

# *Professionals' Perceptions of Electronically Recorded Interviews with Vulnerable Witnesses†*

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## *Abstract*

This study presents a qualitative evaluation of the Video and Audio Taped Evidence (VATE) process involving vulnerable witnesses, introduced by Victoria Police in 1996. Specifically, this study presents an analysis of individual in-depth interviews with a diverse group of 25 key Victorian stakeholders (police officers, prosecutors, solicitors, defence lawyers, and members of the judiciary). The aim of the interviews was to provide an overview of the stakeholders' perceptions of the VATE system, with particular focus on the usefulness of VATE interviews viewed or used in the stakeholders' practice. The findings revealed unanimous support for electronic recording of witness statements. However, the stakeholders also perceived that the effectiveness of the system was impeded by several factors. These include: (a) frequent absence within the interviews of a coherent account and detail needed to prove the various offences, (b) inability to scrutinise questions asked *prior* to the VATE interview, (c) lack of feedback regarding how well the VATE system is working, and (d) the recording medium itself which produced statements of poor sound and visual quality. Three broad recommendations arising from the interviews are discussed.

During 1996, a state-wide system of pre-trial video and audio recording of evidence involving vulnerable witnesses was implemented by Victoria Police. The system, referred to as VATE (Video and Audio Taping of Evidence) was introduced for interviews about sexual and other indictable offences<sup>1</sup> (*Evidence Act* 1958 (Vic) s37B[1]), where the interviewee is a child less than 18 years of age or an adult with a cognitive impairment. Unlike the previous system of taking written statements, which is still in place with adult witnesses, prescribed persons are instructed to record these interviews on videotape soon after the disclosure or report of abuse is made (Corns 2001). Prescribed persons are police members from the Sexual Offence and Child Abuse Units who have successfully completed a training course administered by Victoria Police. The main aim of this legislative provision was to increase the access of vulnerable witnesses to the criminal justice system, as the provision permits the videotaped statement to be tendered as all or part of the witness's evidence-in-chief,

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<sup>1</sup> Indictable offence involves assault on, or injury or a threat of injury to a person (*Evidence Act*, s.37B[1]). For ease of presentation, the term 'abuse' is used throughout this report to refer to sexual and other indictable offences, including physical abuse and neglect.

subject to certain pre-conditions (*Evidence Act* (Vic) s37B(1) and Evidence (Recorded Evidence) Regulations 1994).

Since the implementation of the VATE interview procedure there has been no independent review of the process. The absence of a review was a concern highlighted in the Victorian Law Reform Commission (2004) enquiry into sexual offences, which noted (anecdotally) that very few video interviews conducted by members of Victoria Police were being used in evidence-in-chief with quality issues cited as the reason for this reluctance. Concerns were also expressed about low reporting rates and the high attrition rate of reported cases of alleged abuse (Victoria Law Reform Commission 2004). The Victoria Law Reform Commission suggested that a robust examination of the police interviewing and evidence-gathering process with vulnerable witnesses could potentially assist in ensuring that the Victorian criminal justice system adequately responds to the needs of these witnesses.

The current study presents the findings of one evaluation of the VATE process undertaken in response to the Victoria Law Reform Commission recommendation. Specifically, it presents an analysis of individual in-depth interviews with a diverse group of 25 key Victorian stakeholders (i.e., police officers, prosecutors, solicitors, defence lawyers, and members of the judiciary) who have particular expertise in child abuse offences and who view VATE interviews on a regular basis for their work. The purpose of this study was to provide an overview of the stakeholders' perceptions about the VATE system, with particular focus on the usefulness of the VATE interviews that the stakeholders had previously viewed in their practice. Overall, we wanted to determine how well the VATE interview procedure was accommodating the needs of the stakeholders and complainants, and how (if at all) the interview process could be improved.

Conducting individual in-depth interviews was deemed most appropriate for this study because we wanted to gain a thorough understanding of the *reasons* underlying stakeholders' concerns and to explore strategies that could be adopted to improve the quality of VATE statements. The Victoria Law Reform Commission (2004) had already indicated that there was widespread discontent among stakeholders regarding the quality of VATE interviews, thus a broad survey of professionals' attitudes was not considered informative. We commence the presentation of the findings with an overview of the general impressions held by the various professional groups. We then describe the key themes that arose during the interviews regarding perceived limitations in the effectiveness of the VATE procedures and the stakeholders' consideration of how these limitations could be addressed in the future. Quotations are provided to illustrate for the reader the various perceptions.

## Method

### *Participants*

A diverse sample of key stakeholders was nominated and recruited with the assistance of staff within the Sexual Offences and Child Abuse Coordination Office (SOCACO) of Victoria Police. The criteria for selection of stakeholders were that they were regularly exposed to VATE statements and that multiple representatives were obtained from each sector of the legal system.

Nominated stakeholders were individually invited to partake (in writing) by managers of the SOCACO. Of the 30 professionals invited, 5 (all non-police professionals) declined to

be involved due to time restraints. Individuals who declined involvement often recommended other colleagues who they perceived would be appropriate. The final sample size was determined by data saturation, that is, when no new information was being obtained about the topics of inquiry (Sim & Wright 2000). The sample included a variety of police stakeholders (managerial officers, detectives, police prosecutors, members of Sex Offence and Child Abuse units), as well as non-police stakeholders (prosecutors, defence barristers, solicitors, magistrates and judges). All of the stakeholders had extensive experience in their respective positions. The police officers ( $N = 14$  in total) had been employed by Victoria Police for an average of 22 years (range = 16 to 33 years) and had extensive experience (in either a managerial or operational role) in the field of sexual assault investigation. Similarly, the legal professionals had extensive legal expertise in the area of child abuse offences and had worked in the area for an average of 17.5 years (range = 8.5 to 29.0 years). To protect the anonymity of the stakeholders, no further demographics are provided. Further, only broad descriptors were used when providing quotations and any identifying information was removed from these. The quotations were also corrected (where appropriate) for minor wording or grammatical errors.

### *Procedure*

The interviews ranged in duration from 30 to 76 minutes ( $M = 51$  minutes), and were all conducted by the second author (an expert in qualitative interviewing) at the stakeholders' place of occupation. A semi-structured interview schedule was used to generate discussion about a range of themes deemed by the researchers and managers of the Sexual Offence and Child Abuse Coordination Office (Victoria Police) to be important lines of inquiry in evaluating the effectiveness of VATE procedures. Importantly, each interview commenced with a broad open-ended question inviting each professional to reflect generally on their overall impressions of the VATE system and how it is functioning within the criminal justice system. Subsequent lines of inquiry included: (i) current and ideal use of VATE tapes within the criminal justice system, (ii) the standard of questioning in VATE interviews, (iii) factors which impact the usefulness of VATE in improving the access of vulnerable complainants to the criminal justice system (e.g., legislative and police procedural issues), and (iv) recommendations for change.

A number of steps were taken to ensure that the participants had the autonomy to direct the discussion toward experiences and concerns that were personally relevant, and to attribute their own meaning to these experiences. First, the themes outlined in the interview schedule were broad in nature. Second, a recursive or conversational style of interviewing was used, allowing the researcher the flexibility to pursue any lines of inquiry raised by the participants that were not outlined in the interview schedule. Third, the researcher was a largely passive participant in the conversation at all times, asking only broad open-ended questions to encourage further elaboration and to seek clarification. Finally, the researcher was allowed some discretion in the order and manner in which subsequent issues were raised, to facilitate smooth transition of ideas.

### *Data Management and Analysis*

All of the interviews were audio taped, transcribed verbatim and double-checked for accuracy. The interview data was organised, coded and analysed using principles of grounded theory (Glaser & Strauss 1967). That is, the themes were inductively derived and grounded within the dataset. Integral to the grounded theory approach, data collection and analysis occurred simultaneously. Soon after each interview was conducted, the interview was transcribed and coded for key themes. Further, the coding process was collaborative in

nature; the two researchers (authors) independently read all of the interview transcripts soon after and then met to identify common themes, to develop a coding protocol, and to discuss new areas of interest which could be followed up in subsequent interviews. Such discussions aided in refining the coding protocol to ensure that it adequately captured the content of the interviews.

## Results

All stakeholders spoke freely about the current VATE system and its limitations, and they recognised that the elicitation of evidence from vulnerable complainants about sexual matters is a tremendously challenging task. Their overall impression was that the system of electronically recording contemporaneous accounts was a much better way of gathering and presenting the evidence of vulnerable complainants compared to taking written statements and that VATE interviews played a crucial role in the legal process:

*Sex cases involving kids are the most delicate and difficult cases. The law that applies to them is very complex, so it's critical we start the whole process right, with a sound VATE interview.*  
(Crown Prosecutor)

A wide range of benefits were perceived to be associated with the introduction of videotaped evidence of vulnerable witnesses. These include: (a) greater number of guilty pleas from suspects due to the more vivid and compelling nature of these interviews, (b) improvement in the quality of training (due to increased scrutiny of the interview process), (c) reduction in the need for vulnerable complainants to repeat their story to multiple professionals or to give live examination-in-chief (this offers greater access of vulnerable witnesses to the criminal justice system), (d) better 'safeguarding' of evidence over long delays and (e) advantages associated with legal professionals being able to assess demeanour and language capacity of the complainant prior to the commencement of the trial. While some professionals noted that working with videotaped statements was more tedious because the content was not as clearly structured or organised (in terms of chronology of events) compared to a written statement, the advantages were perceived by all stakeholders to outweigh the disadvantages, particularly for younger (i.e., pre-adolescent) witnesses.

*As an investigator, VATEs can be fairly tiresome because quite often they're not as structured or organised as a written statement. Having to look through the VATE is more tedious than just picking up a piece of paper and going to the spot that you require. Having said that though, there's been times where the victim has described the event on tape in such a way that you would never have represented that on paper. To see, for example, the change in the expression on a person's face; the picture is worth more than words ... I've had some experience with serious matters where the defendant or the defendant's barrister or solicitor has come in and seen the VATE and just turned around and said "We'll be pleading guilty" ... The VATE can be very powerful... particularly if the victim can tell the story in a meaningful way. The value of that far outweighs the tediousness of the format.* (Police officer)

Given the numerous benefits of the VATE process, several stakeholders proposed that it should be extended to a wider range of witnesses and to all sex offence cases. Further, one stakeholder proposed that it should be played in court even when the defendant pleads guilty, to ensure that the sentence determined by the judicial officer is consistent with the nature and impact of the crime.

Most stakeholders spontaneously commented on the low conviction rates for sexual offences in Victoria and recognised that this reflects a wide range of factors, not just the

quality of the VATE interview. Criticisms of the system included lengthy delays between initial complaints and the commencement of trials, a shortage of experienced and competent prosecutors (especially those willing to work the regional circuits), inadequate education of judicial officers, difficulties in adequately preparing witnesses for cross-examination and negative attitudes held by juries regarding sexual abuse cases. However, all stakeholders acknowledged that improvement in the quality of VATE statements is required if there is to be a 'more level playing field' for vulnerable witnesses. Problems in police procedure were an overriding concern.

Collectively, the criticisms regarding the VATE system fell into three major themes. These included: (i) inadequate questioning procedures, (ii) technical limitations of the recording medium, and (iii) the absence of objective data related to the application and effectiveness of VATE statements. For each of these themes, the stakeholders' views regarding the nature of the problem, the perceived reasons underlying the problem and potential solutions for overcoming these problems are discussed in turn.

### *Inadequate Questioning Procedures*

All of the stakeholders reported that the quality of VATE interviews varies substantially, and that an unsatisfactorily high number contain insufficient details to satisfactorily prosecute a charge. While 'insufficient evidence' was attributed to many factors (including limitations in the witness's language and memory abilities), questioning procedures (which directly impact the quality and usefulness of the evidence) was a major concern and was usually raised by stakeholders at the outset of the interviews.

Overall, two major criticisms were made about the questioning procedure. First, stakeholders felt that the questions often impeded a clear and organised narrative account due to insufficient use of open-ended questions and lack of direction (on the part of the interviewer) in the flow of content. VATE statements were sometimes described as being 'disjointed', 'vague', 'meandering', and 'rambling' and stakeholders reported that because of the lack of clarity about which occurrence was being referred to, it was often difficult to identify and distinguish individual incidents of repeated abuse. Poor coherence and structure of the evidence was not only considered detrimental for mounting a defence. It reportedly undermined the effectiveness of the investigation and the establishment of the charge as well.

*The questions in evidence-in-chief have to draw out a narrative from the witness, no matter what their age. That is best done by using open-ended, not closed, questions. Quite often the interviewer will start out with open questions but for some reason they don't quite listen to the answer or they misunderstand it and fall back into asking closed questions. The quality of the evidence decreases once you start getting yes/no answers.... Interviewers need to ask questions that allow the child to tell the story and if the child is not willing to do that for whatever reason, then the interviewer needs to be able to get around that block another way. I sometimes see it done successfully... there are ways. (Member of the judiciary)*

*VATEs are often quite disjointed and there's a lot of content in there which isn't relevant. To identify clear and cogent incidents, you've got to sift through all the transcript which can go over many pages. Sometimes it's almost impossible to piece together whether they (the child witness) are still talking about the same incident. (Defence barrister)*

The second criticism of police questioning relates to the fact that on their own, VATE statements often lack sufficient information to establish a charge (especially sexual penetration) and they do not always adhere to rules of evidence. Use of leading and presumptive questions was noted by stakeholders. Such questions heighten the risk that information elicited from witnesses would be ruled inadmissible, that the credibility of the

evidence would come under attack by defence counsel, or that the VATE tape would need to be edited. Editing of tapes was viewed as undesirable because it was time consuming and often reduced the coherence of the narrative, thus resulting in the prosecutor having to call the complainant to court to supplement the original evidence.

*Some interviewers just don't seem to have in mind what they've got to prove and how they've got to prove it...The VATE statements are more refined than they were, however interviewers still need to concentrate on what the law requires. You can always add to a VATE during evidence-in-chief but it doesn't look good doing so...If you're going to use the VATE, it's best to have the evidence all there at the outset. (Crown Prosecutor)*

*One of the main problems with VATE interviews is that they fail to address the elements of the offence. They cover a whole lot of material that is blatantly irrelevant or inadmissible but fertile ground for cross-examination of the poor complainant. (Member of the Judiciary)*

There were discrepancies among professionals, however, about the degree of specific detail that was needed to establish a charge. Some professionals took the 'more is better' attitude when it came to the elicitation of evidence, but other professionals disagreed.

*I think that a lot of the questioning that is taking place is just not necessary. For example, consider the question "How long was his penis inside you for?" That doesn't mean anything unless there is some other issue as to injury. Why do they need to ask the 'what..', 'where...', 'how long'... all those specific questions? (Defence barrister)*

Given the widespread concern about the nature of some of the questioning observed on VATE statements, it is not surprising that many of the professionals disapproved of the fact that electronic recording was limited to those interviews that potentially constituted witnesses' evidence-in-chief. Indeed, concerns about potential 'coaching' or 'contamination' of witness' evidence prior to electronically recording the witness' responses (during initial 'disclosure' interviews which are not electronically recorded) was raised by stakeholders across all professional groups.

*I look at the VATE tape as a consumer - the person presenting it to a court. And to be honest, we (prosecutors) don't have much knowledge about what goes on behind it. If there is preliminary questioning which is not recorded, this casts doubts about whether the allegation was put into the child's mind during that questioning... If the preliminary questioning is not recorded, it can be quite devastating to the acceptance of the evidence, so that needs to be looked at by Vic Police...It's very important to have the whole process open and transparent. I can understand that they (investigative interviewers) need to do preliminary questioning to establish a rapport with, and make an assessment of, a witness.... But my point is that it should be recorded. It doesn't necessarily have to be shown to the jury; only the relevant parts of it need to be shown ... In that way, the defence concerns would be allayed. (Crown Prosecutor)*

*It (the disclosure interview) is essentially like a record of interview in the criminal jurisdiction... I think it's really important that you know everything that is said between the interviewer and the interviewee, particularly with a child. (Member of the Judiciary)*

Although some officers argued that the content of the initial disclosure interviews was actually recorded in note form, other professionals did not seem reassured by this process (concerns about the quality of notes were expressed). Further, some stakeholders suggested that the 'disclosure' interview was perceived by some members of the Sex Offence and Child Abuse units as 'a dry run' of the VATE interview, which not only increased the risk of contamination, it also decreased the child's willingness to disclose the offence again (in the VATE interview) and heightened the risk that the VATE statement would appear too 'practised' or rehearsed.

On a positive note, all stakeholders expressed the view that better interview quality was achievable and there was unanimous agreement among the stakeholders about what change

was needed. In relation to interview technique, stakeholders emphasised the need for more intensive training and regular monitoring and follow-up. The specialised nature of the interviewing was emphasised.

*I think that the expertise required to do a VATE is severely underestimated and a lot of that rides on the perceived lack of importance of what SOCAU members [members of the Sex Offence and Child Abuse units] do. (Police officer)*

*You can see the frustration building up in people who don't have the experience or the skill to deal with these witnesses. And as the frustration builds up, the interview gets less and less worthwhile. This is a highly specialised job and it requires highly specialised training. (Crown Prosecutor)*

Several suggestions were offered about ways to potentially minimise the financial burden associated with more intensive training. These included: (a) combining training in relation to interviewing witnesses and suspects (there is marked overlap in skills required to interview these diverse groups), (b) make greater use of on-line or distance education teaching technologies in training programs, (c) employing 'rotating' assessors of interviewers rather than relying on internal supervisors who were insufficiently qualified to review interview performance, (d) reducing the pool of qualified VATE interviewers, and (e) engaging more with academics who have expertise in police training and resources to assist with quality control evaluation.

In relation to increasing the likelihood that VATE interviews contain sufficient information to prove a charge, stakeholders emphasised the need for more collaboration. They reported that members of the Sex Offence and Child Abuse units currently received very little feedback from other stakeholders regarding their interview performance because they have limited exposure to court, are often not involved in the investigation, and often do not have direct contact with criminal investigators at the time the VATE interviews are conducted.

*Many SOCAU [Sex Offence and Child Abuse Unit] members that are now coming through don't have a lot of exposure to court. So VATE just becomes a tool that they use on a frequent basis with little understanding of how these interviews fit within the broader evidence at court. They don't have the same experience I did 10 years ago when we had to go to court and have our evidence scrutinised all the time. If you're exposed to the court system and you're exposed to barristers cross-examining you, you know what they're likely to pick on.... If you're not aware of what's going on in court then us little SOCAUs down the end of the food chain just keep going about our business making the same mistakes over and over. (Police officer)*

An increase in court attendance just for the sake of obtaining feedback was not recommended. Rather, a range of professionals (13 stakeholders from across all professional groups) expressed the opinion that prosecutors should be more involved in the interview process, particularly at the early stages of the investigation. The purpose of this interaction was not so much reactive as it was pro-active; that is, helping officers to think in advance of potential avenues to follow in the interview and what precise detail needed to be elicited to support various charges.

*In reality, interviewers need a lawyer who could be there to offer ongoing advice to make sure they get all the elements. The prosecution are in a good situation to assist them in that regard because they are ultimately going to lead these tapes and prosecute these offences. (Police officer)*

*There needs to be much greater liaison in the preparation of matters between the prosecutors and police units. Police can only be trained to a certain degree; they also need to rely on the expertise of others who live and breathe the analysis of evidence 5 days a week. This is consistent with the American model where the DA comes in early in the investigation and*

*analyses what evidence is being gathered and how it is gathered. Here (in Victoria), we separate those powers quite dramatically. It's often many months after the investigation and many weeks after the briefs are prepared before a lawyer in public prosecutions will read the brief. And it's often not until you are in circuit 9, 10, 11, 12 months later before they will view the VATE. (Defence Barrister)*

*Defence lawyers could also be involved but ultimately the OPP is the agency that uses VATES and understands their effectiveness. Every time there's a VATE tape made and a copy given to the OPP, they should be giving feedback and likewise at the conclusion of every trial where the tape was used. I guess people are just too busy – perhaps resources aren't there. Police try to do a good job, but they're limited by their training and by what they're being told. (Prosecutor)*

One stakeholder expressed the view that non-sworn police members (e.g., child psychologists) may be better suited to conducting these interviews, at least those with the most vulnerable witness groups (e.g., very young children, people with a moderate intellectual disability). However, while increased specialisation on the part of investigative interviewers was deemed essential, the majority of stakeholders did not see the need to recruit a different professional group. In the 14 interviews where this issue was raised, 4 professionals expressed the view that good interviewing was a by-product of good training rather than professional background per se, and 9 reported that although specialists with expertise in child development were of potential assistance and their knowledge should be disseminated, it would be inappropriate for professionals other than police members to conduct these interviews on a routine basis.

*From a child welfare perspective it might be beneficial to use psychologists. But my concern is that you'd be moving yet another step away from a prosecution perspective. I don't know how well a child psychologist would grasp the legal concepts involved and the evidence that they need to elicit. (Prosecutor)*

*You've really got to look at the issue from a criminal lawyer's perspective. Why are you interviewing the child? And what is going to be the final product? ...If it was handled by people outside the police force, I'd be a bit sceptical. (Prosecutor)*

### ***Technical Limitations of the Video-Recording Medium***

A second key area of concern among the stakeholders related to technical difficulties associated with the recording medium. For police detectives, a major concern related to the accessibility of the tapes. They complained that the interviews were not often transcribed until *after* the preliminary investigation and that television and video cassette players (which are required to view the statements) are not always readily available.

For legal professionals, concerns related primarily to poor visual and audio clarity of statements which was perceived to disadvantage witnesses by compromising jurors' ability to hear the testimony and see the child's facial expressions and hand gestures. The professionals reported that jurors' decisions were based (at least in part) on perceptions of the child's credibility, which was determined by assessing nonverbal behaviours as well as verbal responses. Inadequacies in the audio quality were attributed to built-in microphones not picking up 'soft' voices and distinguishing background noises such as traffic. They were also attributed to lapel microphones (i.e., those that clip onto the interviewee's clothing) distorting the clarity of the child's dialogue when the child moved. Problems in the picture quality related primarily to the fact that (in an attempt to get both the interviewer and interviewee on camera at the same time) only a distant image of the child was provided on the screen. Overall, these technical difficulties were compounded in the courtroom because of poor positioning of the television screen, poor lighting and small screen size. While some stakeholders talked about the benefits of large down-screens or a bank of television screens



positioned directly in front of the jury, these facilities were clearly not available in all courtrooms where VATEs are played.

*I understand that having the child and the interviewer both in the screen is so that everybody can see that nothing untoward is happening. However what you get is this tiny, weeny picture projected right across the courtroom. There are two screens but the VATE recording only comes up on one screen located at the opposite side of the courtroom to the jury box so that jurors view it as they would a live witness. Great idea, but the problem is that it's too far away. It couldn't be further away. The jury don't get to see it very well and they don't get to hear it very well either. (Member of the Judiciary)*

*Normally with a witness in front of you, you look at their face, their expressions, their body language and you use those three things to assess whether they are telling the truth or not. If you've got a VATE that's taken of a small child from the other side of the room you lose those aspects completely. This clearly disadvantages the witness and the jury's assessment of the witness. (Prosecutor)*

Some lawyers questioned why the VATE monitor could not provide more close-up views of the child during crucial parts of the interview.

### ***Absence of Objective Data Related to the Application and Effectiveness of VATE***

The final key theme to arise from the interviews was inadequate documentation related to the use, incidence and outcome of VATE interviews. Comments relating to this theme were made directly by several professionals:

*A great source of frustration for all of us working in this area is that most of our knowledge on the outcome of cases is anecdotal. We need funding for someone to collect and analyse the statistics on a very basic level. We should have data entry as a matter of course as well as exit interviews with children to find out how things went for them. (Member of the Judiciary)*

*Sometimes we will get a VATE back advising that the brief had not been authorised [to proceed to prosecution]. Often we don't know if it's been shown in court. We don't get that feedback so I really can't say how they're being used. All I can say is that for the number of VATE interviews we do, the number that actually get to court or are played in court are substantially less. If we were to establish a way of accurately recording information about the use of VATE, I'm sure we'd all be very shocked. (Police officer)*

While some police members commented that it was possible to look up the outcome of cases, this was a cumbersome process as locating files required access to several different data bases as well as authorisation to do so.

The lack of documentation surrounding VATE was also evident by the contradictory information given by various professionals regarding the degree to which VATE tapes are available and the degree to which they are accepted by members of the court as evidence-in-chief.

*The defence, obviously for the best interests of their client, are going to try and knock out everything they possibly can... If they can have unscripted evidence-in-chief as in having the complainant in the witness box, it's great for them because they can find more holes. (Police officer)*

*Defence lawyers prefer children to give evidence on the video screen because any prejudice that would flow from seeing someone crying in the witness box or their body language in the witness box would go against the defendant. One tends to empathise more with someone who is there in front of you as opposed to someone on a screen. There's that unreal aspect. (Solicitor)*

Discrepancies in opinion between stakeholders were also noted regarding the degree to which VATEs are actually used within and across different courts.

*I think the biggest barrier to it's (VATEs) intended purpose is when it gets to court... It's still quite an abused process at court in that I don't think it's truly accepted as evidence-in-chief. I think it's just viewed by the defence and the prosecution as just a glimpse into the evidence-in-chief, which is never what it was intended for. It was intended to be evidence-in-chief. (Police officer)*

*I can't recall the last time a VATE interview was shown in court to a jury. For a VATE to go to a jury would be a rarity. (Police officer)*

*By and large VATEs are used and most defence practitioners would say that this is inevitable and right and just part of our system now. (Defence barrister)*

*I haven't heard of a child under 12 (certainly under 10) giving live evidence-in-chief – it's always been the tape used. (Member of the judiciary)*

*In my experience when there's actually been VATE interviews, it's invariably been relied on as the evidence-in-chief and the witness gives (other) evidence from the remote facility. (Prosecutor)*

*These days we will pretty much use the VATEs always but we may also augment the VATE and ask the witness to give additional evidence-in-chief... There's really no reason these days not to use the VATE and I'd say, in the majority of cases, we do. (Solicitor)*

Overall, police officers perceived that the use of videotaped statements as evidence-in-chief was not the norm, whereas legal professionals tended to state the opposite. The only exception to this was a comment from a judicial officer in the Children's Court who estimated that the use of recorded interviews was rare:

*We do such a lot of these cases that I'm surprised we have few VATE tapes to deal with. You would think that a tape recorded interview would come before us but it's quite rare. (Member of the judiciary)*

Finally, although the police professionals usually spoke about VATE statements as if they were a standard or routine part of their procedure, other professionals complained that police had too much discretion regarding whether they would conduct a VATE interview at all (as opposed to a written statement).

*The application of VATE is entirely inconsistent... the police have to come to the point of either using VATE or not using VATE because I don't think you can leave it to the discretion of the informant. It's simply not fair to do that. The problem with taking a written statement from a child is that it doesn't really convey the flavour of what they're trying to tell you. (Member of the judiciary)*

*I have come across cases where young people make allegations of a sexual kind by way of written statement and it's just inexplicable that there is not a VATE tape available. (Defence barrister)*

*I see statements from young people that would have been eligible to make a VATE but for some reason or other they weren't VATED. (Prosecutor)*

Lack of documentation to justify variations to the intended VATE process was a source of considerable tension between professionals. Without firm data it is difficult to dispute opinions of others that are deemed to be wrong. Further, some professionals complained that inadequate documentation about the use of VATE inhibited their ability to evaluate the efficacy of the system as a whole. Statistics about the use of VATE were perceived as the basis for further action.

*We need statistics so that we can actually measure all these reforms. We have had so many reforms in the last decade. We need to know if they're not working and if so, determine why. We*

*can't determine that unless we measure against performance. The criminal justice system is such a movable feast and is very difficult to measure. You can't just put a ruler up to it and say "it's got this far", "we've put so many child witnesses through the system"... You actually have to measure whether the witnesses have come out the other end no less traumatised than when they went in, and are willing to return if they were ever offended against again. Ongoing qualitative as well as quantitative data is required.* (Member of the judiciary)

## Discussion

All of the 25 stakeholders who were interviewed for this study acknowledged the widespread benefits of having contemporaneous statements of abuse by vulnerable witnesses recorded on videotape. They perceived that this process was superior to the system that had been previously in place (i.e., the elicitation of evidence solely via written statements). However the stakeholders also perceived that the usefulness of the current VATE process was limited by several factors. These include: (a) the frequent absence of a coherent account and insufficient detail needed to prove the various offences, (b) the inability of legal professionals to scrutinise questions asked prior to the VATE interview, (c) lack of ongoing qualitative and quantitative feedback regarding how well the VATE system (as a whole) is working, and (d) limitations related to the recording medium itself (i.e., inaccessibility of video-cassette players, poor sound and visual quality). Not surprisingly (given the large representation of legal professionals in the sample) the focus of the criticisms was on the use of videotaped statements as an evidentiary mechanism. The overriding message was that if VATE statements are to continue to be used as evidence-in-chief, then the detail obtained in these statements needs to be clearer and more coherent, more accessible to juries and investigators, and it needs to be conducted in a manner that is consistent with the rules of evidence. Further, any interaction between police and the child prior to the VATE statements needs to be transparent to, and recorded for the benefit of, all parties.

It is important to note that despite the largely evidential focus of the stakeholder interviews, many of the problems identified by the stakeholders are relevant regardless of whether police interviews with vulnerable witnesses are used as evidence-in-chief. Any well conducted police interview advances the investigation by eliciting a greater number of accurate leads that can potentially be used to obtain corroborative evidence. In contrast, a poorly conducted police interview can distort the witness's memory and contaminate the entire investigative process (Powell 2005). The point is that eliminating the use of VATE statements as evidence-in-chief would not negate the importance of obtaining coherent, accurate, contemporaneous, forensically relevant and accessible statements of abuse on videotape.

Several constructive recommendations were offered by the stakeholders for improving the quality of the VATE interviews. Collectively, the stakeholders emphasised the need for: improved training in the use of non-leading open-ended questions, more effective collaboration between interviewers and legal professionals (to ensure that the interviews adhere to rules of evidence and elicit details needed to prove the charges), better record keeping of data related to the use and incidence of VATE statements, and greater consideration of the visual and audio quality and accessibility of the statements. These suggestions are entirely consistent with prior evaluation and other empirical research. For example, insufficient use of open-ended questions has been a common criticism of investigative interviewers around the globe (Aldridge & Cameron 1999; Cederborg, Orbach, Sternberg & Lamb 2000; Clarke & Milne 2001; Freeman & Morris 1999; Sternberg, Lamb,

Orbach, Esplin & Mitchell 2001; Warren et al. 1999) and ongoing regular practice and monitoring of this skill by experts is the only known way of maintaining competent interviewers over time (Lamb, Sternberg, Orbach, Esplin & Mitchell 2002; Lamb, Sternberg, Orbach, Hershkowitz et al. 2002). Poor technical quality and the size of the child's face has been noted in other jurisdictions as a major reason for not playing pre-recorded statements from child witnesses in court (Burton et al. 2006; Cashmore & Trimboli 2005; McConachy 2002; Richards et al. 2007). Further, concerns about combining investigative and evidentiary interviews are widespread around the globe (see Hoyano & Keenan 2007), and lack of information regarding what detail is required to particularise child abuse cases has been known to provoke interviewers' use of undesirable questions (Guadagno, Powell & Wright 2006).

Greater consultation between investigative interviewers and prosecutors would no doubt improve the usefulness of VATE interviews in meeting the requirements of evidence-in-chief. However, greater consultation would not necessarily lead to better interview technique per se. Prosecutors and criminal investigators understand the nature of the evidence required but their knowledge of child memory, language development and suggestibility (the theoretical basis for choosing appropriate questions) is limited. This was highlighted in this study (anecdotally) by several comments made by prosecutors and police detectives, which were inconsistent with the current scientific literature on investigative interviewing of children.<sup>2</sup> Clearly, input from both prosecutors *and* child eyewitness memory experts is needed to ensure that VATE statements meet necessary legal requirements and are also tailored to the capabilities of the vulnerable witness.

In conclusion, several broad recommendations have arisen from the current interviews with stakeholders. First, police organisations need to afford higher status to the role of police interviewers who conduct interviews about abuse and to ensure that specialised training in interview technique (i.e., regular practice and expert feedback) is offered (see Powell 2008 for review). Second, if VATE statements continue to be used as evidence-in-chief, legal professionals and child abuse interviewers/investigators need to engage in greater dialogue (in a manner that adheres to the requirement of prosecutorial independence) about the adequacy of the VATE interviews and the elements needed to prove various charges.

Third, clear documentation about case outcome, the role of VATE interviews in the legal process and the incidence and use of VATE statements needs to be accessible to stakeholders on an ongoing basis. Such documentation is essential for ensuring that the system is working in the manner intended and for making decisions about how the process can be improved. A more transparent decision-making process may also facilitate collaboration among professionals by disputing myths that underlie negative attitudes toward others and by giving professionals a greater sense of control in the process. Indeed, disagreement among professionals is reported by police officers to be a major source of stress when working in the child abuse area (Wright, Powell & Ridge 2006). Finally, given concerns regarding the vulnerability of child witnesses to interviewer suggestions (Ceci &

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<sup>2</sup> Examples of such propositions include: (a) anatomical dolls are useful as diagnostic tools, (b) a child's behaviour or emotional response provides an indication of the accuracy of the child's response, (c) experienced and female interviewers are more likely to adhere to best-practice interviewing guidelines, and (d) interviewers who are also conducting the investigation are less likely to be open-minded and objective during the interview process. See Ceci, Kulkofsky, Klemfuss, Sweeney and Bruck (2007) for an overview of unwarranted assumptions about children's testimony.

Friedman 2000), all dialogue between police and vulnerable witnesses about substantive matters should be recorded electronically.

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