot more of, “It’s okay if you can’t remember”, which almost reinforces that she doesn’t have to explain. It seems to me that it gave the child a way to avoid talking.’

In one investigative interview, the child repeatedly responded “I don’t know” to questions. The trial prosecutor praised the interviewer who sought clarification from the child by asking “Is it just that you don’t really feel like talking about it right now or you can’t remember?”. The prosecutors also suggested ambiguous terms (like slang names
for genitals) should be clarified, but not at the cost of ‘frustrating’ the child or compromising the relationship between the interviewer and the child. Generally, where it is clear what the child is referring to (e.g., “boobs”), clarification may not be necessary and where further clarification is sought, the reason for this should be explained to the child to avoid frustrating him/her (e.g., “I know it seems silly to ask, but some people might not understand what you mean by ‘China’. We need to make it really clear for the people who might watch this [interview] later. Do you have another word for your ‘China’?”).

Sometimes inconsistencies and ambiguities occurred spontaneously in the interviews. However, a frequent source of frustration for prosecutors was when they occurred as a direct result of interview strategies adopted. Inconsistencies or ambiguities sometimes occurred because the interviewer posed questions that were poorly phrased or conceptually too complex for the child’s developmental level. These questions often confused the child because they did not clarify precisely what information was being requested. Examples of confusing and complex questions included the following: “How is he related to you, when you say he’s your dad?”, “What are your ‘flappy bits’ used for?”, “How did your clothing move?”. For the most part, these questions were perceived to be unnecessary and problematic as they dissuade the child from answering more questions, or make the child appear foolish to the jury if the child struggles to understand and respond appropriately. The prosecutors emphasised the importance of the interviewer clearly specifying what information is requested from the child.

Second, inconsistencies sometimes occurred because the interviewer had incorrectly repeated something the child had said and the child then adopted the incorrect account, or the interviewer asked the same question more than once and the
child gave inconsistent responses. Repeating back part of the child’s account was not seen to be of any benefit (i.e., having the child tell the same story again was not perceived to bolster credibility). Rather, repetition at best frustrated the judge and jury, and at worst (i.e., when the child was inconsistent on some detail) it could damage the case by providing opportunities for defence counsel to use the inconsistency to challenge the witness’s credibility. Prosecutors suggested that interviewers avoid repeating what the child has said, or encouraging the child to repeat themselves. If the interviewer is confused about something the child has said, appropriate questions should be asked at the time, rather than repeating the child’s story later.

‘The interviewer was very chatty, and so she just kept on saying, “oh so you said earlier on...”, and she’d repeat everything that was said. It lost some of its potency for the jury. If a child has answered the question already, quite fully, why keep going back again to it? What ends up happening if you do that is you get a different answer, and that just makes her [the witness] look inconsistent... The interviewer added in her own little parts, “So I’m a bit confused, can you explain that part again?”, or, “I don’t understand”, I don’t think that was really appropriate for her to say. You wouldn’t be able to ask those sorts of questions or make those comments in court. If you’re a bit confused then you should try and ask questions at the relevant time.’

**Consider how the child will present in the eyes of the jury**

The prosecutors perceived that the child’s demeanour in the investigative interview was vital to the jury’s decision making. Unlike the accused, who sits through the trial in person, the jury comes to know the child through the child’s interaction with the interviewer on the electronically recorded interview. If the child appears to have a negative demeanour in the interview, this is likely to affect the jury’s assessment of the child’s credibility, and thus affect the jury’s decision regarding the charges. Some
examples of common behaviours in interviews that may be viewed negatively include opposition, irritation, frustration, withdrawal, and restlessness. During recorded interviews, these behaviours seemed to arise when the child was confused and/or suffering strain which limited their ability to engage properly in the interview. On many occasions, the prosecutors had perceived that these behavioural responses were largely avoidable if the interviewer had kept the interview concise and avoided questions that might confuse, frustrate, or patronise the child. Four other suggested areas of improvement were raised that addressed the management of negative behaviour and appropriate presentation of the witness.

First, prosecutors suggested that interviewers (on some occasions) could have made better use of breaks or intermissions or should have deferred the interview instead of persisting with a situation where the child was not engaging, or was engaging in a negative manner. The demeanour of the child was considered more important to prosecutors than the need to elicit the child’s account in a single interview.

‘Sometimes you do more harm than good by pushing on. Just get out, she’s clearly not going to talk. We’ve caught her on a bad day, or upset her or whatever. Just stop.’

Sufficient use of pauses during the interview was also emphasised. Interviewers need to be patient and give the child plenty of time to respond to each question without repeating the question. Indeed, many examples were offered where the interviewer–interviewee relationship was strained because the interviewer was too eager to get an immediate response. This was particularly evident in interviews with anxious or intimidated children and children from a cultural minority background.
Second, prosecutors emphasised the importance of active listening. Excessive note taking was perceived to impede active listening or engagement with the child and to be a source of frustration for the child (and for the jury and judge) as it inhibits or slows down disclosure.

‘It’s like the old saying amongst prosecutors or court lawyers: “What you’ve got to do is you’ve really got to listen to the answers”. If you are not actually engaging with the witness and looking at them and hearing what they are saying to you, then it will be a shambles. You won’t get their story out.’

‘I had some interaction with the judge and defence counsel after the trial. It was pretty widely agreed that the practice of writing down the answers as they came makes the whole process so slow and laborious that for a jury it must be so hard to keep their mind on the job... what you’ve got is a child who’s just flicking her eyes between the interviewer’s notes and the interviewer, wondering when the next question will come. It’s quite uncomfortable to watch.’

The prosecutors suggested that notes should be limited to dot points or ‘mind maps’ (a diagram used to represent words or ideas) as a quick aid memoire to prompt future questioning, as opposed to writing verbatim notes.

The third suggested area of improvement related to the initial on-camera rapport-building phase. Lengthy or inappropriate on-camera rapport was seen to be problematic by many prosecutors because it could distract and fatigue the jury and give the child the wrong impression about the nature of the interview. For example, long rapport where the child is encouraged to speak at length about things like their hobbies or family may give the child the impression that they can talk about anything they like in the interview, or encourage the child to divert the conversation away from the offending. The prosecutors were also concerned that lengthy discussion about neutral topics may confuse the child who understands that they have come to be interviewed about the offending and would
prefer to begin immediately. Some rapport building was considered inappropriate because it was overly friendly or light-hearted. During the rapport-building phase of some interviews, the interviewer joked with the child and the child giggled and laughed. The prosecutors were concerned that such rapport could make the child’s account seem frivolous, as a child who is joking and laughing may not appear to jurors to be taking the interview seriously. Whilst setting the child at ease is important, the interviewer should, at all times, portray the interview as a serious matter.

‘I think on-camera rapport detracts because if the interviewers start joking around with the complainant a little bit, when this gets into court, this is solemn evidence and of course the defence are going to say, “How seriously did this girl take this?” It just ends up making the process and child look frivolous.’

The issue of whether rapport should be on camera was a contentious one. Some prosecutors believed there was no need for rapport building to be on camera, and that the jury could come to know the child through similar rapport building in evidence-in-chief at trial. On the other hand, on-camera rapport could be useful to demonstrate the youth of the complainant, and how the child expressed him/herself and their capabilities when the interview was conducted. It allows the jury to identify the child as a human being.

‘I think rapport characterises the child as a person for the jury. It humanises the child in a way that you need sometimes. It shows the way the child expresses themselves which can be especially important with Aboriginal children who are reluctant to talk. If you cut out all that rapport building, it’s difficult for the jury to understand that this is a child who doesn’t want to talk at all. But if you have already had a rapport-building exercise and the child had given monosyllabic answers and isn’t even able to talk about their dog, or their family, then it really gives the jury an understanding of where that person’s level of ability to converse in the interview is at. Yes, I think it should be filmed. Will I always play it? No, I won’t always play it, but I like to have the option.’
The majority of the prosecutors suggested that rapport could remain on camera provided it is kept to 1-2 minutes, and limited to one or two topics rather than attempting to cover numerous neutral topics. Broad open-ended questions (such as “Tell me everything about hockey”) may not be ideal as they encourage long responses that may distract the child (and the jury) from the offending. The prosecutors suggested that rapport building could be recorded on a separate tape to the substantive phase of the interview. The trial prosecutor would then have the discretion to play the rapport-building tape in court or not.

The fourth area that prosecutors suggested needed improvement was the choice and number of interviewers. In the investigative interviews discussed, two interviewers were present and the lead interviewer often ‘crossed’ to a second interviewer by asking, “Do you have any questions about that?” This practice was perceived to frustrate and confuse the child and interrupt the flow of interviews, thereby discouraging disclosure. It was also perceived to frustrate and distract the jury.

‘One thing in my opinion that really impacted [the interview quality] was that the interviewers bounced the questions back and forth. Like, one would ask a bunch of questions about, for example, location, and then would follow that with, “So and so [other interviewer], do you have anything to ask in relation to location?” It became a stop-start affair, rather than letting the interview flow naturally. The interviewers ended up asking similar questions about the same topic.’

The prosecutors’ suggestions about the choice of interviewers primarily related to interviewer gender and consistency of interviewers across multiple interviews. The prosecutors perceived that some female complainants’ reluctance to speak could have been due to the fact that the interviewer was male. If a child partakes in more than one interview, the prosecutors suggested that the same interviewers should conduct each
interview. If different interviewers are involved on each occasion, the child’s disclosure may be inhibited because they are embarrassed about speaking to people they have not met before.

‘I just think for the child, speaking about very personal issues is intimidating and embarrassing. I’m not saying we shouldn’t have male interviewers, but having a male interviewer didn’t assist this girl. She had things to say, but when she got [to the interview suite] and saw the bloke there, that was it, she wasn’t going to talk. I thought the interviewers should have identified that and just shut it down.’

The prosecutors noted that the investigating officer may be the best person to conduct the interview. The investigating officer will be familiar with the case and know what needs to be pursued from an investigative point of view.

**Discussion**

Overall, the present study has provided unique insight into prosecutors’ perceptions of child witness interviews about abuse. Analysis of the interviews with the prosecutors has revealed three broad areas for improvement of child witness interviews: a tighter focus on the elements of the offence; better clarification of inconsistencies and ambiguities in the account; and greater consideration of how the child presents in the eyes of the jury. This study is distinct from prior literature on the quality of interviews which has tended to focus on the interview process from the perspective of the child witness, as it has been written by child psychologists with expertise in child language and memory development (see, for example, Lamb et al., 2007). Although prosecutors and child psychologists agree with the overriding need for open-ended questions and for
minimising the stress and trauma on the witness during the investigation and trial process, concerns about the persuasiveness of the evidence come to the forefront when eliciting feedback from prosecutors (see Voss, 2005 for a discussion of the importance of persuasion in the courtroom). Just as important as the accuracy and coherency of the child’s responses (the child developmental focus) is the usefulness of the child’s responses in proving the charges and the usefulness of the interview in presenting the witness to the jury (the prosecution focus). Given the lack of significant relationship between accuracy and credibility of the child’s account (Vrij, 2005), persuasiveness has not been a prevalent concern of child developmental psychologists when developing interview protocols.

The broad concerns expressed by the prosecutors in this study are consistent with those reported in prior research from across the globe (e.g., Burton et al., 2006; Criminal Justice Joint Inspection, 2012; McConachy, 2002; Powell et al., 2011; Richards et al., 2007). To date, however, prosecutors have played a limited role in the development of formalised interview protocols. This study illustrates that deep collaboration and cross-pollination of ideas between child development experts and prosecutors is needed to develop innovative changes to protocols to improve the usefulness and persuasiveness of child investigative interviews in the eyes of the jury. Unless prosecutors’ needs are addressed through formalised interview processes, improvement in justice outcomes is unlikely to eventuate. Although some of the concerns (e.g., the need to avoid complex and suggestive questions, the need to ensure cooperation of the child witness) would be addressed by better training in adherence to the narrative interview technique,⁸ other

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⁸ As with most other evaluation research across the globe, the interviewers were not always adhering to best-practice interview protocols (i.e., a narrative-based interview approach).
concerns (e.g., the need to focus on elements of the offence and to know when to elicit contextual background information) would not. The need for further interview protocol development is supported by a recent study showing the absence of any significant relationship between a broad measure of adherence to a narrative-based interview protocol and prosecutors’ decisions to proceed with a case referred to them by police (Hagborg et al., 2012). Protocols to date have been concerned purely with maximising the accuracy and detail in children’s statements. As such, evaluation measures are uni-dimensional, focusing solely on the number or proportion of open-ended questions asked by the interviewer rather than the way in which these questions are used to elicit evidential detail (Powell et al., 2005).

It is too premature to recommend formal changes to interview protocols on the basis of the prosecutors’ feedback in this study. The prosecutors’ perceptions need to be considered within the context of research on child language and memory development. The next step for protocol developers is to (a) work with prosecutors to develop formalised principles and strategies to address their concerns about evidential quality raised in this study, (b) test the effect of these new interview strategies in laboratory settings to ensure that they do not undermine the accuracy and detail of the child’s account, and (c) develop measures of interviewer performance to show that interviewers actually adhere to the new recommended techniques. Based on the suggestions arising from this study, some formalised decision trees need to be developed to guide investigators in knowing when and how to address inconsistencies in the child’s account, when to elicit descriptive information about the offender’s identity and other contextual/background information, the extent and type of rapport building to put on camera, and the degree and nature of detail required about the timing and location of the
offence. Given that the capacity of children to give testimony and understand the interview process varies with age (Gudjonsson, Sveinsdottir, Sigurdsson, & Jonsdottir, 2010), decision trees or recommendations may need to be tailored to different stages of development.

This study has shown the enormous benefits to be gained by using qualitative interview technique and analysis to elicit the prosecution perspective on child witness interviewing. In the past decade there have been repeated calls for prosecutors to provide interviewers with feedback about their concerns in the form of regular case-conference meetings between prosecutors and interviewers, or brief surveys provided to interviewers after each trial (e.g., Powell, 2008a; Powell & Wright, 2009; Victorian Law Reform Commission, 2004). Having conducted this study, where case-specific feedback was elicited about interviews, it appears that the responsibility for addressing prosecutors’ concerns should rest firmly in the hands of researchers in child testimony and investigative interview technique rather than the interviewers themselves. The qualitative research method was ideal for addressing prosecutors’ concerns because the subject matter was relatively unexplored in the academic literature and flexible methods were required to address the concerns (Hudelson, 1996). Further, in this sample of prosecutor interviews (as with most participant groups) there was diversity in opinion over certain issues such as whether drawings might be preferable to help the child focus on the offending and whether on-camera rapport facilitated the positive presentation of the witness. If individual comments were taken on face value, these diverse opinions would appear confusing and contradictory to interviewers. However, through a process of inductive analysis (breaking down the entire set of interviews into discrete units and organising them in a relational form by examining how individual comments relate to
one another) principles could be drawn that accommodate and explain the differences in professionals’ opinion. It was through the process of examining the entire set of individual interviews that the central themes emerged. Additionally, child development experts must play an integral role in the translation of prosecutors’ concerns into interview procedure because formal techniques need to be tailored to the capabilities of children.

In sum, this study provides a valuable resource for those professionals responsible for developing and ensuring adherence to protocols used for eliciting child witness statements about abuse. Specifically, it has addressed the call for more feedback from legal professionals about how to improve the evidential quality of investigative interviews with child witnesses (Guadagno et al., 2006; Powell & Wright, 2009). Three areas of potential improvement were identified, including the need for tighter focus on the elements of the offence, better clarification of inconsistencies and ambiguities in the account, and greater consideration of how the child presents in the eyes of the jury. The next step for research is to develop formalised interview strategies designed to address the prosecutors’ concerns.
CHAPTER 5 - PROSECUTORS’ PERSPECTIVES ON USING ELECTRONICALLY-RECORDED CHILD WITNESS INTERVIEWS AS EVIDENCE-IN-CHIEF (STUDY 2)

This chapter presents the second study of this thesis. Like Study 1, Study 2 used in-depth interviews to elicit detailed and constructive feedback from prosecutors in a particular Australian jurisdiction about the evidential usefulness of child witness interviews. Study 1 explored prosecutors’ perceptions of the strengths and limitations of interviews as evidence-in-chief, and their suggestions for improvement. In contrast, the present study focuses on the challenges of using electronically recorded interviews (rather than live testimony) as evidence-in-chief at trial, and suggestions for how these challenges may be addressed.

As highlighted in Chapter 3, although prosecutors have tended to prefer recorded interviews to traditional written statements, numerous evaluations have revealed limitations in the usefulness of recorded interviews as evidence-in-chief. For example, shortly after the provisions for the use of recorded interviews as evidence were introduced in New South Wales, McConachy (2002) conducted a broad evaluation eliciting feedback about child witness interviews from a range of stakeholders including a number of prosecutors who responded to a questionnaire about their overall perceptions of the benefits, limitations, and impact of electronic recording. Whilst supporting the use of interviews in principle, a major concern of prosecutors was that the

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evidential usefulness of investigative interviews was undermined by the quality of questioning in the interview. Prosecutors perceived that interviewers asked too many irrelevant or leading questions, and interviews were consequently too long and lacked focus. Prosecutors were also concerned that recorded interviews may not be as compelling to a jury as a live witness, that children who gave evidence via recorded interview may be disadvantaged when giving evidence in court (as they had little opportunity prior to cross-examination to become familiar with the courtroom environment and questioning process), and that interviews were of poor audio and visual quality.

Similar concerns about the usefulness of recorded interviews as evidence-in-chief have emerged in other evaluations involving prosecutor feedback (see Chapter 3, for example, Bala et al., 2001; Cashmore & Trimboli, 2005; Davies et al., 1995; Davis et al., 1999; Richards et al., 2007). Prosecutors’ concerns about the questioning process have also been shared by experts in child development and memory, and consequently, a large body of work has been dedicated to defining best-practice questioning from a child development perspective. This research has established that the accuracy and detail of children’s statements is maximised when interviewers adhere to non-leading open-ended questions, rather than specific or closed questions (see Chapter 2; Lamb et al., 2007).

Research is yet to determine, however, the degree to which the challenges of using recorded interviews as evidence-in-chief are accounted for by the quality of questioning in interviews (i.e., too many leading and specific questions). Indeed, the lack of detailed, contemporary feedback from prosecutors means it is unclear whether previously reported concerns about the evidential usefulness of interviews continue to be relevant, or whether they have since been mitigated by developments in interviewer
training procedure, continued legal reform, and prosecutors’ increased experience and familiarity with the provisions over the past 10 years. Overall, there has been little documentation of prosecutors’ concerns resulting in lack of clarity regarding the current evidential utility of recorded interviews. For example, Powell and Wright (2009) found a high level of confusion and uncertainty, particularly among police interviewers, about the usefulness of recorded interviews at trial. Such confusion was attributed, albeit in part, to the fact that there was no mechanism through which interviewers could receive feedback about actual interviews from a prosecution perspective.

The purpose of the present study was to address the need for detailed and contemporaneous feedback from prosecutors about the limitations of electronically recorded interviews in child abuse trials, and the extent to which prosecutors’ concerns relate to questioning process per se. Like the previous study, the current study adopted a constructive approach, utilising detailed feedback which was elicited from prosecutors at the time of the trial (when they were most familiar with the case material) and on a range of sexual abuse cases. This approach, when layered on the rich history of child developmental memory and language research, provided a unique framework for the development of recommendations for how the challenges of using recorded interviews as evidence-in-chief could be addressed.
Method

Participants

The participants were prosecutors recruited from the same Office of the Director of Public Prosecutions (ODPP) as Study 1. This study, however, related to a unique set of interview questions, distinct from those posed in Study 1. Some prosecutors responded to these questions during the phone interview conducted for Study 1, and some additional phone interviews were conducted for this purpose. The recruitment method was the same as Study 1. As such, once a month, the Manager Prosecution Support provided the researcher with a list of upcoming trials for child sexual abuse (CSA) matters where there was a child witness. The trial lists were de-identified but for the names of the prosecuting counsel. The prosecutors on the list were invited to participate. Forty-six invitations to participate were issued to 29 prosecutors (one invitation for every eligible trial between the months of August 2011 and April 2012). Eleven invitations were declined for reasons such as an absence of an investigative interview, the trial being discontinued before the prosecutor had reviewed the interview, or time constraints of the prosecutor.

The final sample of participants in this study consisted of 19 prosecutors (12 male, 7 female). Prosecutors had, on average, 9.2 years of experience as a prosecutor (range = 5 to 17 years). Most of the professionals prosecuted CSA cases regularly, making up an average of 54% of their workload (range = 10 to 95% of cases they prosecuted). More specific information regarding the profile of these professionals has not been provided (for ethical reasons) to ensure anonymity. The final sample size was determined by data saturation, that is, when no new information was being obtained.
about the topics of inquiry (see Sim & Wright, 2000).

**Procedure**

Interviews were held as close as possible to the date of trial (usually within a few days) to ensure that the usefulness of the recorded interview was at the forefront of the prosecutor’s mind so they could provide contemporaneous and case-specific feedback. A semi-structured interview schedule was employed. Each prosecutor was invited to give feedback about the usefulness of, and challenges in using, the interview as evidence-in-chief in that case. The prosecutors were then invited to reflect on how the challenges of using interviews as evidence could be addressed (if at all). Some prosecutors were interviewed more than once, having prosecuted at more than one CSA trial during the data collection period. To avoid over-representing the concerns of these prosecutors, the results reported below reflect the number of prosecutors expressing particular concerns, rather than the number of times particular concerns were expressed. To meet the researcher’s ethical obligations, prior to each interview the prosecutor was asked to use a generic name for any person (such as ‘child’ or ‘accused’) and not to reveal any identifying case information.

Steps were taken to ensure each prosecutor had the autonomy to direct the discussion toward concerns that were personally relevant. The interview schedule was kept broad in nature to enable the prosecutors to raise any concern or suggestion. The researcher was a largely passive interviewer of the prosecutors, using broad open-ended questions and minimal encouragers to promote further elaboration. Additionally, a recursive style of interviewing was employed to allow the researcher to pursue any lines of inquiry raised by prosecutors. In total, 41 interviews were conducted with
prosecutors, averaging 25 minutes in duration (range = 5 to 79 minutes). The project was approved by the Deakin University Human Research Ethics Committee and the Director of Public Prosecutions in the jurisdiction being examined (which cannot be identified for ethical reasons).

**Cases and investigative interviews**

The 41 interviews with prosecutors related to 26 CSA cases. As outlined in Chapter 2, in Australian jurisdictions (including the jurisdiction in which the interviews were conducted), the trial prosecutor chooses whether to admit one or more recorded interviews as evidence-in-chief, and may supplement the interview with further questioning. Of the cases that proceeded to trial in this study, in all except one (where the audio quality was too poor) the interview was played as the witness’s evidence-in-chief, or part thereof. In 35% of the cases, the accused was convicted on at least one charge. In 50% of the cases the accused was acquitted of all charges, and the remainder of cases were discontinued by the ODPP.

The CSA cases most often involved female complainants and male defendants, and allegations typically involved ‘contact’ sexual abuse (e.g., touching under or over clothes, or penetration) by a person familiar to the child (usually a member of the child's extended family, or the current or past partner of the child's mother) in the home of either the child or the defendant. Complainants were aged 5 to 16 years. This profile is relatively consistent with CSA incidence data from various jurisdictions (see, for example, Brereton & Cole, 1989; Wundersitz, 2003). Also consistent with other jurisdictions, the investigative interview usually represented the prosecution’s entire
evidence. The investigative interviews were conducted by specialist trained child interviewers from metropolitan or regional centres.

As described in Study 1, the interview protocol employed in this jurisdiction included a rapport-building phase (using open-ended questions), followed by an introduction of the topic of concern via a question such as “Tell me why you’ve come to talk to me today?” and (after disclosure) the elicitation of a free-narrative account using questions designed to elicit elaborate responses without dictating what specific information was required. In reality, however, the interviewers adhered to a format typically reported in prior research which consisted mainly of specific cued-recall and closed questions (e.g., Who, What, Where, When questions) rather than open-ended questions (see Chapter 2, Powell et al., 2005; Powell & Hughes-Scholes, 2009). Like other jurisdictions, the interview protocol also required that offences be identified and particularised.

Data management and analysis

All of the interviews were audio-taped and transcribed verbatim, and the transcripts double checked for accuracy. The in-depth interviews were analysed using an inductive, methodical coding process to identify themes arising within the data (Browne & Sullivan, 1999). Data collection and analysis occurred simultaneously and the coding process was collaborative in nature. The researcher and her primary supervisor read each transcript thoroughly and met regularly to discuss and debate emerging themes. A stepwise procedure of qualitative text reduction was employed (see for review Jovchelovitch & Bauer, 2000). First, passages of transcript were paraphrased into summary sentences. These sentences were then further paraphrased into key words or
phrases. In practice, a spread sheet of three columns was created, the first column containing the transcript, the second column containing the first reduction, and the third column containing keywords. Ultimately, common keywords or phrases emerged, representing key themes of participants’ responses. The challenges for prosecutors using recorded interviews as evidence are described in the next section along with their suggestions for overcoming these challenges.

**Results**

Each prosecutor favoured the use of electronic recording of children’s evidence. Compared to written statements, capturing and preserving the evidence at an early stage in the process (by recording the interview) was seen to result in more complete and cohesive evidence, increased opportunity to scrutinise the investigative process, and to provide a better understanding of the child’s demeanour and developmental level at the time of initial reporting. Recorded interviews were also considered advantageous in facilitating prosecutors’ case preparation (because the main evidence could be determined in advance of the trial) and in reducing the potential psychological harm to the child associated with long trial wait times (especially when the child gave the remainder of their evidence at a pre-recorded hearing).

‘There’s no denying that the interview was useful. It was vital to our case. He gave this evidence a year ago when it was still fresh. We’d be struggling if we had to lead that from him now.’
The prosecutors raised, however, substantial challenges in using interviews as the entirety of evidence-in-chief. Indeed, while the interview was played as evidence in all cases that proceeded to trial, in every trial in this study, the prosecutors reported that they supplemented the interview with additional questioning in evidence-in-chief. One of the primary challenges, raised by all the prosecutors, related to the quality of questioning in the interview. The prosecutors were concerned that interviewers typically placed excessive emphasis on eliciting fine-tune details using highly specific questions, and that this practice affected justice outcomes by fatiguing the child (at the time of the interview), and the jury (when the interview is played at trial), and providing unnecessary opportunity for attack by defence counsel.

‘The interview definitely affected the case outcome. Like many sex assault cases, this case relied on the child’s evidence. I think the child in this case was quite capable of answering questions and if she had been asked better questions in the interview, she probably would have given stronger evidence, and yes, it would have been much more useful to our case.’

Importantly, the prosecutors’ concerns about interviews extended beyond questioning quality. Even among those prosecutors who reported that the interviewer was skilled in questioning, concerns were still raised about the usefulness of the recorded interviews. These concerns related to (a) reduced juror engagement with the witness, (b) reduced sense of formality of evidence, (c) poor clarity of evidence due to technical problems, and (d) reduced witness preparedness for cross-examination. Each concern, and the strategies suggested to reduce their impact, is now discussed in turn.
Reduced juror engagement with the witness

A major challenge (raised by over three-quarters of prosecutors) was that recorded interviews, no matter how good the quality, were perceived to be less engaging than live evidence where the witness presented in person at the time of the trial. Compared to recorded interviews, live evidence was perceived to be more compelling for three reasons. First, there was believed to be a greater opportunity for jurors to build an emotional relationship with (i.e., feel empathy for) the child who presented in person at court. Second, because the courtroom context created an atmosphere of intimacy and privacy or exclusiveness, the prosecutors believed that jurors felt a greater sense of privilege as first-hand recipients of the child’s story, especially when it was clear that the witness had obvious fears or inhibitions about reporting their story to them. The perceived contribution of the contemporaneous element of live testimony (as opposed to the recording medium per se) was demonstrated by the fact that the prosecutors preferred to lead live evidence, even using CCTV, over playing pre-recorded evidence, whether the pre-recorded evidence was the police interview or the pre-recorded hearing.

Third, live testimony seemed more congruous with the entire evidential process and the surrounding environment. The sources of interruptions or distractions were more overt, and the child’s demeanour and developmental capabilities were more consistent across the various stages of giving evidence (evidence-in-chief, cross-examination and re-examination). Overall, the three characteristics of live evidence reported above were perceived to facilitate connectedness, understanding, and empathy with the witness, greater attentiveness on the part of jurors, and enhanced credibility of the witness’s story.
‘The trouble with interviews is that you’ve got distance between the jury and the complainant because the child is just a face on a TV screen. As a juror, watching a screen is not as personal as someone sitting right next to you on a witness box. When you’re a juror listening to someone live, you might not cough or sneeze, or pick your nose and that kind of thing. But when you’re looking at someone on a screen, there’s no disrespect really, in picking your nose, or fidgeting, or coughing, or whatever, because you know the witness can’t hear you. So you’ve just got that artificiality there, and jurors might not really connect with the child.’

Apart from replacing or supplementing the recorded evidence with live testimony (live in the courtroom or via CCTV), prosecutors reported that the detriment of recorded evidence may be mitigated (albeit in part) by a simple warning in their opening address to the trial jury. Specifically, the prosecutors reported that they often explained to the jury at the outset that watching the child on a recording was a different experience to seeing a live witness, and they implored the jury to attend carefully to the recording and to afford the child the same respect and attention that the jury would give a live witness. Alternatively, one prosecutor’s suggestion to ensure juror engagement with the child was to have the accused, rather than the child, outside the courtroom and linked via CCTV. The exact benefits of these procedures, however, were speculative.

‘The problem is that at trial, the accused is in the courtroom and the child is scared stiff of him. You can’t have a child in the courtroom that’s going to have their evidence compromised by the fact that the accused is in there watching them, so the child gives evidence via CCTV. Then the accused sits in the court room the whole duration of trial, which could be days or even weeks. Jurors might start to feel like they know him and empathise with him. On the other hand, jurors only see the child on a TV screen for an hour or so. By the time they come to deliberate, they’re not thinking about the child anymore. What would be really good is if we could have the child in the courtroom giving her evidence in person, and the accused outside watching it on a screen, giving his evidence via CCTV.’

‘In this case, even the judge directed the jury saying “Watching DVDs is hard work, and it’s not like watching and listening to someone in the courtroom, you’re just staring at a screen”. I always remind juries “Please treat the witness as if she’s in the courtroom” but the reality is that she’s not, and you don’t know how juries
are affected by that.’

**Reduced sense of formality**

Another major concern, raised by over two-thirds of the prosecutors, was the reduced sense of formality in the investigative interviews. Interviewers often presented in a cheery, light-hearted manner which at times made the children and/or their accounts of abuse seem frivolous in nature. Children, particularly teenagers, sometimes dressed in clothes that were less formal than they would wear to a courtroom (e.g., hooded jumpers, low cut shirts), and presented with oppositional behaviour (e.g., swearing, grunting). The problem is that the more relaxed, informal and carefree presentation style was perceived to negatively impact the jury’s assessment of the child’s credibility.

‘It sounds terrible but physical presentation matters. I’ve seen girls being interviewed wearing tiny tops with their breasts exposed. And that’s the first thing the jury see. I have to remember that I have to persuade jurors who are likely to judge the child pretty quickly. In the interview in this case, the girl wore lots of make-up and a black hoodie. When it came to giving her evidence in court, in accordance with my suggestion, this girl wore her school uniform and no make-up. She presented really well. I wish someone had advised the complainant about appropriate dress in the interview.’

The reduced formality of the interview was perceived to affect, not only the style of responding, but the likelihood that the child would divulge information that was prejudicial to the prosecution’s case. Such information was permanently recorded on the interview, and often difficult for the prosecution to recover from at trial.

‘When a complainant is asked a question in their interview, they often blurt things out that they probably wouldn’t say in court. In this case, the girl in her interview continually referred to her past sexual experience and her past drug use, almost like she was boasting about it to the interviewers. In cross-
examination, defence asked her about her drug use and she said “Do I have to answer that?” So she knew it wasn’t a good thing to say in court. It’s certainly good that she felt comfortable to open up to the interviewers, but defence used it against her.’

The prosecutors suggested factors that may be responsible for the reduced sense of formality in interviews. As investigative interviewers do not typically attend trials, they may not appreciate the impact at trial of the child’s presentation in the interview. They may not understand the nature and importance of the formality of evidence, or how to reproduce this in an interview. The reduced formality in the interview may also be due in part to the dual purpose of the interview as an investigative and evidential tool. At the investigative interview stage (which is usually soon after initial disclosure) the child is usually in a highly emotional state and the likelihood of disclosure may be more dependent on the rapport between the child and interview compared to disclosure in the courtroom. Further, at the investigative interview stage, the primary concerns are to establish whether a particular criminal offence has been committed, to get a clear idea of what occurred (i.e., the nature of the witness’s allegations, the circumstances of the offence, and the identity of the alleged perpetrator), and to generate potentially useful leads (details) that could be followed to gather corroborative evidence. To maximise the accuracy, scope, and clarity of the information obtained, investigative interviewers must encourage interviewees to recall *everything* that comes to mind. At the prosecution stage, persuasiveness of the evidence is paramount. The different context and dual purpose of the interview could be (and often was) explained to the jury in the trial prosecutor’s opening address.

The prosecutors nonetheless felt that the interviewers needed to be more mindful or considerate of the fact that interviews would potentially be played as evidence-in-
chief. The dramatic difference in presentation sometimes observed in the investigative interviews as opposed to the live presentation in court indicated to the prosecutors that, at the time of the investigative interview, children and caregivers may not be fully aware of the importance of the interview and potential consequences of children’s statements within the justice process. The prosecutors reported that increased solemnity of these interviews could be portrayed without compromising rapport or increasing a sense of threat, intimidation, or anxiety.

‘I think more judges are becoming concerned about the atmosphere in child witness interviews. Traditionally, children gave evidence in court, but it was too overwhelming for them. So we’ve made it easier for them by using recorded interviews that are less formal and less confronting. I think some judges are concerned that it’s too easy now for children to spout off allegations of abuse without realizing that there are serious consequences associated with that.’

‘I felt the interviewer in this case was too condescending and almost too friendly. She sounded like one of the Wiggles. She had a really sing-song voice that you could tell she was really putting on for the kids. It seemed so contrived. I don’t think that settled the child at all, and really didn’t come across well in court. I honestly do not think that enough emphasis is paid to the fact that interviewers are preparing evidence that is going to be used in court. In all seriousness, that’s the only reason you are doing the interview. There’s no point to it otherwise. You could do it in a comfy room with a video and a soft toy, if you were doing it for any other reason.’

**Reduced preparedness for cross-examination**

Irrespective of whether the child’s investigative interview is used as part or all of their evidence-in-chief, child witnesses (within the jurisdiction being examined) are always subjected to cross-examination (either via CCTV or in the courtroom). Over a third of the prosecutors in this sample raised the concern that bypassing live and contemporaneous evidence-in-chief (as a result of using the recorded investigative
interview for this purpose) was disadvantageous to the state because it reduced the child’s preparedness for cross-examination, which in turn increased the risk of error or inconsistencies during questioning of the child witness by defence.

Children who gave evidence-in-chief via recorded interview were perceived to face three disadvantages in cross-examination. First, because the trial is held months (if not years) after the child’s recorded interview, there may be considerable decay in the child’s memory. The decay in memory may result in inconsistencies between details provided in cross-examination and the original statement, especially given the level of precision in details sought in cross-examination and the leading and suggestive nature of the questions often posed. If evidence-in-chief was given at the time of the trial, there would still be considerable decay in memory, however, the pool of details on which to base the witness’s account would be similar, which would presumably result in less inconsistencies. Further, the process of providing evidence-in-chief itself would be an opportunity for the witness to consolidate the story (prior to being asked highly specific questions about contextual details) thereby increasing resilience to misleading questions and suggestion. Although children in this jurisdiction were required to watch their recorded investigative interviews shortly before the trial to refresh their memory, this process was not perceived to be overly effective because the child was often passive during the revision process (i.e., did not always attend to the recording when it was played to them prior to trial) and the recording was frequently not viewed close enough to the trial to be of mnemonic benefit.

‘Having the child witness watch sometimes hours of recording before trial can be very draining for children. It’s an awful lot for someone to sit through and remember. Then the child gets really closely cross-examined in relation to minor, peripheral details of the interview, and that’s when they start getting trapped.
Defence will ask “What colour was this?”, “What time was that? How do you know?” and the child just can’t remember everything they initially said in their interview. I think that’s a huge disadvantage with the interviews rather than leading evidence from a child like we used to.’

‘The child didn’t want to watch her interview before trial. I understand that because it’s very hard to watch yourself on television, particularly as this was an adolescent and not many of us like watching ourselves on TV, particularly women and particularly young women and particularly when you’re talking about something really painful.’

Second, children whose evidence-in-chief was given via recorded interview were believed to have little or no opportunity to become accustomed to the question and answer process in the courtroom, and the nature of the content expected. Children’s performance in cross-examination may be negatively affected by anxiety related to the unfamiliar questioning process and courtroom environment. Third, children could be disadvantaged in cross-examination where information important to the prosecution’s case was not elicited in the investigative interview. Unlike prosecutors leading live evidence-in-chief, investigative interviewers (eliciting evidence at an early stage of the investigation) are often unable to anticipate what information may be relevant in a particular case. Defence counsel at trial may use the omission of relevant information in the child’s initial account to suggest that the child is unreliable or untrustworthy.

It is important to note that prosecutors were not proposing to abandon electronic recording of the investigative interview, or that it had no use within the trial. Rather, they emphasised the importance of prosecutors having the opportunity to lead additional evidence-in-chief to help prepare the child for cross-examination, address necessary content, or to provide developmental or other explanations for inconsistencies that emerge between the interview and trial. Even so, many prosecutors who led additional evidence-in-chief from the child maintained some concern about the child’s
preparedness for cross-examination. The prosecutors expressed a desire to be more engaged in the process of deciding the type of content included in these interviews.

‘I always lead a little bit of evidence from the child before cross. Just to settle them down and to get them used to being questioned before they’re cross-examined. I don’t like sending them in cold. That’s just not the way I do things.’

‘I thought it appropriate to give some guidance as to how that interview was to be conducted. But the interviewers just basically turned up and conducted the interview. I thought there was insufficient consultation with our office about the issues with the case and how the interview was to be conducted. The child suffered in cross as a result of things that should have been addressed in the interview.’

**Reduced clarity of the evidence due to issues related to audio and visual quality**

The final concern raised by prosecutors about the usefulness of electronically recorded interviews was poor audio and visual quality. Specific concerns of the prosecutors with technical quality included the camera angle being too high; the image of the child being too distant (and consequently failing to capture the child’s hand gestures or facial expressions); microphones failing to detect the voices of softly spoken children (and interviewers reportedly failing to respond to alarms warning that recording equipment could not detect audio); lighting causing the child’s face to be in shadow (particularly an issue with Indigenous children); and inappropriate positioning of people in the room (for example, where interviewers were not visible on the recording, or had their backs to the camera). There was some disagreement about this jurisdiction’s use of ‘split screens’, whereby the video image of the child also features, in the top corner of the screen, a small image of the interview room. One prosecutor commented that split screens were useful in showing the interview suite and all the parties therein, while
another prosecutor commented that the image was not useful because it was so distant that “the interviewers looked like little ants in the room”.

Technical problems reportedly arose not just at the investigative (police interview) stage, but also at the trial stage. Many prosecutors were concerned that media players in some courts failed to adequately project the image and/or the sound of the recording. The television screens on which the recording was played in court were often small, and the jury were typically seated some distance from the screens (15 m, as reported by one prosecutor). As a result, it was often very difficult for the jury to see and hear the interview. More than an inconvenience to prosecutors or jurors, technical difficulties were considered a potential source of injustice as they may impede the jury’s ability to assess the (often only piece of) evidence and come to a fair decision. In one case, the jury sent a note to the trial judge expressing concern that they could not hear or see the child in the interview, and highlighting the importance of improving technical quality to ensure just outcomes in future cases.

‘The jury make assessments about the child’s truthfulness and reliability based, not only on what the child says, but on how they say it, what their facial [expression] and body language is like. If the jury can’t see the child and make out every word she says, then they can’t make a proper assessment of her truthfulness, reliability, and credibility. In that case, how can they be satisfied beyond reasonable doubt and convict the accused? You might get acquittals when really there should have been a conviction.’

The prosecutors provided some suggestions for interviewers to assist in overcoming technical problems, including testing recording equipment prior to each interview and taking steps, where necessary, to improve the quality of the image and
audio captured on the recording. The prosecutors also made specific suggestions about the visual composition of the recording.

‘It’s best if the camera shot is more level and is directly facing the child. What you should see is a close shot of the head and torso of the child so you can assess their demeanour as closely as possible, and you should see the interviewers on the left and right of the child, and the top of the desk. That’s ideal. That’s what you would see if the child was in court. You should see the child as you would if she gave live evidence.’

‘For me personally, I like to have the interviewers side on, but right to the side so they’re only taking up about 25% of the frame. The child should take up the other 75%. You should see the child from the waist up, in good proportion so you can see the top half of her body, her face, her reactions, and any gestures or demonstrations she makes. The microphone should be nice and close to the child.’

The prosecutors highlighted the need to work with the courts to ensure the best possible presentation of the recording in the court room (given the available resourcing). They identified that, where the technical quality of the recording was poor, the trial prosecutor could lead additional evidence-in-chief on any details that were not audible on the recording. However, many prosecutors perceived risks in leading from the child additional evidence-in-chief on material matters.

‘Although in this case we had the interview’s audio enhanced, it was actually so bad that we decided not to play it in court because the child wasn’t audible at all. I was left with no other option than having to adduce the entire evidence again from the kid. That’s not good because there’s always the danger that they’ll forget something, or they’ll come out with something that is slightly different from what was said in their interview, which is understandable, but it becomes a prior inconsistent statement that defence will use to suggest that the child can’t be trusted.’
Discussion

Overall, the prosecutors supported the use of recorded interviews as evidence-in-chief in child abuse prosecutions. Nevertheless, they perceived considerable scope for further improvement to the evidential quality and usefulness of interviews. The quality of questioning was a major concern for prosecutors and poor skill of the interviewers was perceived to limit the usefulness of interviews in court. Irrespective of whether the prosecutors perceived room for improvement in questioning, however, they held substantial concerns about the usefulness of recorded interviews as evidence, concerns that were robust across contexts including trial and pre-recorded hearings, and persisted before and after the verdict. Compared to live evidence, interviews were perceived to limit juror engagement with the witness, reduce the sense of formality of evidence, compromise the witness’s preparedness for cross-examination, and potentially undermine the clarity of the evidence. These perceived limitations are consistent with those raised in previous evaluations (see Chapter 3, for example Bala et al., 2001; Burton et al., 2006; Cashmore & Trimboli, 2005; Criminal Justice Joint Inspection, 2012; McConachy, 2002; Powell & Wright, 2009; Richards et al., 2007; Stern, 2010), indicating that policy, training, and increased prosecutorial familiarity and experience with the provisions are yet to mitigate the challenges of using electronically recorded interviews as evidence.

Two possible strategies for improving the evidential usefulness of interviews have been identified in this study. First, the results highlight the need for a more holistic approach to interviewer training, incorporating best-practice questioning procedure as well as techniques for ensuring that the evidence is clear, solemn, and persuasive (see for
example, Voss, 2005). For example, training could better address strategies for managing children’s physical presentation and behaviour, and for maximising the technical quality of recordings. Having interviewers occasionally attend trials may assist in developing their appreciation of the importance, and nature, of appropriate presentation of evidence. Likewise, children may benefit from heightened awareness (e.g., through the provision of visual or written resources) of the way their evidence may potentially be used in court if the case goes to trial. The potential disadvantage of this latter suggestion, however, is that only a relatively small proportion of cases go to trial and emphasising the trial process per se may heighten anxiety and subsequently inhibit disclosure of abuse in children who are already fearful about the consequences of testifying.

Second, this study has highlighted the need for continued research and development of techniques that may assist children to prepare for the dramatic change in questioning style from evidence-in-chief to cross-examination. The questioning process typically used in cross-examination is ill-matched to children’s limited linguistic and social capacity. Defence counsels’ questions are commonly designed to create confusion and inconsistencies and are often closed, leading, or suggestive in nature – such questions are strongly discouraged by child testimony experts due to their associated high error rates (Cashmore & Trimboli, 2005; Cossins, 2009; Eastwood & Patton, 2002; Zajac, Gross, & Hayne, 2003). Judicial officers in most jurisdictions are entitled to intervene to prevent inappropriate questioning in cross-examination; however there appears to be considerable reluctance to do so (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997; Cashmore & Trimboli, 2005; Cossins, 2009). Further, warning children that defence counsel may ask difficult questions and encouraging children to correct any misunderstandings held by counsel
has been found to be ineffective in reducing the negative impact of cross-examination on testimonial accuracy (Righarts, 2007).

Recent research has highlighted the utility of various practical interventions for assisting children to maintain testimonial accuracy in the face of challenging cross-examination questioning. For example, O’Neill and Zajac (2013) interviewed 196 children (aged 5 to 10 years old) about a staged event. Six months later, children watched their recorded interview and were then interviewed with the intent of inducing error and inconsistencies in to their account (i.e., children were ‘cross-examined’). Before ‘cross-examination’, some children took part in a preparation intervention in which they practiced answering cross-examination style questions about an unrelated topic and received feedback about their responses. Children who participated in preparation (up to one week prior to cross-examination) were significantly more accurate under cross-examination than children who had no preparation. The importance of developing effective witness preparation techniques is heightened by the fact that, in the present study, leading additional evidence-in-chief from the child did not appease the prosecutors’ concerns about children’s preparedness for cross-examination. That is, it appears that preparation techniques above and beyond leading additional evidence-in-chief are necessary in order to address prosecutors’ concerns about children’s readiness for cross-examination.

Further research is needed to explore the degree to which limitations perceived by prosecutors in this study reflect the actual effectiveness of video-recorded evidence. For example, while prosecutors were concerned that using video-recorded evidence reduced jurors’ engagement with the witness, case outcome studies have suggested that juror decision making is unaffected by the mode of evidence presentation (e.g., Davies
et al., 1995; Taylor & Joudo, 2005). Future work should also determine whether improvements in open-ended questioning in interviews would address, at least in part, concerns about the presentation of the witness and their lack of preparedness for cross-examination. Although (for ethical reasons) access was not granted to the actual child witness interviews being discussed in this study, related work conducted by the researcher’s primary supervisor indicates that interviewers in this jurisdiction tend to use few open-ended questions (typically around 10%) and that greater use of open-ended questions would have had widespread benefits (Hughes-Scholes & Powell, 2008). For example, narrative styles of questioning limit the number of errors and inconsistencies that may be used in cross-examination to discredit the child’s allegations and they encourage witnesses to play an active role in the interview process thereby enhancing cooperative behaviour (Roberts et al., 2004; Sternberg et al., 1997).

Irrespective of the quality of questioning in the investigative interviews, however, it appears that, given the dual and conflicting purposes of the witness interview as an investigative and evidential tool, it would be unrealistic for a narrative interview conducted soon after the disclosure to serve all the requirements of evidence-in-chief. The prosecutors in this study reported that having the latitude to lead further evidence-in-chief from the child gave them the opportunity to ‘recover’ from any poor persuasiveness of the interview, inappropriate demeanour of the witness, or inadequate technical quality. These findings, coupled with research showing that providing live evidence may also be beneficial for the psychological recovery process of witnesses who wish to tell their story to the court in person (Australian Law Reform Commission, 2010), indicate that it may be inappropriate to restrict supplementary questioning as is
the case in some jurisdictions. Given the potential for supplementary questioning to compensate for the possible detriments to the state of admitting recorded evidence, legislative review and reform in some jurisdictions may be beneficial.

In conclusion, this study has provided valuable insight into the prosecution perspective on the usefulness of recorded interviews as evidence-in-chief. For recorded interviews to be useful and effective in providing reliable statements that are appropriate for use as evidence, continued collaboration is necessary between child developmental psychologists, investigators, and prosecutors. The feedback from the prosecutors in the present study suggests that additional work is required in increasing interviewer adherence to narrative protocols, developing holistic interviewer training programs that incorporate appropriate presentation of the witness, and preparing children for cross-examination.

10 Legislation in the UK, for example, limits the circumstances under which supplementary questioning is permitted, Coroners and Justice Act 2009 (UK), s. 103; Youth Justice and Criminal Evidence Act 1999 (UK), s. 27.
CHAPTER 6 – PROSECUTORS’ PERSPECTIVES ON CLARIFYING SEXUAL ACTS IN CHILD ABUSE INTERVIEWS (STUDY 3)\textsuperscript{11}

The current study aimed to elicit practical and constructive guidance from prosecutors about how child witness interviewing techniques could be improved to accommodate prosecutors’ suggestions. The original research presented so far in this thesis has, through in-depth interviews, examined the nature and extent of prosecutors’ concerns about the evidential quality of interviews, and explored their broad suggestions for improvement. In contrast, the present study used a focus group methodology to elicit direction from prosecutors about how interviewing procedure could be improved to mitigate prosecutors’ concerns, particularly about unnecessary questioning (Study 1 and 2). More specifically, this study sought prosecutors’ perceptions about when and how interviewers should clarify details about sex acts alleged by a child in an interview.

Prior research evaluating the evidential quality of interviews suggests that concerns about overzealous questioning expressed by prosecutors in Studies 1 and 2 are generalisable across jurisdictions (see Chapter 3, for example Criminal Justice Joint Inspection, 2012; Hanna et al., 2010). Prosecutors’ suggestions for addressing unnecessary questioning, however, may differ across jurisdictions given variation in sex offence legislation and policy. The decision was therefore made to take a broad, national approach for the current study. Prosecutors representing every Australian jurisdiction (with the exception of one small jurisdiction) participated in a focus group, the overall

\textsuperscript{11} This study has been submitted for publication in a peer reviewed journal. The full reference is Burrows, K. S., & Powell, M. B. (manuscript under review). Prosecutors’ perspectives on clarifying sexual acts in child abuse interviews. Psychiatry, Psychology and Law.
purpose of which was to formulate practical solutions which would be applicable throughout Australia.

Excessive questioning about offence-related details has emerged as a common complaint of prosecutors involved in prior work evaluating interview evidential quality (see Chapter 3 and Study 1). Study 1 revealed concerns that interviewers frequently struggle to focus the interview on the elements of the offence (what sex act occurred and who perpetrated it) and that disclosure of these elements is typically interrupted by questions about fine-tune details that are less useful, if at all, for establishing the state’s case. The prosecutors’ perceived that interviewers attempt to elicit minute and unnecessary detail (e.g., information about body positions, or clothing worn during offending) which risks damaging the witness’s credibility in the eyes of the jury (Study 1). Excessive questioning about the nature of the sexual act alleged reduces the likelihood of successful prosecution of child sexual abuse (CSA) cases by increasing the risk of witness error and attack by defence counsel at trial. This feedback from prosecutors in Study 1 is consistent with that in other jurisdictions including the United Kingdom (Criminal Justice Joint Inspection, 2012; Stern, 2010) and New Zealand (Hanna et al., 2010).

Most CSA is repeated and intra-familial in nature; thus the task of identifying and recalling a sexual act (located in time and place) is highly complex, requiring fine-tune distinction between highly similar occurrences of abuse (e.g., Connolly & Lindsay, 2001; Powell & Roberts, 2002). Further, accurate and detailed reporting of CSA is dependent on the witness’s ability to provide explicit descriptions of what occurred. Many children in the early school years do not understand what the word ‘sex’ means and many define it as kissing (Caron & Ahlgrim, 2012; Janus & Bess, 1976). Many
adolescents do not consider oral or anal sex as ‘sex’ (Bersamin, Fisher, Walker, Hill, & Grube, 2007). The poorer the witness’s memory and language skills, the greater the risk of suggestibility and of misunderstandings occurring during witness interviews (Gignac & Powell, 2006). Furthermore, many witnesses adopt strategies to cover up their limitations, such as repeating back phrases or words used by the interviewer, providing stereotypical responses, providing affirmative answers to yes/no questions even if they do not understand them, or responding with a simple “yep”, “nup”, “dunno” or “maybe” (Snow & Powell, 2004). Thus, the disadvantages child witnesses face from a developmental perspective may go undetected by decision makers.

Interview progress and decision making in CSA trials is also encumbered by emotional factors related to the abuse and to the criminal justice process. When children are embarrassed and intimidated in an interview situation, it is harder for interviewers to engage them in strategies designed to maximise honest and elaborate reporting (Collins et al., 2002). Highly specific questioning about the sexual acts alleged also commonly elicits behavioural responses (such as irritability, anger, withdrawal) that reduce the witness’s credibility (Study 1). These behaviours are often misinterpreted by juries as being due to boredom, evasion, lying, or reluctance to cooperate, rather than to the distressing nature of the interview process or to anxiety about being perceived as an incompetent witness (Snow & Powell, 2004).

Maximising the evidential usefulness of CSA interviews requires balancing the need to establish the elements that form the charge, while minimising specific questions that risk error, inconsistencies, and behavioural responses that undermine witness credibility. Achieving this balance requires a good understanding of the circumstances in which, to sufficiently establish the offence elements, it is necessary to seek further
information about the sex acts alleged. While an abundance of prior evaluations have outlined prosecutors’ broad concerns about the quality of the interview as evidence-in-chief (see Chapter 3 for review), there has been relatively little explicit feedback from prosecutors about the questioning process in interviews. This study addresses the need for further guidance from prosecutors about the nature of the questioning required in CSA interviews. Specifically, it explores the conditions in which interviewers should seek further detail from the child about the sex acts alleged.

Method

Participants

The participants included nine Crown prosecutors representing every Australian state and territory (with the exception of one small jurisdiction). Participants were recruited with the assistance of managerial staff in their work places who directed the researcher to those professionals who would be in the best position to participate. The selection criteria were that the prosecutors specialised in prosecuting CSA and had considerable experience. All prosecutors who were approached agreed to participate, totalling 7 female and 2 male prosecutors, with a group mean of 12.7 years prosecution experience (range = 5 - 20 years) and 217 CSA cases allotted to them throughout their careers (range = 100 – 300 cases). Five prosecutors indicated that their role involved consulting or advising on child interviewing. Two experienced police investigators (each from a different jurisdiction) attended the focus group to observe the discussion and provide information about police investigative procedure if required. More specific
information regarding the profile of these professionals has not been provided to ensure anonymity.

It is important to note that while there are minor differences in legislation across Australian jurisdictions, the process of conducting and using recorded interviews is consistent across the country (see Chapter 2). Soon after a disclosure or report of abuse is made, authorised persons (police and/or social workers) conduct and electronically record an interview with the child witness. Narrative-based protocols (whereby open-ended questions are used to elicit a detailed free-narrative account) are prescribed by organisations, although in reality, interviewers tend to adhere to the format typically reported in prior research which consists mainly of specific cued-recall and closed rather than open-ended questions (Powell et al., 2005, Powell & Hughes-Scholes, 2009). Where cases proceed to trial, prosecutors may choose to admit one or more recorded interviews as the child’s evidence-in-chief and may lead additional evidence from the child.

Procedure

The focus group facilitator first invited the prosecutors to openly reflect on the manner and degree to which interviewers typically sought information about the sexual acts. The prosecutors were then asked to discuss what factors should inform an interviewer’s decision to question a child about sex acts. In order to facilitate discussion, numerous examples of phrases used by children to describe sex acts were offered. The phrases were drawn from a large pool of field interviews. The project was approved by the Deakin University Human Research Ethics Committee and the Director of Public Prosecutions in each jurisdiction.
Analysis

The focus group (90 minutes in duration) was audio recorded and transcribed. To ensure anonymity, prosecutors were represented on the transcript by a number from one to nine. Thematic analysis was conducted, involving the identification of common themes or ideas within the discussion (Gifford, 1998). Analysis was collaborative in nature. The researcher and her primary supervisor independently read the focus group transcript, made notes about the key themes and differing opinions between participants, and then met and discussed emerging themes until agreement was reached about the overriding themes. The key themes that emerged are described in the following section. Quotes have been edited for grammar, readability, and to de-identify all parties.

Results

The nature and quality of child interviewers’ questioning about alleged sexual acts was a major concern of the prosecutors who took part in this study. This was evident in the length and intensity of the discussion and the numerous case examples the prosecutors provided to support difficulties that were articulated. The discussion highlighted a ‘double edged sword’ when it came to seeking detail about sexual offences. On the one hand, a failure to adequately follow up on the nature and circumstances of offending may result in charges consequently being downgraded to less serious offences, or dropped altogether due to insufficient information. On the other hand, overzealous attempts to seek information about offences can undermine the
evidential quality and prospects of conviction by confusing the child, increasing the risk of error and increasing the likelihood of attack from defence counsel.

Consistent with prior research, the overwhelming concern was that interviewers tend to engage in excessive questioning about the sexual offending in attempts to elicit information that, from a prosecution perspective, was unnecessary and unhelpful. The prosecutors emphasised the importance of acquiring detail in narrative as opposed to short-answer format, and of staying focused on obtaining information that assists in determining the nature of the sexual acts that occurred, rather than on eliciting a ‘frame-by-frame’ description of the acts.

Prosecutor 6: ‘We’d all agree it’s difficult to find that balance in how much detail you need about offending. The police obviously have a very tough job. But what we all see universally is that they try and get too much detail. It seems interviewers think they need to know every detail of what happened. That’s just not the case.’

Prosecutor 2: ‘These relative questions about “how long did it go on for?”, “how far in did his finger go?”, “where was his leg in relation to your body?” No one can answer those, and it doesn’t matter anyway. There’s far too much questioning about the descriptive stuff. And questions about ejaculation? They’ll tell you if they remember that he ejaculated. It’s very probative when they spontaneously talk about the ‘white goo’. But I don’t think you can chase it, it’s not an element of the offence. Nobody cares whether he ejaculated. Just leave it alone.’

Prosecutor 4: ‘I don’t care what his penis looks like! That’s for cross-examination if defence want to try and discredit the child by suggesting that there is something distinctive about the penis that the child should be able to describe. Interviewers shouldn’t be asking the kinds of questions we’d expect to be asked on cross-examination.’

The prosecutors perceived that child sex offence legislation imposed an unrealistic and unfair expectation that children are capable of describing, and discerning
between, sex acts. It may be particularly difficult for children who have been touched around the vagina or anus to distinguish whether or not they have actually been penetrated (a distinction required in Australia to determine the appropriate charge).

While prosecutors could lay lesser charges where there was uncertainty about whether a child had been penetrated, many prosecutors called for legislative reform to broaden the definition of penetration offences to include touching around, as well as inside, the genitals which would remove the unrealistic requirement that children make such a distinction. Notwithstanding the perceived need for legislative reform, interviewers were believed to play an important role in maximising the quality of evidence available to secure a conviction. The overriding theme in relation to interviewing technique was that interviewers seem to indiscriminately ask questions about the sexual acts alleged with little consideration of whether questions were necessary or appropriate.

Prosecutor 9: ‘You don’t just ask questions for the sake of it. You should always have a reason why you’re asking them.’

Prosecutor 4: ‘Interviewers need to know the elements of offending and focus on them. Then they can differentiate between what has to be proven, the elements, and what the child volunteers. You might be able to follow up on details that they volunteer, but don’t go chasing rabbits down holes if you don’t need to. You need the child’s story with the elements of the offence. To determine the offence, you need to know which body parts touched which body parts. That’s it. Focus on that and you’ll get the questions you need.’

Prosecutor 6: ‘If the child’s suggested a penetration act, then explore it. If you can’t determine penetration, then move back to an indecent dealing charge, be happy with that, and move on. Because in the end, if you keep trying to establish penetration in the interview, you lose the credibility of the complainant.’

The prosecutors listed three factors that should be considered before asking follow-up questions about sexual acts. First, interviewers need to reflect on whether the
nature of the sexual act was clear within the context of the child’s narrative account. Follow-up questions about the act would be unnecessary if a juror would be likely to understand what sexual act the child is referring to in their narrative.

Prosecutor 7: ‘Just think: would a person off the street know what the child is talking about? If it’s something like “he put his rude part in my mouth”, that’s pretty clear. The jury would understand that, and I don’t think they’d accept an argument from defence claiming that phrase isn’t clear.’

As the above quote illustrated, a clear description of the act need not be explicit or use technical terminology (such as ‘vaginal penetration’ or ‘masturbation’). Rather, a description would be sufficiently clear where it includes the body parts involved (even if described using colloquial or non-anatomical terms) and indicates the nature of the act (i.e., how the body parts were involved). Sufficient clarity about the nature of the act may be achieved where the child provides subtle indication of the act in their narrative via, for example, use of the word ‘in’.

Prosecutor 4: ‘When you’re trying to establish whether penetration occurred, if the child says “in”, like “he touched me in my vagina”: that’s sufficient. You can leave it at that, you don’t need to ask more about the penetration. It’s really the prosecutor’s responsibility then at trial to explain the definition of penetration to the jury. The child doesn’t have to do that, we do.’

Follow up, however, was considered appropriate where the child used colloquial sex act terms which jurors may not understand. For example, some prosecutors were doubtful as to whether all jurors would understand phrases such as “he gave me head” (‘head’ being a term commonly used by Australian teenagers to refer to fellatio). The prosecutors suggested that in order to clarify the nature of the act in those cases, the interviewer
should direct the child back to the part of their narrative where they described the act and ask for elaboration, or alternatively ask a specific question such as “what do you mean by ‘gave you head’?”.

The second factor to inform interviewers’ decisions about whether and how to question about the sex acts alleged was the developmental age of the witness. Specifically, the degree of knowledge children would have (relative to their experience, language, and cognitive capacity) needs to be considered. Older children are more likely than younger children to understand the meaning of anatomical terms and have the capacity to distinguish between and describe sexual acts. This would reduce the need for clarification of terms (to check their meaning) but at the same time increase the likelihood that a term or act that needed to be followed up would be able to be clarified by the child.

Prosecutor 3: ‘Clearly, questioning has got to depend on age. If a 15 year old says “we had sex” and a five year old says “we had sex”, you need to take a different approach. You’d need to know more with the five year old because we can’t be sure that the five year old knows what that phrase means.’

Prosecutor 5: ‘It’s important to know the age of the victim and be sensitive to who you’re dealing with. I think the problem is that there is just a fundamental belief that you have to question the child, particularly about penetration, regardless of the ability of the child to give you the information you want. The problem with that is that you are undermining reliability. If it’s a four year old who has been touched around the vagina, she might not actually know whether she was technically penetrated and probably doesn’t have the words to explain it.’

Overall, young children’s language and cognitive limitations means that considerable caution is warranted when following up acts with specific questions. When deciding whether to question children about sexual acts, the prosecutors perceived it was also
important to consider the likelihood that further information about the act would result in an increased penalty for the accused. Penalties are typically high for sexual offences against young children regardless of whether penetration occurred, so while there may be difficulties in establishing penetration with this interviewee group, the need to have the issue clarified is potentially less important for overall case outcome than it is for older children.

Prosecutor 6: ‘If the child is so young that they can’t explain whether they’ve been touched on the inside or outside of their bodies, then the penalty is going to be that much higher in relation to that child anyway. I don’t think we should be focusing so much with the younger children on “in” or “out” if it’s rubbing on them. Whereas if it’s a 14-year-old girl, you might need to determine that the touching was on the inside in order to get a high penalty.’

The prosecutors identified that developmental differences would be compounded over time. As time since the offence increased, highly specific details would likely be forgotten, thus there would be less utility in asking fine-tune questions of witnesses irrespective of age.

Third, deciding whether to ask follow-up questions about the sexual act requires consideration of the strength of the evidence available to support the allegation. For example, if the medical examination revealed evidence of the suspect’s semen in or near the child’s vagina, the need for verbal clarification from the witness regarding the nature of the offence was less pertinent. While it was recognised that the witness’s statement often preceded thorough investigation of the case, the prosecutors perceived that careful planning and consideration of case information obtained prior to and during the interview would facilitate the identification of corroborating details.
Prosecutor 2: ‘Interviewers should be well prepared and get as much information about the case as they can before interviewing the witness. That way, the depth of the potential evidence obtained from the interview is going to be so much greater because you’ll know what detail is relevant in that case. Otherwise, you’re going into the interview completely blind, and that’s what leads to a lot of this gumf questioning.’

Discussion

The overriding message of this study is the importance of using discretion when seeking further information about the sex acts reported in child abuse interviews. Excessive questioning about sexual acts can undermine the evidential usefulness of child witness interviews about abuse, especially with young children whose memory and language limitations make them more prone to error in response to specific questions. While it is ideal to have as much offence-related information as the child can reasonably provide, the quality and evidential usefulness of the information also needs to be considered and this is largely determined by the interviewer’s questioning.

The prosecutors emphasised the importance of obtaining detail as much as possible in narrative format. This message is consistent with the large body of work on child witness testimony, which reveals the importance of using non-leading open-ended questions when interviewing vulnerable witnesses (Dent & Stephenson, 1979; Lamb et al., 2007; Sternberg et al., 2001). Open-ended questions are those that encourage elaborate detail without dictating what specific information is required (Powell & Snow, 2007). While all witness groups respond with high accuracy to open-ended questions, the detrimental effect of specific (e.g., Who, What, When, Where) questions on accuracy is greater for vulnerable witnesses. Given the low arrest and conviction rates for child
sexual abuse (Cross et al., 1995), and the fact that low prosecution rates of CSA cases are due in large part to the inadequate quality of evidence obtained from witnesses who allege abuse (Office of Director of Public Prosecutions [ACT] and Australian Federal Police, 2005; Powell & Wright, 2009; Success Works, 2011), the importance of the present results cannot be overstated.

This study was the first to examine prosecutors’ perceptions of questioning about sex acts in interviews, but it is part of a broader body of research in which prosecutors have voiced concern about interviewers’ focus on highly specific event details (Study 1; Cashmore & Trimboli, 2005; Criminal Justice Joint Inspection, 2012; Hanna et al., 2010; McConachy, 2002; Stern, 2010). Considered collectively, the interviewer evaluation literature provides a clear indication of the way forward in addressing the concerns raised in this study and ensuring interviewing practices become more consistent with the prosecutors’ recommendations.

The first step is to ensure the appropriate dissemination of this study’s findings, along with further discussion about how the findings could be incorporated in interview protocol development. Qualitative research (both individual interviews and focus group work) has revealed markedly different views between prosecutors and police interviewers about the nature and amount of information required for prosecution (Guadagno et al., 2006; Powell et al., 2011). Police officers tend to perceive that highly specific details (such as the location, date, and time of the offence) are essential, and that maximising the number of separate offences and specific details about each offence increases the chance of successful prosecution (Guadagno et al., 2006; Powell et al., 2011). In contrast, prosecutors place emphasis on the persuasive qualities of the account and perceive that the primary goal of interviewers should be to elicit a free-narrative
account of one or more offences (Guadagno et al., 2006; Powell et al., 2011). The strong implication is that prosecutors need to play a much more integral role in the development of interviewer training guides.

The second step is for organisations to ensure that interviewers are equipped with the skills required to elicit accounts of child abuse in narrative format. Despite the existence of clearly defined ‘best-practice’ guidelines emphasising the use of open-ended questions in investigative interviewing, the content, structure, and efficacy of investigative interviewer training courses is generally insufficient to promote adherence to such questions (Powell et al., 2005). Although interviewers can generally begin interviews with good open questions, there are common problems in questioning that restrict children’s opportunities to provide elaborate and accurate narrative accounts of events (Powell & Guadagno, 2008). Powell and Guadagno (2008) found that interviewers commonly invited free-narrative recall without first establishing what event had occurred. Interviewers often used phrases that discouraged elaborate responses and encouraged descriptive information about persons or places rather than narrative detail about what actually happened. Each of these interviewing practices would inhibit the provision of narrative information about sexual acts and undermine evidential quality. To be effective in promoting adherence to open-ended questioning, interviewer training programs should incorporate ongoing practice, expert feedback, and regular performance evaluation (Powell et al., 2005).
CHAPTER 7 – PROSECUTORS’ PERCEPTIONS ON CLARIFYING TERMS FOR GENITALIA IN CHILD SEXUAL ABUSE INTERVIEWS (STUDY 4)\textsuperscript{12}

This chapter presents Study 4 of this thesis, which, like the previous study, used a focus group methodology (involving prosecutors from across Australia) to elicit practical and constructive suggestions for addressing concerns about unnecessary questioning in child witness interviews. The previous study focused on eliciting prosecutors’ guidance in relation to questioning around offence-related details. In contrast, the focus of the current study is on prosecutors’ suggestions for improving questioning around the meaning of (often obscure) genitalia terms used by children in interviews. Overzealous questioning about genitalia terminology has emerged as an issue in its own right, distinct from questioning about offence-related details (see Study 1; Guadagno et al., 2013).

To reiterate, witness statements detailing what offences occurred and the identity of the alleged offenders must have enough specificity to establish guilt beyond reasonable doubt. The interview process, however, must also accommodate the child’s developmental (e.g., memory and language) capabilities. If the concepts being requested are too advanced for the child, the questioning process further compounds misunderstandings on the part of decision makers and increases the risk of error in the account (Powell et al., 2009). Decades of child eyewitness testimony research has shown that when children misreport events, it is usually due to the nature of the questions

\textsuperscript{12} This study has been accepted for publication in a peer reviewed journal. The full reference is Burrows, K. S., & Powell, M. B. (in press). Prosecutors’ perspectives on clarifying terms for genitalia in child sexual abuse interviews. \textit{Australian Psychologist}.
asked, children’s misunderstanding of the purpose of questions, and their tendency to provide responses to direct questions rather than say “I don’t know” (Hughes & Grieve, 1980). Unintentional memory errors due to developmentally inappropriate questions usually account for inaccurate testimony in child witnesses rather than intentional deception per se (Poole & Lamb, 1998).

The primary challenge when interviewing alleged child abuse victims is in knowing how to weigh the demands of the legal system with the developmental capabilities of the child. As explained in Study 1, to convict an alleged offender, the state is required to prove beyond reasonable doubt the elements of each offence (i.e., what offence occurred and the identity of the perpetrator). Legislation in each jurisdiction defines the acts that constitute each sexual offence. For example, in the offence of sexual penetration of a child, most legal definitions involve penetration of the vagina or anus with any object or body part (e.g., Criminal Code Act Compilation Act 1913 [WA], s. 319). However, many children do not use correct anatomical terms for genitalia in spontaneous accounts of abuse. Colloquial or obscure terms are common (e.g., ‘dick’, ‘doodle’ and ‘willy’ are commonly used colloquial words for penis). Documented examples of interviewer attempts to clarify the meaning of terms include use of dolls and body part inventories (e.g., “What do you call this part [on the doll or picture]”), re-enactment (e.g., “Show me what happened [on child’s own body or on doll]”) or specific questions (e.g., “What is your doodle?”, “Where is your doodle?”, “What do you use your doodle for?”). The issue for the interviewer, and the focus of this

13 Throughout this study, reference to ‘colloquial or obscure terms for genitals’ includes any terms that an interviewer presumes or suspects are being used by a child in an interview to describe genitals.
study, is whether and how to clarify children’s terms for anatomical body parts when describing sexual acts within the investigative interview.

There is an argument for and against following up terms for genitalia. On the one hand, not clarifying an ambiguous term could potentially damage the state’s case if it undermines the ability to determine offences. On the other hand, as indicated in Study 1, an interviewer’s attempts to clarify the meaning of terms could damage the usefulness of the child’s entire statement from a prosecution perspective if such attempts increase confusion or risk of error. Research and anecdotal observation of field transcripts has shown how techniques such as use of dolls and body part inventories can undermine the child’s credibility (through the elicitation of ambiguous or contradictory responses). These techniques can also reduce the child’s willingness to engage in the interview. Collectively, and from a developmental perspective, the problems associated with these techniques are threefold.

First, many children cannot respond to interviewers’ direct attempts to clarify the meaning of terms because they do not actually know the correct anatomical term. Words such as ‘penis’ and ‘vagina’ are learned by many children relatively late in development. For example, Kenny and Wurtele (2008) reported that less than 10% of pre-school aged children understood these terms. Gartrell and Mosbacher (1984) reported that the mean age for knowing the correct name for male genitalia was 11.5 years, and 15.6 years for female genitalia. There is large variability in the age at which children acquire these terms, however, because children’s vocabulary is largely determined by experiential knowledge such as caregivers’ use of terms (Elischberger, 2005). Many caregivers are reluctant and awkward using anatomical language for sexual body parts as a result of their society’s simultaneous discomfort and fascination with sex (Chilcott, 2012).
Similarly, child sex offenders are reluctant to use anatomical labels, and they are known
to target children who have little knowledge of, and language for, sexual body parts in
order to minimise the risk of detection (Elliot, Browne, & Kilcoyne, 1995).

Second, while lack of knowledge and experience related to a topic can reduce the
quality of a statement, so too can an abundance of knowledge and experience especially
among children with advanced socio-emotional development. As children reach
adolescence, they become more self-conscious, awkward and embarrassed when
disclosing sensitive issues (Anderson, Richards, & Willis, 2012; Westcott & Davies,
1996). This can manifest as a lack of cooperation in the interview process which is
illustrated in the following excerpt from a field transcript with a 14 year old girl who
perceived that her account was being unfairly interrogated:

I: You say you had sex in the bed. Now we just need to make sure we know what
you mean by having sex because there’s lots of different meanings.

C: **Him shoving his dick in me.**

I: Okay, so when you say ‘dick’ is there another word?

C: **A doodle.**

I: Okay, what about if you’re at school and you have to talk about parts of the body.

C: **Penis!**

I: Okay, when you say ‘put his dick in me’ what part do you mean?

C: **In my hole, where you are supposed to have sex!**?

I: We have to ask these questions because obviously there are different places that
you could put that.

C: **Oh my god! This is so stupid. I’ve had enough of this. I don’t want to talk
anymore. That’s everything that’s happened.**
This child was so irritated by the questions that the interviewer had no choice but to terminate the questioning. The emotional response of this girl indicates traumatisation through the investigation process which is referred to as system abuse (see Hoyano & Keenan, 2010). System abuse also potentially arises when a child is asked to touch their own genitals in the presence of an adult (in order to clarify where they were touched) or is shown graphic images of genitals for the purpose of identifying body parts, particularly when the child has not been exposed to naked images of people before.

Third, specific questions or cues can lead to problems due to limitations in the utility or format of these procedures (these problems are unrelated to the sexual content of the interview). Any prompt or question that narrows the focus or response options increases the risk of error because the witness must engage in a more rapid, automatic, and shallow level of memory processing (Craik & Lockhart, 1972). Children’s understanding of words is context-specific and they do not necessarily recognise human drawings or figures as being a symbolic representation of their own body (DeLoache & Marzolf, 1995). In any case, body maps have not been found to facilitate children’s verbal descriptions of touch and there is a risk of misinterpretation in any situation where the child is asked to use nonverbal behaviour in the place of a verbal report (Bruck, Ceci, & Francoeur, 2000; Hungerford, 2005; Willcock, Morgan, & Hayne, 2006). The overriding conclusion from the prior research is that interviewers should attempt to elicit terms for genitalia in response to open-ended questions (i.e., as part of the narrative account of what occurred) and they should use follow-up questions or techniques cautiously and sparingly (Poole & Bruck, 2012). This recommendation requires in the first instance, skill in using open-ended questions effectively to elicit
elaborate accounts. It also requires knowledge (from a legal perspective) about the level of specificity required.

The current study addresses the need for further knowledge about the legal perspective on following up terms for genitalia by eliciting prosecutors’ perceptions (through the focus group described in the previous study) about the degree of specificity required and how such specificity (from a prosecutor perspective) should be elicited. Such feedback from prosecutors provides important support for trainers in investigative interviewing in their attempts to improve the quality of investigative interviewer training. The overriding goal of the current focus group was to generate possible recommendations for improving current interview procedure; these conclusions will be provided at the conclusion of this study.

Method

Participants

Data collection for this study occurred during the focus group described in Study 3. As such, the participants were nine Crown prosecutors representing every Australian state and territory (with the exception of one small jurisdiction), including 7 female and 2 male prosecutors, with a group mean of 12.7 years prosecution experience (range = 5 - 20 years) and 217 child sexual abuse (CSA) cases allotted to them throughout their careers (range = 100 – 300 cases). Five prosecutors indicated that their role involved consulting or advising on child interviewing. Two experienced police investigators (each from a different jurisdiction) attended the focus group to observe the discussion and intervene if information about police investigative procedure was required.
**Procedure**

The focus group described in Study 3 involved additional prompts relating to clarifying genitalia terminology in child witness interviews. Specifically, the facilitator invited the prosecutors to openly reflect on the manner and degree to which interviewers clarified (if at all) children’s terminology for genitalia in investigative interviews about abuse and the degree to which clarification methods (or lack thereof) were a problem. When reflecting on their experiences and concerns, prosecutors were encouraged to articulate the circumstances in which they believed terms required clarification. To provide a concrete reference point for this discussion, the prosecutors were provided with a list of terms used in prior field interviews about sexual abuse which were randomly drawn from a pool of 150 actual interviews.\(^{14}\) Finally, the prosecutors were asked to describe how (if at all) terms for children’s genitalia should best be clarified, while reflecting on actual questions they have frequently encountered drawn from prior interviews. The project was approved by the Deakin University Human Research Ethics Committee and the Director of Public Prosecutions in each jurisdiction.

**Analysis**

The focus group discussion pertaining to clarifying terms for genitalia (1 hour in duration) was audio taped and transcribed. Thematic analysis was conducted, involving the identification of common themes or ideas within the discussion (Gifford, 1998). Like

\(^{14}\) The list of terms was: penis, willy, dick, doodle, cock, goodoo (a word for vagina used by some Aboriginal children), wee wee, bum, butt, ass, bottom, breasts, boobs, tits, vagina, fanny, front Bum, where I wee from, my private parts/bits, my private, minnie, my thingy, rude part, my butterfly, the little hole.
Study 3, analysis in this study was collaborative in nature. The researcher and her primary supervisor independently read the focus group transcript, made notes about the key themes and differing opinions between participants, and then met and discussed emerging themes until agreement was reached about the overriding themes. The key themes that emerged in response to the questions posed during the focus group are described in the following section. Quotes have been edited for grammar and readability and to de-identify all parties. To ensure anonymity, prosecutors were represented on the transcript by a number from one to nine.

Results

Interviewers’ clarification of children’s terminology for genitalia was a major concern for the prosecutors. The relevance of this issue from a prosecution perspective was portrayed not only in the length and intensity of the discussion, but also the frustration voiced when prosecutors shared examples of situations where questioning had potentially affected case outcomes.

Prosecutor 6: ‘We see this all the time, with interviewers hounding the child about “what’s the health name for this?” and “what do you use that for?” It’s really frustrating to watch. It is not essential to have the child say “vagina” or “penis”.

Prosecutor 1: ‘Often you hear interviewers ask something like “what’s another name for ‘dick’?” Come on, that’s pretty clear! Willy, Dick, Doodle, Cock, you can look those up in the dictionary!’
Prosecutors’ concerns tended to relate to interviewers’ overzealous attempts to clarify terms (as opposed to interviewers’ failure to clarify terms per se) and the nature of the concerns tended to echo developmental concerns reviewed in the introduction of this study. For instance, prosecutors perceived that specific questions about terminology often elicit errors or inconsistencies in the account, particularly if the child did not understand the question or did not have an answer and resorted to guessing. Further, the prosecutors perceived that questioning about terms for genitalia may embarrass or frustrate the child and the subsequent demeanour may reduce the child’s credibility in the eyes of the jury. Unrealistic attempts to elicit these terms, or unrealistic expectations on the part of court personnel, often reflected lack of understanding of child development especially language and socio-emotional development.

The focus group participants were not arguing that clarification of terms was unimportant. Rather, arguments focused on the fact that the meaning of terms needed to be obtained in a reliable manner, preferably through the elicitation of the narrative account. Understanding of genital terminology often resulted through the context or use of the term when the child relayed what happened in the event. Specifically, a detailed narrative description of the offence and the oftentimes naïve way in which the child uses the genitalia term in that description, establishes what body parts were involved in offending while enhancing the believability and integrity of the child’s story.

Prosecutor 6: ‘If you get a good narrative, the child will usually give good detail of what they’re talking about in terms of the body parts and the position that they were in when the offending happened. For example, the child will usually indicate whether he or she was facing the offender, or facing away from him. That context will clarify what they mean by the term.’

Prosecutor 4: ‘Yes, it’s their story; they should be able to use their own words. Why drag them away from a narrative with lots of questions? Using their own
words can come across as more real too, rather than using technical words where defence might suggest that someone told her what to say. If the child uses words that are unusual, it can be more powerful.’

The prosecutors perceived that in the context of accounts of abuse, most terms that children use to describe genitalia are sufficiently clear. This opinion was largely consistent with prosecutors’ response when asked to clarify which terms about sexual abuse in Footnote 14 were not clear. Of the list of 25 words, the only words perceived to require clarification were ‘minnie’, ‘goodoo’, ‘butterfly’, ‘my thingy’, ‘rude part’, ‘my private’, and ‘my private parts’. Although two prosecutors argued that a high degree of clarity around terms for genitalia was perceived to be desirable in their jurisdiction, others perceived that courts were more concerned with the particulars of offending, rather than the meaning of terms.

Prosecutor 4: ‘I think terms have to be clarified. Some courts in our jurisdiction expect it to be really clear.’

Prosecutor 9: ‘I don’t think the courts often pick up on terminology per se. I think what you are referring to is the court picking up on what details need to be given to particularise a charge. That’s a different issue from just what terms are used. For me, terms like “willy”, “dick”, “doodle”, and “cock” are clear and I think it would be appropriate to write a guideline to say when it’s a commonly used word, it is sufficient. The issue of particularising is then the next step.’

[many] ‘Yes, that’s right.’

The remainder of the debate focused on two issues; determining whether to clarify a genitalia term that has been provided in a description of an offence, and, where necessary, how to do so. In relation to the first issue, prosecutors warned that considerable caution should be exercised in following up terms. While it is better to have
the detail clarified in the interview (where possible), it is permissible in Australia for prosecutors to ask the child about the meaning of terms in court.

Prosecutor 1: ‘We can clarify the term later on. As prosecutors, we’re better at asking the child questions for the purpose of evidence-in-chief, and we’ve got the luxury of having the interview already done. We know what issues, and what terms, need to be followed up.’

Prosecutor 4: ‘It’s better to clarify it in the interview so that we don’t have to ask those questions. The whole idea of having a great interview is that you don’t have to put the child through more questioning in evidence-in-chief. But yes, we can chase the term up later in conference or trial.’

Further, if the interviewer understands what the child is referring to, then it is likely that a jury will too. Specifically, the prosecutors suggested that interviewers consider whether a lay person would understand what body part the term refers to. If a lay person would understand what the child is referring to, then the term is sufficiently clear and no further clarification about the term is required. If a lay person would not understand what the term means, then it should be clarified.

Prosecutor 2: ‘Interviewers have got to exercise their judgement. Ask themselves: “Do I understand that term? Is that going to be clear to an ordinary person that doesn’t have my experience?” Doodle? No problem. Particularly in the context of “he put his doodle in my wee wee”. That’s enough.’

Prosecutor 6: ‘Also, the jury need to be able to be satisfied of whether it was the vagina or the anus, otherwise we can’t convict. Would an ordinary person understand what orifice the kid is referring to? That’s why there can be issues if a girl says “my private parts” or something.’

The prosecutors believed that this lay person test should be informed by the child’s age and community of origin. That is, interviewers should consider a lay person to be a person in the community who does not have the interviewer’s experience with CSA
cases, but who would be familiar with the terms for genitals that are commonly used in the community (i.e., a hypothetical juror). For example, the term ‘fanny’ when used by a child of British decent would be understood to mean vagina, whilst if used by a child from the USA, it would be understood to mean buttocks. The lay person should also be considered to be a person who is sensitive to the age of the child.

Prosecutor 1: ‘Clarifying has got to depend on age. I mean, if a 14 year old girl says “he put his dick in my hole”, that’s sufficiently clear, you expect that she knows what “dick” means, but if a 5 year old says that, you might want to know more. Maybe a 5 year old doesn’t understand what “dick” means.’

The need to clarify tended to be integral to the offence. For example, if the offence is sexual intercourse, it may be necessary to distinguish between vaginal and anal penetration in order to convict. However, clarification of terms (pursuant to the lay person test) need not always depend on the child. A caregiver, for example, may be able to provide information about the terms a particular child uses to describe body parts, negating the necessity to seek clarification from the child.

Prosecutor 8: ‘Don’t despair if you get a really quirky term. You can get someone else, the mother or whoever, to make a statement and say what the word means. It’s a piece of evidence that can come from other sources.’

Prosecutor 6: ‘Yes, the investigator can speak to the mother and say “What words does the child use? What are the local terms for vagina, anus, breast?” That would be really useful, especially with Indigenous kids. You could even get the terms from Mum before you interview the kid.’

While it was acknowledged that the source of this knowledge may be biased, or have an agenda, this was not deemed to undermine the integrity of the evidence if the child’s statement was obtained completely independently (i.e., was free from contamination of
the information obtained) and any conversation about children’s terminology with an independent person was documented appropriately.

Prosecutor 7: ‘I have an issue with having a chat with Mum before the interview, particularly if Mum’s going to be a witness to receiving the initial complaint. There might be a suggestion that her version has been informed by the questions she’s been asked before the interview.’

Prosecutor 9: ‘But the reality is that the police have spoken to Mum before the interview anyway. I don’t see a problem with asking Mum about terms, provided the police keep detailed notes about the conversation.’

Prosecutor 5: ‘Maybe the initial complaint statement from Mum should be bedded down first so there can be no suggestion that her statement has been influenced by discussions with the police.’

[Many]: ‘Yes.’

An area of major contention among the focus group participants related to methods of clarifying terms for genitalia within the interview. Methods discussed included specific questions, having children draw pictures of where they were touched, or asking children to point to the body part on a doll or their own bodies. Debate centred on the degree to which the techniques discussed would be distracting or suggestive and would contaminate the interview. Debate also centred around the utility of some of the techniques from a developmental perspective (e.g., whether young children can use a doll or drawing as a representation of themselves) and the appropriateness (ethically) of eliciting graphic movements.

Prosecutor 5: ‘Dolls and teddy bears can be really useful for the young kids who have trouble saying what they mean in any other way.’
Prosecutor 4: ‘The problem with using a doll is that the dolls are so life-like that it takes away from the fact that we are talking about touching the child’s body, rather than a doll.’

Prosecutor 9: ‘Isn’t there a problem in asking them to point to their genitalia in the interview? If they just pointed in the general direction that would be okay, but they’re being invited to actually point more specifically. I think sometimes children will actually make very graphic movements. I’ve seen a child rub her crutch and do all sorts of things. I know it’s persuasive. It just makes me uncomfortable.’

While the prosecutors could not come to an agreement about which direct techniques were most appropriate for clarifying children’s terms, they agreed that regardless of the technique employed, interviewers should only seek clarification at the end of the interview in order to minimise contamination of the child’s account, and irrespective of whether a term has been defined, interviewers should always adhere to the child’s original terminology.

Prosecutor 7: ‘If you need to clarify, I think it's best to do it at the end of the interview. If the child shuts down or you lose rapport trying to clarify, well you’ve already got what you need.’

Prosecutor 3: ‘I’ve seen some interviewers switch back to using “penis” and “vagina” in their questions after the child has said “dick” or “fanny” or whatever. Interviewers shouldn’t do that. They should use the kid’s word. If interviewers use their own word, the kid might get confused.’

**Discussion**

The main conclusion arising from this study is that a reduction in specific questioning around genitalia would subsequently improve the usefulness of investigative interviews with children from a prosecution perspective. The current prosecutors’
anecdotal experiences, as well as empirical evaluation of actual field interviews, reveal a heavy reliance on specific questioning to clarify genital terminology (Guadagno et al., 2013). Overzealous questioning arises (albeit in part) due to a misconception among child interviewers that anatomical terms for genitalia are necessary for successful prosecution. For example, in the study by Guadagno et al. (2013), police interviewers engaged in a mock interview with an actor who had been trained to play the role of an abused child. During the interview, the officers were stopped by a researcher and asked to reflect on why they had asked specific questions. A major reason for deviating from open-ended questions was to clarify the meaning of terms used by the child to describe genitals. According to the participating interviewers, children frequently use ambiguous terms for genitals and clarification of terms was considered necessary for their investigation as well as future jury deliberation.

In contrast, however, the prosecutors who took part in the current study perceived that if a lay person would understand the child’s genitalia term, then it is not necessary to follow up the term in the interview. This comment needs to be considered in the context that lay person benchmarks exist in other areas of law, particularly in criminal and tort law where the court considers what a ‘reasonable person’ would have done in certain circumstances (for example, Brown v. Kendall, 1850). The potential benefit of clarifying terminology at the time of the interview needs to be weighed against the likelihood of eliciting (and detrimental effect of) inconsistencies, confusion, or errors arising in response to specific questions or cues. Prosecutors emphasised the need to elicit terms for genitals within the narrative account; this was not only important for minimising error (i.e., open questions elicit fewer errors than specific questions) but also to enhance the meaning and clarity of a term through consideration of the context.
and manner in which the term was used. The broader case evidence can also be used to inform the meaning of the genitalia term. It may be possible to clarify the child’s term through discussion with a caregiver or through the elicitation of physical evidence, as opposed to seeking clarification from the child. As a resource for trainers, Figure 1 summarises the recommended steps for clarifying terms for genitalia.

To adhere to the recommendations provided in Figure 1, investigative interviewers will require better quality training in pre-interview planning and adherence to open-ended questioning. Poor planning is a frequent criticism of interviews (Study 1; Clarke & Milne, 2001; Criminal Justice Joint Inspection, 2012). Further, while the central aim of investigative interview protocols is to obtain a comprehensive narrative account of the alleged offence with as little specific prompting as possible from the interviewer (Poole & Lamb 1998; Wilson & Powell 2001), most professionals do not adhere to this approach when interviewing children. Instead, investigative interviewers mostly ask specific questions, which risk contaminating the child’s account (see for review Chapter 2; Powell et al., 2005). The global incompetence of investigative interviewers is conceptualised as inadequacy of training. The essential elements of training include (albeit in part) effective ongoing practice, expert feedback, and regular evaluation of interviewer performance, yet these elements are missing from most interviewer training programs across the globe (Powell et al., 2005). Although the importance of eliciting narrative detail has been highlighted in an abundance of prior research on child eyewitness testimony, the current study is part of a broader body of research highlighting the importance of narrative detail from a prosecution perspective (see also Study 1 and 3).
Figure 1. Clarifying terms for genitalia: A flow chart for interviewer decision making.

Would a lay person understand what body part the child is referring to?

Yes

No

Can someone else provide a statement about the child’s meaning for the term?

Yes

No

No clarification required from child

Clarification required from child at conclusion of interview

Ask the child an age appropriate direct question

E.g.,

“What is your [term]?”
“Where is your [term]?”
“What do you use your [term] for?”
Additional training regarding the impact of various questioning techniques on children’s responses regarding genitalia is warranted not only for investigative interviewers but prosecutors as well. The usefulness of various techniques for clarifying children’s terms was a considerable source of contention among the current focus group participants. Although prosecutors have limited background in child memory and language development, knowledge of questioning needs to be applied in the courtroom; there are three contexts. First, prosecutors may be required to address the source of inconsistencies or errors when specific questions have been used by investigative interviewers to clarify terminology. Second, if interviewers (as requested by the prosecutors in this study) start to reduce the degree of specific questioning about genitalia in interviews, then the frequency of prosecutors needing to ask about the terms in court may increase. Finally, prosecutors may be able to educate (either directly or indirectly) juries and legal professionals who expect a higher-than-warranted degree of clarity in the children’s accounts of abuse (see Cossins, Goodman-Delahunty, & O’Brien, 2009 for the need to educate jurors about children’s evidence).
CHAPTER 8 - FACILITATING CHILD WITNESS INTERVIEWERS’ UNDERSTANDING OF EVIDENTIAL REQUIREMENTS THROUGH PROSECUTOR INSTRUCTION (STUDY 5)

This chapter presents the final study in this thesis, which sought to investigate whether child witness interviewers’ perceptions of the evidential requirements of interviews could be changed through simple prosecutor instruction. The research so far presented in this thesis has focused on exploring prosecutors’ perceptions of interviews and their suggestions for improvement. The present study sought to assess the benefit in having done so. Specifically, this study examined the extent to which the findings of this thesis would be useful in changing interviewers’ perceptions of interviewing requirements. Overall, the prominent concern that has emerged in the previous four studies of this thesis is that the evidential quality and usefulness of child witness interviews is often undermined by unnecessary questioning. The prosecutors have reported that interviews need to be more tightly contained around the offence elements, being what offence occurred and who perpetrated it. For fairness to the accused, who is entitled to know the allegations against him or her, the child’s account also needs to have sufficient particularity to identify and distinguish each abusive incident from any others (Study 1). However, prosecutors report that often in interviews, there is excessive focus on highly specific event details and that such details are elicited in an interrogative manner, using short answer (i.e., specific and closed) as opposed to open-ended questions (Studies 1, 2, 15 This study has been published in a peer reviewed journal. The full reference is Burrows, K. S., Powell, M. B., & Anglim, J. (2013). Facilitating child witness interviewers’ understanding of evidential requirements through prosecutor instruction. International Journal of Police Science and Management, 15, 263-272. doi: 10.1350/ijps.2013.15.4.316.
3, and 4). Concerns about long interviews containing irrelevant contextual details have been prevalent across jurisdictions including the United Kingdom (Criminal Justice Joint Inspection, 2012; Stern, 2010), New Zealand (Hanna et al., 2010), and Australia (Cashmore & Trimboli, 2005; McConachy, 2002).

Prosecutors have identified various topics that they perceive to be unnecessarily pursued with questioning in investigative interviews with children. Particulars (i.e., details such as time, place, or context of offending) are among these oft pursued topics (Guadagno et al., 2006; *S v. The Queen*, 1989). Unnecessary questions are (from a prosecution perspective) also often asked about ‘fine-tune’ descriptive details such as the colour of clothing, bedding, and furniture at the scene of the offence (Studies 1, 2, 3, and 4). With lengthy interviews containing an abundance of specific questions, there is heightened opportunity for errors and inconsistencies in witness accounts. This is due in part to increased number of specific questions, as well as witness fatigue (Study 1).

So why do interviewers seek detail in child investigative interviews which, from a prosecution perspective, is unnecessary? Prosecutors in Study 1 attributed this to three issues: poor interview planning and case preparation; inadequate engagement and active listening skills on the part of the interviewer; and limited understanding (on the part of the interviewer) of precisely what information is required for prosecution purposes. The focus of the present study is on the third explanation, for which support comes from individual interview and focus group research where various professionals have discussed the requirements of the interview process and have critiqued actual child sexual abuse (CSA) interviews (Guadagno et al., 2006; Powell et al., 2011). Irrespective of the research methodology, jurisdiction, or participant sample, the prior work has shown that views about the information required in CSA interviews differ markedly between prosecutors.
and investigative interviewers. Interviewers (particularly police officers) perceive that highly specific details (such as the location, date, and time of the offence) are essential for particularisation to occur, and that maximising the number of separate offences and specific details about each offence increases the chance of successful prosecution. In contrast, prosecutors perceive that the primary goal of interviewers should be to elicit a free-narrative account of one or more offences (Guadagno et al., 2006; Powell et al., 2011). The implication arising from the above-mentioned research, and highlighted in several recent guides for reform (e.g., Hanna et al., 2010; Powell, in press; Powell et al., 2011), is that prosecutors need to play a much more integral role in the development of interviewer training guides.

The present study tests whether the current gap between the evidential qualities perceived to be important by prosecutors and interviewers can be narrowed through simple prosecutor instruction. The key findings of this thesis were represented in the form of brief prosecutor instruction that included, for example, the nature of prosecutors’ concerns about child witness interviews and the requirements of interviews in terms of the elements, and particulars, of sexual offences. The instruction was presented in the form of an interview transcript with an actual prosecutor (see Appendix). The procedure involved in the development of this interview transcript was fourfold. First, the focus, scope, and format of the interview was determined and an experienced Crown prosecutor was invited to participate. Second, after seeking approval from this prosecutor and his director, an electronically recorded interview was conducted over several sessions. The interview transcript was then edited to enhance clarity. Third, after seeking agreement from the prosecutor that the condensed interview was an accurate representation of the entire interview, the edited transcript was distributed to nine Crown prosecutors representing
every Australian state and territory (with the exception of one small jurisdiction). The group of prosecutors was required to read the transcript in their own time, reflect on the propositions made by the prosecutor in the transcript, and to indicate (by writing on the transcript) areas where the prosecutor’s views were not consistent with their own. Finally, the nine prosecutors met face to face. The issues they raised were discussed and amendments to the transcript were agreed upon to ensure that it represented their collective views. The Crown prosecutor (who had many years’ experience in child sexual assault trials) chose to remain anonymous.

To determine whether differences in evidential qualities that are perceived as important by prosecutors and interviewers could be reduced through simple instruction, five prosecutors and 33 interviewers completed a written exercise wherein they were required to identify what aspects of information required follow up in five hypothetical narrative accounts of abuse. Twenty of the interviewers had, prior to completing the exercise received prosecutor instruction in the form of the amended transcript of interview with a prosecutor. The effect of the prosecutor instruction on the details interviewers reported they would follow up in hypothetical interviews was measured, and the responses for interviewers who had, and had not received instruction were compared. Given that the practical recommendations drawn in the previous studies of this thesis were intended to be applicable across Australia, the present study took a broad approach and included interviewers from across the nation.
Method

Participants

Participants (N = 38) included 5 Crown prosecutors and 33 investigative interviewers of children (8 male and 25 female, 19 police and 14 social workers), recruited from across 5 different Australian states and territories\(^{16}\) with the assistance of managerial staff in the professionals’ work places. The selection criterion was that the professionals specialised in investigating or prosecuting CSA cases. All interviewers were currently employed in a child abuse unit (either police or child protection) and engaged in the research as part of their ongoing professional development. Ethical approval was obtained from the university and police ethics committees. Participation in the research was voluntary; three prosecutors and three interviewers chose not to participate (the descriptive data presented above reflects the final sample, exclusive of those who chose not to participate).

Procedure

All participants completed an exercise, hereby referred to as the evidential assessment activity, which was completed on-line (i.e., accessed through a web browser using a computer) at a time of the participant’s choosing and at their own pace. The activity contained five hypothetical narrative accounts of abuse of approximately five lines each. The narratives were based on actual cases and varied in terms of the nature of the offending, location and recency of offending, gender and age of the victim, victim-suspect

\(^{16}\) Note that there are minor differences in the legislation governing child sex offences across Australian jurisdictions (for example, there is some variations across jurisdictions in the definitions of child sex offences in terms of the age of the victim, e.g., under 13, 14 or 16 years old).
relationship and frequency of offending (from one to numerous occasions). The level of
detail provided by the child in their narrative also varied across the five scenarios. The
narratives were presented in the same order to all participants. For each narrative, the
participants were required to decide whether follow-up questions were necessary, and
what particular aspects (if any) needed to be followed up. The following is an example of
the degree of detail provided in the narratives:

Child interviewee: “It was when me and Mum lived at my Uncle’s place when I
was eight. I always thought Uncle Ben was a bit weird. Some nights when Mum
was at work, he’d watch me in the bath cus he said it was dangerous for me to be
in there on my own. Then he started sitting by the bath and touching me while I
was in there. He did that all the time until we moved out.”

Prosecutor instruction (the independent variable in this study) was manipulated
using an independent samples design. Interviewers were allocated to either an instruction
(n = 20) or no instruction group (n = 13). In the instruction group, another task (hereby
referred to as the instruction exercise) was completed as a pre-requisite to the evidential
assessment activity. Interviewers were assigned to the instruction conditions pseudo-
randomly, based on workload, leave considerations, and organisational context (i.e.,
minimising potential for contamination through participant discussion). Although the
participants in the interview conditions may have varied with regard to adherence to open-
ended questions, the level of prior feedback from prosecutors was negligible for all.
Importantly, a series of chi square tests found that between the instruction and no
instruction groups, there was no significant difference in the proportion of males and
females, $X^2 (1, N=33) = 0.02, p = 0.9$, or the composition of police and social workers, $X^2$
(1, \(N = 33\)) = 1.19, \(p = 0.28\). There was also no significant difference between the instruction and no instruction groups on the mean number of years’ experience in their current field, \(t(31) = 1.36, p = 1.83\).

The instruction material (as with the evidential assessment activity) was provided on-line in the form of a reading which was 15 pages of A4 text (Appendix). This reading was prepared with the assistance of a Crown prosecutor and subsequently checked for accuracy by a group of Crown prosecutors representing every state and territory in Australia (with the exception of one small jurisdiction). The text contained in the reading represented the overall findings of this thesis and addressed four areas in particular. First, it outlined prosecutors’ key concerns with child witness interviews, namely that they are often too long and contain irrelevant details. Second, it defined the elements of sexual offences (being what sexual act occurred and who perpetrated it). Third, it provided instruction on establishing these elements in an interview, including using the child’s narrative to establish the nature of the offence, clarify the meaning of obscure genitalia terms, and to identify the offender. Fourth, the text explored the nature and extent of particulars required in an interview (that is, information about when and where the offence occurred and how it was different from any other similar offences) and concluded that these details are ideally elicited through the child’s narrative rather than specific questioning. Interviewers were asked to read the instruction material prior to completing the evidential assessment activity. Completion and understanding of the reading was confirmed through a 10 item multi-choice on-line quiz, in which all received an accuracy score of at least 70%.
**Coding**

Participant responses for each scenario in the evidential assessment activity were coded according to eight information categories; the nature of the offence, the timing of the offence, the location of the offence, offender identity, offence context, location and identity of potential witnesses, location and nature of possible forensic evidence, and other miscellaneous information. Table 1 lists the coding criteria and an exemplar interviewee response for each aspect. To assess coding reliability, 53% of the completed exercises (n = 20) were randomly selected and coded by a researcher who was not otherwise involved in this study. An inter-rater reliability analysis using the Kappa statistic was performed to determine consistency among raters across 800 data points (20 participants x 5 scenarios x 8 types of information). Reliability was found to be high, Kappa = 0.90 (p<.001).

**Results**

The first group of analyses compared the number of times participants requested each type of information (collapsed across scenarios) across the prosecutor and ‘no instruction’ participant groups. The results revealed that there was variability both within and between groups in terms of the type of information requested. A mixed ANOVA (2 groups, prosecutors and ‘no instruction’ interviewers, by 8 types of information) revealed a significant difference in the frequency with which participants requested different types of information, F(7, 98) = 16.60, p<0.05. There was also a significant interaction effect between participant group (prosecutors and ‘no instruction’ interviewers) and type of information requested, F(7, 98) = 4.25, p<0.05. Figure 2
Table 1

Aspects of information identified as requiring follow up by participants, coding criteria, and example participant responses

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Nature of information requested</th>
<th>Example response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence</td>
<td>Identifying the offence, including clarifying genitalia terminology and distinguishing one offence from another</td>
<td>“More detail is required about ‘touching me down there’”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Clarify did it happen one time or more than one time, then get the details of each occasion.”</td>
</tr>
<tr>
<td>Time</td>
<td>Clarifying or precisely pinpointing the timing of the offence, or corroborating the child’s report of the timing of the offence</td>
<td>“I would want to know how the child remembers the timing of the offence, how does she know it happened on the Easter Holidays? It could assist with corroboration.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I would ask what was on TV when the offence occurred to narrow the timeframe”</td>
</tr>
<tr>
<td>Location</td>
<td>Relating to the location of offending, either generally or specifically</td>
<td>“Need to clarify where Uncle Ben’s house is”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I would ask about the location of the couch where the offence occurred”</td>
</tr>
<tr>
<td>Identity</td>
<td>Relating to clarifying or determining the identity of the offender, including descriptive or relationship information</td>
<td>“More information is needed about offender identity. The child just said it was Katie’s dad. ‘Dad’ is too generic - it may be a situation where Katie calls a number of men ‘dad’.”</td>
</tr>
<tr>
<td>Witnesses</td>
<td>Information about who (other than the victim and suspect) was present</td>
<td>“Ask the child about the identity of everyone else who was there. Witnesses could help identify whether the alleged offender had the opportunity and ability to commit the offence.”</td>
</tr>
<tr>
<td>Forensics</td>
<td>Information to uncover DNA or other physical evidence</td>
<td>“The child’s clothing is required for forensic analysis so need details of the clothing and where the clothes are now”</td>
</tr>
<tr>
<td>Offence context</td>
<td>Determine how the offence happened</td>
<td>“How did they ‘end up’ naked?”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“How did the touching happen? Was it accidental?”</td>
</tr>
<tr>
<td>Other</td>
<td>Information on other miscellaneous topics</td>
<td>“Did he say anything when he touched her?”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I would ask how much, and what kind of alcohol had been consumed”</td>
</tr>
</tbody>
</table>
demonstrates the frequency with which types of information were requested by prosecutors and interviewers. It shows that, compared to prosecutors, interviewers in the ‘no instruction’ condition were more likely to request information about offence timing, offender identity, and witnesses.

Figure 2. The mean proportion of scenarios in which prosecutors, and interviewers with and without instruction requested different types of information.

The next set of analyses determined whether interviewers who had been exposed to prosecutor instruction were more consistent with prosecutors in their responses to the
scenarios. A spreadsheet was created for each scenario with a column for each type of information and a row for each participant. In each column, participants scored a ‘1’ if they had requested the listed information type and a ‘0’ if they had not. For each information type for each scenario a ‘mean prosecutor score’ was calculated by tallying the prosecutors’ scores and dividing by the total number of prosecutors (for example, if 4 out of 5 prosecutors requested information about offender identity in scenario 1, then the mean prosecutor score for identity in scenario 1 was 4/5 or 0.8). Subsequently, for each scenario, participant, and type of information, a ‘discrepancy score’ was created by calculating the absolute difference between the participant’s response and the mean prosecutor score. For example, if the mean prosecutor score was 0.8 and the participant’s score was 1, a discrepancy score of 0.2 was listed. Discrepancy scores were then summed for each participant providing an overall measure of the degree to which each participant deviated in their responses from the ‘average’ prosecutor.

An independent-samples t-test was conducted to compare the discrepancy scores of interviewers who had, and had not received prosecutor instruction. There was a significant difference in the discrepancy scores of interviewers who had received prosecutors’ instruction (M=7.20, SD=3.49) and interviewers who had not (M=11.08, SD=3.75), t(31) = -3.03, p<.05; d = 1.07. The effect size for this analysis (d =1.07) was found to exceed Cohen’s (1988) convention for a large effect (d =.80). Interviewers who had learnt about the prosecution perspective of interviewing were significantly more consistent with prosecutors in their responses about the information required in each scenario. This effect is illustrated in Figure 2, which shows that interviewers who had received prosecutor instruction were more similar to prosecutors in the frequency with which they sought different types of information.
Discussion

This study demonstrated that interviewers’ perceptions about the nature of evidence required in child witness interviews about sexual abuse can be shifted (through simple instruction) to be more in line with that of prosecutors. Specifically, the study found that interviewers who had received the brief prosecutor instruction provided responses to the evidential assessment activity that were more consistent with that of the prosecutors, and in particular, they requested less information about offence timing, offender identity, and witnesses, information that was perceived to be unnecessary to prosecutors. A strength of this finding was that it emerged despite the fact that the instruction provided was simple, lacking the elaboration and specifics provided throughout Studies 1 through 4. Although the study utilised a written assessment exercise as opposed to examining questions in actual interviews, the interviewers’ responses would have reflected meaningful learning of the written instruction material. Indeed, the assessment exercise used to measure the effect of prosecutor instruction required participants to apply their knowledge of the material by indicating (using recall rather than recognition memory) the type of information that needed to be followed up in actual case scenarios.

Overall, the findings of the current study suggest that what prosecutors have previously referred to as ‘overzealous questioning’ on the part of child investigative interviewers (Study 1; Criminal Justice Joint Inspection, 2012; Guadagno et al., 2006) may reflect (at least in part) simple confusion or misunderstanding of the elements and particulars of sexual offences and the evidential qualities perceived to be necessary for successful prosecution. In a historical framework where prosecutors have played a limited
collaborative role in the interview protocol development process (and the nature of evidence required in interviews has been given little airplay in interview protocols), the importance of these findings cannot be underestimated. Criticisms in relation to poor evidential quality have been widespread across evaluations of child investigative interviewing and improved collaboration between prosecutors and police interviewers has been a common suggestion to rectify this problem (see Chapter 3; Hoyano & Keenan, 2010; McConachy, 2002; Victorian Law Reform Commission, 2004). This is the first study, however, to take a constructive role in showing how the gap between the evidential qualities perceived to be important by prosecutors and interviewers can be addressed.

Importantly, the feedback (prosecutor instruction) had relatively little imposition on prosecutors’ time. Prior evaluations have suggested the need for extensive interaction to narrow the gap between interviewer and prosecutor perceptions, through the scheduling of joint seminars for legal professionals and police, and co-location of prosecutors in specialist police units to assist with investigations (see Hoyano & Keenan, 2010 for review). Further, Powell (2008a) suggested that to be of value in altering performance, feedback from prosecutors needed to be elaborate and needed to refer as specifically as possible to actual interviewer behaviour as opposed to being generalised inferences or judgements. This study suggests that simple instruction guides may have more utility than previously thought.

Now that it has been demonstrated that interviewer decision making is amenable to change, the next step for researchers is threefold. First, it needs to be determined whether the changes observed actually transfer to the field and improve interview practice. Prior training research has illustrated the tenuous relationship between knowledge and actual interview performance (Powell, Hughes-Scholes, Smith, & Sharman, in press; Yii, Powell,
& Guadagno, 2012), as well as the difficulty maintaining gains from training long term. Ongoing instruction may be needed to maintain these results, particularly if biases or misunderstandings about the nature of the information required are widespread within the units where interviewers work.

Second, research is needed to determine the interaction between the type, nature, and format of prosecutor instruction on the knowledge and performance of interviewers, as well as the outcome of interviews. This study has raised many interesting questions: what is the added utility (if at all) of providing more elaborate, face-to-face feedback or feedback directed at actual interviewer performance as opposed to general principles about legal requirements? How generalisable are these findings, and the prosecutors’ perspectives, across jurisdictions?

Third, future guidance is needed to further articulate the level of precision that needs to be established in interviews in relation to contextual details and how it can be achieved. The level of clarity required will depend on the degree of latitude prosecutors have to supplement the evidence (Davis et al., 1999; Home Office, 2007) and the weight given to the different needs of investigators and prosecutors. Specifically, a tension relates (in part) to the fact that the processes, context, and functions of investigative interviewing and evidence-in-chief are distinct (see for review Westera, Kebbell, & Milne, 2011). At the investigative stage one must maximise the amount of detail that could potentially lead to additional evidence to corroborate the witness’s account – details that appear irrelevant at the outset of an investigation could potentially turn out to be important and may reinforce the validity of the witness’s statement. Ideally, therefore, the interviewer encourages complete reports whereas prosecutors need to be selective regarding what detail is presented at trial. Advice from experts in child eyewitness memory and police
investigation may be needed when ascertaining how (if at all) the problems raised by prosecutors can be addressed without compromising the reliability of the witness’s statement and the integrity of the investigation.
CHAPTER 9 – GENERAL DISCUSSION

The aim of the current thesis was to determine how the evidential quality and usefulness of child witness interviews could be improved. The research took a constructive approach, eliciting in-depth perspectives of Australian Crown prosecutors. The need for this research arose in the context of reports that child sexual abuse (CSA) cases are often not prosecuted because of the poor evidential quality of children’s visually recorded interviews, which constitute the main, and often only evidence available to secure convictions (Office of Director of Public Prosecutions (ACT) & Australian Federal Police, 2005; Powell, 2008a; Success Works, 2011). Prosecutors’ perspectives, therefore, provide an important foundation for improving interview process and justice outcomes (e.g., Guadagno et al., 2006; Powell, 2012; Victorian Law Reform Commission, 2004). Yet, prior to this thesis, the views of prosecutors had been given little consideration in the child witness interviewing literature. For the most part, previous research had taken a child development or human learning approach, exploring interviewing techniques that are most likely to elicit detailed and accurate accounts from children, and evaluating interviewer adherence to best-practice guidelines (e.g., Aldridge & Cameron, 1999; Lamb et al., 2007; Powell et al., 2005). Where research on interviewing had considered the legal perspective, only prosecutors’ general concerns had been reported (e.g., Bala et al., 2001; Burton et al., 2006; Cashmore & Trimboli, 2005; McConachy, 2002; Powell & Wright, 2009).

This thesis sought to address the need for detailed, contemporaneous, and constructive feedback from prosecutors about the quality of child witness interviews.
The research used in-depth interviews to investigate prosecutors’ concerns and suggestions for improvement, and then employed a focus group methodology to explore prosecutors’ perceptions on how interviewing procedure could be improved to address their concerns. Finally, a quantitative methodology was used to examine how useful the perspectives of prosecutors might be in changing interviewers’ perceptions of the requirements of interviews. The present chapter summarises the findings of the original research presented in this thesis, and discusses the overall implications in the context of the broader literature. The chapter concludes by offering recommendations for future research and stakeholder collaboration.

9.1 Summary of the main findings

The investigation of prosecutors’ perspectives in this thesis occurred in three phases. The first phase, consisting of Studies 1 and 2, sought to extend prior research regarding the evidential quality of child witness interviews by articulating more precisely the nature of prosecutors’ concerns about interviews as well as their suggestions for improvement. While the need for detailed and constructive feedback from prosecutors about interviews had been highlighted consistently over the past two decades and across jurisdictions (e.g., Davis et al., 1999; Guadagno et al., 2013; McConachy, 2002; Powell et al., 2011; Victorian Law Reform Commission, 2004), it was prosecutors in one particular Australian jurisdiction (which cannot be named for ethical reasons) who took the initiative to instigate and drive this initial phase of research. In-depth interviews were held with 19 trial prosecutors (located in one
Australian jurisdiction) shortly before and after CSA trials to elicit prosecutors’ perceptions about the evidential quality and usefulness of interviews.

Study 1 focused on prosecutors’ perceptions of the strengths and limitations of child witness interviews, along with their suggestions for how particular interviews could have been improved. Thematic analysis revealed that overzealous and (from a prosecution perspective) unnecessary questioning in interviews was a primary concern for the prosecutors. Three broad areas for improvement emerged: the need for tighter focus on the elements of the offence; better clarification of inconsistencies and ambiguities in the child’s account; and greater consideration of how the child may present in the eyes of the jury. Unlike prior research, which had taken a child development focus and emphasised the importance of eliciting children’s accounts in free-narrative form, this study provided unique insight into prosecutors’ perceptions of interviews and revealed that prosecutors are concerned, not only about questioning, but also about the content and persuasiveness of the interview.

The purpose of Study 2 was to examine prosecutors’ perceptions about the challenges in using electronically recorded interviews (as opposed to a live witness) as evidence-in-chief at trial, and suggestions for how these challenges may be addressed. Thematic analysis of in-depth prosecutor interviews indicated that the quality of questioning was a major concern of prosecutors but that irrespective of whether prosecutors perceived room for improvement in questioning, they held substantial concerns about the usefulness of recorded interviews as evidence. Compared to live evidence, interviews were perceived to limit juror engagement with the witness, reduce the sense of formality of the evidence, compromise the witness’s preparedness for cross-examination, and potentially undermine the clarity of the evidence. While improvements
in questioning style may address these challenges, at least in part, the concerns raised by the prosecutors in this study highlighted that it may be unrealistic for a narrative interview conducted soon after disclosure to serve all the requirements of evidence-in-chief.

Having elicited, in phase 1, detailed feedback about the evidential quality of child witness interviews through in-depth interviews with prosecutors in one Australian jurisdiction, the second phase of this research sought to take a more practical, solution-based approach. The purpose of this phase, comprising Studies 3 and 4, was to investigate prosecutors’ perceptions of how child witness interviews could be improved to address prosecutors’ concerns about overzealous questioning that arose throughout phase 1. A focus group methodology was employed, involving Crown prosecutors representing every Australian state and territory (with the exception of one small jurisdiction). A broad, national approach was taken in this phase of research because, while prosecutor concerns about excessive questioning appear to be generalisable across jurisdictions (see Chapter 3, for example Criminal Justice Joint Inspection, 2012; Hanna et al., 2010), prosecutors’ suggestions for addressing unnecessary questioning might have differed between jurisdictions given variation in sex offence legislation and policy. It was deemed appropriate, therefore, to include prosecutors from across jurisdictions in order to determine the generalisability of suggestions.

Study 3 examined prosecutors’ perceptions about when and how interviewers should clarify details about sex acts alleged by children in investigative interviews. Offence-related details had been reported as a source of excessive and unnecessary questioning by prosecutors in the current research (Study 1) as well as in the broader literature (e.g., Guadagno et al., 2013). Thematic analysis of the focus group discussion
indicated that, from a prosecution perspective, three factors need to be considered before asking clarifying questions about sexual acts: whether the detail already provided by the witness would be clear to juries; the developmental age of the child; and the strength of the evidence available to support the allegations. The overriding message of Study 3 was the importance of using discretion when seeking further information about the sex acts reported in child abuse interviews.

The focus of Study 4 was prosecutors’ perceptions about when and how interviewers should clarify the meaning of (often obscure) genitalia terms used by children in interviews. Overzealous questioning about genitalia terms had emerged as an issue in its own right (distinct from questioning about offence-related details) in Study 1, as well as in the broader literature (e.g., Guadagno et al., 2013). Thematic analysis of the focus group discussion revealed that, from the prosecutors’ perspective, questioning about genitalia terms was unnecessary in most cases. Specifically, where a lay person would understand a genitalia term used by a child, then for the purpose of prosecution, the term was sufficiently clear. Clarity about the child’s meaning for a term could typically come from the context provided by the child’s narrative account, or from another source (the child’s mother, for example), rather than via specific questioning in the interview. A flow chart was created to help guide interviewer decision making about when and how to clarify genitalia terminology.

The third and final phase of this research moved beyond exploring prosecutors’ perceptions of interviews, as had been the focus of phases 1 and 2. Phase 3, consisting of Study 5, examined how useful the prosecutors’ perspectives, elicited in Studies 1 through 4, would be in changing interviewers’ perceptions of interviewing requirements. Consistent with the broader literature, Study 1 suggested that overzealous questioning in
interviews may be attributable to a mismatch between interviewers’ and prosecutors’ understandings of the legal requirements of an interview (see for example, Guadagno et al., 2006; Powell et al., 2011). Study 5 therefore aimed to determine whether differences in the evidential qualities that are perceived as important by prosecutors and interviewers could be reduced through simple instruction. Five prosecutors and 33 interviewers completed a written exercise wherein they were required to identify what aspects of information required follow up in five hypothetical narrative accounts of abuse. Twenty of the interviewers had (prior to completing the exercise) received prosecutor instruction on the requirements of interviews in terms of the elements and particulars of sexual offences, and the manner in which necessary information is best elicited in an interview (from a legal perspective). The responses to the exercise of interviewers who had and had not received prosecutor instruction were compared. The results indicated that interviewers who had received instruction were more consistent with prosecutors in their responses to the exercise. That is, interviewers’ perceptions about the nature of evidence required in child witness interviews could be shifted, through simple instruction, to be more in line with that of prosecutors.

9.2 Implications of the current findings

Overall, three implications can be drawn from the findings of this thesis; (a) the evidential quality of child witness interviews may be improved by increased interviewer adherence to open-ended questioning, (b) there may be benefit in affording greater consideration of prosecutors’ perspectives in training and interview protocol
development, and (c) the evidential usefulness of investigative interviews may be maximised where there is legislative scope to allow supplementary questioning in evidence-in-chief. The remainder of this chapter discusses these implications within the context of the broader literature and suggests directions for future research. The findings of this thesis are reiterated where necessary to explain and justify the implications that are drawn.

**Increased adherence to open-ended questioning may improve the evidential quality of child witness interviews**

The findings of this thesis imply that the evidential quality of child witness interviews may be improved through greater focus on the child’s narrative account of abuse, and increased interviewer adherence to open-ended questioning. The prosecutors perceived that open-ended questions were beneficial because they facilitated a clear and authentic account, minimised the risk of error and inconsistency, and, by prompting narrative story-telling, preserved witness (and juror) engagement with the interview (Studies 1, 3, and 4). This perception is consistent with broader evaluations involving prosecutors where a general preference for a narrative approach has been reported (see Guadagno et al., 2006; Powell & Wright, 2009; Powell et al., 2011; Westera et al., 2013a). A unique contribution of the present work is in highlighting the specific value of the free narrative in establishing the information required for CSA prosecution.

The conclusion that open-ended questioning may improve interview evidential quality arose throughout this thesis. The prosecutors emphasised the importance of acquiring detail in narrative, as opposed to short answer, format using carefully selected open-ended questions, particularly questions that directed the child to focus on the
elements of offences (i.e., what happened and who did it). The narrative format was perceived to be important because it gave the child the opportunity to tell their story in their own words, which was believed to be more persuasive to a jury than responses to specific questions (Studies 1, 3, and 4). The prosecutors believed that the context provided in children’s detailed narrative accounts was more useful than responses to specific questions in establishing the nature of the sex acts alleged (Study 3) and the meaning for obscure genitalia terms (Study 4).

The overwhelming concern expressed by the prosecutors throughout the qualitative studies of this thesis was that rather than acquiring a narrative account of offending, interviewers tended to engage in excessive questioning about information that, from a prosecution perspective, was unnecessary and unhelpful. For instance, the prosecutors reported that children’s disclosure of the elements of the offence was often interrupted by unrelated questions about details peripheral to offending (Study 1) and that interviewers often used specific questions in an unnecessary attempt to elicit a frame-by-frame description of events (Study 3). The prosecutors’ reports of overzealous questioning in interviews are consistent with the broader literature which has indicated that interviewers across the globe struggle to adhere to the narrative-based approach recommended in most interview protocols, and rely instead on specific, closed, and/or leading questions (for example Aldridge & Cameron, 1999; Lamb et al., 2000; Powell & Hughes-Scholes, 2009; Sternberg et al., 2001; Sternberg et al., 1999).

A reliance on specific questioning was attributed by the prosecutors in this thesis to a misunderstanding (on the part of the interviewers) of the nature and extent of information that is necessary for prosecution purposes (Study 1). In a study by Guadagno et al. (2013), child witness interviewers perceived that, for successful
prosecution, it was necessary to ask specific questions about certain topics, including the
offence alleged and the meaning of obscure genitalia terms. The findings of the present
research indicate that this is not the case, highlighting the mismatch in interviewers’ and
prosecutors’ perceptions of interviewing requirements. Rather than facilitating clarity,
the prosecutors in the present research were of the view that specific questions were
likely to undermine the evidential quality of an interview by frustrating or embarrassing
the child and increasing the risk of error, misunderstanding, and inconsistency.

Support for the contention that there may have been a mis-communication about
the information that prosecutors require was provided by the findings of Study 5.
Compared to interviewers who had not received prosecutor instruction, interviewers who
had received instruction were more consistent and aligned with prosecutors in their
perceptions of the nature of information requiring follow up in hypothetical narrative
accounts of abuse. Interviewers without instruction requested more information about
offence timing, offender identity and witnesses; information that was perceived to be
unnecessary in the eyes of prosecutors. Like Study 5, prior research has similarly drawn
tentative conclusions that overzealous questioning may reflect (at least in part) simple
confusion or misunderstanding of the evidential qualities perceived to be necessary for
successful prosecution (Guadagno et al., 2006; Powell et al., 2011).

Those jurisdictions in which interviewers rely on specific questioning may
benefit from interviewer training designed to promote a narrative approach. Research
indicates, however, that most training programs are ineffective at increasing adherence
to open-ended questioning (e.g., Aldridge & Cameron, 1999; Warren et al., 1999).
Training programs usually involve intensive learning over a short time period which is
unlikely to result in long term retention of knowledge or skills (Bellezza & Young,
At best, intensive training programs are likely to improve interviewers’ declarative knowledge of best-practice, rather than significantly increasing the proportion of open-ended questions interviewers ask (Cederborg et al., 2000; Powell, 2002; Warren et al., 1999).

As indicated in Chapter 2, recent research has determined that interviewer training programs can be effective in increasing adherence to best-practice guidelines where training incorporates three key elements (Lamb et al., 2000; Lamb et al., 2002; Orbach et al., 2000; Powell, 2008a; Stewart et al., 2011). First, interviewers should be provided with a structured interview protocol, adherence to which has been found to significantly increase interviewers’ use of open-ended questions (e.g., Sternberg et al., 1999). Second, interviewer training programs should provide ongoing practice opportunities rather than once-off instruction (e.g., Davies et al., 1998; Rischke et al., 2011). Finally, training should include regular, individualised expert feedback, known to increase open-ended questioning particularly when combined with ongoing practice (e.g., Powell et al., 2008). These three key elements of effective interviewer training have been found to be absent from most training programs across the globe (see for example Burton et al., 2006; Clarke & Milne, 2001; McConachy, 2002; Richards et al., 2007).

It is likely that there are several barriers to implementing training that incorporates multiple practice opportunities, expert feedback, and a structured interview framework (Powell, 2008a). For example, in Australia, each state and territory is independently responsible for writing, coordinating, and delivering their own training programs, as well as determining what constitutes best-practice (Powell, 2008a). Such independence makes it difficult to monitor the quality of interviewer training. One
solution may be to implement a national interview protocol and interviewer training curriculum to facilitate monitoring and evaluation of training programs (see Davies et al., 1998; Powell, 2008a). Another barrier to implementing best-practice training is the cost (in time and resources) of providing, in particular, ongoing practice and expert feedback (Powell, 2008a; Powell & Hughes-Scholes, 2009). Such costs are largely associated with the removal of interviewers from the workplace into the classroom (Powell, 2008a) and may therefore be successfully mitigated through the use of distance learning and on-line training courses, which have proven to be effective in imparting knowledge and improving practical skills including the use of open-ended questions (Head, Lockee, & Oliver, 2002; HM Inspectorate of Constabulary, 1999; Powell & Wright, 2008).

Greater consideration of prosecutors’ perspectives in training and interview protocol development may improve the evidential quality of child witness interviews

The evidential quality of child witness interviews may be improved through broadening interview protocols to incorporate the prosecution perspective. Contemporary interview protocols focus largely on the types of questions interviewers should ask in order to elicit a detailed and accurate account (e.g., Home Office, 2011; Lamb et al., 2007; State of Michigan Governor’s Task Force on Child Abuse and Neglect and Department of Human Services, 2011). Protocols tend to involve limited recognition (if any) of the needs of the interview as evidence-in-chief.17

17 In the UK interviewing protocol, for example, the guidance provided about the information required in interviews is limited to the recommendation that interviewers should address “points of proof for any alleged criminal offence” and ask about “each relevant topic not adequately covered in the witness’s account” (Home Office, 2011, p. 49).
The findings of the present thesis suggest that, while prosecutors prefer a narrative-based interviewing approach, for the interview to be useful as evidence, more may be required than interviewer adherence to open-ended questioning. As indicated in the qualitative studies of this thesis, as evidence-in-chief, the interview also needs to focus on particular content (i.e., the elements and, to a lesser extent, the particulars of offending), and needs to be persuasive to a jury (i.e., present a clear and solemn account, and a credible witness). It is likely that the limited acknowledgment in interview protocols of the prosecution perspective is responsible for the lack of clarity on the part of interviewers about the nature and extent of information required for prosecution. Such lack of clarity was observed in the interviewers who did not receive prosecutor instruction in Study 5, and highlighted in broader literature where interviewers similarly perceived fine-tune detail to be necessary in child witness interviews (e.g., Guadagno et al., 2006; Powell et al., 2011).

Employing interview protocols that incorporate the needs of prosecutors may assist in providing clarity for interviewers in what they are trying to achieve in interviews. On the basis of the findings of the present research, it may be beneficial for protocols to include two features in particular. First, protocols could describe the nature of information that is and is not required in interviews for the prosecution of CSA offences, and debunk myths about the level of specificity necessary. Prosecution of CSA offences requires a narrative account of abuse that addresses the elements of the offence(s) (i.e., what sexual act occurred and who perpetrated it), and (to a lesser extent) the particulars of offending, to the degree that prospective jurors would understand the allegations (Studies 1, 3, and 4). For example, in Studies 3 and 4, the prosecutors clarified that it was not necessary for children to label sexual acts or body parts with
technical or anatomical terms. Rather these aspects were sufficiently clear where a lay person would understand the child’s meaning.

There may be benefit for protocols to include guidance for interviewers (possibly in the form of flow charts or decision trees) about the circumstances in which further questioning may be necessary after the free-narrative account has been exhausted. Suggestions emerged in Studies 3 and 4 of several factors that, from a prosecution perspective, interviewers should consider before posing specific questions. These factors included whether the offences alleged by the child would be clear to a jury given the context provided by the child’s narrative, the developmental age of the child and his or her ability to provide a meaningful response to specific questions, and the strength of the other evidence available to support the allegations. Overall, the prosecutors in the qualitative studies of this work believed that specific questions should generally be avoided unless they seek to establish the elements of the offence(s), to elicit particulars of offending, or to clarify an inconsistency or ambiguity. This guidance could be reflected in interview protocols.

Second, protocols could explain the importance of (and techniques for producing) a solemn and persuasive account of abuse. Prosecutors’ concerns about the persuasiveness of the evidence and the need to present the child as a credible witness emerged (albeit to varying degrees) in all four qualitative studies of this thesis. Contemporary interview protocols have tended to consider interview presentation only in the context of creating a relaxed interview environment and good rapport between the child and interviewer in order to encourage the child to share their experiences (e.g., Home Office, 2011; Lamb et al., 2007). While good rapport is important, it may be best, from a prosecution perspective, to balance the establishment of good rapport and a
relaxed environment with the need to produce an interview that is appropriate for presentation as the witness’s evidence-in-chief at trial (see also Gudjonnson, 1992). Possible interview techniques that emerged in this research for maximising the persuasiveness of evidence, as well as the credibility of the child, include being mindful of how interviewing practices (such as overzealous specific questioning, or informal interviewer manner) may influence the child’s behaviour and demeanour, providing a formal and solemn interview environment, and attending to the technical (audio/visual) quality of the recording (see in particular Studies 1 and 2).

Provisions to allow supplementary questioning in court are likely to maximise the usefulness of child witness interviews

The finding of this thesis that there are limitations in the usefulness of recorded interviews as evidence irrespective of the quality of questioning, provides support for legislative provisions that allow prosecutors the flexibility to supplement a child’s recorded interview with further questioning in evidence-in-chief. Four limitations associated with using recorded evidence were highlighted in this thesis (see in particular Study 2) and are reiterated here to justify the present implication. First, the prosecutors perceived that recorded interviews were often of poor technical (audio/visual) quality and that this was likely to undermine the jury’s ability to assess the child’s demeanour and credibility and therefore come to a just verdict. Second, there was concern among the prosecutors that recorded evidence made acquittals more likely because the recording was less persuasive and engaging than a live witness. Third, the prosecutors believed that using recorded evidence-in-chief compromised the child’s preparedness for cross-examination as he or she may not be accustomed to the court’s question and
answer process. Finally, the prosecutors were concerned that the reduced sense of formality of the interview (compared to courtroom testimony) may negatively impact the jury’s assessment of the child’s credibility. These perceived limitations were consistent with those raised in previous evaluations (e.g., Bala et al., 2001; Burton et al., 2006; Cashmore & Trimboli, 2005; Criminal Justice Joint Inspection, 2012; McConachy, 2002; Powell & Wright, 2009; Richards et al., 2007; Stern, 2010; Westera et al., 2013a) and highlight the benefits of legislation that provides scope for supplementary questioning.

Recorded interviews were never intended to wholly replace the evidence-in-chief of children as it was anticipated that the tension that arises from the dual purpose of the recorded interview as an investigative and evidentiary instrument would result in testimony that was incomplete, inadmissible, or difficult for the jury to follow and appraise (e.g., Burton et al., 2006; Davis et al., 1999; Hoyano & Keenan, 2010; Pigot Report, 1989; Powell et al., 2011). While supplementary questioning is permitted across Australian states and territories, overseas, jurisdictions differ in the degree to which their legislation allows for supplementary questioning (See Chapter 2 for review). For example, in England and Wales, supplementary questioning can only be led on a matter which, in the opinion of the court, has not been dealt with in the interview, or otherwise only with permission of the court (Coroners and Justice Act 2009 [UK], s. 103; Youth Justice and Criminal Evidence Act 1999 [UK], s. 27).

Where there is flexibility for the trial prosecutor to lead additional evidence-in-chief from the child, the prosecution may have the opportunity to ‘recover’ from any poor persuasiveness of the interview, inappropriate demeanour of the witness, or inadequate technical quality. Supplementary questioning could also provide the child
with an opportunity to be better prepared for cross-examination. The value of supplementary questioning is highlighted in the fact that in every case that proceeded to trial in Study 2, the prosecutors reported that they supplemented the interview with additional questioning in evidence-in-chief. Given the potential for supplementary questioning to compensate, at least in part, for the possible detriments to the state of admitting recorded evidence, legislative review and reform in some jurisdictions may be beneficial.

9.3 Directions for future research and collaboration

On the basis of the current thesis, three suggestions for future research and stakeholder collaboration can be made. First, future research could examine the most effective means of, and the utility in, incorporating the prosecution perspective into interview protocols. Prior research suggests that to be of value in altering performance, feedback from prosecutors needs to be elaborate and refer as specifically as possible to actual interviewer behaviour as opposed to being generalised inferences or judgments (Powell, 2008a). The findings of Study 5, however, suggest that simple instruction guides may have more utility than previously thought. Further work is necessary to determine whether changes in interviewer perceptions about interviewing requirements observed in Study 5 transfer to the field and improve actual interview practice. Future research could also determine the interaction between the type, nature, and format of prosecutor instruction on the knowledge and performance of interviewers as well as the outcome of interviews.
Second, future work could consider in-depth the specific needs of the interview as an investigative tool. A focus of the present research was the nature and extent of information required in interviews from a prosecution perspective. It was beyond the scope of this thesis to thoroughly examine investigators’ views on what information is required in interviews and why. At the investigation stage, one must maximise the amount of detail that could potentially lead to additional evidence to corroborate the witness’s account (e.g., Davis et al., 1999). As such, certain lines of questioning that were considered to be unnecessary from a prosecution perspective may have a practical use for police investigators (see for review Westera et al., 2011). Further research could assist in understanding the investigators’ rationale in seeking certain information, particularly given that prosecutors’ perspectives are based exclusively on the small proportion (and most likely, unrepresentative sample) of CSA cases deemed to have sufficient evidence to be referred to prosecution (see Cross et al., 1995; Pipe et al., 2008). It is noteworthy, however, that recent research suggests that interviewers’ pursuit of fine-tune detail via specific questions typically arises out of a belief that such detail will strengthen the prosecution’s case, rather than a belief that it will assist the investigation (Guadagno et al., 2013).

Third, and in terms of stakeholder collaboration, the present findings suggest that there may be benefit for prosecutors in receiving guidance from experts in child development and witness interviewing. Some comments made by the prosecutors throughout the current work reflected deficits in knowledge about child development, trauma, and best-practice questioning. For example, many prosecutors who engaged in the current research favoured the use in interviews of auxiliary techniques, such as props and drawings (see in particular Studies 1 and 4) despite research indicating that such
techniques are likely to increase the risk of error in children’s accounts (see for review Poole & Bruck, 2012).

A lack of understanding of the impact of (particularly long term) CSA on the victim may also be reflected in prosecutors’ concerns about children displaying negative behaviours in interviews. The prosecutors in Study 1, for example, were concerned that the jury’s assessment of a child’s credibility may be impacted by negative behaviour, such as opposition, frustration, and withdrawal, exhibited by the child in an interview. Research suggests, however, that such behaviours may be a relatively common emotional response of victims to CSA (see for review Browne & Finkelhor, 1986). This could be explained to a jury to mitigate any detrimental impacts of the child’s behaviour on perceived credibility. In all, greater prosecutor knowledge of best-practice questioning, child development, and trauma would have many uses in the courtroom including assisting prosecutors to address the source of any errors and inconsistencies in children’s evidence, and to account for children’s behaviour or demeanour in the interview where necessary (see Cossins et al., 2009).

9.4 Conclusion

This thesis provided an in-depth examination of the prosecution perspective on child witness interviewing. The prosecutors’ primary concerns related to overzealous specific questioning, and inadequate consideration of how the child and the interview will present in the eyes of jurors. Overall, the findings indicated that the evidential quality of interviews could be improved where interview protocols encourage
interviewers to focus on eliciting the child’s narrative account of abuse, whilst keeping in mind the nature and extent of information required for prosecution, and the potential for the interview to be played as evidence-in-chief at trial. Providing interviewers with simple instruction to this effect appears to be beneficial in changing perceptions of interview requirements.

The unique contribution of this thesis has been in exploring prosecutors’ perceptions of how the evidential quality and usefulness of child witness interviews could be improved, and in offering the prosecution perspective for consideration in the debate about interviewing procedure. The next step for protocol developers is to (a) create more sophisticated decision trees to guide interviewers in knowing when and how to question children, (b) test the effect of these new interview strategies in the laboratory setting to ensure that they do not undermine the detail and accuracy of children’s statements, and (c) develop measures of interview evidential quality to assess interviewer performance. The importance of improving the evidential quality of investigative interviews cannot be overstated. Low prosecution and conviction rates in CSA cases (Cross et al., 1995) have been attributed in large part to poor evidential quality of interviews (Office of Director of Public Prosecutions (ACT) and Australian Federal Police, 2005; Powell & Wright, 2009; Success Works, 2011). It follows that to improve justice outcomes in CSA cases requires a greater recognition of the prosecution perspective and, specifically, greater emphasis in interview protocols of the requirements of interviews as evidence-in-chief.
References


*Canadian Criminal Code 1985* s. 715 (CND).


Research. Retrieved from


Community Development and Justice Standing Committee. (2008). *Inquiry into the prosecution of assaults and sexual offences* (Report No. 6). Retrieved from the Parliament of Western Australia website:


*Craners and Justice Act 2009* ss. 100, 103 (UK).


*Criminal Code Act Compilation Act 1913* (WA) s. 319(1) (Austl.).

*Criminal Procedure Act 1986* (NSW) s. 306S (Austl.).

*Criminal Procedure Act 2009* (Vic) ss. 367, 370 (Austl.).


Evidence Act 1906 (WA) ss. 106 HB, 106I (Austl.).

Evidence Act 1929 (SA) s. 13A (Austl.).

Evidence Act 1958 (Vic) s. 366 (Austl.).

Evidence Act 1977 (Qld) ss. 21A, 21AK (Austl.).

Evidence Act 2006 ss. 103, 106, 107 (NZ).

Evidence Act 2013 (NT) s. 21B (Austl.).


*S v. The Queen* (1989) 168 CLR 266 (Austl.).


Yii, S. B., Powell, M. B., & Guadagno, B. (2012). The association between investigative interviewers’ knowledge of question type and adherence to best-practice
interviewing. Legal and Criminological Psychology. Advance online publication. doi:10.1111/lcrp.12000


Youth Justice and Criminal Evidence Act 1999 ss. 21, 27 (UK).


Appendix

A prosecutor’s guide to improving child witness interviews about alleged sexual abuse

The following transcript of interview addresses the need for further discussion about how investigative interviews can better meet the needs of prosecutors. The procedure involved in the development of this interview transcript was fourfold. First, the focus, scope, and format of the interview was determined and an experienced Crown prosecutor was invited to participate. Second, after seeking approval from this prosecutor and his director, an electronically recorded interview was conducted over several sessions. The interview transcript was then edited to enhance clarity. Third, after seeking agreement from the prosecutor that the condensed interview was an accurate representation of the entire interview, the edited transcript was distributed to nine Crown prosecutors representing every Australian state and territory (with the exception of one small jurisdiction). The group of prosecutors was required to read the transcript in their own time, reflect on the propositions made by the prosecutor in the transcript, and to indicate (by writing on the transcript) areas where the prosecutor’s views were not consistent with their own.

Finally, the nine prosecutors met face to face. The issues they raised were discussed and amendments to the transcript were agreed upon to ensure that it represented their collective views. The precise amendments were minimal and are

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18 This material has been published in a peer reviewed journal. The full reference is Burrows, K. S., & Powell, M. B. (2013). A prosecutor’s guide to improving child witness interviews about alleged sexual abuse: A view from the Australian context. Investigative Interviewing: Research and Practice, 5, 12-22.
We know from our prior discussions with you that you have concerns about child witness interviews being too long and containing irrelevant detail. Could you reiterate these concerns in detail for readers?

Sure, but I want to stress at the outset that I know being an interviewer for child interviews is very difficult. I understand that it’s all too easy to critique an interview afterwards, and I would think that few trial lawyers would relish the idea of their court work being critiqued. My concerns are, as you say, that firstly, often, probably too often, visually recorded interviews are too long. Secondly, the interviews often include detail about matters that don’t require detail, and that can be quite problematic.

Ok, so it would appear that there’s some confusion among interviewers about what level of detail is required. Tell us what detail is required, from a prosecution perspective?

Well, the state is required to prove all of the elements of an offence beyond reasonable doubt. What do I mean by ‘elements’ of an offence? I mean the aggregate of all parts of the offence alleged. So, to give an example, for the charge of robbery the elements of the offence can be discerned from the Criminal Code. The elements are (1) the accused and no one else, (2) steals, (3) anything, (4) at or before threatens, or uses, actual violence, (5) to any person or property, and (6) in
order to steal the thing being stolen or in order to prevent resistance to it being stolen. Those six aspects, as determined by the legislation, are the elements of the offence of robbery. In a trial of the offence of robbery, the state is required to prove each of those elements to the jury’s satisfaction. If any of them is not proven to the jury’s satisfaction, then the accused must be acquitted.

In sexual matters, fortunately, it’s a little bit easier in that the elements to be proven are less in number. For example, in an indecent dealing charge, identity is clearly an important issue. The second element is that the person alleged has indecently dealt with the child. And thirdly, you have to prove the age of the child, which is a question of fact and can be proven simply by a birth certificate. So, in an indecent dealing there are really only two elements a) the right person, and b) whether or not that person has indecently dealt with that child. Similarly, with sexual penetration allegations, the elements are that a) a person, b) the person sexually penetrates the child. They are the elements, essentially, what offence was committed and who committed it.

It is clearly necessary for the interviewer to establish that all of the elements of the offence have been made out, without putting words in the child’s mouth, because if the elements aren’t made out, then prosecution is not possible. The elements need to be established for a practical reason as well. That is, if at the cross-examination stage, the child divulges further information about the elements

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19 Among the prosecutors who commented on this point, there was some debate about whether the timing of the offence should be included in this sentence. Two prosecutors of the panel said that although offence timing isn’t technically an element, it is very important because a) an allegation which is too broad in time may be attacked by defence as too vague, b) the age of the child at the time of the offence may affect the charges to be laid, and c) the legislation may have changed since the time of the offence. Another prosecutor, however, believed that interviewers placed too much emphasis on when the offence occurred. She was concerned that asking too many specific questions may result in inconsistencies or mistakes. She said “There needs to be a balance between saying that ‘when’ does need to be asked, but there is scope for a wide date range depending on the offence and the circumstances.” Two other prosecutors suggested that no change was necessary to this sentence, because timing is discussed in the next passage. The panel agreed that if these sentences were read out of context, there may be risks of misunderstandings about the value of timing of the offence, but that the interview is accurate when read as a whole.
that the child hasn’t volunteered before, then inevitably defence counsel will say that he’s making it up because otherwise he would have given those answers earlier. Besides the elements, what jurors hear about in a trial are particulars, which are the where and the when. How, when, and where, basically. These matters are relevant though they don’t have to be proven to the same standard.

So the elements of each offence are important, and so are particulars, but to a lesser extent. Particulars don’t have to be proven, but they should be ascertained? Tell me more about that.

Well, the state needs sufficient detail to prove the charge, that is, to satisfy each element of the charge. But it can’t do that in a vacuum. The jury has to be satisfied that the allegations made by the complainant are the truth, that is, they are accurate, reliable, and truthful allegations. The only way that they can be so satisfied is if the child gives sufficient particulars of the offence to enable the jury to be satisfied. Particulars are relevant, not because legislation requires them, but because the accused is entitled to have, as a minimum, sufficient particularity to identify an incident from any others. This means that a description of the incident charged must be distinguished from any other similar incidents suggested by the evidence.

Particulars, unlike the elements, do not have to be proven by the state to secure a conviction. But they do have to be established to allow the accused to know the allegations against him or her, and to the extent necessary to establish the elements of the offence beyond reasonable doubt. That is, there is a need to establish that the child is speaking of a particular offence which is different from any other and is not speaking only in general terms, for example “oh yeh, that happened all the time”. Now, it may be impossible for a child to detail any allegations with any great particularity, especially a younger child. For example, if
an offence occurred two years before an interview, that may be a half or one third of that child’s life. It may be difficult for a child to recall when an incident happened, even which year it happened. However, even in those cases it is still possible for a jury to convict, if they are satisfied that the child is accurate, reliable, and truthful. I should add that, in my experience, sometimes a child’s account will actually be enhanced by a concession that he or she doesn’t know specific details. A jury might consider a child more trustworthy if the child concedes, quite reasonably, that they don’t remember the date of an offence. So it’s not always going to be the case that an “I don’t know” answer is going to be treated by the jury as a vague and unreliable account.\footnote{20}

So it might be perfectly explainable that they don’t have an answer?

Yes. In one recent case where I was counsel, it was clear that the child had no real recollection of when the alleged offences occurred. He couldn’t even remember the year the offence happened. Still, the interviewer asked for very specific detail about the day the event occurred, the hour the event occurred, and the course of conduct over the two hour period he was with the accused. Given the child couldn’t even recollect the year, it seemed to me to be risky, at least, for the questions to become even more focused and narrow thereafter. The child inevitably attempted to give answers to these questions. Many of these answers were later shown to be inaccurate, and the child’s entire account was discredited.

That case illustrates the inevitable tension between the amount of particulars required to establish the elements reliably, truthfully, and accurately,

\footnote{20} The following sentences were deleted: “Basically, if the child is clearly not able to provide particulars, an interviewer need not pursue them. Some detail about where and when the offence occurred is desirable, where possible, but not essential.”. One prosecutor argued that some information about where and when the offence occurred is necessary (rather than ‘desirable’), at least to the extent that the information enables offences to be distinguished from one another. Other prosecutors believed that this was made clear earlier in this passage. They suggested deleting these sentences to avoid any misunderstanding.
and the need of the accused to question the child’s recollection to create doubt. That is, particulars can be used to bolster the state’s case from the prosecution perspective, or to weaken the state case from the prosecution perspective, depending on the accuracy or otherwise of the witness’s recollection. So because they serve competing interests, particulars are inherently risky to one side or the other in any trial. Frequently, interviewers inadvertently assist the defence or damage the prospects of conviction by seeking unnecessary particulars or detail. Of course, it is necessary for the viewer of the interview, ultimately the jury, to have sufficient detail so that they can picture how the offence occurred, but what they don’t need is a slow motion, frame-by-frame account of the unfolding events.

I think the tendency of interviewers to seek fine detail is understandable given their job, given their knowledge of how lawyers seek detail, how lawyers in fact have an insatiable demand for detail. But although the interests of the accused must be safe-guarded, they don’t have to be enhanced by the visually recorded interview process. For example, in the same case I was referring to earlier, there were many questions about the detail of the room in which the offence occurred. There were many questions about the colour of the bedspreads, about how many beds were in the room, what else was in the room, whether the blind was up or down. It seems the child, understandably, got some of these things wrong. It all became grist for the cross-examination mill, for no benefit to the prosecution. Having said that, a jury must be satisfied that the witness’s account is truthful, reliable and accurate, and some, perhaps extraneous, detail can be important in establishing the witness’s credibility to the requisite degree. This is why it is so difficult.

Basic information may be helpful, but inordinate detail like this may only damage the child’s interview for no forensic purpose. What happens if the child makes a mistake or gets it wrong? It’s very easy for the defence to suggest that a child who made a mistake about these minutiae shouldn’t be relied upon. So, an
error about these details is either an innocent mistake, in which case the prospect is that the witness’s evidence will be damaged for no purpose, or the error is because the child is making it all up, in which case his or her evidence will still be damaged. I think the interviewers have a tendency to seek more and more detail, and I think that tendency usually constrains and inhibits the state’s prospects of conviction, not to mention making it harder for the child when being cross-examined which surely is the opposite of what was intended with the introduction of visually recorded interviews.21

Okay, so there’s danger in seeking fine-tune details. But such details can help establish an offence. How do you think interviewers can achieve that right balance?

Interviewers should let the child tell his or her story, with sufficient detail to allow a third party, namely a jury member, to evaluate the reliability. Any more than that runs the risks that I’ve mentioned. In my experience, interviewers tend to err on the side of getting too much information. Overall, in my opinion, once the elements are established, there are greater risks with seeking too much detail than there are with not seeking enough detail. I think it’s important for the interviewers to review the charge and the elements prior to the interview, and to concentrate the interview on allowing the child to tell his or her story with those elements in mind.

It is really important that an interviewer understands why a question is being asked. What element does it go to establish? Or what context does it seek to

21 The following sentences were deleted: “However, I accept that a reasonable amount of detail is required from a ‘justice and fair trial’ perspective. Finding the right balance may be difficult.” Four prosecutors considered that these sentences were open to the misinterpretation that details about the colours of bed spreads etc. are necessary from a ‘justice and fair trial perspective’. Two prosecutors supported the inclusion of these sentences, saying that it is important that interviewers remember that the accused is entitled to know what the allegation against him is. The prosecutors eventually agreed that the sentences should be removed. These sentences were not considered necessary, and were at risk of misinterpretation.
set? If there is no good reason for a question to be asked, then chances are, the question should not be asked. So if the question doesn’t specifically go to the element to be established, or goes into too much detail about contextual details, then most likely it ought not be asked as it is unnecessary and irrelevant. As for particulars, interviewers should just be aware of the needs of the court - that is, the system needs to be satisfied but also the needs of the child to give his or her story with as little interruption and review as is possible.

Review? Meaning when interviewers summarise what the child has said?

Yes. Now some judges really don’t like that, and will tell a jury to ignore a re-statement. It is a dangerous endeavor, to summarise what the child has said. Especially if different words are used. Paraphrasing should not occur. If it is clear what the child’s allegations are, for example, a child says “he touched me on my willy under my clothes”, then that’s the allegation! Why go over it?

Okay, so summarizing should be avoided. Are there other questions that should generally be avoided, or are unnecessary?

I think any extraneous material which is designed perhaps from the interviewers’ perspective to confirm the clarity of the child’s recollection should usually be avoided. The risks of adducing irrelevant information are too high. Exploring such extraneous material can, for example, cause child witness fatigue, it can lead to child irritation, it may lead to false answers, or bland, general answers like “that’s all I can remember”. It may lead to the child seeking to please the interviewer, to give the interviewer an answer, when in reality there maybe isn’t one. For example, in one matter I was dealing with, the interviewer asked the

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22 This sentence previously read “It can be a dangerous endeavour…”. A prosecutor of the panel commented that it is not that paraphrasing may be dangerous, it is dangerous.
child many questions about very specific information, this ‘frame-by-frame’
enquiry, like “Where were the accused’s hands?”, “Which way were his fingers
pointing?”, “How much of your testes did the accused’s hand cover?”. That type of
information, even if desirable from a proof of evidence stand point, which I would
almost always dispute, is almost always counterproductive. If you have been
traumatized by some man groping you, how and why would you remember minute
detail as to where his leg was when he touched your penis? Particularly when you
are recounting an incident that happened, say 6 to 12 months earlier? Of course,
humans are infinitely variable, there will be some children who recall precisely
what happened, but I think they are in the minority and justifiably so.

Frankly, I don’t think jurors expect that precise recollection, because, of
itself, a juror may think that precise recollection may mean evidence that is not
necessarily reliable; it’s a bit suspicious. I had another trial where both the child
witnesses gave, what I thought was really good evidence. However, when speaking
with a journalist after trial, she found their evidence too good to be true and she
didn’t believe them at all. So, I think interviewers should avoid pursuing very
specific details in the interview. But of course, I cannot really know what a juror
may be thinking, which is of course why lawyers always default to asking detailed
questions, even when they are not relevant. From a strictly legal perspective, it is
hard to justify my assertions, and easy for a lawyer to insist that more or complete
detail is required. However, I would still argue that interviewers do not have to
seek that detail. If a lawyer thinks it is so essential he can ask the questions in
court.

When it comes to particularization, do interviewers need to, or should they
attempt to, particularize all alleged offences?
That’s a difficult one because it may not be apparent until the interview is in progress as to what the child is going to say. It is, after all, their story. If the child can remember ten occasions of abuse in detail, then great, particularise all ten. If the child is only able to provide detail about one occasion, then just get particulars for that one. If it’s a historical case, and/or the child has been systematically abused, it may be very difficult for the child to provide a unique detail about each occasion. That’s the reality of abuse, not a failing on the part of the interviewer.23

If multiple offences are alleged, then I think deal with the most recent offence first and go back to others. Any alleged offence, if it’s going to be separately charged, requires any particulars that can be received, with the qualifications and cautions that I’ve mentioned about seeking extra detail. If a child is vague, and unclear about incidents that happened in the past, then we don’t necessarily need specifics of the multiple occasions in the past because all that evidence can be led as uncharged acts. So the jury will still hear that evidence, will still be told about it, but will be told it’s an uncharged act and that it is not a matter directly going to the charges that are made against the accused. It can contribute to sentencing, with some qualifications.

What about detail around anatomy? Stakeholders have previously highlighted that a lot of children struggle to describe and name their anatomy. How much detail do interviewers need to elicit about anatomical details?

I think basically as much detail as is sensible, depending upon the child’s age. If it’s a really young child, the interviewer might not reasonably expect anything more than “where I wee or poo”. Or the child might have interesting

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23 The four preceding sentences were added following suggestions from the panel of prosecutors.
names for genitalia, and I think there’s no need to go beyond those interesting names as long as it’s apparent what the child is meaning.

Is it appropriate for the prosecutor to follow up strange names of genitalia at a later stage?

It’s possible, but frankly it’s preferable to have clarity at the time of the interview. However, clarity doesn’t mean going over and over the same things. If a child talks about ‘penis’ as ‘willy’, then, that’s enough. We don’t need to know what the child thinks a ‘willy’ is used for, how often he uses it, and so on. My experience has been that where there is any difficulty relating to genitalia in an interview, the difficulty is in the detail sought from a child which can become somewhat cringe worthy.

What’s ideal in that situation where the child uses slang names?

I think the ideal is to allow the child to give his or her story, I mean that’s what it’s all about at the end of the day. We are only seeking to allow the child to give his or her story. All that needs to be done is to ensure that others know what he or she means when they refer to his or her genitalia as something else, if they do.

Ok. Another area that can be difficult for interviewers is establishing penetration. How much detail should be sought to establish penetration?

Establishing penetration can be difficult. My own view is that, well, firstly, of course, an interviewer cannot ask leading questions. If the child doesn’t make it clear whether there was a technical penetration (that is, a digital or penile
penetration, going so far as to actually go into the child’s vagina or anus), then so be it, frankly. I mean, if the child’s recollection is that he or she isn’t sure whether there was penetration, well, maybe there should not be a conviction for that offence anyway.

In my experience, repeated, increasingly detailed questions about penetration are unlikely to succeed in establishing penetration and will only probably lead to some dispute about the admissibility of those questions later at trial because they are likely to tend more and more towards leading questions. Pursuing penetration with these questions may therefore increase the risk that the accused will be acquitted of that charge. Where penetration is not part of the child’s story, it may be more appropriate to establish a lesser charge, such as an indecent dealing, which may be likely to secure a conviction, where a penetration charge is not.

Ok. Please summarise what you think an ideal interview from a prosecution perspective would look like in terms of its structure and length.

Well, I think it’s essential that the interview be in the child’s own words, using the child’s language. What traditionally happens in interviews is the child gives a relatively long blanket answer with as much detail as he or she can, and then that answer is forensically ‘chopped up’ into many pieces and regurgitated, by way of asking the child questions about each piece of the story. I think there has to be great care in doing that because there still needs to be, before every question is asked, a consideration by the interviewer of what is this question going to establish, and what are the risks, as I’ve indicated.

If more than one offence is alleged, deal with the most recent offence first, then depending on if the child is still ‘with’ the interviewer, that is, they haven’t flagged due to tiredness, then earlier offences can be considered and elaborated.
It’s not necessary to explore every offence. It is, of course, necessary to establish who the offender is in a sexual matter. But even that may not require any more than “it was my Uncle Billy”. If we get that statement from the child, we don’t then need “What’s his age? What are his features? What does he look like? How often do you see him? Does he have a beard? Which address does he live at?”, because we know the allegation is against Uncle Billy.

In all, my ideal interview would be an interview that lasts no longer than one hour, both for the reasons of the child, who is likely to become more fatigued as time goes on, and for the important reason of not boring a jury. Now of course in every legal matter, for every rule there will be an exception. There will be some cases where it is necessary to spend much longer than an hour with a child. But in general, if the allegation is one of indecent dealing or sexual penetration on one or two occasions, it would be, I think, surprising if a comprehensive and focused interview could not be completed inside say, 45 minutes.24

That’s been really helpful. Is there anything else you would like to add?

No, I think we’ve covered it pretty comprehensively.

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24 This comment caused some debate among the panel of prosecutors. One prosecutor believed that it was dangerous to suggest a duration for interviews because interviewers may think that this represents a time limit. Another prosecutor supported the provision of a duration suggestion, adding that a jury’s attention span is likely to be only about 50 minutes in any case. This prosecutor emphasised that the duration will depend on the age and nature of the child, and that after 45 minutes, there should at least be a break in the interview.