

Chapter 6

The Application of the Uniform Evidence Law to Delay in Child Sexual Assault Trials

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This chapter considers a topic that has not received much academic attention, that is, how the Uniform Evidence Law (UEL) operates in relation to one of the most common criminal offences prosecuted in the higher courts – child sexual assault (CSA).¹ There are several key features that characterise a child sex offence:²

1. *Word against word evidence*: usually no eyewitnesses means that the complainant is the prosecution's chief witness.
2. *Complainant's young age*: for non-historical cases, vulnerability due to age may be compounded if the complainant suffers from psychological trauma,³ even though special measures exist for children giving evidence.⁴ Children are susceptible to confusion from poor police and cross-examination-style questions, that may induce reporting errors.⁵

1 See, for example, J Fitzgerald, 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System' (2006) 92 *Crime and Justice Bulletin* 1, New South Wales Bureau of Crime Statistics and Research; A Cossins, 'The Behaviour of Persistent Sex Offenders: Implications for the Prosecution of Child Sex Offences in Joint Trials' (2011) 35 *Melbourne University Law Review* 821.

2 As detailed in A Cossins, *Alternative Models for Prosecuting Child Sex Offences in Australia*, (National Child Sexual Assault Reform Committee, UNSW, 2010), 60-64.

3 Adverse childhood experiences, such as CSA, increase a child's risk of depression, anxiety and PTSD: E Paolucci, M Genuis and C Violati, 'A Meta-Analysis of the Published Research on the Effects of Child Sexual Abuse' (2001) 17 *Journal of Psychology* 135; DM Fergusson, GFH McLeod, LJ Horwood, 'Childhood Sexual Abuse and Adult Developmental Outcomes: Findings from a 30-year Longitudinal Study in New Zealand' (2013) 37 *Child Abuse & Neglect* 664; R Maniglio, 'Child Sexual Abuse in the Etiology of Anxiety Disorders: A Systematic Review of Reviews' (2013) 14 *Trauma, Violence & Abuse* 96.

4 In many jurisdictions a child's video-taped forensic interview with police is played to the jury instead of the child giving live examination-in-chief. See, for example, *Criminal Procedure Act 1986* (NSW) s 306Q; *Criminal Procedure Act 2009* (Vic) ss 367 and 368; see M Powell, N Westera, J Goodman-Delahunty and S Pichler, 'An Evaluation of How Evidence Is Elicited from Complainants of Child Sexual Abuse' (Royal Commission into Institutional Responses to Child Sexual Abuse, 2016). In some jurisdictions, the child's cross-examination can also be pre-recorded; see, for example, *Criminal Procedure Act 2009* (Vic) ss 370, 381.

5 R Zajac and H Hayne, 'I Don't Think That's What Really Happened: The Effect of Cross-Examination on the Accuracy of Children's Reports' (2003) 9 *Journal of Experimental Psychology* 187; The British Psychological Society (BPS) Research Board, *Guidelines from Memory and*

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