

# Methods to Evaluate Justice Practices in Eliciting Evidence from Complainants of Child Sexual Abuse

Jane Goodman-Delahunty\*, Eunro Lee\*\*, Martine B Powell\*\*\* and Nina Westera\*\*\*\*

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## Abstract

To facilitate evidence-based practice, following implementation of a reform, evaluation of field practice involves rigorous and scientific methods. The present article reviews the methods and implications of 17 studies commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse to evaluate how alternate measures are being used and how complainants are being questioned about child sexual abuse in Australian criminal justice proceedings. This evaluation used qualitative and quantitative methods to assess the processes and practices applied to manage the witnesses' psychological distress and vulnerability to elicit more reliable and credible evidence. The topics and areas of interest were stakeholder perceptions and views of the use of alternate measures, factors considered in the processes, and challenges in police interviews and courtroom questioning. Data sources included video recordings of interviews by police and CCTV cross-examinations and trial transcripts supplemented by stakeholder interviews, a survey, and an online experiment. In particular, the evaluation findings highlighted a range of practices based on unsupported assumptions about victim memory and behaviour, judicial instructions to child complainants, cross-examination strategies, judicial interventions, and shortcomings in the quality of video recordings of police pre-interview and CCTV cross-examination. In this article, following a review of the studies, implications of the findings are discussed to inform evidence-based practice and research in eliciting evidence from complainants of child sexual abuse.

**Key Words:** evidence-based practice, child sexual abuse, elicitation of evidence

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\* Research Professor, Faculty of Business, Justice and Behavioural Sciences, Charles Sturt University. Author contact: [jdelahunty@csu.edu.au](mailto:jdelahunty@csu.edu.au).

\*\* PhD, Lecturer, School of Health & Biomedical Sciences, College of Science, Engineering & Health, RMIT University. Author contact: [eunro.lee@rmit.edu.au](mailto:eunro.lee@rmit.edu.au).

\*\*\* Professor, Centre for Investigative Interviewing, Griffith University. Author contact: [martine.powell@griffith.edu.au](mailto:martine.powell@griffith.edu.au).

\*\*\*\* Research Fellow. Griffith University, Australia.

## Introduction

Delivery of justice is critically dependent upon the quality of trial evidence, for which a range of legislative and judicial procedures exists to facilitate the elicitation of evidence of the best quality. This is particularly salient in the criminal justice sector regarding the evidence of the most vulnerable of all witnesses, namely complainants of child sexual abuse. Child sexual abuse is difficult to prosecute and has one of the highest attrition rates of all criminal offences.<sup>1</sup> Although exact figures are difficult to come by, estimates suggest that only about eight to nine per cent of child sexual assault cases reported to police are prosecuted.<sup>2</sup> Part of the difficulty in prosecuting these cases is that the offending is often hidden from public view, leaving only the complainant's evidence to establish the defendant's guilt beyond reasonable doubt.<sup>3</sup>

A substantial body of research has established that complainants of child sexual abuse experience severe anxiety, distress, and psychological difficulties during legal processes, due to the witnesses' developmental characteristics, the impact of confronting the offender and adversarial cross-examination in court.<sup>4</sup> These findings co-occurred with low reporting rates to police (8-9%), high attrition rates during the investigative process (81 - 85%), low prosecution rates (15%), and low conviction rates at trial (8%).<sup>5</sup> These trends have emerged in multiple jurisdictions nationally and internationally.<sup>6</sup> As a consequence, miscarriages of justice may occur at various stages of the criminal justice process.

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<sup>1</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report No 14 (2010); Christine Eastwood, Sally Kift and Rachel Grace, 'Attrition in Child Sexual Assault Cases: Why Lord Chief Justice Hale Got it Wrong' (2006) 16(2) *Journal of Judicial Administration* 81; Gail Goodman, 'Children's Eyewitness Memory: A Modern History and Contemporary Commentary' (2006) 62(4) *Journal of Social Issues* 811.

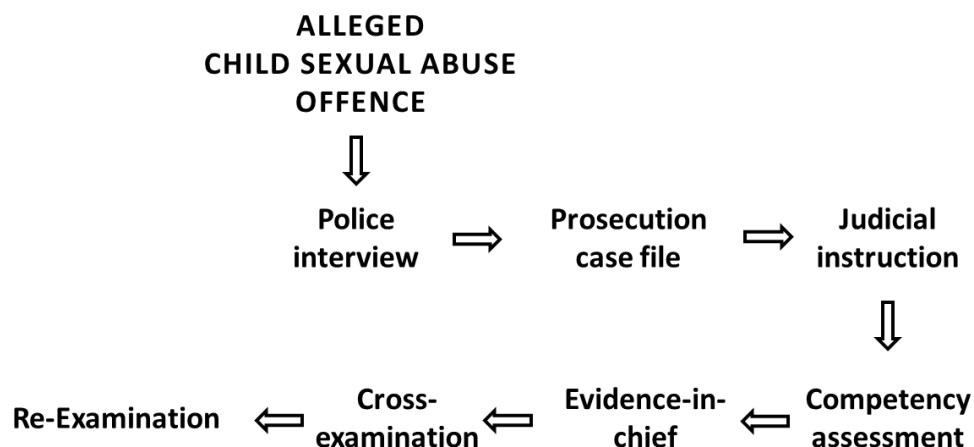
<sup>2</sup> Community Development and Justice Standing Committee, Legislative Assembly, Parliament of Western Australia, *Inquiry into the Prosecution of Assaults and Sexual Offences* (2008); Jacqueline Fitzgerald, 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System' (2006) *BOCSAR Crime and Justice Bulletin, Contemporary Issues in Criminal Justice* No 92.

<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Executive Summary and Parts 1-111* (2017), 253

<sup>4</sup> Gail S Goodman et al, 'Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims' (1992) 57(5) *Monographs of the Society for Research in Child Development* i; Michael E Lamb et al, *Tell Me What Happened: Structured Investigative Interviews of Child Victims and Witnesses* (John Wiley & Sons, 2011).

<sup>5</sup> Larissa Christensen, Stefanie Sharman and Martine Powell, 'Professionals' Views on Child Sexual Abuse Attrition Rates' (2015) 22(4) *Psychiatry, Psychology and Law* 542; Fitzgerald, above n 2; Royal Commission, above n 3, 165; Jane Goodman-Delahunty, Anne Cossins and Kate O'Brien, 'Enhancing the Credibility of Complainants in Child Sexual Abuse Trials: The Effect of Expert Evidence and Judicial Directions' (2010) 28 *Behavioural Sciences and the Law* 769.

<sup>6</sup> R A Carr-Hill and N H Stern, *Crime, The Police and Criminal Statistics: An Analysis of Official Statistics for England and Wales Using Econometric Methods* (Academic Press, 2014); Theodore P Cross et al, 'Prosecution of Child Abuse: A Meta-Analysis of Rates of Criminal Justice Decisions' (2003) 4(4) *Trauma, Violence, & Abuse* 323; Brian Francis, Claire Hargreaves and Keith Sothill, 'Changing Prevalence of Sex Offender



**Figure 1. Phases of the Criminal Justice Process**

In the Australian legal system children were traditionally viewed as an unreliable class of witness.<sup>7</sup> Because of their age, they were presumed incompetent by law, and their evidence had to be independently corroborated.<sup>8</sup> For child complainants, giving evidence at trial about sexual abuse was a potentially traumatic process, resulting in great anxiety and stress.<sup>9</sup> In addition, prosecution outcomes were poor, leading many complainants (or those responsible for their welfare) to opt out of pursuing a criminal prosecution.<sup>10</sup> These factors led to concerns that the process for giving evidence in criminal trials was working against the interests of justice for children, and that prosecutions failed because the court process was ill-suited to children.<sup>11</sup> In recognition of this fact, a range of special measures,<sup>12</sup> also known as ‘alternate measures’, was

Convictions: Disentangling Age, Period and Cohort Effects Over Time’ in Arjan Blokland and Patrick Lussier (eds), *Sex Offenders: A Criminal Career Approach* (John Wiley & Sons, 2015) 231; Ellen Gray, *Unequal Justice: The Prosecution of Child Sexual Abuse* (Free Press, 1993); Rosaleen McElvaney, ‘Disclosure of Child Sexual Abuse: Delays, Non-Disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice’ 2015 24(3) *Child Abuse Review* 159.

<sup>7</sup> Anne Cossins, ‘Prosecuting Child Sexual Assault Cases: Are Vulnerable Witness Protections Enough?’ (2006) 18(2) *Current Issues in Criminal Justice* 299; Graham Davies, ‘Children’s Testimony: Research Findings and Policy Implications’ (1994) 1 *Psychology, Crime and Law* 172.

<sup>8</sup> Thomas Pigot, *Report of the Advisory Group on Video-Recorded Evidence* (UK Home Office, 1989); Victoria Law Reform Commission, *Sexual Offences: Final Report* (2004).

<sup>9</sup> Christine Eastwood and Wendy Patton, *The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System* (Report, Criminology Research Council, 2002); Eastwood, Kift and Grace, above n 1; Becky Hamlyn et al, ‘Are Special Measures Working? Evidence from Surveys of Vulnerable and Intimidated Witnesses’ (Home Office Research Study No 283, Home Office (United Kingdom) July 2004).

<sup>10</sup> Judy Cashmore, ‘The Prosecution of Child Sexual Assault: A Survey of NSW DPP Solicitors’ (1995) 28(1) *Australian & New Zealand Journal of Criminology* 33; Kathleen Daly and Brigitte Bouhours, ‘Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries’ (2010) 39 *Crime and Justice: An Annual Review of Research* 565; Fitzgerald, above n 2.

<sup>11</sup> Graham Davies et al, *Videotaping Children’s Evidence: An Evaluation* (Home Office (United Kingdom), 1995); Pigot, above n 8.

<sup>12</sup> Nicky Friedman and Margaret Jones, ‘Children Giving Evidence of Sexual Offences in Criminal Proceedings: Special Measures in Australian States and Territories’ (2005) 14(3) *Journal of Judicial Administration* 157;

introduced by courts in Australian and other jurisdictions to assist complainants in presenting their evidence in legal settings.<sup>13</sup>

The experiences and satisfaction of vulnerable and intimidated witnesses were systematically assessed before<sup>14</sup> and after<sup>15</sup> special measures were implemented in the United Kingdom in 1999. Data were gathered by means of a survey administered in both 62 Crown Courts<sup>16</sup> and 48 Magistrates' Courts<sup>17</sup> for this purpose.<sup>18</sup> Some survey participants (30%) also took part in interviews. The researchers found that the overall level of satisfaction by the cohort of vulnerable witnesses was significantly lower than that of other witnesses in the criminal justice system. The findings of this UK study suggested that the effectiveness of alternate measures implemented in Australia could be assessed using a similar suite of research methods.

In 2013, the Royal Commission into Institutional Responses to Child Sexual Abuse (hereafter 'the Royal Commission')<sup>19</sup> engaged a team of law and psychology researchers to investigate how these special measures were being utilised in Australian jurisdictions.<sup>20</sup> This Royal Commission project further explored whether improvements were needed to enhance the quality, reliability and credibility of evidence from complainants of child sexual abuse.<sup>21</sup> The present article reviews the methods employed in the Royal Commission project comprising a multi-study research evaluation, with regard to a range of Australian special measures available in cases of child sexual abuse.

In the Royal Commission project, a variety of qualitative and quantitative methods were applied in a total of separate 17 studies to conduct a robust evaluation of the effectiveness of these alternate measures in eliciting evidence from complainants and vulnerable witnesses. Assessment of apparent benefits and effects of alternate measures revealed by empirical legal

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Hamlyn et al, above n 9; Kirsten Hanna et al, 'Questioning Child Witnesses in New Zealand's Criminal Justice System: Is Cross-Examination Fair?' (2012) 19(4) *Psychiatry, Psychology and Law* 530.

<sup>13</sup> Pigot, above n 8.

<sup>14</sup> *N* = 552.

<sup>15</sup> *N* = 569.

<sup>16</sup> *N* = 62; 86 for selected phases.

<sup>17</sup> *N* = 48; 94 for selected phases.

<sup>18</sup> Hamlyn et al, above n 9.

<sup>19</sup> Royal Commission into Institutional Responses to Child Sexual Abuse  
<<http://www.childabuseroyalcommission.gov.au/>>.

<sup>20</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report Parts VII-X and Appendices, Section 30* (2017), 18-108.

<sup>21</sup> *Ibid.*

studies is contingent upon the research methods employed.<sup>22</sup> The present article provides an overview of multiple methods employed in the 17 studies conducted in the course of the multi-study research in the Royal Commission project. The goal of the research was to determine whether the processes and practices implemented were successful in managing the witnesses' psychological distress and vulnerability, so that more reliable and credible evidence is elicited.

Drawing on social science and psychology research approaches, the research team collected several forms of data from diverse sources. Notable sources were video recordings and transcripts of actual pre-recorded complainant interviews by police and of CCTV cross-examinations, plus transcripts of real child sexual abuse trials. These data provided unique insights into actual practices in three primary nominated jurisdictions, namely NSW, Victoria, and WA. In some studies, additional data from Queensland and Tasmania were included. In addition, the research team gathered supplementary data via stakeholder surveys, interviews and focus groups with criminal justice professionals including judges, prosecutors, criminal defence lawyers, police officers, and witness support staff. Complementary methodologies used for data analysis were derived from qualitative thematic analysis of interviews, content analysis of trial transcripts as well as quantitative statistics using analysis of variance,  $\chi$ -tests, factor analysis, and mixed model analyses of survey and experimental data. The foregoing methods comprised a rich and comprehensive evaluation of practice.

The multiple methods used in the Royal Commission project are illustrative models of evidence-based practice that can be applied in other legal sectors and to other legal issues as well as to complaints of child sexual abuse. One of the main advantages of including several different methodologies is that the findings converge to enhance our understanding of the matter. As a result, any limitations associated with one methodology are mitigated by the commonality of findings across methodologies. In this article, an overview of the methods used is outlined.

Before the specific research methods are discussed, policy changes permitting special measures for complainants of child sexual abuse are reviewed. In the conclusion, future applications of research methods in law and justice practice are discussed.

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<sup>22</sup> Donald N Bersoff et al, 'Training in Law and Psychology: Models from the Villanova Conference' (1997) 52(12) *American Psychologist* 253; David Canter and Rita Žukauskiene (eds), *Psychology and Law: Bridging the Gap* (Routledge 2017); Jeffrey J Rachlinski, 'New Law and Psychology: A Reply to Critics, Skeptics, and Cautious Supporters' (1999) 85(3) *Cornell Law Review* 739.

### Special Measures for Child Sexual Abuse Complainants: Research and Practice

Starting in the 1980s, in Australia and other overseas jurisdictions across the globe, special measures were implemented to take the evidence of child complainants, such as the provision of support persons, and cross-examination via CCTV.<sup>23</sup> Whether these measures, individually or collectively, accomplished the intended aims of reducing anxiety, intimidation, and frustration incurred by standard court procedures was untested. Accordingly, the Royal Commission nominated three primary jurisdictions to investigate the effectiveness of alternate measures, namely New South Wales (NSW), Victoria (Vic) and Western Australia (WA).

The discrete phases of the criminal justice process depicted in Figure 1 were examined in a series of different studies incorporated in the Royal Commission project. For instance, Study 4 analysed case files maintained by prosecutors to report on documented considerations of special measures in the period after a case was referred for prosecution, whereas Study 5 analysed the use of special measures at trial during the complainants' evidence in-chief, cross-examination, and re-examination.

A combination of qualitative and quantitative methods was used in the programmatic evaluation research. Data sources included prosecutors' files, video recordings of police interviews and CCTV cross-examinations, and trial transcripts. Each data source, the type of research method, and the topics of the respective studies addressed by the evaluation are summarised in Table 1.

**Table 1. Data Sources, Qualitative and Quantitative Methods Applied to Evaluate Special Measures for Complainants of Child Sexual Abuse.**

Data Source	Type and Topic of Studies	Study
<i>Qualitative studies</i>		

<sup>23</sup> Mandy Burton, Roger Evans and Andrew Sanders, 'Are Special Measures for Vulnerable and Intimidated Witnesses Working? Evidence from the Criminal Justice Agencies' (Online Report No 01/06, Home Office (United Kingdom), 2006); Judy Cashmore, above n 10; Judy Cashmore and Marion Horsky, 'The Prosecution of Child Sexual Assault' (1988) 21(4) *Australian & New Zealand Journal of Criminology* 241; Emma Davies and Kirsten Hanna, 'Pre-Recording Testimony in New Zealand: Lawyers' and Victim Advisors' Experiences in Nine Cases' (2013) 46(2) *Australian & New Zealand Journal of Criminology* 289; Robert A Nash et al, 'Remembering Remotely: Would Video-Mediation Impair Witness' Memory Reports?' (2014) 20(8) *Psychology, Crime & Law* 756. For instance, in Victoria the *Criminal Procedure Act 2009* (Vic) ('CPA') s 370 was amended in 2012 to prohibit the accused from attending the room in which the complainant's evidence is taken (see CPA s372(1)(a) and (b)).

Interviews	Professionals' views on how to improve evidence-taking	1
Case files	Prosecution case file review	4
Police interview transcripts	Police interview practices	8
Trial transcripts	The labelling of recurring abusive events	10
	The utility of alternate measures	5
	Courtroom discussions about police interviews	9
	The labelling of recurring abusive events	10
	Judicial directions to child complainants	11
	Assessing truth-lie competency	12
	Courtroom questioning	13
	Non-supported assumptions about victim memory and behaviour	14
	Cross-examination strategies observed	15
	Questioning about and handling of inconsistencies	16
	Judicial intervention	17
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Minutes of the NSW		
Sexual Assault Review Committee	Content analysis regarding alternate measures	6
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Video recordings	Analysis of the quality of pre-recorded police interviews, CCTV cross-examinations and non-verbal features of the speakers	7
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<i>Quantitative studies</i>		
Survey	Professionals' experiences with and views of special measures	2
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Experiment	Factors that influence perceptions of the quality of cross-examination	3
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A total of fifteen qualitative studies and two quantitative studies were included in the evaluation program conducted for the Royal Commission. These are outlined below.

### **Qualitative Study 1: Interviews of criminal justice professionals.**

To examine how well evidence is taken from complainants of child sexual abuse, the most conventional research methodology in social science, an interview study, was conducted with

criminal justice professionals most closely acquainted with child sexual abuse complaints. This approach was selected to achieve a detailed and in-depth understanding of any barriers and limitations surrounding the use of special measures in practice.<sup>24</sup> By exploring stakeholders' individual experiences and perceptions in a narrative format, interview data can provide an insights and a 'closer' investigation of the topic than is achieved by means of quantitative information such as frequencies and proportions of uses of alternate measures in each jurisdiction, or statistical reports of conviction rates or survey results.

To conduct the interview study, the research team contacted police departments, public prosecution offices, law firms, barristers' associations, courts, and witness assistance agencies in the target states. Judges, prosecutors, lawyers, and witness support staff were invited to participate in interviews to explore their day-to-day experience, regarding special measures for complainants of child sexual abuse. A semi-structured interview schedule was sent to each participant prior to the interview. Thus, a pre-determined set of interview topics was explored with all participants.<sup>25</sup> Furthermore, using broad open-ended questions, these topics probed for information about preparing a complainant for trial, uses of special measures to question the complaint and present evidence. A total of 43 criminal justice professionals participated in the study, and were interviewed in person or by telephone. The interviews focused on how well special measures are being used in their everyday practice with child and vulnerable adult complainants of childhood sexual abuse. The participants' thoughts and suggestions to improve criminal procedures and alternate measures were further explored.

All interviews were audio-recorded and transcribed for analysis using an inductive, 'bottom-up' approach,<sup>26</sup> rather than a pre-existing theory. This approach affords the opportunity to include unexpected themes and agendas that researchers may not have anticipated, theorised or hypothesised beforehand.

### **Qualitative Studies 8 and 10: Analyses of police interview transcripts.**

Detailed factual information on how complainants of child sexual abuse are interviewed when they first encounter representatives of the criminal justice system are difficult to obtain as the

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<sup>24</sup> Carolyn Boyce and Palena Neale, 'Conducting In-Depth Interviews: A Guide for Designing and Conducting In-Depth Interviews for Evaluation Input' (Pathfinder International Tool Series, Monitoring and Evaluation – 2 May 2006).

<sup>25</sup> Wendy Hollway and Tony Jefferson, *Doing Qualitative Research Differently: Free Association, Narrative and the Interview Method* (Sage Publications, 2000).

<sup>26</sup> Tom Wengraf, *Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods* (Sage Publications, 2001).



records of interview are typically confidential. In this evaluation, police interview practices were evaluated in Study 8 by analysing a sample of 118 transcripts of police interviews gathered from the three nominated states. This method allowed the researchers to identify gaps between the recommended interview guidance and actual practice with alternate measures. Through content analyses of the police interview transcripts, researchers discerned the proportions of open-ended questions, leading questions, and non-verbal aids used in practice. One finding was that recommendations for rapport building using open-ended questioning were not adhered to by a majority of the police interviewers. Thus a training need emerged. Likewise, in Study 10, the labelling of recurrent abusive incidents by the same offender was specifically analysed in police interviews of 23 complainants. When responding to questions about recurring abuse incidents over a span of time, confusion can arise when police, lawyers and child witnesses use different terminology and labels to refer to the same and similar types of abusive acts on different occasion. Thus, sensitivity to terminology and labels that are developmentally appropriate for and used by children can be critical in eliciting accurate evidence throughout the criminal justice processes from the initial police report to cross-examination. More effective and useful labelling of each abuse incident will assist police in eliciting more reliable and credible evidence from complainants. This analysis highlighted some limitations in the practice, in terms of the source of the labels used and their consistency across interviews of the same complainant. A beneficial outcome of this evaluation method is the potential to guide the future training focus and professional development of police interviewers on rapport building and on labelling of recurrent abusive events to close the observed gaps between evidence-based recommendations and practice.

**Qualitative Study 4: Prosecution case file review.** To further evaluate the impact of the witness procedural reforms in Australian jurisdictions, the effectiveness of the reforms for complainants of child sexual abuse was examined by assessing how the measures were considered during the prosecution phase. This was accomplished by means of a manual review of prosecutors' files in a sample of 60 most recent child sexual abuse cases lodged after 2010 in NSW, Victoria, and WA. A coding protocol was developed by the project researchers to analyse these considerations in light of case characteristics. The coding generated quantifiable descriptors to compare the frequencies and proportions of the uses of special measures such as CCTV, cross-examination, or assistance by an intermediary. Comparisons were also conducted of contemporary versus historical claims and institutional versus non-institutional claims.

These quantitative analyses were supplemented by further in-depth qualitative methods using thematic analysis. The analysis classified text excerpts from the prosecution file entries, for all comments recorded that showed explicit considerations surrounding the use of the special measures. The purpose of the systematic thematic analysis was to identify the reasoning and motivation for the use or non-use of eligible alternate measures. Examples of prominent themes that emerged were the complainant's needs, legislative compliance, and logistics pertinent to the special measures. Content analysis coding permitted the frequencies of each theme to be analysed by complainant type, age, and case type. These results of the content analysis provided indirect measures of the importance of each theme to the legal practitioners in the course of litigating these claims. The results shed light on the complainants' preferred methods for giving evidence and tensions between the prosecution and the complainant's caregivers. In summary, the file review method using a coding protocol and systematic thematic analysis provided unique empirical evidence that will be useful for policy reform evaluation.

#### **Qualitative Study 6: Analysis of the Minutes of the NSW Sexual Assault Review Committee.**

Broader and wider perceptions of the use of alternate measures for complainants of sexual abuse held by various agencies and stakeholders were explored in Study 6 by examining archival records of the NSW Sexual Assault Review Committee (SARC), founded in 1993. This Committee is comprised of representatives from various government and non-government agencies in the justice, health, and community sectors who deal with sexual assault claims. The committee has met quarterly and regularly discussed NSW legislative reforms on evidential procedures in child sexual abuse cases. The minutes of all SARC meetings held in the period 1993 to 2014 were reviewed and content pertaining to alternate measures was analysed using an inductive qualitative method.

This desk review revealed multiple themed categories documenting various technical, administrative and practical logistical barriers encountered in implementing alternate measures. By analysing the minutes across the period spanning 20 years, chronological perspectives and insights were gained and staff training needs were highlighted. The findings provided a richer context on the progression of the uses of alternate measures in practice in a key Australian jurisdiction, compared to other studies using data from sources within the justice sector.

#### **Qualitative Studies 5, 9-14 and 17: Analyses of trial transcripts.**

Trial transcripts provide invaluable objective information on how the legislative reforms are implemented on the use of alternate measures for complainants of child sexual abuse. This method of trial transcript analysis contrasts with and supplements the subjective nature of interview responses. Although trial transcripts are a repository of objective information about a targeted practice, these data are typically difficult to access due to the sensitive nature of child sexual assault trials, the closure of many of these court proceedings to the public to protect the confidentiality and anonymity of the child complainants, and the costs of transcription.

The Royal Commission facilitated research access to a sample of 156 trial transcripts from the three target jurisdictions. Using these data, Study 5 evaluated which alternate measures were used, their prevalence and identified challenges in the nature of their use. Utilising a coding scheme, the resulting analyses revealed the proportion of complainants for whom specific alternate measures were used, by age group and jurisdiction. Uses of all available alternate measures were analysed in this manner, including instances of the removal of judges' and lawyers' gowns. Challenges and problems arising when using alternate measures were specified through these analyses. For example, the nature and frequencies of technological issues encountered in recording, editing, and playing of pre-recorded interviews in lieu of in-person evidence in chief by complainants were analysed by jurisdiction. Similarly, common problems arising with the support persons were identified and summarised.

A series of additional studies about alternate measures were conducted based on the trial transcripts. For example, Study 9 examined in-court discussions about issues pertaining to evidence in the form of pre-recorded police interviews, based on a sample of 96 trial transcripts. In these analyses, open coding was used<sup>27</sup> to capture the content of the discussions line by line. Then, common topics were categorised, and the discussion content was coded by category. The results illuminated facets of the police interview structure and the procedure, as well as legal and technical problems in some interviews.

Using a similar trial script analysis method, judges' directions to child complainants were analysed in a sample of 52 randomly selected trial transcripts from the three nominated jurisdictions. The researchers coded 11 distinct categories of judicial instructions. The major topics were ground rule instructions, the scope and length of the directions on the ground rules, and question formats, truth-lie competency, courtroom questioning, non-supported

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<sup>27</sup> Anselm Strauss and Juliet Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage Publications, 2<sup>nd</sup> ed, 1998).

assumptions about victim memory and behaviours, and judicial interventions during the trials. For instance, ground rule instructions at times included guidance on the “*rule of don’t know*” such as “I might ask a question and you don’t know the answer. Just say “I don’t know”.

A significant evidentiary concern in the justice sector is the use of traditional adversarial cross-examination strategies and tactics used by criminal defence lawyers. Prior research showed these strategies were rated as unfair and subsequently detrimental to the quality of the evidence elicited from complainants of child sexual abuse.<sup>28</sup> By applying a coding scheme developed in previous studies,<sup>29</sup> each line of cross-examination in the trial transcripts was coded and analysed in Study 15. The strategies and tactics used challenged the reliability of the complainant’s memory or the plausibility of the reported offence where the case facts included delayed reporting or the absence of resistance by a complainant at the time of offence. Despite empirical research showing that the assumptions implicit in the lawyers’ tactics are not evidence-based, the rates of the deleterious strategy use in the study sample ranged mostly above 90%, across jurisdictions, encompassing both children and adolescents.. A strength of this research method is the objective evidence it yielded of actual courtroom practices.

A related and no less significant issue is the emphasis at trial on inconsistencies in the evidence elicited from complainants of child sexual abuse. This topic is central to many cross-examinations. A thorough and extensive review of memory research and developmental psychology demonstrated that minor inconsistencies are features of all human memory and rarely negate the reliability of the gist of reported abusive events.<sup>30</sup> Drawing on this research evidence, Study 16 analysed details of the types of inconsistencies raised in cross-examining complainants of child sexual abuse in the three target jurisdictions. The categories included the content of common inconsistencies such as reports of when the abuse occurred, as well as

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<sup>28</sup> Mark Brennan and Roslin E Brennan, ‘Strange Language: Child Victims Under Cross Examination’ (Riverina Murray Institute of Higher Education, 3<sup>rd</sup> ed, 1988); Emma Davies, Emily Henderson and Fred W Seymour, ‘In Reply to: The Interests of Justice? The Cross-Examination of Child Complainants of Sexual Abuse in Criminal Proceedings’ (1997) 4(2) *Psychiatry, Psychology and Law* 217; Rachel Zajac, Sarah O’Neill and Harlene Hayne, ‘Disorder in the Courtroom? Child Witnesses Under Cross-Examination’ (2012) 32(3) *Developmental Review* 181.

<sup>29</sup> Sarah Zydervelt et al, ‘Lawyers’ Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?’ (2016) 57(3) *British Journal of Criminology* 551.

<sup>30</sup> Jane Goodman-Delahunty, Mark Nolan and Evianne van Gijn, *Empirical Guidance on the Effects of Child Sexual Abuse on Memory and Complainants’ Evidence* (Report for the Royal Commission Into Institutional Responses to Child Sexual Abuse, July 2017); Ronald Fisher, Neil Brewer and Gregory Mitchell, ‘The Relationship Between Consistency and Accuracy of Eyewitness Testimony: Legal Versus Cognitive Explanations’ in Ray Bull, Tim Valentine and Tom Williamson (eds), *Handbook of Psychology of Investigative Interviewing: Current Developments and Future Directions* (Wiley-Blackwell, 2009) 121; Carolyn H Jones and Martine B Powell, ‘The Effect of Event Context on Children’s Recall of Non-Experienced Events Across Multiple Interviews’ (2005) 10(1) *Legal and Criminological Psychology* 83.

sources of the inconsistencies. Based on these qualitative features, quantitative statistical analyses were conducted. The analyses included Chi-squared tests on the frequency with which these issues were raised with complainants in different age groups as well as analysis of variance and t-tests on the mean frequency of strategies and tactics used in these groups. This study comprises an exemplar of multiple methods, integrating qualitative and quantitative analyses to evaluate common but controversial practices in the criminal justice process.

### **Qualitative Study 7: Video analysis of pre-recorded police interviews and CCTV cross-examinations.**

A number of special measures for complainants of child sexual abuse entail the presentation to juries of remote evidence presented visually in the form of video recordings of police interviews and CCTV evidence. The quality of the recordings and CCTV video displays has been a topic of concern and a potentially detrimental element in the adoption of these reforms.<sup>31</sup> In Study 7 of the research evaluation project, a total of 102 electronic pre-recorded police interview videotapes and CCTV cross-examinations were systematically rated by trained coders. The resulting analyses revealed, for instance, that the audio and image resolution quality was poor or substandard in 17% of the cases. These results indicated that additional resources and effort should be focused on resolving this issue to improve the use of alternate measures for complainants of child sexual abuse. Additional coding was conducted of non-verbal features of the speakers (e.g., emotional expressions, eye contact, whether the speaker was mostly silent or actively interacted). A strength of this research method is the detailed objective information it provided to guide the allocation of further resources and policy development to advance the use of alternate measures in court by standardising the protocols for video recordings and remote CCTV transmission.

### **Quantitative Study 2: A survey of criminal justice professionals' views and perceptions of alternate measures.**

As a means of evaluating how a system is functioning, quantitative methods such as surveys of the practice professionals most familiar with the system can increase the robustness of the evaluation by canvassing the views and perspectives of a larger number of participants.

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<sup>31</sup> Kimberlee S Burrows and Martine B Powell, 'Prosecutors' Perspectives on Using Recorded Child Witness Interviews About Abuse as Evidence-in-Chief' (2014) 47(3) *Australian & New Zealand Journal of Criminology* 374.

Compared to the in-depth and detailed subjective data gathered in interviews, an online survey described in Study 2, compared the uses of alternate measures implemented in three target jurisdictions. A total of 335 criminal justice professionals were recruited in five distinct groups to participate in the survey: judges, prosecutors, defence lawyers, police officers, and witness support staff. Results showed that their experiences with and training for child sexual abuse cases ranged broadly.

Statistical analyses were conducted on participants' ratings of the reasons for non-use of alternate measures (e.g., logistics, credibility concerns) as well as ratings of the perceived impact of expert witness testimony, and the professionals' views on best procedures for complainants of child sexual abuse. Collectively, these ratings provided insight into current practice. Qualitative analysis conducted on responses to open-ended questions using the software NVivo were useful in grouping opinions on expert witness testimony and suggestions for professional training on child sexual abuse. By including open-ended questions in the online survey, qualitative analysis complemented the statistical outcomes achieved.

The survey method delivers a more generalised understanding of the views and practice perceptions from a larger number of professionals than can be obtained from interviews or focus groups. The survey results can also be compared to the interview results. These two methodologies are distinct in the depth and breadth of the responses obtained regarding key issues. A strength of the survey method is that a more comprehensive perspective is derived of legal practices from a larger number of professionals, permitting new insights in evaluating the implementation of the alternate measures. A critical methodological point in survey administration is the nature of the sampling method. To increase the generalisability of the findings, random sampling or stratified sampling is required, so that potentially confounding variables (e.g., participant gender or professional role) are numerically balanced. A rigorous sampling method increases the representativeness of the results and minimises errors in the inferential statistics.<sup>32</sup> Measures of participants' views and perceptions are typically validated to ensure rigorous reliability and validity of the survey outcomes.<sup>33</sup> In study 2, convenience sampling rather than random sampling was feasible to engage practising criminal justice professionals with a heavy work load.

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<sup>32</sup>Carl-Erik Särndal, Bengt Swensson and Jan Wretman, *Model Assisted Survey Sampling* (Springer, 2003).

<sup>33</sup>Holli A DeVon et al, 'A Psychometric Toolbox for Testing Validity and Reliability' (2007) 39(2) *Journal of Nursing Scholarship* 155.

**Quantitative Study 3: An online experiment on the factors influencing the fairness and appropriateness of cross-examination of complainants.**

One of the most powerful empirical and scientific methods, an experimental design, was applied in Study 3. This online experiment involved the same 335 justice practitioners who participated in Study 2 to explore factors that influence perceptions of the quality of cross-examination of a complainant. A mixed model was used for this study. Specifically, each participant read two vignettes, in which three legal factors of interest were systematically varied as between-subject variables. Participants were randomly assigned to one of 8 different vignette conditions, in a 2 (victim aged 10 vs 16 years: contemporary vs. historical) x 2 (questioning type: appropriate vs. inappropriate) x 2 (judicial intervention vs. no intervention) design. The complainant's gender (male vs. female) and the two cross-examination vignettes were counter-balanced within each condition. Accordingly, the first and the second vignettes presented to each participant differed on all varied factors, plus complainant gender. For instance, if a participant first read a vignette featuring a female complainant who alleged a contemporary/non-penetrative physical contact offence, was appropriately questioned and with judicial intervention, then the second vignette would feature a male historical claim of attempted penile-oral penetration, inappropriately questioning without any judicial intervention. The offence of non-penetrative sexual abuse occurred either at school or at church..

Analyses of the experimental data yielded significant effects of victim age on the professionals' perceptions of the simulated CCTV cross-examination in terms of quality, fairness, and impact on the evidence reliability and credibility. Interestingly, the question type impacted only the perceived quality and fairness of the cross-examination of the complainant, whereas the presence or absence of judicial intervention influenced only the perceived reliability and credibility of the complainant. Specifically, age-inappropriate questioning by the defence lawyer in the simulated CCTV cross-examination was rated significantly more unfair and aggressive, compared to age-appropriate questioning. Likewise, when the judge did not intervene in the questioning by the defence lawyer, the professionals perceived the complainant as significantly less reliable and credible.

In contrast with surveys and qualitative studies, experimental methods are more powerful research tools because they permit causal inferences, and identify cause and effect in the relationships between variables. By manipulating factors in controlled experimental conditions,

confounding features can be isolated and controlled through the random assignment of the participants to these conditions.<sup>34</sup> Through causal inferences, in evaluating the use of alternate measures for complainants of child sexual abuse, the experimental method employed in Study 3 uncovered the importance of considering the age of a complainant, the appropriateness of the question form, and judicial interventions during witness examinations. The strength of the experimental findings of this study was derived from the scientific method applied in an online 'laboratory'.

## Discussion

To efficiently facilitate evidence-based practice, the evaluation of field practice requires rigorous and scientific methods. In the next part of the article, the strengths and contributions of the multi-study evaluation methods in the Royal Commission project are discussed in turn, followed by future research directions flowing from the review of this research.

Firstly, the research methods employed in the foregoing Royal Commission evaluation project may improve legal practice with complainants of child sexual abuse. The evaluation uncovered significant challenges and issues in current practice. The research also generated substantial recommendations for improvements in the ways in which alternate measures are implemented in Australian jurisdictions. In particular, improvements are needed to the quality of in court questioning of complainants of child sexual abuse.<sup>35</sup>

Secondly, the integration of various methodologies in the project advanced the field of law reform evaluation research. Four distinct methodological categories applied were (a) stakeholder surveys and interviews, (b) retrospective analysis of archival documents, (c) comparisons with recommendations arising from prior social science and psychology research, and (d) experimental studies. This extensive methodological variety served to enhance the comprehensiveness of the evaluation of the uses of special measures and court practices in the field. Multiple methods provided a more efficient assessment of the complexity and intricacy of child sexual abuse cases and child witness characteristics.<sup>36</sup> Any limitations of one

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<sup>34</sup> Lee J Cronbach, 'The Two Disciplines of Scientific Psychology' (1957) 12(11) *American Psychologist* 671.

<sup>35</sup> Royal Commission, above n. 20, Section 30.5.

<sup>36</sup> Samantha A Andrews, Michael E Lamb and Thomas D Lyon, 'Question Types, Responsiveness and Self-Contradictions When Prosecutors and Defence Attorneys Question Alleged Victims of Child Sexual Abuse' (2015) 29(2) *Applied Cognitive Psychology* 253; Burrows and Powell, above n 30; Anne Cossins, Jane Goodman-Delahunty and Kate O'Brien, 'Uncertainty and Misconceptions About Child Sexual Abuse: Implications for the Criminal Justice System' (2009) 16(3) *Psychiatry, Psychology and Law* 435; Goodman-



methodology were mitigated by and integrated with the strengths of other methodologies through the commonalities they shared in the single research project.

Thirdly, methodological strengths emerged in the course of the research evaluation project. For instance in Study 1, a semi-structured interview method was used along with an inductive bottom-up approach. While these two approaches are often used in research studies, combining them in a single interview design yielded a wealth of findings. In particular, various practice characteristics were reported for the shared common topics and areas specified in the semi-structured questions, so the responses could be contrasted and discussed by professional group and by jurisdiction. Furthermore, with the inductive, bottom-up approach, the justice professionals' suggestions and thoughts in response to the open-ended questions expanded the findings beyond the topics that had been outlined by the researchers. For instance, they provided suggestions to improve trial scheduling and case management to accelerate the effects of alternate measures for complainants of child sexual abuse.

Furthermore, the research design was strengthened by supplementing the interview data in Study 1 with survey responses in Study 2. In this way, confidence in and the generalisability of the interpretation of the research results was strengthened. In addition, the qualitative analyses of the responses to the open-ended questions in the quantitative survey data provided further evidence of professional development needs and suggestions for practice improvement. Another example where qualitative and quantitative methods were combined in a single study was the methodology of Study 16. Regarding the challenges posed by inconsistencies in the child complainants' evidence of sexual abuse, these methods enabled the identification of different types of inconsistencies in central versus peripheral information and also categorised the chronological source of testimonial inconsistencies. Again, statistical analyses of the inconsistency categories by complainant age group and by jurisdiction provided invaluable evidence to evaluate practice.

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Delahunty, Cossins and O'Brien, above n 5; Jane Goodman-Delahunty, Anne Cossins and Kate O'Brien, 'A Comparison of Expert Evidence and Judicial Directions to Counter Misconceptions in Child Sexual Abuse Trials' (2011) 44(2) *Australian & New Zealand Journal of Criminology* 196; J Zoe Kleffuss, Jodi A Quas and Thomas D Lyon, 'Attorneys' Questions and Children's Productivity in Child Sexual Abuse Criminal Trials' (2014) 28(5) *Applied Cognitive Psychology* 780; Tara Nay (ed), *True and False Allegations of Child Sexual Abuse: Assessment & Case Management* (Routledge, 2013); Stacia N Stolzenberg and Thomas D Lyon, 'Evidence Summarized in Attorneys' Closing Arguments Predicts Acquittals in Criminal Trials of Child Sexual Abuse' (2014) 19(2) *Child Maltreatment* 119; Zsófia A Szojka et al, 'Challenging the Credibility of Alleged Victims of Child Sexual Abuse in Scottish Courts' (2017) 23(2) *Psychology, Public Policy and Law* 200; Rachel Zajac et al, 'Misconceptions About Childhood Sexual Abuse and Child Witnesses: Implications for Psychological Experts in the Courtroom' (2013) 21(5) *Memory* 608.

Finally, another strength of the research project was inclusion of an experimental design, an innovative methodological initiative. The factors that influence the fairness and quality of CCTV cross-examination were examined by means of an online experiment, involving five groups of criminal justice professionals. Experimental designs allow causal inferences, thus the most powerful evidence for practice is available through this method.

### *Limitations and future directions*

Although the Royal Commission project with 17 studies showcased a variety of methods for evidence-based practice in law and psychology, there were limitations offer future research opportunities in this field. Sampling methods in this area of research pose fundamental challenges. Not surprisingly, the sampling in the 17 studies did not include random sampling or other methodologies that guarantee more representativeness of the samples. The non-random and convenience samples achieved among the interviewed professionals, survey and experimental participants, were more limited than the random sample of cases included in the file review, and of the trials from which the trial transcripts were obtained, along with videotapes of pre-recorded police interviews and CCTV cross-examinations. However, this challenge is ubiquitous and an inherent feature of this type of research. Similar issues surfaced in a research project conducted by the UK Crown Prosecution Service (CPS) involving a review of 55 applications of special measures at the prosecution stage, yielding 10 recommendations for CPS.<sup>37</sup> These data were gathered notwithstanding the absence of track indicators or monitoring flags for special measures within the CPS electronic systems.

Also, further methods to be explored beyond those reviewed in this paper may include the involvement of specialists and experts in research projects to evaluate evidence-based practice. For instance, a guide for British psychiatrists discussed the importance of special measures and fairness issues in procedures for children and vulnerable witnesses with psychiatric symptoms.<sup>38</sup> The involvement of expert witnesses such as psychiatrists was recommended, along with ground rules hearings and liberal adjustments to court schedules to achieve more fair procedures and higher quality evidence. Focus group and survey methodologies are well-suited to canvass experts' suggestions and recommendations about the practices of interest.

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<sup>37</sup> Corrine Charles, *Special Measures for Vulnerable and Intimidated Witnesses: Research Exploring the Decisions and Actions Taken by Prosecutors in a Sample of CPS Case Files* (Report, Crown Prosecution Service (United Kingdom), April 2012).

<sup>38</sup> Penny Cooper and Janet Grace, 'Vulnerable Patients Going to Court: A Psychiatrist's Guide to Special Measures' (2016) 40(4) *BJPsych Bulletin* 220.

While a police service guide on working with vulnerable and intimidated witnesses has been available in the UK since 2011, the current evaluation provided guidance to police and other criminal justice sector professionals, with a focus on Australian courts and jurisdictions.<sup>39</sup>

Another important source in evaluating the effectiveness of alternate measures for complainants of child sexual abuse is the complainants themselves and their caregivers. Their individual perceptions and views can be quantitatively analysed whereas their suggestions can be assessed by means of open-ended questions followed by qualitative analyses, similar to Study 2 above. Progress surveys and exit questionnaires built into the justice process will minimise the burden on complainants and keep the evaluations current. A substantial body of literature has established the significance of this research method for justice professionals, legal practitioners, policy-makers and court administrators.<sup>40</sup>

### ***Conclusion***

Justice in cases of child sexual abuse is contingent upon eliciting evidence from the complainant. Yet, the psychological challenges and distress experienced by complainants during their involvement in the criminal justice process often compromise their evidence. To mitigate these effects, in Australia, various special and alternate measures for complainants of child sexual abuse have been implemented. The multiple research methods outlined in this paper demonstrate how these practices can be evaluated with scientific rigor and empirical sophistication. Together, the findings from the 17 studies indicate that alternative measures are supported by criminal justice sector professionals and are routinely used with child complainants. Nonetheless, five key areas were identified for improvement. These include the need to: (a) overcome technological obstacles; (b) align police interviews with evidence-based practice guidance; (c) improve the quality of in court questioning; (d) increase uses of alternate measures with adults; and (e) reduce delays in the prosecution process.

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<sup>39</sup> Ministry of Justice (United Kingdom), 'Vulnerable and Intimidated Witnesses: A Police Service Guide' (Report, March 2011).

<sup>40</sup> Phoebe Bowden, Terese Henning and David Plater, 'Balancing Fairness to Victims, Society and Defendants in the Cross-Examination of Vulnerable Witnesses: An Impossible Triangulation?' (2014) 37(3) *Melbourne University Law Review* 539; Joyce Plotnikoff and Richard Woolfson, *Evaluation of Young Witness Support: Examining the Impact of Witnesses and the Criminal Justice System* (Home Office (United Kingdom), 2007); Elaine Wedlock and Jacki Tapley, *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment* (Victims' Commissioner for England and Wales, March 2016); Emmy Whitehead, 'Witness Satisfaction: Findings from the Witness Satisfaction Survey 2000' (Home Office Research Study 230, Home Office (United Kingdom), October 2001).