

ROYAL COMMISSION

INTO THE

NEW SOUTH WALES POLICE SERVICE

FINAL REPORT

VOLUME IV: THE PAEDOPHILE INQUIRY

Commissioner: The Hon Justice JRT Wood

August 1997

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ROYAL COMMISSION INTO THE NSW POLICE SERVICE

26 August 1997

The Hon RJ Carr MP
Premier of New South Wales
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

My Dear Premier

Pursuant to Letters Patent issued to me by the Government of the State of New South Wales, I now have the honour to present to you the Final Report of my inquiry into paragraphs (d), (d1) to (d3) and (g) to (j) inclusive of the consolidated terms of reference (the Paedophile terms).

Yours sincerely

The Hon Justice JRT Wood
Royal Commissioner

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EXPLANATORY NOTES

The amalgamation of the New South Wales Police Force (operations) and the New South Wales Police Department (policy and administrative support) into a single entity known as the New South Wales Police Service, commenced in June 1987. This was formalised by the *Police Service Act 1990* (NSW) which came into effect on 1 July 1990. Throughout this Report, the organisation is generally referred to as ‘the Service’ or ‘the Police Service’.

The Department of Youth and Community Services (YACS) became the Department of Family and Community Services (FACS) in 1988 and the Department of Community Services (formerly abbreviated to DOCS, but now referred to as DCS) in 1991.

Legislation referred to throughout this Report is NSW legislation unless otherwise indicated.

The letter ‘C’ following a Royal Commission exhibit number indicates that the exhibit is confidential.

The letter ‘B’ following a Royal Commission exhibit number indicates that this is the public version of the exhibit, which will have some deletions to preserve necessary confidentiality, and the letters ‘AC’ indicate that this is the confidential version of the same document.

ABBREVIATIONS USED IN THIS REPORT

| | |
|-------|--|
| ABA | Australian Broadcasting Authority |
| ABCI | Australian Bureau of Criminal Intelligence |
| ACID | Australian Criminal Intelligence Database |
| ADD | Ageing and Disability Department, NSW |
| ADT | Administrative Decisions Tribunal |
| AFP | Australian Federal Police |
| AIDS | Auto Immune Deficiency Syndrome |
| ALRC | Australian Law Reform Commission |
| AMA | Australian Medical Association Limited |
| BBS | Bulletin Board Services, Internet |
| BCS | NSW Bureau of Crime Statistics and Research |
| BLACP | Boy Lovers Against Child Pornography |
| BLAZE | Boy Lovers and Zucchini Eaters |
| CAPS | Child Abuse Prevention Service |
| CCP | Centre for Child Protection, Children's Commission |
| CCTV | closed circuit television |
| CEO | Chief Executive Officer |
| CFS | Child and Family Services, Department of Community Services |
| CIB | Criminal Investigation Branch, NSW Police Service |
| CIIS | Crime Information and Intelligence System |
| CIS | Client Information System, Department of Community Services |
| CIT | Computer Investigation Techniques, National Police Research Unit |
| CMS | Case Management System, Department of School Education |
| CMU | Child Mistreatment Unit, NSW Police Service |
| CMU | Central Management Unit, Department of School Education |
| CNI | Criminal Names Index |

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| COBAC | Community Based After Care |
| CPC | NSW Child Protection Council |
| CPD | Child Protection Directorate, NSW Police Service |
| CPE program | Child Protection Education program |
| CPEA | Child Protection Enforcement Agency, NSW Police Service |
| CPIT | Child Protection Investigation Team, NSW Police Service |
| CPS | Child Protection Services |
| CSC | Community Service Centre |
| CSC | Community Services Commission |
| CUBIT | Custody Based Intensive Treatment Unit, Department of Corrective Services |
| CWU | Child Witness Unit, Office of the Director of Public Prosecutions |
| DCS | Department of Community Services, NSW (present acronym) |
| DG | Director-General |
| DJJ | Department of Juvenile Justice |
| DOI | Duty Operations Inspector |
| DPP | The Director of Public Prosecutions, NSW |
| DSE | Department of School Education |
| DSR | Department of Sport and Recreation |
| EIC | Employment Information Centre, Children's Commission |
| EMDR | Eye Movement Desensitisation and Reprocessing |
| EU | European Union |
| FACS | Department of Family and Community Services |
| FAIRS | FACOM Advanced Information Retrieval System - a former NSW Police Service database for sensitive information |
| FBI | Federal Bureau of Investigation, USA |
| GREAT | Government and Related Employees Appeals Tribunal, NSW |
| HCCC | Health Care Complaints Commission, NSW |
| HCR | Health Conciliation Registry |
| HIV | human immunovirus |

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| HREOC | Human Rights and Equal Opportunity Commission |
| ICAC | Independent Commission Against Corruption, NSW |
| ICARE program | Interviewing Children and Recording Evidence program |
| IOC | Child Protection Interagency Operational Committee |
| IPSB | Internal Police Security Branch, NSW Police Service |
| IRC | Industrial Relations Commission |
| IROC | Initial Response Officers Course, NSW Police Service |
| IRU | Investigation and Review Unit |
| JCS | Juvenile Crime Squad, NSW Police Service |
| JIT | Joint Investigation Team (comprising police and DCS personnel) |
| JSB | Juvenile Services Bureau, NSW Police Service |
| LRC | Law Reform Commission, NSW |
| MCEETYA | Ministerial Council of Education, Employment, Training and Youth Affairs Ministers |
| MLA | Member of the Legislative Assembly, NSW Parliament |
| MLC | Member of the Legislative Council, NSW Parliament |
| OCYP | Office of Children and Young People, The Cabinet Office, NSW |
| ODDP | Office of the Director of Public Prosecutions, NSW |
| OFLC | Office of Film and Literature Classification |
| ORC | Operations Review Committee |
| PANOC | physical abuse and neglect of children |
| PSG | Paedophile Support Group |
| PSRG | Professional Standards Resource Group (Catholic Church) |
| RAHC | Royal Alexandra Hospital for Children, Sydney (now the New Children's Hospital) |
| RC | Refused Classification |
| RCPS | Royal Commission into the New South Wales Police Service |
| RCT | Royal Commission Transcript (Commissioner Wood) |
| RCT(U) | Royal Commission Transcript (Commissioner Urquhart) |
| RYC | Rural Youth Centre |

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| SAAP | Supported Accommodation Assistance Program |
| SANE | Sexual Assault Nurse Examiners |
| SCAG | Standing Committee of Attorneys-General |
| SIG | State Intelligence Group, NSW Police Service |
| SNYPIC | State Network of Young People in Care, NSW |
| SOAP | Sex Offenders Assessment Program, Cooma |
| SRA | Satanic ritual abuse |
| VCB | Victims of Crime Bureau, NSW |
| ViCLAS | Violent Crime Linkage Analysis System |
| YACS | Department of Youth and Community Services |

PREFACE

This Report of the Paedophile Inquiry deals with an area of human sexuality which gives rise to the expression of strong emotions. Persons involved, either as perpetrators or victims of paedophile activity, may be so affected as to take their own lives or to suffer enduring psychiatric trauma. So abhorrent is the activity that outraged members of the community call for drastic measures to deal with perpetrators. Care must be taken not to allow this outrage to cloud an objective approach to a very real and a very difficult problem. Any remedial measures or changes must be fair to all in the circumstances.

The Report will deal with paedophilia itself and with the position of perpetrators as well as victims. Questions of treatment and rehabilitation will be canvassed. Systems will be visited in some detail, together with institutions which work within the system. Recommendations will be made for change.

Recurrent themes will appear throughout the Report. There are, however, some fundamental matters which merit mention in this preface:

- paedophilia, when manifested by overt physical acts involving the sexual exploitation and abuse of children, is recognised by the legislature as a serious crime. No less so by this Commission. Many things flow from this, not least the principle that the question of guilt or otherwise in a particular case should be left to the criminal justice system;
- a socio-legal definition of paedophilia has been adopted, equating it with sexual dealings with young persons in a way which is contrary to the present criminal law;
- the paedophile, whilst generally but not necessarily male, can present in almost any guise. He may come from any background or walk of life. It is a mistake to assume, in any investigation, that the holding of a particular position of responsibility or eminence automatically disqualifies a person from being a suspect. Sad to say, it can be a trait of a paedophile that he seeks and attains positions where he can be in contact with, or have influence over, children. Also sad but true is the fact that the paedophile may well be extremely plausible, devious in the exploitation of children, and capable of gulling those caring for them and of covering up his activities;
- importantly, for this is an area which has raised anxiety amongst some members of the gay and lesbian community, the paedophile may be of any sexual orientation. It cannot be said that a homosexual is any more prone to be a paedophile than a person of heterosexual orientation. This is a view held by the Commission since its inception and it was reinforced by its inquiries;
- once a person engages in an act of paedophilia, there is a great likelihood that he will reoffend, whether with the same person or another young person. There is no guaranteed treatment or management regime to redirect a paedophile's sexual preference into more acceptable practices. The probability of recidivism is accordingly an important factor in the balancing exercise that underlies a fair and responsible approach to the problem, in each area where it manifests itself;
- the magnitude of the problem is not one that can be accurately described by figures or statistics. It ranges from familial abuse through abuse from relatives or hitherto trusted family friends to abuse from strangers. Much of it remains unreported to authorities. Many of the reported cases cannot be taken further for various reasons, including the tender years of the child and the inability to testify as to the detail of the incident. Without wishing to engender paranoia, the Commission has concluded that the incidence of paedophile activity is of considerable proportions such as to amount to a very significant problem;

- the problem has been compounded by the past approaches, attitudes and conduct of important institutions. Within these institutions, paedophilia was generally a subject best not spoken about; and if forced to be confronted, it was dealt with in a way that was based upon denial and protection of institutional reputation rather than regard for the welfare of children;
- sadly, amongst others, the Department of Community Services (DCS) and its predecessors demonstrably failed to provide adequate care, protection or support for children in the field of child sexual abuse. This was so despite the dedicated best efforts of many officers in the field. The revamping of this department to enable it effectively to fulfil its important role is vital to any meaningful reform. It presents no less a challenge to its new Director-General and senior management than the daunting task that is faced by the new Commissioner of Police. A completely fresh approach is necessary, accepting and learning from, rather than rationalising, the mistakes of the past. The progress of this key institution must be carefully monitored;
- DCS has not been alone in this failing. Every other department, agency and institution examined has neglected to address the problem. The criminal justice process has also proven itself wanting, and in many instances has further traumatised the victims of child sexual abuse;
- fragmentation of effort and want of co-ordination have been serious deficiencies contributing to the shortcomings found. The Commission addresses these factors and makes recommendations based upon the adoption of a combined and co-operative approach between all agencies having a responsibility for the welfare of children;
- because children are unable adequately to protect themselves from adult exploitation, the approach of the Commission has been to place the interest of the child as paramount when a balance has to be struck between competing interests. This is not to say that the Commission has ignored such competing interests. Difficult decisions arise, especially in the field of disclosure of information and in the area of employment. The Commission recommends the introduction of a new body called the Children's Commission to be the focal point for co-ordinating the effort to protect children. It has developed the concept of unacceptable risk as the touchstone for excluding those who are judged to present such a risk from working in positions where they have direct contact with children;
- the Report discusses the Commission's procedures and its general approach to conducting its hearings in public, together with exceptions to this procedure. The Commission was not at large in its conduct. It was required to act within its terms of reference. It could use its powers and authority only in circumstances coming within those terms. Those who have called for the Commission to name and expose all paedophiles have been repeatedly informed by the Commission in public hearings, and in correspondence, that this was not the Commission's task. This will be dealt with in the body of the Report but, simply stated, the Commission was not empowered to act as an alternative police service, nor should it have been. The investigation and prosecution of specific acts of paedophilia was and remains a matter for the Police Service. The primary task of the Commission was to assess the depth and gravity of the overall problem, to identify deficiencies, and to make recommendations for reform. Such is not only the objective of this Report, it sets the limits of the Commission's duty and capacity beyond which it cannot travel. Against this background, perceptions of 'cover-up' or favouritism are misconceived. There has been no such thing and the body of the Report demonstrates the way in which gratuitous intervention from outsiders can lead to unfortunate results.

CHAPTER 1

INTRODUCTION

This chapter examines the circumstances in which the Royal Commission came to inquire into paedophilia, the scope of its terms of reference, and its investigative approach.

A. PUBLIC INQUIRY INTO PAEDOPHILIA - A BACKGROUND

FIRST WARNINGS OF A PROBLEM

1.1 In March 1989, a police operation known as Operation Hawkesbury concluded with the arrest and charging of a Detective Sergeant of Police, Larry Churchill, and others for conspiracy to supply a prohibited drug (methyl amphetamine). While in custody awaiting committal, one of the co-conspirators, Mr Colin Fisk, who describes himself as a 'homosexual hebephile bordering on pederism at the lower range',¹ provided information to police² concerning his alleged association with:

- other people who had sexual relationships with children; and
- a group of police officers who had protected such offenders from investigation and/or prosecution, and who were involved in extortion and fraud.³

1.2 Contemporaneously, a police investigation (Operation Seabeach) into allegations of child sexual abuse at a northern beaches kindergarten was in progress.⁴ That investigation had commenced in October 1988. The committal proceedings brought against the proprietor of the kindergarten, her husband and two employees were heard by Mr Hyde SM, in July and August 1989.

1.3 During the committal proceedings it became clear that there were serious problems with the way in which the evidence had been gathered, and that as a result there was a significant risk of it having become contaminated. On 10 August 1989, each of the defendants was discharged, following the decision of the magistrate that the children involved could not pass the existing competency test.⁵ Continuing disquiet concerning the matter led to attempts by the Opposition to secure a Royal Commission.⁶

¹ C. J. Fisk, RCT, 30/5/96, p. 26194.

² The reason Mr Fisk gave for his decision to provide this information to the police was that he was hurt because these people did not come to visit him whilst he was in gaol and this distressed him. C. J. Fisk, RCT, 1/8/96, p. 29680.

³ C. J. Fisk, Statutory Declaration, 17/4/95, RCPS Exhibit 1604C.

⁴ At least 22 children aged six and under made allegations of sexual assaults involving the defendants, some of which allegedly involved a man dressed as a clown. See Chapter 7 of this Volume.

⁵ As set out in the *Oaths Act 1900*, s. 33.

⁶ See correspondence between then Opposition leader Mr Bob Carr and Premier Nick Greiner, September 1990, RCPS Exhibits 1507/1 and 1507/2. See also NSW Parliament, *Hansard*, Legislative Assembly, 5/9/90, p. 6701.

1.4 At the request of the then Minister for Police, Mr Pickering, in July 1990, Detective Sergeant (now Chief Superintendent) Lola Scott provided a report in respect of the police investigation, in which she advised that:

- there was no evidence that it had been inadequate; and that
- she did not believe a Royal Commission would resolve the matter.⁷

1.5 The officer in charge of the Seabeach investigation was Detective Senior Sergeant Ronald Marinus Fluit who was at the time stationed at Mona Vale Police Station.

1.6 In making his disclosures to the police, Mr Fisk alleged that Detective Fluit was one of the police prepared to provide protection for himself and his friends. This allegation was denied by Mr Fluit in evidence before the Royal Commission. When the association between Mr Fisk and Detective Fluit became known calls for a public inquiry intensified.⁸

1.7 The Service, through its Internal Police Security Branch (IPSB), formed a Task Force, Operation Gull⁹ in November 1990, to investigate the matters raised by Mr Fisk. Its inquiry was monitored by the Independent Commission Against Corruption (ICAC).¹⁰ The Operation Gull report delivered in April 1992,¹¹ concluded that there had been corrupt practices which existed between serving police officers and paedophiles 'until 31 March 1989', but that there was no evidence to suggest that any such corrupt activity still existed.¹² In a television broadcast on 15 November 1993,¹³ Mr Fisk repeated his disclosures, including the allegation that police had been providing protection for paedophiles.

REFERENCE TO THE ICAC

1.8 Following the broadcast of this program, a motion was moved in the Legislative Assembly, on 18 November 1993, by the Honourable Member for Heffron, Mrs Deidre Grusovin, and agreed to, for the establishment of a judicial inquiry 'into the paedophilia networks in this State'.¹⁴

⁷ NSW Police Service, Submission: Seabeach Kindergarten, Detective Sergeant L. A. Scott & Sergeant R. I. Martin, 24/7/90, RCPS Exhibit 2306C, pp. 9-11, para. 22.

⁸ 'Police Accused of Paedophile Protection Racket', *Sydney Morning Herald*, 7/9/90, p. 1; NSW Parliament, *Hansard*, Legislative Assembly, 5/9/90, pp. 6701-07; NSW Parliament, *Hansard*, Legislative Assembly, 6/9/90, pp. 6746-58.

⁹ Originally known as Operation Speedo.

¹⁰ Following debate in the Legislative Assembly in September 1990, the Minister for Police Mr Pickering, directed that a meeting be held on 29/1/91. At this meeting, attended by Assistant Commissioner Cole, Chief Superintendent Schloeffel, Detective Chief Inspector Scott and ICAC members Mr Peter Lamb and Mr Kevin Zervos, ICAC took on a monitoring role in the investigation. NSW Police Service, Task Force 1, Professional Integrity Branch, Final Report Operation Gull (Confidential), RCPS Exhibit 1509AC, p. 3, para. 3.

¹¹ NSW Police Service, Task Force 1, Professional Integrity Branch, Final Report Operation Gull (Confidential), RCPS Exhibit 1509AC.

¹² *ibid*, p. 13.

¹³ Broadcast on 'A Current Affair', Channel 9, 15/11/93, RCPS Exhibit 1654.

¹⁴ NSW Parliament, *Hansard*, Legislative Assembly, 18/11/93, pp. 5697-98.

1.9 Discussions ensued as to the most appropriate vehicle for a public inquiry into the matters raised, and eventually motions were moved and agreed to, in the Legislative Council, on 9 March 1994¹⁵ and in the Legislative Assembly on 10 March 1994,¹⁶ that the ICAC be requested to conduct an investigation (in substance) into:

- allegations that some members of the NSW Police Service by act or omission had protected paedophiles from criminal investigation or prosecution;
- whether the procedures of or the relationships between the Service and other public authorities had adversely affected such investigations or prosecutions; and into
- the conduct of public officials relating to these matters.

Thereafter the matter was referred to the ICAC for inquiry.

1.10 In May 1994, this Royal Commission was established under terms of reference which partially overlapped with those of the ICAC, so far as term (d) required it to investigate and report on:

the impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions including, but not limited to, paedophile activity.

1.11 In August 1994, shortly after Mr Fisk was interviewed for the first time by the Royal Commission, he was invited to provide information for an article written by a journalist, Mr Ronald Hicks under the pseudonym John Vincent.¹⁷ In that article the following claims were made:

- Mr Fisk was about to give evidence before the Royal Commission;
- he would 'expose respected businessmen, a former media personality, top legal identities and an ex-politician'; and that
- he was at risk of being murdered by a ring of millionaire child molesters and corrupt police officers who protected them.

1.12 On 30 September 1994, the ICAC published its *Interim Report on Investigation into Alleged Police Protection of Paedophiles* (Operation Carbon),¹⁸ in which it:

- summarised the results of a literature review undertaken to identify the factors which adversely affect the investigation and prosecution of child sexual abuse;
- provided an overview of the system for dealing with child sexual abuse; and
- outlined the future direction of its investigations.

TRANSFER OF THE ICAC REFERENCE TO THE ROYAL COMMISSION

1.13 Arising out of concern as to their overlapping responsibilities the Royal Commissioner and the acting ICAC Chairman wrote to the Government on 20 October 1994, proposing that the ICAC take the primary responsibility for the inquiry, and liaise with the Royal Commission on matters of relevance to it, so as to avoid wasteful and detrimental duplication of resources.

1.14 On the evening of 21 October 1994, Mr Fisk made a further statutory declaration at the electoral office of Mrs Grusovin, to the effect that:

¹⁵ NSW Parliament, *Hansard*, Legislative Council, 9/3/94, p. 349. A further motion was moved by Hon. R. J. Webster and agreed to, on 10/3/94, to accept an amendment moved and agreed to in the Legislative Assembly - NSW Parliament, *Hansard*, Legislative Council, 10/3/94, p. 501.

¹⁶ NSW Parliament, *Hansard*, Legislative Assembly, 10/3/94, p. 561.

¹⁷ J. Vincent, 'Sex Monsters Want Me Dead', *Woman's Day*, 5/9/94, pp. 14-15.

¹⁸ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516.

- after his arrest on 31 March 1989, he had participated in a series of records of interview with the IPSB in which he named a number of prominent people he 'knew to be pederasts', including Mr John Marsden;
- the police had failed to investigate the people he had named;
- his copies of the records of interview had been destroyed and notwithstanding a number of requests made to Chief Inspector Watson for additional copies, they had not been provided;
- Chief Inspector Watson had told him that some of the material had been 'misplaced';
- when he had gone to the Royal Commission to give evidence about the 'pederast protection racket', he found that 'some of the most important interviews' in which he had taken part and which included allegations against the 'most prominent pederasts' were missing; and that
- he was seeking 'Mrs Grusovin's help to ensure that justice was done and [to] ensure that there will be no more cover-ups'.¹⁹

1.15 On 1 December 1994, in the course of an adjourned debate concerning the overlapping responsibilities of the ICAC and the Royal Commission to inquire into the protection of paedophiles,²⁰ Mr Fisk's statutory declaration of 21 October 1994 was tabled. An amendment to the motion before the House was moved by Mrs Grusovin to revoke the ICAC's reference and to have its terms included in the Letters Patent of this Royal Commission. That motion was agreed to.²¹

1.16 On 2 December 1994, motions were moved and agreed to, first in the Legislative Council²² and then in the Legislative Assembly²³ to have the terms of reference of the Royal Commission amended by including the term 'pederast' in addition to the term 'paedophile'.

1.17 On 21 December 1994 the Letters Patent of the Royal Commission were accordingly varied to include paragraphs (d1) to (d3) inclusive which, but for the word 'pederast,' had previously been the subject of the reference to ICAC.²⁴

1.18 On 27 January 1995 Mr Fisk made a further statutory declaration in which he asserted that:

- he had come to the realisation that in his confused state of mind at the time of making his statutory declaration on 21 October 1994 he could not differentiate between fact and fiction;
- financial inducements in the way of media dollars had been offered and had contributed to the blurring of his vision;
- the reference to Mr John Marsden in his first statutory declaration was 'pure hearsay from an unreliable source'; and
- on reflection he now believed that the 'misplaced records of interview' (in which he had made allegations against 'prominent pederasts'), did not exist in the first place.²⁵

1.19 Between January and March 1995, ICAC disseminated to the Royal Commission the material it had gathered in relation to Operation Carbon, and the Royal Commission commenced its own investigations.

¹⁹ C. J. Fisk, Statutory Declaration, 21/10/94, RCPS Exhibit 2288.

²⁰ On 27/10/94 a motion concerning the proposal contained in the joint letter from the Royal Commission and the Acting ICAC Commissioner was moved in the Legislative Assembly. Debate on that motion was adjourned (and resumed on 1/12/94). NSW Parliament, *Hansard*, Legislative Assembly, 27/10/94, p. 4871.

²¹ NSW Parliament, *Hansard*, Legislative Assembly, 1/12/94, p. 6118.

²² NSW Parliament, *Hansard*, Legislative Council, 2/12/94, p. 6196.

²³ NSW Parliament, *Hansard*, Legislative Assembly, 2/12/94, p. 6289.

²⁴ See Volume VI, Appendix P1 for a copy of the consolidated Letters Patent.

²⁵ C. J. Fisk, Statutory Declaration, 27/1/95, RCPS Exhibit 2288. Mr Fisk was subsequently examined in some depth as to the circumstances in which he made each of these statutory declarations, and as to the reasons for the retraction of the serious allegations earlier made. This is a matter addressed in more detail in Chapter 7 of this Volume.

1.20 Public hearings in relation to the paedophile inquiry commenced on 18 March 1996, and were interrupted on 6 September 1996,²⁶ for the purpose of completing some ongoing investigations, including those relating to former Supreme Court Justice David Yeldham (now deceased). These investigations which had commenced in August 1995, reached a critical stage on 9 October 1996, when an important breakthrough was made.

FURTHER ENLARGEMENT OF THE ROYAL COMMISSION TERMS OF REFERENCE

1.21 On 15 October 1996, a resolution²⁷ was passed in Caucus by the Labor Party for an enlargement of the terms of reference of the Royal Commission, and for an extension of its duration, so that it might be tasked with conducting criminal investigations at large into allegations of paedophilia and pederasty.

1.22 On 23 October 1996, in response to this resolution, the Letters Patent were varied to add paragraphs (g) to (j) to the terms of reference.²⁸ The extension removed any residual doubt concerning the authority of the Royal Commission to inquire into the adequacy of the existing laws and of the investigatory and trial processes to deal with crimes involving paedophilia and pederasty, and into the sufficiency of the monitoring and screening processes of government departments and agencies to protect children in their care or under their supervision from sexual abuse. It did not, however, authorise the Commission to undertake purely criminal investigations. On 30 October 1996, the Letters Patent were further varied to extend the reporting date.²⁹

1.23 On 31 October 1996, the Reverend, the Honourable Fred Nile moved a motion in the Legislative Council, calling on the Government to add the following paragraphs to the terms of reference:

- That the Royal Commission be tasked with conducting criminal investigations, at large, into allegations of paedophilia or pederasty, that are unconnected with protection issues, arising either as a result of corruption, or as a result of system failure, or abuse of office by a public official.
- That the Royal Commission fully investigate and report on paedophilia in New South Wales with particular reference to:-
 - any relationship between individual paedophiles and/or paedophile networks; and
 - the relationship between paedophile networks in New South Wales with other individuals and organisations in Australia and overseas³⁰

In the course of that debate (which was adjourned), the Honourable Franca Arena named a former politician who had been the subject of evidence in the Royal Commission under a code-name and posed various questions concerning former Justice Yeldham, a prominent person who she suggested had received preferential treatment.³¹ Shortly afterwards Mr Yeldham took his own life.

1.24 The public hearings in the paedophile segment resumed in December 1996, and continued during February and March 1997. The debate of 31 October 1996 was resumed on 10 April 1997, and on that day Mr Nile's motion was agreed to in the Legislative Council.³² No such motion was, however, moved in the Legislative Assembly, and the Letters Patent were not further widened.

²⁶ See Commissioner J. R. T. Wood, RCT, 6/9/96, pp. 31725-26, when it was announced there were further matters to be concluded at a time to be fixed. On 9/9/96, the Commission again confirmed publicly that the hearings into the paedophile inquiry had not closed, Commissioner J. R. T. Wood, RCT, 9/9/96, p. 31808.

²⁷ Notice of motion moved by the Honourable Franca Arena MLC on 22/10/96, RCPS Exhibit 3118.

²⁸ Letters Patent issued to the Honourable James Roland Thomson Wood, 23/10/96, RCPS Exhibit 2724 & Letters Patent issued to His Honour Judge Paul David Urquhart, 23/10/96, RCPS Exhibit 2725.

²⁹ Correspondence from Premier Carr agreeing to the extension of reporting date requested by the Royal Commission, 29/10/96, RCPS Exhibit 2727. The reporting date was extended on 30/10/96 to 30/6/97, and further extended on 21/5/97 to 30/8/97, RCPS Exhibit 3060.

³⁰ NSW Parliament, *Hansard*, Legislative Council, 31/10/96, p. 5619.

³¹ *ibid*, p. 5623.

³² NSW Parliament, *Hansard*, Legislative Council, 10/4/97, p. 7394.

1.25 The Royal Commission did not, itself, seek an extension of its powers in a way which would have converted it into a standing body tasked with the criminal investigation of unlawful paedophile or pederast activity, for the reasons that:

- by their nature commissions of inquiry are short-term investigative bodies whose purpose classically is not to investigate individual criminality, but rather the reasons why existing laws, systems and structures for public governance, in this instance the policing and protection of children from paedophilia and pederast activity, have failed their purpose, and to make recommendations for long-term reform;
- such bodies cannot continue their work indefinitely, since at some stage a permanent and regular agency must resume the work for which it was created;
- during the Royal Commission, the Child Protection Enforcement Agency (CPEA) was established and funded and is carrying out very professional and successful criminal investigations in the area of serious extrafamilial abuse. It is supported by the Joint Investigation Teams (JITs) which have also been approved and deployed in various locations to deal particularly with familial sexual abuse;
- the resources needed to cover the entire field of child sexual abuse are very extensive, and are well outside the capacity of the Royal Commission. To interrupt the progress of the CPEA and the JITs made no sense and would have been seriously counter-productive to any co-ordinated attack on this form of criminal activity; and
- the use of a commission of inquiry for law enforcement is not compatible with the adversarial system of justice, nor is the exercise of coercive powers by such a body, in a public forum, particularly helpful for criminal investigative purposes, since:
 - the findings of a Royal Commission are not a substitute for findings in a criminal trial, and are not binding upon such a trial;
 - the publicity given to the proceedings of a Royal Commission can cause difficulties in ensuring that an accused receives a fair trial;
 - evidence collected pursuant to coercive powers of the kind used by a Royal Commission is not available in a criminal trial; and
 - the office of a serving judge is not compatible with the acceptance of an office that involves an exclusively criminal investigative or prosecutorial function.

1.26 The Royal Commission was satisfied that, upon a proper interpretation of its terms of reference, as explained in the following section of this chapter, it had sufficient authority to undertake the necessary inquiry into the policing of paedophile and pederast activity, and into the protection of children from unlawful sexual abuse.

B. THE TERMS OF REFERENCE - PAEDOPHILIA

1.27 The amended terms of reference, relevant to the paedophile inquiry, require the Royal Commission to inquire into:

- (d) The impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions including, but not limited to, paedophile activity.
- (d1) Whether any members of the Police Service have by act or omission protected paedophiles or pederasts from criminal investigation or prosecution and, in particular, the adequacy of any investigations undertaken by the Police Service in relation to paedophiles or pederasts since 1983; however, you may investigate any matters you deem necessary and relevant which may have occurred prior to 1983.

- (d2) Whether the procedures of, or the relationships between the Police Service and other public authorities adversely affected police investigations and the prosecution, or attempted or failed prosecution, of paedophiles or pederasts.
- (d3) The conduct of public officials related to the matters referred to in paragraphs (d1) and (d2).
- (g) Whether the existing law prohibiting crimes involving paedophilia and pederasty are appropriate and sufficient to effectively prosecute persons accused and punish persons convicted of those crimes or other related crimes of sexual abuse.
- (h) Whether penalties currently prescribed for crimes involving paedophilia and pederasty are appropriate and a sufficient deterrent to the commission of those crimes.
- (i) Whether Government departments and agencies have sufficiently effective monitoring and screening processes to protect children in the care of or under the supervision of Government departments and agencies from sexual abuse; if not, what measures should be put in place to provide effective protection in this respect.
- (j) Whether Police Service investigatory processes and procedures and the criminal trial process are sufficient to effectively deal with allegations of paedophilia and pederasty.

1.28 The expressions 'paedophilia', 'pederasty', 'paedophile activity', 'paedophiles' and 'pederasts' used in the terms of reference require explanation, as does the expression 'sexual abuse of children'.

1.29 Some difficulty arises in this respect since these expressions are not necessarily used consistently in clinical medical practice or in popular speech. Nor are they terms given any precise definition in the law. Accordingly, depending upon context, and also upon what is understood by the terms 'child', 'children', 'girl' and 'boy', their meaning can alter significantly.

DEFINITION IN CLINICAL MEDICAL PRACTICE

1.30 The World Health Organisation has described 'paedophilia' as a recognised psychological disorder, involving:

a sexual preference for children usually of pre-pubertal or early pubertal age³³.

1.31 The diagnostic criteria for a 'paedophile', according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM)³⁴ are:

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviours involving sexual activity with a prepubescent child or children (generally aged 13 years or younger)
- B. The fantasies, sexual urges or behaviours cause clinically significant distress or impairment in social, occupational or other important areas of functioning.
- C. The person is at least age 16 years and at least 5 years older than the child or children in criteria A.

1.32 These and other texts recognise:

- the existence of different behavioural patterns in individuals who exhibit the characteristics of paedophilia, and in particular the circumstance that their attraction may be exclusively directed to male children or to female children, or may extend to children of both sexes;
- that paedophilia is rarely identified in women; and
- that sexual activity between persons of similar age (children or adolescents) is not necessarily an indicator of a tendency towards paedophilia, but commonly those who go on

³³ The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines, World Health Organisation, Geneva, 1992, RCPS Exhibit 1499, pp. 219-20.

³⁴ DSM-IV: Diagnostic and Statistical Manual of Mental Disorders, 4th edn, American Psychiatric Association, Washington DC, 1994, RCPS Exhibit 3119, p. 528. See also Volume VI, Appendix P6.

to become paedophiles do engage in sexual contact, with persons of similar age or adults, during their early years.³⁵

1.33 'Pederasty' is not given any separate significance within clinical medical practice, presumably on the basis that:

- the activity it involves is but a form of acting out the condition of paedophilia; and
- sexual orientation alone is not regarded as a disorder.³⁶

DICTIONARY DEFINITION

1.34 Although the modern approach to definition is to 'describe not prescribe'³⁷ it is appropriate to note various contemporary definitions of 'paedophilia' and 'paedophile'. Their derivation is from the Greek: *paidos* (child) and *philo* (to love).

1.35 The Australian Concise Oxford Dictionary³⁸ defines 'paedophilia' as 'sexual desire directed towards children', and 'paedophile' as a 'person who displays paedophilia'. A more behaviourally based definition is provided by the Macquarie Dictionary, which includes a definition of 'paedophile'³⁹ as 'a person who engages in sexual activities with children', although defining 'paedophilia'⁴⁰ as the 'sexual attraction in an adult towards children'.

1.36 The behavioural factor is similarly involved in most contemporary definitions of 'pederasty', although even there some differences emerge. For example, the Macquarie Dictionary defines the expression as 'homosexual relations, especially those between a male adult and a boy',⁴¹ while the Australian Concise Oxford Dictionary is somewhat more specific in providing a definition of 'anal intercourse between a man and a boy'.⁴²

1.37 These definitions still leave open the critical question as to what is meant by a 'child', 'children' 'girl' or 'boy'. Although the first two expressions are commonly defined to include a human being between birth and the age of puberty⁴³ they are also understood both in common speech and in the criminal law to embrace adolescents, and in a more general way, the issue of a relationship. The expression 'boy' is usually defined in a more extensive fashion to include for example a youth, or young man who is not yet mature.⁴⁴ The expression 'girl' is also defined in such a fashion to include a female child or youth, or a young, unmarried woman.⁴⁵

1.38 A potential for complication lies in the fact that some adults whose sexual activities breach the criminal laws of the State, attribute to themselves the sub-nom 'hebephile' or 'ephebophile', an expression similarly derived from the Greek, to mean a 'lover of youth', that is, a lover of post pubertal children.

1.39 Further potential for complication arises from the use of the term 'abuse' in the expression 'sexual abuse'. Although this term in general use has connotations of maltreatment and absence of

³⁵ See Chapter 3 of this Volume and Volume V, Chapter 13 of this Report.

³⁶ *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines*, World Health Organisation, Geneva, 1992, RCPS Exhibit 1499, pp. 219-20.

³⁷ *The Macquarie Concise Dictionary*, 2nd edn, The Macquarie Library, McMahon's Point, 1988, Introduction, p. ix.

³⁸ *The Australian Concise Oxford Dictionary*, 2nd edn, Oxford University Press, Melbourne, 1992, p. 812.

³⁹ *The Macquarie Dictionary*, 2nd edn, The Macquarie Library, McMahon's Point, 1991, p. 1274.

⁴⁰ *ibid*, p. 1275.

⁴¹ *ibid*, 1991, p. 1307; and see also *Collins English Dictionary*, 3rd edn, Harper Collins, Glasgow, 1991, p. 1148, where pederasty is defined as 'homosexual relations between men and boys'.

⁴² *The Australian Concise Oxford Dictionary*, 2nd edn, Oxford University Press, Melbourne, 1992, p. 833.

⁴³ *ibid*, p. 187; *Collins English Dictionary*, 3rd edn, Harper Collins, Glasgow, 1991, p. 281.

⁴⁴ *The Australian Concise Oxford Dictionary*, 2nd edn, Oxford University Press, Melbourne, 1992, p. 128; *Collins English Dictionary*, 3rd edn, Harper Collins, Glasgow, 1991, p. 190.

⁴⁵ *The Australian Concise Oxford Dictionary*, 2nd edn, Oxford University Press, Melbourne, 1992, p. 475; *Collins Paperback Dictionary*, New edn, Harper Collins, Glasgow, 1995, p. 332.

consent,⁴⁶ not all sexual experiences between adults and children are necessarily regarded by the latter as harmful, or as having been forced on them. Nevertheless, the conduct of the adult is regarded as an 'abuse' because it involves a violation of the restrictions imposed by the community upon adults for the protection of persons under the age of consent, or constitutes a betrayal of the trust imposed on persons of authority or influence over children.

LEGISLATIVE DEFINITION

1.40 There is no strict legal definition under State or Commonwealth legislation of 'paedophilia', 'paedophile', or 'pederast'.⁴⁷ Instead, within the criminal law, the offence or charge is defined by the nature of the activity involved, and the age of the victim. Similarly, there is no consistent definition of 'child' or 'children', their meaning varying according to context and statute. For example:

- under the *Evidence Act 1995*, 'child' is defined to mean 'a child of any age';⁴⁸
- under the *Children (Care and Protection) Act 1987*, 'child' is defined to mean 'a person who is under the age of 18 years'⁴⁹ whereas the obligation to notify child abuse (which includes sexual assault) relates to a child who is under the age of 16 years;⁵⁰ and
- in other contexts a child is considered by statute to be a person under the age of 18 years.⁵¹

1.41 The legislation which is directed towards providing protection to children through criminal sanction includes:

- the *Crimes Act 1900*, which creates a series of offences involving sexual assault, indecent assault, acts of indecency, and sexual intercourse in relation to persons under the age of 16 years;⁵² a series of offences involving male homosexual intercourse and acts of gross indecency with persons under the age of 18 years;⁵³ and a further series of offences involving incest (where the victim is over the age of 16 years), and carnal knowledge of females between the age of 16 years and 17 years where the offender is a schoolmaster, teacher, father or stepfather.⁵⁴ The Act also provides for an increase in penalty for an aggravation of the original offence, for example in circumstances where the child involved is under the age of 10 years, or is under the authority of the offender;⁵⁵

⁴⁶ See *The Macquarie Dictionary*, 2nd edn, The Macquarie Library, McMahon's Point, 1991, p. 7.

⁴⁷ The term is used in South Australian legislation. The *Statutes Amendment (Paedophiles) Act 1995*, while not specifically defining the term paedophile, does in s. 99AA, under the heading 'Paedophile restraining orders', use the term in a context which suggests that children need protection from people who have been found guilty of a child sexual offence in the past five years or who have been released from prison (having been incarcerated for a child sexual offence) in the last five years. A child sexual offence is defined in the same section as any of the following offences committed against or in relation to a child under 16 years of age: rape, indecent assault, incest, an offence involving unlawful sexual intercourse, an offence involving an act of gross indecency, an offence involving child prostitution etc.

⁴⁸ *Evidence Act 1995*, Dictionary, Part 1.

⁴⁹ *Children (Care and Protection) Act 1987*, s. 3(1).

⁵⁰ *Children (Care and Protection) Act 1987*, s. 22.

⁵¹ eg. *Children (Parental Responsibility) Act 1994*, s. 3; and *Children (Criminal Proceedings) Act 1987*, s. 3(1).

⁵² *Crimes Act 1900*, ss. 61J, 61M, 61N(1), 61O(1), 61P, 66C(1), 66C(2) & 66D.

⁵³ *Crimes Act 1900*, ss. 78K, 78L, 78N, 78O, 78Q(1) & 78Q(2).

⁵⁴ *Crimes Act 1900*, ss. 73, 74, 78A & 78B.

⁵⁵ *Crimes Act 1900*, ss. 61J(2)(d & e), 61M(3)(b & c), 61O(3)(b), 61P, 82A(2), 61M(2), 61O(2), 66A, 66B, 66C(2), 66D, 78H, 78I & 80A(2).

- additionally, the Crimes Act provides for a series of offences relating to child prostitution and pornography,⁵⁶ for the purpose of which a child is defined to mean a person under the age of 18 years;⁵⁷ and a further series of offences relating to the possession of child pornography⁵⁸ which is defined to include various forms of publication and items describing or depicting in a way that is likely to cause offence to a reasonable adult, a person 'who is a child under 16 or who looks like a child under 16';
- under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*, various offences are created concerning the sale or display of pornography (in a broad sense) to minors, who are defined as persons who are under the age of 18 years;⁵⁹
- the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) created a series of offences relating to sexual activity between an adult and a child under the age of 16 years;⁶⁰ and
- under the Customs (Prohibited Imports) Regulations 1994 (Cth) 'objectionable goods' prohibited from importation include items that describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under the age of 16.⁶¹

1.42 Although the legal age of consent in NSW is 16 years for females and 18 years for males, the general age of legal majority is 18 years.⁶²

OTHER DEFINITIONS

1.43 The United Nations Convention on the Rights of the Child (the Convention) to which Australia is a party,⁶³ outlines international arrangements for the protection of children, who are defined as anyone below the age of 18 years unless, under the law applicable to the child, 'majority' is attained earlier. Article 34 of the Convention provides:

State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in an unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

1.44 Arising out of Project Kestrel and the ensuing report known as 'Consequences of Shame'⁶⁴ the Police Service adopted a definition of paedophiles as those whose 'sexual preference for children is apparent' from police intelligence, prior criminal records, admissions or any other information suggesting such a sexual preference. A 'child' for the 'purposes of the investigation of child sexual abuse' was defined as one who had not yet attained the age of 16 years.⁶⁵ However, within the Service Guidelines, child abuse (including sexual assault) is defined in terms of 'abuse in relation to a child', and defines a child as 'any person under the age of 18 years'.⁶⁶

⁵⁶ Crimes Act 1900, ss. 91G(1), 91D, 91E & 91F.

⁵⁷ Crimes Act 1900, s. 91C.

⁵⁸ Crimes Act 1900, s. 578B.

⁵⁹ Classification (Publications, Films and Computer Games) Enforcement Act 1995, s. 4.

⁶⁰ Crimes (Child Sex Tourism) Amendment Act 1994 (Cth), ss. 50BA-50BD.

⁶¹ Customs (Prohibited Imports) Regulations (Cth) 1994, cl. 4A(1A)(b).

⁶² See the Interpretation Act 1987 which defines 'minor' as an individual who is under the age of 18 years.

⁶³ The United Nations Convention on the Rights of the Child was ratified by Australia in December 1990.

⁶⁴ NSW Police Service, The Consequences of shame: a report on paedophiles and child sexual abuse in New South Wales, c1993, RCPS Exhibit 1513/1.

⁶⁵ NSW Police Service, Commissioner's Instructions, No. 67.10, RCPS Exhibit 1510.

⁶⁶ NSW Police Service, Child Protection Procedures for Recognising, Notifying and Responding to Child Abuse and Neglect, November 1996, pp. 3-4, RCPS Exhibit 2897, at Doc. 2499482-83.

1.45 The Australian Institute of Health & Welfare defines child sexual abuse as 'any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards'.⁶⁷

1.46 The ICAC adopted as its working definition of paedophilia 'the sexual attraction in an adult towards children', for which purpose 'children' were taken to include 'at least young adolescents'.⁶⁸

DEFINITION USED BY ROYAL COMMISSION

1.47 It is clear from the foregoing that there is no universally accepted meaning for the expressions 'paedophilia', 'paedophile', or 'paedophile activity' used in the terms of reference, and that even the definition of 'child' may vary according to whether it is based on chronological age, biological age (pre-pubertal), the age of legal majority, the legal age of consent, or statutory prescription. Other complicating factors exist.

1.48 First, it is recognised that different views exist as to whether incest or familial sexual activity involving a stepfather, guardian or other near relative is a form of 'paedophilia', in the sense of involving an inherent sexual attraction towards children, or is driven by other factors, including:

- environmental circumstances such as opportunity and the disinhibiting effects of alcohol, loneliness or revenge; or by
- other personality traits or disorders.

1.49 While there are offenders within the familial setting who also have normal sexual relations with adults, and who may be regarded as situational/opportunistic offenders, there are also significant numbers of familial offenders who:

- confine their activities principally to children; and
- also have sexual contact with children outside the familial setting.

1.50 It follows that incest and familial sex offenders cannot be excluded, as a class, from consideration.

1.51 Secondly, the clinical and dictionary definitions of paedophile include adults who fantasise about sexual activity with children, but do not act upon those urges. Although they present as a potential danger to children, until they do act out, no occasion arises under the criminal or general law, for the Police Service, or any other government agency or instrumentality for that matter, to take any action in relation to them.

1.52 In all these circumstances, and taking into account the overall context of the Royal Commission, a socio-legal definition has been adopted which takes 'paedophiles' to mean those adults who act on their sexual preference or urge for children, in a manner which is contrary to the criminal laws of the State of New South Wales. Within this context, a child is a person who is below the relevant age of consent for the activity involved. A 'pederast' has been taken to be a paedophile who engages in homosexual intercourse with a boy, who similarly is below the age of consent. 'Paedophilia', 'paedophile activity' and 'pederasty', are similarly taken to constitute those forms of sexual behaviour, on the part of an adult, with or directed towards a child which, having regard to the child's age, are unlawful.⁶⁹

⁶⁷ G. Angus & S. Woodward, *Child Abuse and Neglect Australia 1993-94*, Child Welfare Series, no. 13, Australian Institute of Health & Welfare, AGPS, Canberra, 1995, p. 46.

⁶⁸ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516, p. 4.

⁶⁹ In adopting this working definition, the Royal Commission also acted pursuant to the advice of the Crown Solicitor of 16/7/96, which confirmed the correctness of its approach. See I. V. Knight, Crown Solicitor, Letter to Director-General, The Cabinet Office regarding the use of the terms 'pederast' and 'paedophile' by RCPS, 16/7/96, RCPS Exhibit 3216C.

1.53 In adopting this working definition, the Royal Commission has taken into account, in addition to the considerations outlined earlier:

- the circumstance that there is no fixed age for the onset of puberty, nor any clear demarcation between the various stages of puberty and adolescence, nor any legislative definition of any such terms;
- the tenor of the Parliamentary debates which preceded the reference to the ICAC and the issue of the Letters Patent to this Royal Commission, and which revealed a clear concern with the protection of children generally from unlawful sexual abuse;⁷⁰ and
- the inappropriateness of adopting a narrow or technical definition more appropriate for diagnosis of clinical deviancy, that would preclude a broad based inquiry into all areas where there was a risk that existing laws, arrangements and procedures for the protection of children from sexual abuse had failed, either through corruption, neglect, ignorance or otherwise.

1.54 Accordingly, the sufficiency and appropriateness of existing laws and penalties for 'crimes involving paedophilia and pederasty';⁷¹ the sufficiency of the monitoring and screening processes of government departments and agencies to protect children in their care, or under their supervision, from 'sexual abuse';⁷² and the sufficiency of the process and procedures of the Police Service and of the criminal trial process to deal with allegations of 'paedophilia and pederasty'⁷³ are addressed, in the context of the *Crimes Act 1900* and the *Children (Care & Protection) Act 1987*, rather than in the narrow context used by clinicians.

1.55 The same approach is taken in relation to the remaining terms which call for an examination of the impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions in relation to 'paedophile activity',⁷⁴ the protection by police or public officials of 'paedophiles or pederasts' from such investigations and prosecutions;⁷⁵ and the effect which the procedures of, or the relationships between the Police Service and other public authorities have had in relation to such investigations or prosecutions.⁷⁶

1.56 Later, in this Report, the range of persons brought within this definition, their behavioural characteristics, the particular problems they pose, and their separate needs, will be addressed. This is in recognition of the fact that grouping all child sex offenders together may result in an erroneous impression that they are a homogenous grouping.

C. THE ROYAL COMMISSION INQUIRY

1.57 In undertaking the paedophile inquiry the Royal Commission has informed itself in various ways, including:

- an extensive literature research, both within Australia and overseas;
- informal discussions with criminologists, paediatricians, sexual assault counsellors, psychiatrists and others with expert knowledge or interest in the field of child sexual abuse;
- discussions with senior police and with officials of government departments and agencies, homes, refuges and other institutions within NSW, providing for the care and protection of children;

⁷⁰ eg. NSW Parliament, *Hansard*, Legislative Assembly, 10/3/94, p. 556; and NSW Parliament, *Hansard*, Legislative Council 2/12/94, p. 6195.

⁷¹ Letters Patent, RCPS Exhibit 2724, paras. (g) & (h).

⁷² *ibid*, para. (i).

⁷³ *ibid*, para. (j).

⁷⁴ *ibid*, para. (d).

⁷⁵ *ibid*, paras. (d1) - (d3).

⁷⁶ *ibid*, paras. (d2) & (d3).

- visits by the Royal Commissioner to Children's Advocacy Centres in the United States of America;
- discussions with law enforcement officers, who have particular experience in the enforcement of child sexual assault laws within Australia, the United Kingdom and the United States of America;
- the receipt of submissions from the public at large, in response to announcements inserted in the daily press;⁷⁷
- interviews with a large number of victims of child sexual abuse, and with those convicted or suspected of such activity and their associates;
- the reception and analysis of a vast number of telephone calls and letters from informants, victims, parents, and others who had information of potential interest to the Royal Commission;
- the conduct of surveillance and undercover operations in respect of certain persons suspected of unlawful sexual contact with children, the details of which, in the public interest, will not be revealed in this Report, in order to protect sources, investigative methods and ongoing criminal investigations;
- the calling of evidence, principally in public, but also in camera, where it was thought appropriate to receive evidence formally, or to examine those witnesses who had information of value to provide, or who were unprepared to assist the Commission save where compelled to do so pursuant to an exercise of its coercive powers; and
- the collection of signed statements and statutory declarations from other witnesses where it was convenient, or appropriate, to receive their evidence in that fashion.

HEARINGS

1.58 In conducting the majority of its hearings in public, the Commission took the view that this was the strategy most likely to inform the public of a problem that had largely been hidden and misunderstood, and to secure a commitment by the relevant agencies and instrumentalities to change.

1.59 Guidelines were published⁷⁸ during the public hearings confirming that evidence would be taken in camera only where special circumstances existed,⁷⁹ for example where:

- the evidence, if led in public, was such that, despite a suppression order it might imperil the fair trial of a person waiting trial;
- it was necessary to take preliminary evidence to assist a covert inquiry, yet the early disclosure of it would prejudice that inquiry;
- it was necessary to take evidence from a witness earlier than planned, in relation to a covert inquiry, because of concern to remove a young person from the risk of imminent sexual abuse;
- it was desirable, having regard to the particularly prejudicial or discreditable nature of the evidence, to receive it in camera to ensure that it had prima facie credibility and was relevant to a term of reference, it being important to exercise Royal Commission powers responsibly, and in a way which limited collateral or gratuitous harm; or where

⁷⁷ See advertisement requesting public submissions relating to the paedophile segment, RCPS Exhibit 2100. See also Volume VI, Appendix P3. Submissions were also requested during the hearings, see RCT, 1/7/96, pp. 27891-93. In response to these invitations, some 200 submissions were received. See also Volume VI, Appendix P4.

⁷⁸ See guidelines for evidence in camera as produced by the Royal Commission, RCPS Exhibit 1849. See also Volume VI, Appendix P5.

- the evidence of the witness was such that, if led in public, it would have posed an unacceptable risk to the life of that witness, or of some other person (through harm which was either self-inflicted or attributed to a third party).

1.60 In appropriate circumstances, where the relevant factor which led to the evidence being taken in camera was no longer applicable, the transcript and relevant exhibits were released for public access.

1.61 By reason of the need to protect the identity of victims, or otherwise by reference to privacy interest (particularly of children) or pending prosecutions, many more witnesses or persons of interest were given code-names in the paedophile inquiry than was the case in the policing inquiry. This was in recognition of the intense media coverage given to the proceedings, the strong emotional response directed towards those who were the subject of allegations, and the very real harm that could be occasioned in the event of the allegations being unfounded.

1.62 As was emphasised more than once, the Commission was careful to remain within its terms of reference. Its interest was attracted only when there was material suggestive of a failure or deficiency in the investigative process, either by the Police Service, or by one or more of the agencies involved in the area of child sexual abuse, or some event involving an abuse of power by a public official.⁸⁰ Without that nexus the view was taken that it had no authority to investigate whether any person had participated in unlawful sexual activity with a child.

1.63 This meant that:

- in some cases the Commission conducted preliminary investigations, or received some limited evidence, to determine whether further inquiries were justified; and
- where, either after initial assessment or preliminary inquiries the Commission was satisfied that the required nexus was not present, or that the particular case would not add to its overall understanding of the problem, it disseminated the material available to the Police Service, or other relevant law enforcement or child protection agency for further investigation.

FOCUS OF ROYAL COMMISSION

1.64 The Commission became aware very early in its investigations that the incidence of extrafamilial sexual abuse had been seriously underestimated, and was not as well understood or policed as familial sexual abuse. As a consequence, it became apparent that it would need to explore this area in some depth, to determine the behavioural characteristics of the offenders involved in such abuse, their preferred victims, the circumstances in which such abuse was likely to occur, and the system failures which had allowed such a situation to occur. It also quickly became clear that most offenders within this category were male, and that a significant proportion of their victims were boys.

1.65 The Commission was aware that there was a risk that evidence called in respect of such cases might lead to an impression that it was targeting homosexual male offenders to the exclusion of other categories of offender, or that it had inappropriately reached a conclusion that male homosexual activity was synonymous with paedophilia or pederasty. Again it realised from its early studies that such was not the case, and accordingly it was at pains, from the opening of the public hearings, to reject any such suggestion or inference, and to confirm that it would also be examining familial abuse, and cases where the abuse was heterosexual in nature.

⁷⁹ Commissioner J. R. T. Wood, RCT, 13/5/96, pp. 25086-88.

⁸⁰ See eg. Commissioner J. R. T. Wood, RCT, 16/4/96, p. 33964; RCT, 8/5/96, pp. 24854-55 & 24923; RCT, 13/5/96, pp. 25087-88; RCT, 27/5/96, pp. 25904-5; RCT, 8/7/96, pp. 28282-83; RCT, 5/8/96, pp. 29797-98; RCT, 20/8/96, pp. 30996-97; RCT, 5/9/96, pp. 31675-75; RCT, 16/10/96, pp. 32711-12; RCT, 5/11/96, p. 23640.

1.66 So it was that, on 18 March 1996, Commissioner Wood, in the course of pointing out that the Commission had not fallen into the error of stereotype, observed:

First, we clearly understand that paedophilia and pederasty are not to be confused or equated with homosexuality. Paedophilia and pederasty will be both explained and examined in the course of the hearings, but for the moment, it suffices to say that paedophilia does embrace both heterosexual and homosexual activity.

Its distinguishing or essential factor is the age of the person who is drawn into the sexual activity or relationship in question. Although pederasty is homosexual in nature, that is, in the activity involved, it does not follow that homosexual men, are any more inclined towards sexual activity with children or adolescents than are heterosexual men, or that pederasts or paedophiles, for that matter, are exclusively homosexual in their inclination.

So it is important to observe at the outset that we have not fallen into the error of assuming, for example, that all gay men are pederasts, or are bringing some homophobic bias to this term of reference⁸¹ ...

In relation to familial abuse, the Commissioner added:

... Secondly, it is important to state that although the evidence called will tend to focus more on sexual activity outside conventional family units than on familial sexual abuse, the latter will not be entirely ignored, nor do we understate its significance and seriousness. The reason for our approach is that the sexual abuse of children and adolescents by those outside the family is less well understood and less well policed and is more likely to be the focus of organised or loose knit groups or networks of sexual offenders, and to be the occasion for both the proliferation of child pornography and the development of corrupt relationships than is sexual misconduct within the family⁸² ...

1.67 Notwithstanding these assurances which were repeated more than once,⁸³ as soon as evidence began to be called in relation to male offenders whose interests lay in boys, the Commission came under heavy criticism and was accused of homophobia, and abuse of office, by some sections of the community. That response was not universal, as there were many members of the community who wrote to the Commission advising that they understood and accepted its bona fides, and the need for it to continue on the path it had undertaken.

1.68 The facts are that:

- the Commission had no alternative other than to examine those cases where there was evidence of protection or system failure;
- the circumstances in which those cases occurred, the identity of the participants, and the nature of the sexual abuse involved were not of the Commission's making;
- it would have been as irresponsible for it to have declined to examine those cases out of fear of offending one section of the community, as it would have been for it to have sheltered any other group of offenders from scrutiny; and
- it did not, by any means, confine its inquiries to pederasts; rather it examined all facets of child sexual abuse both within and outside the family, including that of a heterosexual as well as a homosexual nature.

1.69 Nevertheless, the Commission considers it appropriate in this introduction to confirm that its inquiries did not lead it to any different view from that announced at the commencement of the hearings. Homosexuality is not synonymous with paedophilia and those whose sexual orientation is homosexual are no more likely to engage in paedophilia than those whose orientation is heterosexual.

1.70 Child sexual abusers include those who are exclusively heterosexual, those who are exclusively homosexual, and those who are bisexual. Some offenders in each category (mostly those

⁸¹ Commissioner J. R. T. Wood, RCT, 18/3/96, pp. 21950-54.

⁸² Commissioner J. R. T. Wood, RCT, 18/3/96, p. 21951; see also RCT, 27/5/96, pp. 25904-05.

⁸³ See eg. Commissioner J. R. T. Wood, RCT, 27/5/96, pp. 25904-05; RCT, 16/4/96, pp. 23639-40; RCT, 18/3/96, pp. 21950-54.

involved in a familial setting) engage in sexual activity both with adults and children, others confine their activities to children. Sometimes the sexual identity of the victim is crucial; in other cases it is a circumstance of opportunity, or the occasion for an exercise of power, in which the gender of the child is of no moment.

SELECTION OF CASES FOR INVESTIGATION

1.71 Of the very many allegations or complaints received by the Commission, it was sometimes clear from the outset, or after preliminary inquiry, that the information provided was either:

- dependent upon unverifiable hearsay, rumour or speculation;
- the product of malice or of a vested interest associated, for example, with marital conflict;
- the result of an unbalanced mind, or subclinical obsession; or
- representative of a belief genuinely but quite mistakenly entertained.

1.72 In these cases, no further action was taken by the Commission. In other cases where the information appeared to have a sound basis, but not to have possessed the required nexus to the terms of reference, it was disseminated to the agency or authority most suitable to deal with it, without any public acknowledgment of that having occurred. Where appropriate, the Royal Commission did attempt to provide a suitable personal explanation to the source of the information, but in some cases, to ensure operational security or to avoid the exacerbation of an already troublesome situation, that was not possible.

1.73 The Royal Commission is aware that its inability to take up all cases referred to it was a cause for dissatisfaction to some informants. The Commission is also aware that, despite the regular explanations it gave, there were some who sought to take up the cause of those informants, as well as politicians, and some sections of the media, who either did not understand, or would not accept the limitations which were imposed by its terms, or by the need to use its resources to best advantage.

1.74 In some instances, this led to unfounded assertions that the Commission was involved in a cover-up of persons in high places, or was not carrying out a thorough investigation, or was biased in its approach. Such assertions were totally without foundation, did not assist the Royal Commission in the discharge of its duties, and were potentially very harmful to those who were the subject of baseless rumour or innuendo. Particularly was this the case where the allegations were the product of malice, or where those who made the assertions were unprepared to provide the Commission with details or sources which could be tested, and could not be compelled to do so.

SUPPORT OF WITNESSES

1.75 The Commission was mindful of the fact that it was working in a very complex and confused area of human sexuality, in which there were likely to be some very damaged victims and families, as well as a serious potential for error, unfair traducement of reputation, and fear of public exposure on the part of those who came under investigation. Accordingly, from the outset it emphasised the need for a calm and impartial approach to the evidence, which refrained from speculation and avoided over reaction or politicisation of the issues which emerged.⁸⁴

1.76 Additionally, the Commission retained on staff a consultant psychologist, and established a panel of psychiatrists who were available to consult with victims and potential witnesses, including those who were suspected offenders. It exercised considerable care in minimising the potential for harm, by taking expert advice before approaching witnesses who were potentially vulnerable, by providing ongoing support, by allowing them to give evidence under code-names and from a remote

⁸⁴ See the comments of Commissioner J. R. T. Wood, RCT, 18/3/96, pp. 21952-53; RCT, 19/3/96, pp. 22093-95; and RCT, 8/7/96, p. 28283.

location via video link, by suppressing the release of identities or photographs, and otherwise facilitating their participation in the proceedings in a way that would avoid undue embarrassment or pressure. Notwithstanding these precautions, several persons who were of interest to the Royal Commission, some of whom provided valuable information and assistance to it, took their own lives before its inquiries concluded. The risk of this occurring has been shown to be very high in relation to conventional criminal investigation of child sexual abuse cases. It has as much to do with personal shame as it does with the fear of public exposure, rejection and imprisonment.

1.77 The Commission did not curtail its inquiries because of this circumstance, in the same way that a Police Service cannot refrain from investigating this form of criminality. What the experience does underline, however, is the need for considerable care and expertise to be applied in dealing with the victims of child sexual abuse, who can become as victimised by the investigative and trial process as by the offence itself. Similar professionalism needs to be applied in relation to the offenders, some of whom were themselves the victims of sexual assault when children, or for various reasons have limited personal resources.

OUTCOME IN SUMMARY

1.78 As will be addressed in the succeeding chapters of this volume, an exceedingly disturbing picture emerged during the Commission's inquiries. This extended to reveal:

- the existence of groups of offenders prepared to co-operate with each other, and of individual offenders with significant histories of unlawful sexual contact with children that had gone undetected;
- a lack of past commitment by the Police Service, other relevant government agencies with an involvement in child care and protection, and of churches and similar institutions, that collectively have failed to address the problem, or worse have compounded it by concealment;
- fundamental misunderstandings and a lack of suitable operational guidelines or protocols and of co-operation among the agencies and institutions mentioned or of any integrated system for the protection of children;
- a serious lack of community awareness of the nature and extent of the problem, a reticence to recognise and discuss it, and an absence of public education and of suitable training for those working in the field;
- an absence of sufficient monitoring and screening processes for those working with children or having close contact with them in the course of their official duties;
- an absence of any sufficient or organised mechanism for the support, management and rehabilitation of offenders, and of children, or adults who as children, were caught up in this activity;
- an unaddressed potential for serious abuse of the rights of children to freedom from sexual contact via child pornography, prostitution and the like, along with serious inadequacies in the welfare, housing and support systems for young persons that left them particularly vulnerable to unlawful sexual and physical abuse or neglect; and
- a dilatory and unsatisfactory legal framework for the prosecution of those involved in unlawful sexual activity with children which often led to system abuse of those children.

DEVELOPMENTS

1.79 As outlined in Volume I of this Final Report there was a general acceptance of these deficiencies, as the hearings of the Royal Commission progressed.⁸⁵ As a consequence, a number of significant changes were made which have increased the capacity of the Police Service to investigate child sexual abuse, secured an integrated approach between the agencies involved, and caused them to develop appropriate protocols to deal with suspected or reported paedophile activity. In the case of other institutions such as the churches and schools, where a history of cover-up was identified, the shortcomings were acknowledged and a total revision of policy achieved. These developments will be examined in more detail later in these Volumes.

1.80 The disclosures of this Royal Commission and the reforms achieved within NSW have coincided with the close attention given to the problem of child sexual abuse in other States and Territories of Australia, and internationally. In part this has arisen from concern as to organised activities involving sex tours by paedophiles to third world countries. Otherwise, it has become focused by disclosures, internationally, of serious criminality extending to the murder and assault of children, for example, in Belgium and the United Kingdom, the proliferation of child pornography on the Internet, the widespread abuse of children by members of religious orders in many countries, and the existence of networks of paedophiles in France⁸⁶ and Spain.⁸⁷

1.81 Within Australia there have been moves to address the problem on a national basis, for example by:

- the arrangements agreed to in principle by State and Territory Ministers of Education for the establishment of a list of teachers to be barred because of their paedophile activities;⁸⁸
- the passage in 1994 of Commonwealth laws for the prosecution of Australians who engage in the sexual abuse of children overseas;⁸⁹
- steps towards establishing a National Index of known paedophiles to be maintained by the Australian Bureau of Criminal Intelligence (ABCI); and
- the national strategic assessment of organised paedophile activity in Australia by the National Crime Authority (NCA).

1.82 Internationally there have also been important developments, particularly involving signatories to the United Nations Convention, to secure child protection. These have included:

- the first World Congress Against Commercial Sexual Exploitation of Children held in Stockholm, Sweden from 27 to 29 August 1996, at which The Declaration and Agenda for Action was adopted by all 140 government delegations involved. The Agenda for Action is a set of guidelines for action at national and international levels regarding issues such as child prostitution; child sex tourism; and the exploitation of children in pornography, particularly via new technologies such as the Internet;⁹⁰
- moves towards developing international measures to prevent the exploitation and abuse of children through the Internet;

⁸⁵ See Volume I, Chapter 1, paras. 1.25 - 1.26.

⁸⁶ 'French hold 600 in two-day hunt for paedophiles', *The Times*, 19/6/97, p. 16.

⁸⁷ 'Ten arrested over child-sex ring', *Sydney Morning Herald*, 31/7/97, p. 8.

⁸⁸ See Chapter 10 of this Volume.

⁸⁹ *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth).

⁹⁰ Declaration and Agenda for Action, World Congress Against Commercial Sexual Exploitation of Children, Stockholm, August 1996, RCPS Exhibit 3212.

- the formation of a global network of organisations working together for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes, the Australian member for which is ECPAT Australia;⁹¹ and
- the enactment in several countries of legislation⁹² for the prosecution of their nationals for child sexual offences abroad.

1.83 Collectively these are encouraging developments. The problem of paedophilia seems to be common to society generally. It is enormously damaging, it involves a gross betrayal of trust, and any community which neglects to address it, is failing its young. As the remainder of this Report reveals, it is a problem that needs to be approached on a concerted and co-ordinated basis, and it calls for education of the community and frank acceptance of its prevalence, rather than concealment.

⁹¹ End Child Prostitution in Asian Tourism Australia Incorporated.

⁹² eg. *Sex Offenders Act 1997* (UK). Other countries with legislation permitting prosecution of sex crimes committed by citizens or residents overseas include Germany, France, the United States, Belgium, and New Zealand. See M. O'Brian, The international legal framework and current national legislative and enforcement responses, paper written for ECPAT Australia as a contribution to the World Congress Against Sexual Exploitation of Children, Stockholm, 27/8/96 - 31/8/96, RCPS Exhibit 3215, p. 18; O. Calcetos-Santos, Interim report prepared by the Special Rapporteur of the Commission on Human Rights and on the sale of children, child prostitution and child pornography, United Nations General Assembly, October 1996, RCPS Exhibit 3051/35a and O. Calcetos-Santos, Provisional report prepared by the Special Rapporteur of the Commission on Human Rights and on the sale of children, child prostitution and child pornography, United Nations General Assembly, September 1995, RCPS Exhibit 3051/35b.

Chapter 2

DEALING WITH CHILD SEXUAL ABUSE AND PROTECTION: AN OVERVIEW

2.1 Necessary to an understanding of the problems that have emerged is an overview of the system in place for the investigation and prosecution of child sexual abuse and for the protection of children from such abuse. In preparing this overview the Commission has drawn on the valuable research carried out by the ICAC in the course of Phase 1 of Operation Carbon.⁹³

2.2 Unless the context otherwise shows, the Royal Commission will use the term 'child sexual abuse' to comprehend all those activities which involve any form of unlawful sexual conduct with or towards a child including, for example, exposure to pornography or prostitution, acts of indecency and indecent exposure, as well as those forms of contact which amount to a sexual 'assault' at law. This is in recognition of the circumstance that, within the guidelines of the various agencies involved, and in common speech, different and not always consistent meanings are given to the terms 'abuse' and 'assault'.

A. THE SYSTEM

AGENCIES INVOLVED

2.3 There are three agencies with a direct interest in the protection of children from sexual abuse. They are:

- the NSW Department of Community Services (DCS);
- the NSW Health Department (Health); and
- the NSW Department of School Education (DSE).

2.4 Two other agencies have a direct interest in the investigation and prosecution of such cases:

- the NSW Police Service (the Police Service); and
- the Office of the Director of Public Prosecutions (ODPP).

⁹³ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516, pp. 3-29.

2.5 Each of these five key agencies is represented on the NSW Child Protection Council (CPC), an advisory council whose role includes reviewing, making recommendations to the Minister for Community Services, and co-ordinating the implementation on an interdepartmental basis, of policy and procedures in all areas relating to child abuse.

2.6 Other government agencies with an interest include:

- the Department of Sport and Recreation (DSR) which promotes and develops facilities, programs and services that encourage participation in sport and recreation. It also funds groups such as those involved in scouting, surf life-saving, pony clubs and youth centres;⁹⁴
- the Department of Juvenile Justice (DJJ), which is entrusted with the supervision of children subject to detention or supervision following their involvement in the criminal justice system;⁹⁵
- the Corrective Services Department (CSD) with responsibility for the supervision and rehabilitation of incarcerated sex offenders;⁹⁶
- the Community Services Commission (CSC), the function of which is to monitor and review the delivery of community services including those relating to children in care, and to respond to complaints about DCS management, *inter alia*, of sexual abuse cases;⁹⁷
- the Office of the Ombudsman which, prior to 1993,⁹⁸ had jurisdiction to deal with complaints concerning the management by DCS of sexual abuse cases, and may arguably still have a residual jurisdiction;⁹⁹
- the Health Care Complaints Commission (HCCC), which investigates complaints made against health workers, including complaints involving the sexual abuse of children;¹⁰⁰
- the Police Integrity Commission (PIC), which has a general jurisdiction to investigate corruption and serious misconduct involving police, including corruption in respect of the policing of child sexual abuse laws;¹⁰¹ and
- the Independent Commission Against Corruption (ICAC) with a jurisdiction to investigate corruption within the NSW public sector.¹⁰²

2.7 The overall framework provided is represented in the following diagram:

⁹⁴ See Volume V, Chapter 13 of this Report.

⁹⁵ *Children (Criminal Proceedings) Act 1987* ; *Children (Detention Centres) Act 1987* ; *Children (Community Service Orders) Act 1987* .

⁹⁶ The Department of Corrective Services is responsible for the administration of the following legislation:

- *The Community Services Orders Act 1979* ;
- *Parole Orders (Transfer) Act 1983* ;
- *Periodic Detention of Prisoners Act 1981* (except Part 2);
- *Prisons Act 1952* ;
- *Prisoners (Interstate Transfer) Act 1982* ;
- *Sentencing Act 1989* (Parts 3 & 5).

⁹⁷ *Community Services (Complaints, Appeals and Monitoring) Act 1993* .

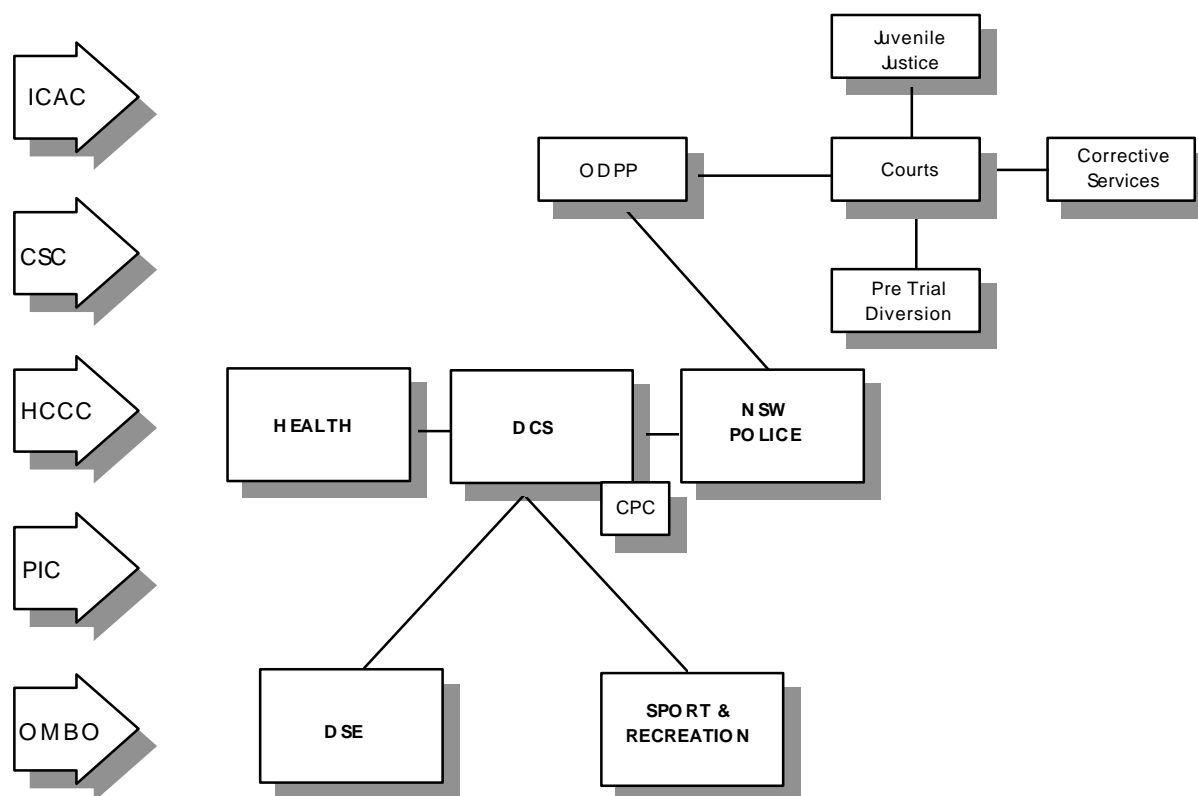
⁹⁸ When the *Community Services (Complaints, Appeals and Monitoring) Act 1993* was enacted.

⁹⁹ *Ombudsman Act 1993*, ss. 12, 13 & 26; see also NSW Ombudsman, 'Legislation by Stealth Robs Ombudsman of Jurisdiction', *Annual Report 1992-1993*, RCPS Exhibit 3117, pp. 100-02, which states that complaints concerning systemic misconduct or maladministration which do not involve the provision of a community service to a particular person can not be dealt with under the *Community Services (Complaints, Appeals and Monitoring) Act 1993* and therefore still lie within the Ombudsman's jurisdiction.

¹⁰⁰ *Health Care Complaints Act 1993* .

¹⁰¹ *Police Integrity Commission Act 1996* .

¹⁰² *Independent Commission Against Corruption Act 1988*.



2.8 The role of several of these agencies is of a supervisory nature and will not be further developed in this chapter. The position of the five key agencies, and of the institutions which become involved once the criminal justice system or the protective function of DCS is invoked, is outlined shortly in this chapter but is dealt with in more detail in later chapters.

THE DEPARTMENT OF COMMUNITY SERVICES

2.9 DCS has the primary responsibility under the *Children (Care and Protection) Act 1987* for the protection and management of children suspected of being subject to sexual, physical or emotional abuse or neglect.¹⁰³ It is the agency:

- to which notifications are to be made where reasonable grounds exist for suspicion that a child under the age of 16 years has been, or is in danger of being abused, or is in need of care;¹⁰⁴
- which may make care applications for those children in need of care;¹⁰⁵
- which may exercise various powers for the removal of children in need of care from private premises and public places;¹⁰⁶
- which is required to investigate allegations of abuse of children and take such action as is appropriate, including bringing such matters to the notice of the Police Service;¹⁰⁷ and

¹⁰³ *Children (Care and Protection) Act 1987*, especially ss. 10 & 55 which confer on the DCS the responsibility of ensuring that children in need of care are provided with assistance and supportive services. Under the Act a child is considered to be in need of care if it is being, or is likely to be, abused, where abuse is defined as assault (including sexual assault), ill-treatment or exposure to behaviour that may psychologically harm the child.

¹⁰⁴ *Children (Care and Protection) Act 1987*, s. 22. This has now been expanded to include children of 16 years or 17 years but is not part of the mandatory notification system. Schedule 1, *Children (Care and Protection) Amendment (Disclosure of Information) Act 1996*.

¹⁰⁵ *Children (Care and Protection) Act 1987*, s. 57.

¹⁰⁶ *Children (Care and Protection) Act 1987*, ss. 59, 60 & 61.

¹⁰⁷ *Children (Care and Protection) Act 1987*, s. 22(7).

- which will normally arrange health and welfare services for abused children, as well as support for family members.¹⁰⁸

2.10 As is explained in more detail later:

- the notification and investigative obligations cease once a child has attained 16 years, although other provisions of the legislation, (including those creating various offences for child abuse and neglect),¹⁰⁹ relate to children up to the age of 18 years;
- the reporting of notified cases to the Police Service is not mandatory;
- DCS staff are very often placed in the position of weighing up competing interests in relation to the institution of criminal investigations and the preservation of the family unit; and
- DCS staff are also in a position to identify and report suspected criminal offenders in the course of their various duties concerned with the protection of children, for example, those relating to licensing and funding of care and support services.

2.11 As at the time of this Report, child and family casework is carried out by District Officers working from 87 DCS Community Service Centres.¹¹⁰ Child protection specialists are located in 20 Area Offices State-wide to provide support and advice to staff at these centres. Additional Specialist Services provided by the DCS include:

- Child Protection and Family Crisis Service - 24 hour freecall telephone line;
- Domestic Violence Services;
- Kings Cross Adolescent Referral & Support;
- Legislation Review Project;
- Hunter Child Protection Service;
- Illawong Child Protection Service;
- Montrose Child Protection Unit;¹¹¹
- Vulnerable Families Program;
- Home Visitor Projects;
- Parent Information and Help Line;
- Supported Accommodation Assistance Program (SAAP);¹¹²
- Psychological Services;¹¹³ and
- Intensive Support and Aftercare Service.¹¹⁴

There are also a large number of non-government child protection or child sexual assault programs that are funded by DCS or by the Commonwealth.¹¹⁵

¹⁰⁸ *Children (Care and Protection) Act 1987*, ss. 12 & 55. In addition, DCS is affected by the *Community Welfare Act 1987*, ss. 4(1) & 6 which allow the Minister to develop and carry out, or assist in the development and implementation of, community welfare services and social development programs that promote, protect and improve the well-being of the people of NSW.

¹⁰⁹ *Children (Care and Protection) Act 1987*, ss. 25-29.

¹¹⁰ DCS, Ageing and Disability Department (ADD) and Department of Juvenile Justice (DJJ), Joint submission to RCPS, August 1996, RCPS Exhibit 2540, p. 2.

¹¹¹ DCS, *Annual Report 1994-95*, RCPS Exhibit 3063/14, pp. 13-15.

¹¹² DCS, *Annual Report 1995-1996*, RCPS Exhibit 3063/16, pp. 24-27.

¹¹³ *ibid*, pp. 75-76.

¹¹⁴ DCS, ADD & DJJ, Joint submission to RCPS, August 1996, RCPS Exhibit 2540, p. 47.

¹¹⁵ A list of non-government child protection programs/organisations funded by DCS is included as Appendix P7 in Volume VI of this Report. The list is taken from the DCS, *Annual Report Addendum 1995-1996*, pp. 1-2.

2.12 The Council on the Cost of Government NSW (CCOG) reported in 1997 that the direct services of the DCS are provided through:

- 16 Area Offices;
- 83 Community Service Centres (CSCs);
- 219 group homes for people with a disability;
- 10 group homes for children in substitute care;
- two residential services for younger people in substitute care (up to 52 children); and
- two large residential services accommodating 1,097 people with a developmental disability.¹¹⁶

2.13 The Child and Family Services Directorate develops relevant policy, procedures and guidelines and participates in interagency forums.¹¹⁷ The Directorate also contains the Legislation Review Project, currently reviewing the *Children (Care and Protection) Act 1987*.

THE DEPARTMENT OF SCHOOL EDUCATION

2.14 DSE staff are required by law to notify suspected sexual assault, involving children under 16 years, to DCS.¹¹⁸

2.15 The deficiencies in the handling of matters which involve allegations of child sexual abuse in which the alleged perpetrator is a DSE staff member are dealt with later in this Report.¹¹⁹ Previously such matters were managed at a school or regional level by the Regional Directors with the advice of the Legal Services Directorate. Since September 1996, such matters have been referred to a central Case Management Unit.¹²⁰

2.16 Various units have been established within the DSE with responsibility for child protection policy and program development:

- the Training and Development Directorate is responsible for maintaining and increasing the skill base of the entire department. A major child protection training program involving every member of staff in all DSE workplaces is being undertaken in 1997. Staff with key leadership roles, such as school principals and District Guidance Officers are also participating in interagency training as part of the whole-of-government approach to child protection;¹²¹
- the Personnel Policies and Student Welfare Directorates, in consultation with parents, unions and other relevant parties, have developed policy documents for recognising and notifying child abuse as well as procedures for responding to allegations of improper conduct of a sexual nature by a staff members;¹²²

¹¹⁶ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 5.

¹¹⁷ NSW Child Protection Council (CPC), Structures of the five key agencies and the NSW Child Protection Council, Appendix D in Report of the working together working party on joint responses to child abuse and neglect, May 1996, RCPS Exhibit 3054C/12, p. 60.

¹¹⁸ Children (Care and Protection) Amendment (Notification of Child Abuse) Regulation, *NSW Government Gazette*, 14/3/97, p. 1471. See RCPS Exhibit 2934 and Chapter 10 of this Volume.

¹¹⁹ See Chapter 10 of this Volume.

¹²⁰ The Case Management Unit is a centralised body, the role of which is to receive, register, manage and investigate allegations of improper conduct of a sexual nature by a Department of School Education (DSE) staff member against a student. It also assists in developing child protection training programs for DSE staff, identifying areas which require policy development, and liaising with other government agencies regarding child protection issues with an interagency component. See K. Boston, Director-General & G. Shadwick, Assistant Director-General, DSE, Statement to RCPS, 16/6/97, RCPS Exhibit 3114C, p. 1.

¹²¹ K. Boston, Director-General & G. Shadwick, Assistant Director-General, DSE, Statement to RCPS, 16/6/97, RCPS Exhibit 3114C, pp. 6-7.

¹²² DSE, Child Protection: Procedures to be followed in response to allegations of improper conduct of a sexual nature by a staff member against a student, 97/018 (S.017) and Child Protection: Procedures for recognising and notifying child abuse and neglect, 97/019 (S.018), 10/3/97, RCPS Exhibit 5967.

- the Personnel and Employee Relations Directorate has been made responsible for developing procedures concerning the promotion, transfer or resignation of staff and the provision of statements of service in situations where an allegation of improper conduct of a sexual nature has been made;
- the former Legal Services Directorate has been abolished and a Legal Services Unit established within the Executive Services Directorate to provide legal advice and to conduct reviews of relevant legislation;
- the Child Protection Steering Committee has been made responsible for ensuring that problems identified by the Royal Commission are addressed in the development and implementation of all departmental policy and procedure. The Committee oversees the development of child protection policies by other units within the department; and
- a National Strategy to Prevent Paedophilia and Other Forms of Child Abuse Working Party has been made responsible for implementing the national paedophile strategy approved by the Ministerial Council of Education, Employment, Training and Youth Affairs Ministers (MCEETYA). The Working Party is made up of senior staff from State and Catholic education systems, the independent school sector and parent bodies.¹²³

THE NSW HEALTH DEPARTMENT

2.17 Medical practitioners are required to notify DCS of all forms of suspected abuse of children under the age of 16 years, including sexual abuse.¹²⁴ Although under no statutory obligation to do so, other health services staff are required by Ministerial directive to similarly notify DCS of such cases.¹²⁵

2.18 Sexual assault services are located in certain hospitals and community health centres, and provide medical and counselling services, information, and support to sexual assault victims. Victims are commonly referred to these services by DCS. Specialist child protection units at the New Children's Hospital and Sydney Children's Hospital, the John Hunter Hospital in Newcastle and the Northern Sydney Area Child Protection Service offer services specifically for children, while the sexual assault services located throughout NSW deal with both children and adults.¹²⁶ If the first point of contact is at such a centre, it notifies DCS, which in turn may notify police.

2.19 In cases of physical and/or emotional abuse and neglect (PANOC), prevention, identification, support and referral are provided by Area Health Services through a system of community and hospital-based services, including Family and Child Health Services. More specialised treatment and support services are available through metropolitan and rural child protection services and the hospital-based child protection units.¹²⁷ PANOC services were as at the time of this Report funded separately from child sexual assault services,¹²⁸ but there have been moves toward developing a more integrated approach to child protection.¹²⁹

2.20 Within Health, responsibility for child protection policy and program development is divided between different units:

¹²³ K. Boston, Director-General & G. Shadwick, Assistant Director-General, DSE, Statement to RCPS, 16/6/97, RCPS Exhibit 3114C, pp. 4-8.

¹²⁴ *Children (Care and Protection) Act 1987*, s. 22.

¹²⁵ Health workers are required by Ministerial directive to notify DCS of all cases where they have a reasonable belief that a child has been, or is in danger of being abused. See NSW Department of Health, Notification of suspected child abuse, Circular, 93/39, 4/5/93, RCPS Exhibit 2541/2, at Doc. 2437423-25; and NSW Health, Recognising and notifying child abuse and neglect: Procedures for front line health professionals in: Community Health, Adult, Child and Adolescent Mental Health, Emergency Departments, Paediatric Wards, Maternity Units, Dental Services and Child Care Services, November 1996, RCPS Exhibit 5984/2, Attachment 4, pp. 23-24.

¹²⁶ CPC, Structures of the five key agencies and the NSW Child Protection Council, Appendix D in Report of the working together working party on joint response to child abuse and neglect, May 1996, RCPS Exhibit 3054C/12, p. 60.

¹²⁷ *ibid.*

¹²⁸ The funding for services remains separate, except in the provision of medical services. See NSW Health Department, Memorandum refunding for child abuse services, 7/8/97, RCPS Exhibit 3265.

¹²⁹ J. Wyn Owen, RCT, 10/7/96, pp. 28509-10.

- the Women's Health and Sexual Education Unit, a State-wide specialist body which is responsible for the provision of training programs and resources for health workers dealing with victims of sexual assault or domestic violence. It is administered by the Western Sydney Area Health Service; and
- the Health Services Policy Branch, within the Policy Development Division, which has management responsibility for child protection issues and interagency liaison. The Senior Policy Analyst (Sexual Assault) and Senior Policy Analyst (Physical and Emotional Abuse or Neglect of Children) liaise with other agencies and operational staff on a day-to-day basis regarding both policy and operational issues associated with child sexual assault and PANOC.¹³⁰

THE NSW POLICE SERVICE

2.21 The Police Service has been, and continues to be, the agency primarily responsible for the investigation of child abuse constituting a criminal offence, and for initiating prosecutions. Police officers are not mandated by the *Children (Care and Protection) Act 1987* to notify DCS of child sexual assault cases, but they are required by Commissioner's direction to do so.¹³¹

2.22 In some cases the Police Service response is initiated by a direct report to it.¹³² In other cases it responds to a report from DCS. Police investigations of this kind are reactive, that is, in response to specific complaints which lead to interviews, collection of physical evidence, medical examinations and the like. In other cases the role of the police is proactive, that is, based on the assembly and analysis of intelligence followed by physical and electronic surveillance and either undercover operations or conventional investigation.

2.23 There have been a number of changes of direction in the way in which the Police Service has investigated these cases. Formerly investigations were carried out at patrol level, if they were minor matters, or by the Child Mistreatment Units (CMUs) if they were more serious. The CMUs were renamed Child Protection and Investigation Teams (CPITs) in June 1994.¹³³ For particularly complex cases, special task forces or investigative teams were employed. In more recent times approval has been given for the use of Joint Investigation Teams (JITs), deployed at various locations, and comprising police and DCS employees. The policing of serial abuse has, since 1 July 1996, been entrusted to the Child Protection Enforcement Agency (CPEA) located in Sydney and staffed by police especially trained in the field of child sexual abuse.

2.24 As is explained later, the policing of child sexual assault was formerly a low priority for the Police Service. The work was unpopular, very stressful and extremely poorly resourced. With the advent of this Royal Commission and the formation of the CPEA and the JITs there has been an improvement. It is however, essential, if there is to be any credibility in the enforcement of child sexual assault laws, that the Police Service maintain a commitment to this area of policing.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

2.25 The ODPP represents the State in criminal prosecutions, including those involving child sexual assault and serious offences involving violence against children, in the Children's, Local, District and Supreme Courts.¹³⁴ Upon request from investigating police, the ODPP provides advice in

¹³⁰ NSW Health Department, Statement of Information, 24/1/97, RCPS Exhibit 5984/2, pp. 9-10.

¹³¹ NSW Police Service, Circulars 81/87 of 23/3/81, 82/185 of 23/8/82, 84/235 of 6/8/84, 85/175 of 23/9/85, 85/186 of 11/10/85 & 87/160 of 4/12/87; Instructions 35.119 issued 30/1/89 & 67.11 issued 8/11/91.

¹³² NSW Police Service, Child abuse investigation and management guidelines, 2nd edn, June 1991, RCPS Exhibit 1508, pp. 18-21 lists procedures to be followed when police are notified that a child abuse offence has occurred.

¹³³ NSW Police Service, *Commissioner's Instructions*, No. 94/52, 13/6/94, RCPS Exhibit 3088. The name change was one of the recommendations put forward in the NSW Police Service's action plan for the investigation and management of child abuse: working with others for the care and protection of children, December 1993, as a means of improving the status of child protection work, RCPS Exhibit 1515, pp. 16-17.

¹³⁴ CPC, *Interagency Guidelines for Child Protection Intervention*, 2nd edn, Sydney, February 1997, RCPS Exhibit 3204, p. 14.

relation to the sufficiency of evidence required to support a charge, and the appropriateness of particular charges, but not in relation to any operational or investigative matters or the exercise of police powers. It has no investigative function of its own¹³⁵ and it must not impinge on the Police Service's jurisdiction in this area.¹³⁶ After charges have been laid, the ODPP will screen the brief of evidence provided by the Police Service and allocate it to an appropriate lawyer.¹³⁷

2.26 The ODPP conducts all committal proceedings involving indictable offences, and may conduct summary proceedings involving persons of public interest. In practice, since 1 January 1989 it has had the carriage of all prosecutions where a person is charged by police with sexual assault on a child, including matters before Children's Courts.¹³⁸

2.27 The Assistant Solicitor (Sydney, ODPP), Mr Dart, gave evidence of the number of child sexual assault matters the ODPP was handling as at 21 February 1997 as follows:¹³⁹

| | |
|--|-----|
| Local Court (includes summary hearings and committal proceedings) | 330 |
| District Court - awaiting trial or part heard | 409 |
| District Court - awaiting sentence after plea of guilty in Local Court | 41 |
| Court of Criminal Appeal | 48 |
| High Court | 2 |
| District Court - all grounds appeal | 13 |
| District Court - severity appeal | 1 |
| Breach of recognisance | 3 |
| Total | 847 |

2.28 Formerly, the ODPP maintained a Child Witness Unit (CWU) which specialised in the prosecution of matters involving the alleged sexual assault of children, as well as those criminal matters where children were required as witnesses. The CWU was dissolved when the restructure of ODPP became effective in June 1996.¹⁴⁰ Case management is now the responsibility of solicitors in selected locations, including Sydney and other major cities. Senior solicitors are responsible for screening all child sexual assault briefs and allocating those to appropriate staff for prosecution.

2.29 Policy development is assisted by the Sexual Assault Review Committee, comprised of representatives from the ODPP, the Judicial Commission of NSW, Health, the Pre-Trial Diversion of Offenders Programme, the Police Service, and the CPC and a research psychologist.¹⁴¹ Its functions include:

- education of legal personnel and prosecutors;
- guidance and advice to other agencies;
- recommendation of improvements to court processes, legislative reform, and procedural and structural improvements within the ODPP; and
- protection of the interests of victims in the pre-trial preparation and hearing processes.

¹³⁵ Office of the Director of Public Prosecutions NSW (ODPP), *Child Sexual Assault Policy and Guidelines Manual*, Revised 1996, RCPS Exhibit 5897, p. 22.

¹³⁶ ODPP, *Child Sexual Assault Policy and Guidelines Manual*, Sydney, 1996, RCPS Exhibit 5897, p. 10.

¹³⁷ *ibid*, p. 125.

¹³⁸ NSW Police Service, *Circular*, No. 89/36, 23/2/89, RCPS Exhibit 3094.

¹³⁹ P. Dart, RCT, 24/2/97, p. 36143.

¹⁴⁰ A result of the review of the structure of ODPP in late 1995, budget cuts and a Government directive to reduce the number of Senior Executive Service employees. N. R. Cowdery QC, RCT, 1/7/96, pp. 27944-45.

¹⁴¹ S. E. O'Connor, Solicitor for Public Prosecutions, Letter inviting the Principal Policy Officer of DCS to become a member of the Sexual Assault Review Committee, 13/6/96, RCPS Exhibit 2105.

2.30 The previous functions of the Child Witness Unit have been taken over by the Witness Assistance Service (WAS) which provides:

- information and support for civilian witnesses;
- referral services; and
- any other assistance required to facilitate a court appearance.

THE NSW CHILD PROTECTION COUNCIL

2.31 The CPC was formed by the State Government in 1985¹⁴² in response to the work of the NSW Child Sexual Assault Task Force.

2.32 Membership of the CPC is drawn from DCS, Health, the Police Service, DSE, the Attorney General's Department, DJJ, the Ethnic Affairs Commission and the Department of Urban Affairs, and Planning and Housing. A number of representatives from the community also sit on the Council. It has a general role, although without any legislative basis,¹⁴³ to:

- provide advice to the NSW Government through the Minister for Community Services on child protection issues, including the prevention of child abuse and neglect;
- co-ordinate, implement, monitor and promote strategies to improve interagency co-operation in child protection through NSW;
- assist with implementation of activities in all relevant government departments, authorities and non-government agencies;
- conduct activities which prevent child abuse and neglect; and to
- conduct activities which improve the competence of staff working in the area.¹⁴⁴

2.33 In 1991 the CPC issued Interagency Guidelines¹⁴⁵ to assist the five agencies principally responsible for the management of child sexual abuse cases¹⁴⁶ to co-ordinate their response. The guidelines were a logical development of the Interdepartmental Guidelines on Child Abuse which had been released in May 1982, and revised in 1984 and 1985, and of the Interdepartmental Guidelines on Sexual Assault Services which had been released in March 1984.¹⁴⁷

2.34 Notwithstanding the existence of these guidelines, the need became apparent for a greater co-ordination of the system response to child abuse and neglect. This arose in part from continuing inconsistencies between the internal guidelines of the key agencies and uncertainties concerning notification requirements. The need for clearer definition and co-ordination of effort became particularly apparent during the Royal Commission hearings.

2.35 At a meeting of the Chief Executive Officers of the key agencies on 11 July 1996, the Premier requested the CPC to accelerate the review of the Interagency Guidelines and to produce a draft by September 1996. The services of a consultancy company were enlisted, and, with the full-time assistance of a CPC project officer, a five-phase process of review was initiated.

- Phase 1 - Critical Analysis of Existing Practice and Knowledge Base;

¹⁴² Pursuant to *Community Welfare Act 1987*, s. 7.

¹⁴³ Unlike the Community Services Commission, which has a legislative base in the *Community Services (Complaints, Appeals and Monitoring Act) 1993*.

¹⁴⁴ CPC, *Report for the Year 1 July 1995 - 30 June 1996*, RCPS Exhibit 3071/1, pp. 7-8.

¹⁴⁵ Foreword to CPC, *Interagency Guidelines*, Sydney, 1991, RCPS Exhibit 1797, pp. 2-3.

¹⁴⁶ DCS, DSE, Health, the NSW Police Service, and the ODPP.

¹⁴⁷ Foreword to CPC, *Interagency Guidelines*, Sydney, 1991, RCPS Exhibit 1797, pp. 2-3.

- Phase 2 - Identification of Problems and Generation of Solutions;
- Phase 3 - Development of Exposure Draft of Interagency Guidelines;
- Phase 4 - Feedback from the Field Exposure Draft; and
- Phase 5 - Documentation of Improved Interagency Guidelines.¹⁴⁸

2.36 Each phase involved extensive consultation with government and non-government agencies, Area Child Protection Committees, academics and other relevant parties.¹⁴⁹ A draft version of the Guidelines was produced in late 1996,¹⁵⁰ with the final version being completed in November 1996. The new Guidelines were formally launched by the Premier on 17 February 1997 at the second annual CPC State conference. Full compliance by agencies was expected from 1 July 1997.

2.37 As discussed in later chapters it is timely to remember that, notwithstanding previous guidelines, agencies did not co-operate in any committed way in managing child sexual abuse cases. The Royal Commission is acutely aware that professional co-ordination will take much more than guidelines but it is pleasing to see they have at least been produced.

THE COURTS

2.38 Within NSW, most cases of child sexual abuse involve indictable offences, and are dealt with on indictment in the District Court. There are exceptions, such as offences relating to child pornography, indecent exposure and the like, which are dealt with in Local Courts. The more serious cases, involving allegations of offences against children aged under 10 years, were formerly tried in the Supreme Court. This is no longer the practice. In June 1992 the former Attorney General, the Honourable Peter Collins QC, issued a directive that all child sexual assault matters were to be prosecuted in the District Court.¹⁵¹ The direction took effect from 20 July 1992.¹⁵²

2.39 Following recent amendments to the *Justices Act 1902* committal hearings now proceed on the basis of the tender of written statements without the need for witnesses to give evidence orally.¹⁵³ It is still open to the magistrate to direct the attendance of a witness at the committal hearing but, in relation to the alleged victims of sexual offences (and other offences of violence), the magistrate may only give such a direction if satisfied that there exist 'special reasons' for so doing.¹⁵⁴ This has been the position in relation to complainants in sexual assault cases since 1987.¹⁵⁵

¹⁴⁸ CPC, Update on the Review and Development of the Child Protection Interagency Guidelines, Letter to RCPS, 30/9/96, RCPS Exhibit 3051/9.

¹⁴⁹ *ibid.*

¹⁵⁰ CPC, Interagency guidelines for child protection intervention (draft), RCPS Exhibit 3054C/33.

¹⁵¹ N. R. Cowdery QC, RCT, 1/7/96, p. 27950.

¹⁵² P. Collins, Attorney General, Letter to the Director of Public Prosecutions, 29/6/92, RCPS Exhibit 2106.

¹⁵³ *Justices Amendment (Committals) Act 1996*.

¹⁵⁴ *Justices Amendment (Committals) Act 1996*, s. 48(E)(2)(a).

¹⁵⁵ *Justices (Paper Committals) Amendment Act 1987*.

2.40 The number of sexual abuse cases finalised in the 1993-95 period together with their outcomes are as follows:

OUTCOME OF CHARGES AND PENALTY - LOCAL COURT AND HIGHER COURTS - 1993 TO 1995¹⁵⁶

| | 1993 | | 1994 | | 1995 | |
|---|-------------|------------------------------|-------------|---------------|-------------|---------------|
| | LOCAL COURT | HIGHER COURTS ¹⁵⁷ | LOCAL COURT | HIGHER COURTS | LOCAL COURT | HIGHER COURTS |
| Persons charged¹⁵⁸ | 253 | 425 | 244 | 419 | 218 | 341 |
| Number of charges¹⁵⁹ | 321 | 929 | 316 | 863 | 262 | 684 |
| Persons found guilty¹⁶⁰ | 91 | n/a | 86 | 211 | 58 | 170 |
| - Male | 91 | n/a | 86 | 209 | 57 | 168 |
| - Female | - | n/a | - | 2 | 1 | 2 |
| Penalty¹⁶¹ | | | | | | |
| Imprisonment | 17 | n/a | 16 | 126 | 12 | 110 |
| Periodic detention | 5 | n/a | 8 | 25 | 7 | 18 |
| Community Service Order | 16 | n/a | 14 | 25 | 15 | 12 |
| Recognizance with supervision | 25 | n/a | 17 | 23 | 10 | 19 |
| Recognizance with no supervision | 18 | n/a | 26 | 10 | 8 | 9 |
| Recognizance without conviction | 1 | n/a | 2 | - | 1 | - |
| Fine | 8 | n/a | 3 | - | 3 | - |
| Nominal sentence or Rising of the Court | - | n/a | - | 1 | 1 | - |
| No conviction recorded | 1 | n/a | - | 1 | 1 | 2 |

2.41 The period between charge and finalisation of charge is as follows:

DURATION OF PROCEEDINGS - LOCAL COURT AND HIGHER COURTS - 1994 AND 1995¹⁶²

1995 - HIGHER COURTS

PERSONS CHARGED IN CHILD SEXUAL ASSAULT CASES - DURATION OF PROCEEDINGS IN DAYS

| | DURATION(DAYS) | | |
|--|---------------------|----------------------|---------------------|
| | Arrest to Committal | Committal to Outcome | Outcome to Sentence |

¹⁵⁶ Table compiled from NSW Bureau of Crime Statistics and Research, NSW Criminal Court Statistics, 1993, 1994 & 1995 and statistics supplied to the Royal Commission by the Bureau, RCPS Exhibit 3177.

¹⁵⁷ According to the Bureau, figures contained NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Courts Statistics 1993*, Sydney, 1994, are incorrect and have therefore either been replaced with correct figures obtained from the Bureau, see RCPS Exhibit 3177, or excluded from this table.

¹⁵⁸ Information relates to individual persons with finalised charges or cases.

¹⁵⁹ A finalised charge is one which has been fully determined by the court and no further court proceedings are required.

¹⁶⁰ Persons found guilty are those persons who, for at least one offence charged, either pleaded guilty or were found guilty by trial. (Principal offence was a child sexual assault matter.)

¹⁶¹ Penalties indicate the principal penalty for the principal offence. Higher Court statistics do not include cases that did not proceed beyond committal.

¹⁶² Taken from NSW Bureau of Crime Statistics and Research Annual Reports 1993-95 and NSW Bureau of Crime Statistics and Research, NSW Criminal Court Statistics, 1993, 1994 & 1995.

| | | | |
|--|-------|-------|------|
| Proceeded to Trial | | | |
| Acquitted of all charges | 109.0 | 293.5 | - |
| Found guilty of at least one charge | 153.0 | 311.0 | 15.0 |
| Acquitted but had other guilty plea | 133.0 | 834.0 | 73.5 |
| Proceeded to sentence only | 89.0 | 142.0 | 0.0 |
| No charges proceeded with | 134.0 | 279.0 | - |
| All charges otherwise disposed of | 90.5 | 278.5 | - |

1995 - LOCAL COURT

PERSONS CHARGED - SEXUAL OFFENCES AGAINST CHILDREN - DURATION OF PROCEEDINGS IN DAYS

| | MEDIAN DURATION(DAYS) | |
|--|-----------------------------|-----------------------------------|
| | Offence to First Appearance | First Appearance to Determination |
| Proceeded to defended hearing | | |
| All charges dismissed | 284.0 | 149.0 |
| Guilty of at least one charge | 113.0 | 76.5 |
| Other | 142.0 | 119.0 |
| Convicted ex parte | 22.5 | 56.0 |
| All charges dismissed w/o hearing | 263.0 | 96.0 |
| Sentenced after guilty plea | 77.5 | 63.0 |
| All charges otherwise disposed of | 308.0 | 28.0 |

2.42 The volume of such cases, and of the remaining workload of the Local Courts, the District Court and of the Court of Criminal Appeal is such that, notwithstanding the high priority given to child sexual assault, significant delay attaches to both trials and appeals.

2.43 Additionally within the criminal justice system, the Children's Court and Family Court have an important role to play in relation to the victims of child sexual abuse, or in dealing with the aftermath of such abuse.

2.44 In the case of the Children's Court¹⁶³ this extends to:

- care and protection applications (including orders for custody, wardship and supervision);¹⁶⁴
- sentencing or otherwise dealing with those children who have offended against the criminal law, some of whom may have come from an abusive background;¹⁶⁵ and
- prosecutions of child offenders for child sexual assault offences.¹⁶⁶

¹⁶³ *Children's Court Act 1987*.

¹⁶⁴ *Children (Care and Protection) Act 1987*, s. 72.

¹⁶⁵ *Children (Criminal Proceedings) Act 1987*.

¹⁶⁶ Determination of whether the Children's Court has jurisdiction to hear allegations of child sexual assault will depend on the charges laid. According to s. 17 of the *Children (Criminal Proceedings) Act 1987*, the Children's Court is required to commit a matter for trial in the District Court where the charges relate to a serious indictable offence. See ODP, *Child Sexual Assault Policy and Guidelines Manual*, Sydney, 1996, RCPS Exhibit 5897, pp. 183-84.

2.45 In the case of the Family Court¹⁶⁷ this extends to residence, contact and special purpose orders in relation to children coming within its jurisdiction as a result of family law proceedings,¹⁶⁸ some of whom may have been the victim of sexual abuse. Specified court personnel, family and child counsellors and family and child mediators performing functions pursuant to the *Family Law Act 1975* are required to notify DCS if they have reasonable grounds for suspecting a child has been or is at risk of being abused.¹⁶⁹

DEPARTMENT OF CORRECTIVE SERVICES AND DEPARTMENT OF JUVENILE JUSTICE

2.46 Although a diversionary program exists in relation to a relatively small group of offenders,¹⁷⁰ many persons convicted of child sexual assault receive custodial sentences.

2.47 By reason of the nature of the offence, and the extreme disfavour with which paedophiles or child sexual abusers (commonly known as 'rock spiders' or 'tin sheds') are regarded within the prison system, very many offenders find it necessary to serve at least part of their sentence in protective custody.

2.48 To cope with this problem it has been the past practice to send most of these offenders either to Cooma or Junee Correctional Centres, although some offenders have been held at other institutions such as Kirkconnell Correctional Centre. This accounts for approximately two-thirds of the child sex offenders in custody, the remainder being detained in other correctional centres throughout NSW.¹⁷¹

2.49 Many such offenders claim to have been the victim of child sexual abuse themselves, and to have resorted to a similar form of offending out of learned behaviour, lack of self respect, inability to maintain normal relationships, or other circumstances attributable to their original trauma. While it is difficult to be categorical about the significance of this factor, bearing in mind the possibility that it was offered as an 'excuse' in mitigation of sentence, in some cases there is corroboration of the existence of earlier abuse.

2.50 As later explained¹⁷² some attempts have been made to provide counselling and specialist rehabilitation services for these offenders. They have run into a number of difficulties, in part due to lack of resources, in part due to lack of trained staff to deliver the programs, and in part due to a lack of any real interest or commitment to reform on the part of the fixated or recidivist offenders. Additionally, there is considerable expert debate as to the forms of treatment offered, and as to whether there is any substantial prospect of securing behavioural modification.

2.51 A Sex Offenders Gaol is, however, being established in 4 Wing, Long Bay Correctional Centre to replace the services provided by Cooma Correctional Centre, which is marked for closure in mid-1998. Long Bay will accommodate 80 male minimum security inmates convicted of sexual offences against children and adults.¹⁷³ Programs for intensive custodial treatment (CUBIT) and community based after care (COBAC) have recently been developed but their implementation has been frustrated by resource problems.

¹⁶⁷ *Family Law Act 1975* (Cth).

¹⁶⁸ *Family Law Act 1975* (Cth), ss. 64-65.

¹⁶⁹ *Family Law Act 1975*, s. 67ZA.

¹⁷⁰ See Volume V, Chapter 19 of this Report.

¹⁷¹ M. Edwards, RCT, 11/7/96, p. 28630; NSW Department of Corrective Services, The distribution of child molesters in NSW correctional centres: from a 'snapshot' census at 30 April 1997, RCPS Exhibit 3173.

¹⁷² See Volume V, Chapter 19 of this Report.

¹⁷³ C. McComish, Assistant Commissioner Personnel & Education, NSW Department of Corrective Services, Statement of Information, 23/6/97, RCPS Exhibit 3105C, at Doc. 2728917.

2.52 The significance of juvenile detention also cannot be ignored. Studies reveal that a very high proportion of juvenile offenders (all crimes) have been the victim of child sexual abuse,¹⁷⁴ and that there is a significant incidence of sexual assault of children by juvenile offenders.

2.53 Under the provisions of the *Children (Detention Centres) Act 1987*, the Director-General must ensure that there are adequate arrangements in place to 'maintain the physical, psychological and emotional well-being of detainees'.¹⁷⁵ Department of Juvenile Justice employees are instructed in procedures for the prevention, identification, notification and management of incidents of abuse and neglect, whether committed by a staff member or an external agent. While staff of the DJJ are not mandatory notifiers under the *Children (Care and Protection) Act 1987*, departmental guidelines direct employees to notify DCS of any allegation or incident of abuse or neglect, and, if there is evidence of a criminal offence having been committed, they are also required to notify the Police Service.¹⁷⁶

2.54 Prior to 1991, when DJJ was established as a separate entity, specialist support services for young offenders exhibiting emotional problems, often resulting from sexual abuse, were provided by DCS via psychologists in detention centres and at Community Youth Centres.

2.55 Currently, DJJ, while recognising that it has a responsibility to provide services to this client group, does not have any programs that deal specifically with young offenders who have suffered sexual abuse. However, it does offer the following programs which deal with some of the symptoms shared by child abuse victims with other persons in detention, through its nine juvenile justice centres and 37 community-based offices across the State:

- Intensive Program Units (IPUs) which provide intensive counselling and support to emotionally disturbed and vulnerable clients, and facilitate their entry into community based therapy;
- Alcohol and Other Drug Program;
- Psychological Services (Juvenile Justice Centres) Program;
- Young Women in Custody;
- Robinson Program, which provides specialist assessment and intervention for young boys with emotional and behavioural disturbance;
- Crisis Support Program, which provides immediate response to critical incidents involving residents of Juvenile Justice Centres; and
- proposed specialist support programs which include the Violent Offenders Program and Post Release Support Programs.¹⁷⁷

2.56 The Juvenile Sex Offender Program has been in operation within DJJ since 1992, with minor structural changes taking place following a review in 1993. The program aims to reduce both sexual and non-sexual reoffending, to help the young offender take responsibility for his or her actions and to encourage the development of a positive self-identity and non-abusive sexuality.¹⁷⁸ Some problems in its implementation and with the limited post-release care are noted later in this Report.¹⁷⁹

¹⁷⁴ R. K. Oates & L. Tong, 'Sexual abuse of children: an area with room for professional reforms', *Medical Journal of Australia*, vol. 147, December 1987, pp. 544-48.

¹⁷⁵ *Children (Detention Centres) Act 1987*.

¹⁷⁶ DJJ, Provision of a protective abuse-free environment in the Department of Juvenile Justice, November 1996, pp. 6-7, RCPS Exhibit 2897, at Doc. 2499593-94.

¹⁷⁷ DCS, ADD & DJJ, Department of Juvenile Justice Specialist Programs, Appendix J in Joint submission to RCPS, August 1996, RCPS Exhibit 2540, at Doc. 2390877-881.

¹⁷⁸ DCS, ADD & DJJ, Joint submission to RCPS, August 1996, RCPS Exhibit 2540, p. 49.

¹⁷⁹ See Volume V, Chapter 12 of this Report.

NON-GOVERNMENT AGENCIES OR INSTITUTIONS INVOLVED WITH THE PROTECTION AND CARE OF CHILDREN

2.57 Quite apart from the many government agencies and institutions which provide services to children in the fields of education, health, welfare, housing, correction and the like, there are many non-government organisations, services and facilities involved with the day-to-day care and management of children, or who have routine contact with them. They include:

- refuges, shelters, charitable organisations and the like providing housing and welfare support, or substitute care;
- foster care agencies;
- non-government schools and the Catholic education system;
- churches, choirs, fellowship and Christian groups;
- youth groups;
- sporting and recreational associations and facilities;
- the Scouting movement; and
- child care and outside school hours care services.

2.58 Many of these bodies are not subject to notification requirements, are staffed by volunteer and untrained workers, have no monitoring processes for staff selection or membership, have no protocols or guidelines for responding to child sexual abuse or to complaints of such conduct involving their own members, and are inadequately qualified to deal with such matters. Evidence led before the Commission, and cases within the criminal justice system, both historically and currently, reveal that each has been the subject of complaints of this type, many of which have been of a most serious kind, and later established to the criminal standard of proof.

SUMMARY

2.59 It is evident from this brief overview that while the problem of child sexual abuse is itself complex and very serious, the system for its management and for the protection of children is enormously complicated and fragmented, notwithstanding the Interagency Guidelines which were designed to establish an integrated case plan for individual cases. Among the many system deficiencies or complicating factors which have emerged during the course of the Royal Commission inquiry, are:

- the inconsistent and uncertain definition, usage and significance given to the terms 'child sexual abuse' and 'child sexual assault'¹⁸⁰ as well as to the criteria for determining whether a child is 'in need of care';
- the uncertainty attached to notification requirements, some of which depend upon legislation and others on Ministerial directive or Departmental policy, and the continued existence of very many bodies or persons having close contact with children, that are not mandatory notifiers;
- the absence of clear or consistent guidelines for screening those workers and volunteers who have close contact with children, or possess care and protection responsibilities in relation to them;

¹⁸⁰ See Chapter 1 of this Volume.

- the diffuse record keeping and intelligence management systems of each of the agencies involved, and the lack of any central co-ordination of such information, or controlled regime for access by those who have a legitimate reason to use it;¹⁸¹
- the lack of a co-ordinated and integrated response by the key agencies to child abuse in all its forms, or of any legislative basis therefore;
- the absence of any single agency having a responsibility or capacity to oversight the interests of all the agencies and institutions, governmental or otherwise, having an involvement with children, and the lack of a legislative interface between child protection and juvenile justice;
- the tension between the criminal investigation and prosecution process on the one hand, for which the Police Service and the ODPP have primary responsibility, and the children (and family) protective function on the other hand, for which DCS has the primary responsibility. The different interests, philosophies and goals of these agencies, when combined with a discretion whether to investigate or report suspected child sexual abuse to the Police Service, can:
 - result in a gap between policy and practice;
 - lead to individual cases falling between the cracks with consequent trauma to children and families; and
 - provide an opportunity for corruption;
- the absence of any broad-based principles or objectives for child care and protection within the various Acts which apply to the key agencies, or co-ordination of the different services and functions which they perform;
- the absence of any coherent philosophy for substitute care, or clarification of the rights and responsibilities of all parties involved;
- the limited capacity of DCS to provide any effective intervention where abuse occurs outside the home environment;
- the delays in the criminal investigative and court process;
- the experience of many children who either drift in and out of care, or cannot receive care at all, particularly once they reach the age of 16 years; and
- the failure of the system to address the problem of youth homelessness and prostitution.

2.60 The nature and extent of these deficiencies, the results of which emerged in the Royal Commission hearings, is a matter for very deep concern. They will be examined in more detail later in these volumes and, where appropriate, recommendations will be made for reform on a system-wide basis. Whatever arrangements are made in this field, however, have to be consonant or compatible with the wider provisions relating to the care and protection of children. It would be inappropriate to single out children the subject of sexual abuse for special treatment and to ignore their place within a much broader community of children who are in need of protection from other forms of abuse and neglect.

¹⁸¹ There are a number of different pieces of legislation concerning privacy issues and the exchange of information. Most notable is the *Children (Care and Protection) Amendment (Disclosure of Information) Act 1996*, which amends s. 22 of the *Children (Care and Protection) Act 1987* to allow for the exchange of information relating to the welfare of a particular child or children between DCS and other prescribed bodies.

B. OBSTACLES TO THE INVESTIGATION AND PROSECUTION OF CHILD SEXUAL ABUSE

2.61 The investigation and prosecution of child sexual abuse has long been recognised as very difficult. By way of overview, some of the factors which contribute to that situation can be identified. They will be explored in more detail later in these volumes, within the context for which they have a relevance. Again the Royal Commission acknowledges the contribution of the ICAC, which helpfully assembled in its Interim Report an inventory of these factors.¹⁸² They include factors:

- affecting the disclosure or reporting of child sexual abuse;
- affecting the investigation process; and factors
- affecting the prosecution process.

DISCLOSURE OR REPORTING OF CHILD SEXUAL ABUSE

2.62 There is a universal recognition that the disclosure and subsequent reporting of child sexual abuse falls far short of the true incidence of such abuse. There is no clear consensus as to the extent of non-disclosure or reporting save for agreement that it is substantial. For example, the two studies cited by the ICAC¹⁸³ suggest respectively that only 2% of familial and only 6% of extrafamilial child sexual abuse were ever reported to police,¹⁸⁴ and that only about 10% of all child sexual assaults are notified.¹⁸⁵ Other studies identified by the Royal Commission place the incidence of reporting at similarly low levels:

- a retrospective study of Australian women carried out in 1994 concluded that 20% of women have suffered some form of child sexual abuse, but only 10% of abuse experiences were reported to authorities;¹⁸⁶
- statistics gathered by the Sydney Rape Crisis Centre over the period 1992 to 1996 reveal that only 14.7% of female victims of child sexual assault reported the offence to police.¹⁸⁷ This figure is in keeping with that obtained through an Advocates for Survivors of Child Abuse (ASCA) survey of male and female victims in 1996, which revealed that only 18% of respondents had any contact with NSW Police in connection with the abuse;¹⁸⁸
- the 1993 *NSW Sexual Assault Committee Phone-In Report* revealed that 76% of callers who had been assaulted under the age of 16 had never reported the incident;¹⁸⁹ and
- other research in America indicates that as many as 40% of trained professionals who have a mandatory responsibility to report child abuse and neglect fail to do so.¹⁹⁰

2.63 The factors contributing to this situation, identified in the literature¹⁹¹ or otherwise observed during the Royal Commission hearings, include the circumstances that:

- the abuse is usually not seen by anyone other than the child and perpetrator;

¹⁸² ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516.

¹⁸³ *ibid.*, p. 9.

¹⁸⁴ D. E. H. Russell, 'The incidence and prevalence of intrafamilial and extrafamilial sexual abuse of female children', *Child Abuse & Neglect*, vol. 7, 1983, RCPS Exhibit 3099, p. 145.

¹⁸⁵ B. Naylor, 'Prosecution of Cases of Child Sexual Assault', *Legal Services Bulletin*, vol. 9, December 1984, RCPS Exhibit 3100, p. 296.

¹⁸⁶ J. Fleming, 'Prevalence of childhood sexual abuse in a community sample of Australian women', *Medical Journal of Australia*, vol. 166, 20/1/97, RCPS Exhibit 3051/26, pp. 65-68.

¹⁸⁷ Sydney Rape Crisis Centre, Submission to RCPS, 15/8/96, RCPS Exhibit 2529/132, p. 17.

¹⁸⁸ Advocates for Survivors of Child Abuse (ASCA), Newsletter, August/September 1996, in ASCA, Submission to RCPS, 9/8/96, RCPS Exhibit 2529C/83, at Doc. 2259865.

¹⁸⁹ NSW Sexual Assault Committee, *Sexual Assault Phone-In Report*, August 1993, RCPS Exhibit 3208/1, p. 27.

¹⁹⁰ S. C. Kalichman, M. E. Craig & D. R. Follingstad, 'Professional adherence to mandatory child abuse reporting laws: Effects of responsibility, attribution, confidentiality, and situational factors', *Child Abuse & Neglect*, vol. 14, 1990, p. 75; G. Zellman, 'Child abuse reporting and failure to report among mandated reporters', *Journal of Interpersonal Violence*, vol. 5, no. 1, p. 11, quoted in D. Pence & C. Wilson, 'Reporting and Investigating Child Sexual Abuse', *The Future of Children - Sexual Abuse of Children*, vol. 4, no. 2, Summer/Fall 1994, RCPS Exhibit 2113, p. 72.

¹⁹¹ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516, p. 9.

- very often there are no physical or unequivocal clinical signs of abuse;
- children may hold back from disclosure because of fear of retaliation or of disbelief; out of fear of the consequences for the perpetrator and the remainder of the family; as the result of inducement or reward; through misguided trust, faith or affection for the perpetrator; through shame, embarrassment or shyness; and/or as the result of ignorance of the wrongfulness of the act, of the child's rights or of the existence of an appropriate avenue for complaint;
- sometimes societal or cultural attitudes towards the rights of parents and children, or lack of faith in the criminal justice or protection system lead to silence on the part of those to whom a disclosure is made;
- some parents or carers are reluctant to subject the child to any more trauma through the criminal justice system;
- sometimes there is an inability, or unwillingness on the part of parents or carers to confront the unthinkable, or to accept the financial loss which might occur if, as a result of disclosure, the family breaks up or the abuser is imprisoned;
- within religious groups, schools or other associations, the need for protection of the reputation of the organisation may be placed before the interests of the child;
- the discretion vested in DCS workers, dependent on their assessment whether to report the matter to police, may preclude investigation; and the circumstance that
- many children who are the subject of sexual abuse, particularly the homeless, and those who are paid for sexual services, or who are taken under the 'wing' of paedophiles, do not see themselves as victims or perceive any reason for disclosure.

2.64 Each can operate as a disincentive to initial disclosure, and to subsequent notification of DCS or the Police Service. None is necessarily spent once the initial disclosure or report has been made.

2.65 On the other hand, the existence of malicious or untrue disclosure is also not unknown. This can arise:

- in the course of a marital dispute where an allegation of child sexual abuse may be of considerable assistance to one party to that dispute;
- in circumstances involving mental illness, morbid preoccupation with cults, or disordered thought processes affecting either a parent or child;
- where there has been exposure, during a subsequent period of breakdown or lifestyle crisis, to unethical or partisan practitioners of techniques of 'memory retrieval'; or
- where children have a susceptibility for fantasy or suggestion in response to the experience of others.

2.66 As discussed later in this Report, although they cannot be dismissed out of hand, considerable care needs to be exercised in those cases where the disclosure is associated with bizarre or ritualistic behaviour, or where there has been a sudden or induced 'recollection' of abuse many years after the event.

THE INVESTIGATION PROCESS

2.67 Very many circumstances were identified by the ICAC¹⁹² and by the Royal Commission, that may operate during the investigation phase of a child sexual abuse case and either hinder that investigation, or affect the decision to initiate a prosecution. They include the following circumstances:

- it is common for victims to retract earlier allegations of abuse, for example, as a result of pressure from the family, or the stress of the investigative process;
- the ambiguity or lack of precision in the disclosure may leave the investigator unpersuaded as to the prospect of a successful prosecution, having regard to existing case law,¹⁹³ and the many amendments to the Crimes Act which can cause great difficulty if an event cannot be dated with some certainty and possibly overlaps a change in the law;
- the usual reaction of the alleged abuser when confronted is to strenuously deny the abuse, a response that leaves most child victims bewildered and with a sense of being, at best, doubted;
- in reality it is often difficult to pursue an investigation where the child is very young or immature and is unlikely to be a good historian;
- police are often reluctant to intervene when the offender is a juvenile, particularly when the victim is a sibling (even though a relatively large proportion of alleged offenders are in fact juveniles);
- many alleged offenders appear to be anything but law breakers, often hold down important positions, and sometimes appear to be shining examples of dedication to the well-being of children;
- there has in the past been a considerable reluctance by police, particularly skilled investigators, to work in the field of child sexual abuse because of the stresses associated with it, the low priority and resources given to it by the Police Service, and the disparaging view taken of it by many detectives;
- frequently investigations have been spoiled by the time they reach the police, either because of the intervention of parents or because of untrained interviews by those who have had the initial contact with the child, or because the accused has been forewarned and had the opportunity to flee the jurisdiction or to interfere with witnesses;
- even where the interviewers are trained and have carried out their function professionally, the number of interviews commonly carried out in the investigation process can risk the immediacy, spontaneity and reliability of the victim's account, especially when he or she feels a need to embellish or improve on the story, or becomes frustrated and unco-operative - this can also open up the possibility of inconsistency, which is then used to advantage by the defence;
- in some cases the therapeutic intervention of a counsellor, even though well-intentioned, can contaminate the child's evidence, especially when there is resort to leading questions, or dubious techniques designed to assist memory recall, or when the counsellors are unqualified and impart their own beliefs, preconceptions and prejudices to the child;
- in the past, poor police practices and delays have seriously compromised investigations, led to the collection of statements or interviews of little value, and overlooked opportunities to corroborate facts critical to an assessment of the evidence and decision to prosecute;

¹⁹² *ibid*, pp. 9-12.

¹⁹³ *S v R* (1989) 168 CLR 266.

- the reluctance or inability of the relevant agencies to share information, and the absence of any central co-ordinated repository of evidence concerning suspected paedophiles can seriously impair investigations;
- the paramountcy of the welfare of the child can lead to a decision not to prosecute, thereby allowing a paedophile to escape justice and perhaps reoffend;
- the personal views or preconceptions of police and prosecutors can differ significantly, and have an impact on the decision whether or not to prosecute;
- a risk inevitably exists in an area of criminality where the stakes of arrest and conviction are high and many of the offenders are wealthy, well placed, respected citizens, that they will be vulnerable to extortion at the hands of police and others, or amenable to corrupt arrangements - each of which can significantly impair the investigation process;
- the facilities available for the distribution of child pornography, and the difficulty of targeting those who are involved in this field, nationally and internationally, present substantial obstacles to effective investigation and enforcement of child sexual abuse laws; and
- the rewards or benefits offered by paedophiles to homeless children and to child prostitutes, and the sophisticated means by which they work their way into the lives of their victims, similarly make it difficult to secure the assistance of the latter.

THE PROSECUTION PROCESS

2.68 Several factors can intervene to spoil or adversely affect an otherwise effective investigation.¹⁹⁴ They include the circumstance that:

- the investigation and prosecution process can be as traumatic for the child and family as the original offence, and in some cases may cause them to encourage the ODPP to withdraw the case;
- the delay between disclosure and resolution during which the victim's life is effectively 'on hold' can affect the reliability of the evidence;
- despite the standard directions to juries, they are not necessarily well informed as to the realities of child sexual abuse and, in particular, may not understand the reasons for delayed disclosure, or the difficulties children can have in giving evidence in the presence of their abuser;
- the evidentiary problems in these cases are far greater than in any other single category of prosecution, having regard to the fact that:
 - corroboration, whether in the form of physical or eyewitness evidence, is only rarely available;
 - medical examination is often inconclusive and of limited evidentiary value even if signs consistent with the complaint are found; and
 - the victims often have difficulty in presenting a clear, concise or confident version of the facts, for the reasons that they may misunderstand the questions put to them, become overwhelmed by the occasion, or appear confused or inconsistent in their answers when pressed in cross-examination of a kind which is entirely foreign to them;

¹⁹⁴ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516, pp. 13-16.

- the legal system places many constraints upon the trial process which, although consistent with the rules designed to protect the rights of the accused generally under the criminal law, are inappropriate or artificial in the context of child sexual abuse which is generally of an ongoing kind, rather than a one-off event, and often involves more than one child. Within that context, the need for the identification of particular incidents¹⁹⁵ and the severance of trials involving multiple victims can occasion very real practical problems, or leave the jury with an artificial and incomplete picture; and
- notwithstanding changes in the law concerning the test for competency,¹⁹⁶ and concerning the directions formerly given concerning the dangers of convicting an accused on the uncorroborated evidence of a child,¹⁹⁷ the legal system has been slow to accept the ability of children to give reliable or truthful evidence.

SUMMARY

2.69 The existence of these several factors which may collectively, or individually, frustrate the investigation or prosecution of child sexual assault cases, has many consequences:

- where it leads to disillusionment of the professionals working in the field, it may cause them to dissuade parents and children from resort to the legal system, thereby increasing the incidence of under-reporting and allowing offenders to go free;
- where a sound investigation fails or a prosecution is discontinued for any of the reasons identified, there is a risk that the abuse will be perpetuated; and
- where investigations or prosecutions are unsuccessful it is likely that the child and family will feel significantly re-victimised.

2.70 It is against this general background that the problems outlined in the chapters that follow need to be understood, and to be addressed.

¹⁹⁵ S v R (1989) 168 CLR 266 at 266.

¹⁹⁶ Section 33 of the *Oaths Act 1900* was amended by the *Oaths (Children) Amendment Act 1990* to allow for the reception of a child's evidence, statement, affidavit or deposition. The Act was further amended in 1995, when s. 33 was repealed. The section dealing with competency is now s. 32, which applies to the making of an affidavit (including a deposition and a statement made in an information or complaint). Competency is to be determined on the basis of 'any matter thought relevant' (including age, capacity to hear, understand or communicate), ie. it does not relate exclusively to children. Sections 12 & 13 of the *Evidence Act 1995* are also applicable.

¹⁹⁷ *Crimes (Child Assault) Amendment Act 1985* removed the requirement under s. 405 (3)(c) of the *Crimes Act 1900* for a judge to give warning to a jury to the effect that it is unsafe to convict a person on the uncorroborated sworn evidence of a child. Section 164(1) of the *Evidence Act 1995* also states that it is not necessary that evidence on which a party relies be corroborated.

Chapter 3

THE PAEDOPHILE OFFENDER

3.1 As already indicated a socio-legal definition of paedophile has been adopted for the purposes of the Commission's inquiry, to include:

those adults who act on their sexual preference or urge for children, in a manner which is contrary to the criminal laws of the State of New South Wales.

3.2 This definition encompasses child sexual abuse both within the family and external to the family. It includes those offenders whose primary sexual preference is for children (preferential or fixated offenders), and those who act on an urge to sexually interact with a child even though their primary orientation is towards adults (situational or regressed offenders).¹⁹⁸

3.3 The Royal Commission has been assisted by many people who were subjected to sexual abuse as children, and also by a number of child sex offenders, each of whom has described, in some detail, their experiences, and the problems encountered in:

- the relationships formed;
- the justice system; and in
- the aftermath of any official intervention.

3.4 The Commission has also been assisted by several experts in relation to matters such as:

- the identification of the different types of offenders;
- their detection; and
- their treatment.

3.5 Events such as those in Belgium¹⁹⁹ and the UK²⁰⁰ and elsewhere²⁰¹ have similarly helped to provide an awareness of the nature of the offence and of the offender.

¹⁹⁸ These categories are discussed in more detail below for the difference between fixated paedophiles and regressed paedophiles; see also K. V. Lanning, *Child Molesters: a Behavioral Analysis for Law-Enforcement Officers Investigating Cases of Child Sexual Exploitation*, 2nd edn, National Center for Missing and Exploited Children, Quantico, 1987, RCPS Exhibit 2538/2, p. 247; see also K. Miller, Detection and reporting of paedophilia: A law enforcement perspective, paper presented at Australian Institute of Criminology Conference, Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 2; and Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C, Appendix 2, pp. 1-3.

¹⁹⁹ In July 1996 Belgian police found two young girls who had been imprisoned, drugged and sexually assaulted. The girls were found after a witness took the number plate of a car of a man who snatched one of the girls from the street. This led to the arrest of a known paedophile, his wife and an accomplice, and the discovery of two bodies buried on his property. Numerous homes were raided and the belief that a network of paedophiles had been exposed has been widely touted with Belgian police investigating possible international links. It is believed there may be other victims; see R. Boyles and D. Burkinshaw, 'Prayers and blame stirred by a nation's lost innocents'; R. Boyles, 'Hunt for victims of child sex ring', *The Times*, 19/8/96, pp. 1 & 3; R. Boyles, 'Belgian justice in the dock over paedophile who was freed early', *The Times*, 20/8/96, p. 3; R. Boyles, 'Belgian police link child sex victims to trade with East', *The Times*, 21/8/96, p. 10.

²⁰⁰ eg. The conviction in the UK in 1994 of Robert Black for the murder of three girls aged 11, 10 and five years. When convicted of the three murders Black was serving a life sentence for abducting and sexually assaulting a six year-old girl in Scotland. Mr Black had also escaped detection for an earlier murder and, as in the Belgium cases, his crimes were only detected after a person noticed that a girl who had walked past Mr Black's van had disappeared; also the 'House of Horrors' case where a number of children's bodies were retrieved from the garden of the house of a married couple.

²⁰¹ eg. The disclosure in many countries of abuse within religious institutions, schools, homes and the like. More recently news reports have indicated that French authorities arrested 600 people in connection with a child pornography ring including school teachers, priests and managers of youth camps, S. Bell, 'French hold 600 in two-day hunt for paedophiles', *The Times*, 19/6/97, p. 16.

3.6 This chapter draws together some of this material to profile the problem of child sexual abuse, to identify some of the specific behaviours of child sexual abusers, and the risks they pose through networking, and similar practices. Matters concerning their prosecution and treatment are dealt with in later chapters.²⁰²

A. THE PROBLEM OF CHILD SEXUAL ABUSE

3.7 Although sexual activity between adults and children has been ever present, it has had relatively little public exposure and has been surrounded by secrecy, denial, minimisation, and misunderstanding. The failure to address its nature and extent has contributed to an environment in which it has often been, inappropriately, attributed to a stereotyped offender, such as a 'dirty old man in a raincoat'. As this chapter explains, the reality is otherwise.

3.8 Sexual abuse of children includes a variety of activities short of, as well as full sexual intercourse²⁰³ and is not always violent or non-consensual. It is a complex issue with many grey areas, especially in relation to post-pubertal children who are becoming aware of and exploring their own sexuality.²⁰⁴

INCIDENCE OF ABUSE

3.9 Recent years have seen a greater acknowledgment of the existence and prevalence of child sexual abuse. It is now universally accepted that its incidence is under-reported²⁰⁵ and that statistics of convictions and reported abuse need to be treated with caution.²⁰⁶ While current conviction statistics support the popular belief that females are the main victims of abuse, the Commission has found that not only is extrafamilial abuse more common than is popularly believed but there is a high level of abuse perpetrated by adolescents, and a high level of under-reporting of abuse against boys,²⁰⁷ possibly attributable in the latter case to shame, and fear that their masculinity or sexuality may be questioned amongst other things.²⁰⁸

3.10 A helpful profile of child sexual abuse is provided by a recent Judicial Commission study of matters determined in the District Court during 1994.²⁰⁹ The study found:

- offenders were mostly male;
- 46% of proven victims were assaulted by family members; 31% by an immediate family member, generally the father;²¹⁰

²⁰² See Volume V, Chapters 15 & 19 of this Report.

²⁰³ See P. Gallagher, J. Hickey & D. Ash, *Child Sexual Assault: An Analysis of Matters Determined in the District Court of New South Wales During 1994*, Judicial Commission of NSW, Sydney, 1997, RCPS Exhibit 3227, p. 27, which identifies the forms of assault, short of penetration, found in their study as, touching with hands, exposure, used in pornography, touch or rub victim with penis, masturbation on offender, cunnilingus or fellatio on victim; The NSW Child Protection Council (CPC) identifies the activities that constitute sexual abuse, actual, threatened or attempted as, sexual suggestion, fondling, genital exposure, oral sex, vaginal or anal interference, exposure to prostitution or pornography; see CPC, Working with child sex offenders, November 1994, RCPS Exhibit 2145, p. 10.

²⁰⁴ See D. Kenny, Opinion, Policy and Practice in Child Sexual Abuse: Implications for Detection and Reporting, paper presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 4, who emphasises the distinction between sexual experience and sexual abuse.

²⁰⁵ S. Goodman, RCT, 9/7/96, p. 28475; A. Ford, RCT, 29/5/96, p. 26145; J. P. Kiely, RCT, 15/4/96, p. 23510; A. Blaszczyński, RCT, p. 33698; R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24210; C. Wilson, RCT (video link to Alabama, USA), 2/7/96, p. 28011; see also Miller, 14/4/97, op cit, pp. 4 & 7.

²⁰⁶ A. Blaszczyński, RCT, 30/10/96, p. 33698; see also Miller, 14/4/97, op cit, p. 4.

²⁰⁷ Y91, RCT, 2/7/96, pp. 28053-54 & 28056; K. J. Buttrum, RCT, 29/5/96, pp. 26110-11 & 26114; D. Pence, RCT, 2/7/96, p. 28012; W35, RCT, 20/8/96, p. 30965; see also W. F. Glaser, Paedophilia: The public health problem of the decade, keynote address presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 5, where he refers to one study which indicates that up to 45% of victims are boys; Miller, 14/4/97, op cit, p. 5.

²⁰⁸ See Volume V, Chapter 17 of this Report.

²⁰⁹ Gallagher, Hickey & Ash, 1997, op cit. Offences were indecent assaults, sexual intercourse with a child under 10, indecent assault, aggravated indecent assault, homosexual intercourse with a male between 10 and 18. These figures do not take into account the large number of offences that are dealt with in the Local Courts for which statistical analysis is very difficult and where many of the minor sexual offences are dealt with.

²¹⁰ *ibid*, p. 25.

- 54% of proven victims were assaulted by a non-family member (44% by an adult known to the family, 5% by a teacher, clergyman or babysitter and 5% were assaulted by strangers;²¹¹
- 72% of the proven victims were female;²¹²
- females were more likely to be abused by a family member in the family home;²¹³
- boys were more likely to be abused by a non-family member, known to the family;²¹⁴
- girls were more likely to have suffered prolonged abuse;²¹⁵ and that
- boys were more likely to have been victims of single incidents.²¹⁶

3.11 During Royal Commission hearings, further figures were provided which challenged popular beliefs about the incidence of abuse:

- NSW Health Department figures,²¹⁷ based on presentations to sexual assault services, indicated that in 1993/94:
 - 36.1% of sexual assaults were committed by family members;
 - 54.8% of sexual assaults were committed by non-family members;²¹⁸ and
 - the most common offender against both girls and boys was the unrelated male known to the family;
- Department of Community Services (DCS) figures for reports of sexual abuse investigated and substantiated from 1991/92 to 1994/95 indicated that abuse by non-family members ranged from 51% of cases to 55% of cases;²¹⁹ and
- an analysis of research conducted by the Catholic Church found that 56.4% of extrafamilial child sexual abuse is perpetrated by friends or strangers.²²⁰

3.12 There is an increasing awareness of the existence of males as victims of sexual assault. One expert who gave evidence believed that the ratio was as high as one male to every two females abused.²²¹ While the Judicial Commission figures do not support this contention, it should be remembered that this study is based on conviction figures only and was conducted prior to the public hearings of this Commission.²²²

²¹¹ *ibid*, p. 26.

²¹² *ibid*, p. 24.

²¹³ *ibid*, p. xi; this finding is also supported by K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31584.

²¹⁴ Gallagher, Hickey & Ash, 1997, *op cit*, p. xi.

²¹⁵ *ibid*.

²¹⁶ *ibid*.

²¹⁷ NSW Health Department, Women's Health Unit & Information and Publications Department, Victims of Sexual Assault 1992/93 - 1993/94, p. 12; N. R. Cowdery QC, Statement of Information, 26/6/96, RCPS Exhibit 2101/2, Annexure GG.

²¹⁸ In 9.2% of assaults the relationship between victim and offender was not reported.

²¹⁹ Figures compiled in March 1996 by DCS, Information & Planning Group, Child & Family Services Directorate and produced by D. L. Semple, RCPS Exhibit 1944. These figures include the categories, stranger/other, friend/neighbour and substitute carer, of which the latter accounted for between 0% to 1%.

²²⁰ A. Blaszczyński, RCT, 30/10/96, pp. 33699-700; Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A national treatment program for priests or religious with psycho-sexual disorders: Final Report, 1996, RCPS Exhibit 2513C, p. 25.

²²¹ A. Blaszczyński, RCT, 30/10/96, p. 33698; W. F. Glaser, Paedophilia: The public health problem of the decade, keynote address presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 5. He quotes results of a study by Watkins & Bentovim that found that up to 45% of child sexual abuse victims are boys; Department of Health figures indicate that the ratio of female victims to male victims presenting to sexual assault services is 3:1, NSW Health Department, Women's Health Unit & Information and Publications Department, Victims of Sexual Assault 1992/93-1993/94, p. 3; N. R. Cowdery QC, Statement of Information, 26/6/96, RCPS Exhibit 2101/2, Annexure GG.

²²² These figures cover prosecutions which occurred in 1994 for offences which may have occurred up to two or three years earlier. As such they do not reflect the impact of this Commission which has underlined the problems of extrafamilial abuse and the large number of male victims involved.

3.13 It is by reason of the concentration on familial abuse, and the failure to comprehend that extrafamilial abuse embraces neighbours, family friends, clergy, teachers, coaches, instructors, and other persons who are known to their victims, as well as strangers, that much of the misconception as to the prevalence of abuse has arisen.

3.14 It may be that some confusion about the incidence of child sexual abuse has also arisen out of the fact that physical abuse, emotional abuse and neglect are distinctly familial. According to DCS statistics, in 1994/95 family members accounted for 93% of physical abuse, 95% of emotional abuse and 94% of neglect cases.²²³ Any analysis which does not separate sexual abuse from other forms of abuse or relies on anecdotal reports about the incidence of 'abuse' is likely to mistakenly conclude that most sexual abuse is familial.

3.15 In the light of the hearings of this Commission, to continue to deal with child sexual abuse on the premise that most sexual abuse is familial risks minimisation of the problem by failing to recognise:

- the variety and complexity of the relationships involved;
- the circumstance that familial cases are more likely to proceed to a trial while many minor cases involving strangers such as indecent exposure, are dealt with in local courts (often without a conviction being recorded) making statistical analysis difficult;²²⁴
- the fact that most incidents of child sexual abuse are unreported and that many more are reported to government agencies, such as DCS, than are ever prosecuted;
- the attitude of society towards certain types of relationships, for example, viewing a relationship between a male child and older woman with more acceptance than that between a female child and older man;
- the different ways in which male and female children deal with the effects of abuse;²²⁵ and
- the fact that female victims are more likely to report abuse than males and have generally had more education about the dangers of abuse and access to avenues of reporting.

THE NATURE OF SEXUAL RELATIONSHIPS WITH CHILDREN

3.16 Sexual desire is a powerful and complex human emotion. For adults, sexual relationships can be fraught with difficulties, particularly, but not only, when they come to an end. Often they are destructive of one or other of the parties involved.

3.17 If it is difficult for adults to deal with the emotional complexities of a sexual relationship, it is only to be expected that the problems will be greater for children who are emotionally immature and whose coping mechanisms are not developed.²²⁶ Many children who are in a sexually abusive relationship do not see it as such, but rather as part of a broader relationship with someone whom they admire and/or love. Some children tolerate the sexual activity involved for the rewards it provides; others may even enjoy it at the time. Others detest it from the outset, and are immediately traumatised.

²²³ Figures were compiled in March 1996 by DCS, Information & Planning Group, Child and Family Services Directorate, and produced by D. L. Semple, 28/5/96, RCPS Exhibit 1944.

²²⁴ N. R. Cowdery QC, RCT, 1/7/96, p. 27940.

²²⁵ R. K. Wyre explained that female children tend to internalise the effects of abuse while boys are more likely to act out the effects. In his experience many career criminals have been abused as children. RCT (video link to Birmingham, UK), 26/4/96, pp. 24210-11.

²²⁶ J. A. Boots, RCT, 20/2/97, p. 36066.

3.18 Child sex offenders target all types of children:

- some target children from happy, functional families; and
- others target children from unhappy and/or violent dysfunctional families.

It depends upon the offender's personality and, in many instances, his occupation, social or recreational interests, and level of income. No matter what once may have been thought, sexual abuse of children is perpetrated by people with diverse backgrounds and from all walks of life, all races and all cultures.²²⁷ A child sex offender who sexually abuses 'rent boys',²²⁸ girl prostitutes or his own children, can just as easily be a wealthy or well-dressed professional with a family, as he can be an unemployed person living alone who loiters around public toilets. There is a wide range of motives for offending and each must be looked at individually.²²⁹

3.19 Child sex offenders have, over the years, put forward arguments in mitigation that they are 'non-predatory', that they provide the child with love, affection and material benefits, and should as a consequence receive some discount on sentence. This approach fails to recognise that all sexual abuse of children, whether the sexual activity was unexpected and unwelcome, or followed a period of sophisticated grooming, involves a violation of the child's right to be free from such attention.

3.20 There are some common elements in this area of criminality:

- the abuse is usually secretive and known only to the abuser and the victim;
- offenders generally do not stop abusing unless there is some intervening factor;
- often there is a distortion of cognition involved, for example, a belief that the victim enjoys the sexual interaction;
- the abuse generally begins with something minor, and gradually builds up to more involved sexual interaction through a process of grooming;
- the abuse continues because the child often adopts some form of survival behaviour which the offender interprets as acceptance of the activity;²³⁰
- whether based on a preference or not, offenders generally enjoy the activity;
- the sexual abuse is generally not a self-contained incident - it is part of a relationship that is corrupting and violating;²³¹
- when exposed, offenders will generally attempt to justify, minimise or excuse their behaviour, ranging from blaming the victim, to claiming their behaviour was a result of their own abuse or that they were under the influence of stress or alcohol;²³² and
- offenders are mostly recidivists.²³³

²²⁷ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24197.

²²⁸ 'Rent boy' is a term commonly used to describe boy prostitutes.

²²⁹ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24197.

²³⁰ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24199.

²³¹ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24199.

²³² Lanning, 1987, op cit, pp. 272-73; Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, pp. 120-22.

²³³ See Recidivism section of this chapter.

3.21 Depending on the perspective from which it is viewed, child sexual abuse can be seen as a criminal issue, a family welfare issue, a mental health issue, or as an issue of sexual preference.²³⁴ All these views are relevant to dealing with the problem but none should be considered in isolation:

- a criminal approach does nothing to repair the consequences of child sexual abuse;
- a family welfare approach may not deal with the issues of punishment or treatment;
- a mental health approach may categorise an abuser as 'sick' and misleadingly imply that there is a 'cure';²³⁵ and
- an approach based on sexual preference may ignore the wider control and consent issues involved.

3.22 Law enforcement and medical experts have developed 'categories' of offenders which may assist the clinician or therapist in the treatment setting, or the law enforcement officer in the identification of an offender.²³⁶

3.23 These categories or classifications are not uniform, but they include the following:

- the American Psychiatric Association, in its *Diagnostic & Statistical Manual of Mental Disorders*,²³⁷ defines four categories of offenders who would fit within the diagnostic criteria for the specific paraphilia of paedophilia:
 - **Sadistic Offender** - Fortunately represents a minority of paedophiles. Displays aggressive traits and antisocial personality features. Sexually aroused by aggressive acts and associated with high risk of physical damage/assault/death. Child is not usually known to offender, force used in abduction, primary aim is sexual gratification. Most likely to appear before the courts rather than mental health professionals. In a minority of cases, the person may be distressed by aggressive urges or fantasies and seek treatment. Response to treatment is poor;
 - **Regressed Offender** - History of normal adolescence and age appropriate sexual and social relationships. Married. May react with feelings of inadequacy in response to environmental stresses, for example, unfaithful wife or loss of employment, and then engage in impulsive or opportunistic paedophilic acts. Excessive alcohol consumption may contribute to impulsivity. Usually heterosexual (female victims). Good prognosis if stress precipitants identified and managed;
 - **Fixated Offender** - Fixated at early stage of psychosexual development. Manifests persistent chronic interest and arousal to children since early adolescence. Absence of precipitating factors in episodes. Male victims more typical. This group shows an affinity for socialising with children, is considered immature and has poor adult interpersonal skills. Many charismatically attract children with shows of affection and offers of gifts. Gradual progression from mild physical contact to oral-genital acts followed by intercourse. Poorly motivated for treatment and outcome poor. Adolescent offenders most resistant to treatment; and
 - **Others** - Paedophilic type behaviours may occur in the context of senility, intellectual dysfunction or organicity.

²³⁴ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24196.

²³⁵ Most experts agree that it is not possible to 'cure' a sex offender. See R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24216; S. Goodman RCT, 9/7/96, pp. 28460-61; and also Volume V, Chapter 19 of this Report.

²³⁶ W. Pithers, RCT (video link to Vermont, USA), 3/9/96, p. 31378.

²³⁷ *DSM-IV: Diagnostic and Statistical Manual of Mental Disorders*, 4th edn, American Psychiatric Association, Washington DC, 1994, RCPS Exhibit 3119, see Volume VI, Appendix P6 of this Report.

- Mr Raymond Wyre,²³⁸ whose interest was in the management of these offenders, identified seven categories:
 - the **predatory paedophile**, that is, the offender who does not care whether the victim gives consent to sexual acts and there is no attempt to form a relationship;²³⁹
 - the **non-predatory paedophile**, that is, the offender who believes a child can, and does, give consent to the sexual relationship,²⁴⁰ which possibly is a classification developed by this group to distinguish themselves from predatory paedophiles;
 - the **regressed paedophile**, that is, the offender who may have an adult relationship or be sexually attracted to adults but is insecure and immature in those relationships and will offend impulsively or when in crisis;²⁴¹
 - the **fixated paedophile**, that is, the offender whose main arousal and sexual orientation is to pre-pubertal children, and who exhibits extreme addictive behaviour, is seductive and gradually turns the relationship into a sexual one;²⁴²
 - the **inadequate paedophile**, that is, the offender who has a psychiatric illness or disability and/or whose mental age is around 8-10;²⁴³
 - the **inadequate fixated paedophile**, that is, the offender who does not have the social skills of the fixated paedophile and fits the more stereotypical view of the child molester;²⁴⁴ and
 - the **parapaedophile**, that is, the offender who sexually abuses anyone and is not oriented in any specific way.²⁴⁵
- Mr Kenneth Lanning,²⁴⁶ whose principal interest is in law enforcement, identified two main categories, the situational and preferential offenders, for each of which he suggested that there were sub-categories:
 - the **situational offender** who does not necessarily have a sexual preference for children and for whom sexual interaction with a child may be a 'one-off' incident or a long-term behaviour pattern²⁴⁷ with four sub-categories:
 - * the **regressed** offender, who has poor coping skills and low self-esteem, whose sexual interaction with children is as a substitute for a 'preferred peer sex partner'. Coercion is the principal method of acquiring a victim and availability appears to be the main criterion as many will abuse their own children;
 - * the **morally indiscriminate** offender who abuses simply for the sake of abuse and will equally abuse adults as children. Victims are usually strangers but can also be the offender's own children. This offender will lure, manipulate and/or force his or her victims;

²³⁸ Raymond Wyre is a sexual crime consultant and principal adviser to Faithful Foundation, UK.

²³⁹ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24198.

²⁴⁰ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24198.

²⁴¹ R. K. Wyre & A. Swift, *Women, Men & Rape*, Headway, Sevenoaks, 1990, pp. 39-40.

²⁴² R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24194.

²⁴³ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24195.

²⁴⁴ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24195.

²⁴⁵ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24196.

²⁴⁶ Kenneth Vincent Lanning is a special agent with the Federal Bureau of Investigation (FBI) specialising in the investigation of child sexual assault. He has a masters degree and from 1981 to April 1996 he was attached to the Behavioural Science Unit of the FBI. At the time of giving evidence he was assigned to the Missing and Exploited Children's Task Force; see RCT, 5/9/96, pp. 31576-77.

²⁴⁷ See Lanning, 1987, op cit, pp. 272-73; Mr Lanning believes that the situational category is larger and increasing faster than the preferential category. See also Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 250.

- * the **sexually indiscriminate** situational offender, one of the more difficult to define because while they do not have a preference for children they exhibit similar characteristics to preferential offenders. Their basic motivation is sexual experimentation and sex with children often results because of boredom. Victims may often be the offender's own children. This offender is the most likely to collect pornography and erotica; and
- * the **inadequate** offender who is similarly difficult to define but includes individuals suffering mental illness or retardation, as well as the 'shy teenager' or 'eccentric loner'. Most seem to get involved with children out of curiosity or insecurity or 'built up impulses'. These offenders may also be violent and sadistic. Their victims could also include the elderly.²⁴⁸
- the **preferential offender**, who has a definite preference for children as sexual partners and who displays highly predictable behaviour. While they are less in number than the situational offender they can potentially abuse far more children. Three sub-categories were identified:
 - * the **seduction** offender who involves children in sexual activity by seducing them with material items or affection, and who may be involved with multiple victims and have a unique ability to identify with children, particularly vulnerable children;
 - * the **introverted** offender who, like the stereotypical offender, lacks the social skills to seduce a child and mostly abuses strangers or very young children. This offender tends to hang around playgrounds and other places where children congregate. He may also expose himself to children or engage in brief sexual encounters; and
 - * the **sadistic** offender whose arousal is dependent on inflicting some form of pain or suffering on the victim and is more likely than any other offender to abduct and/or murder the victim.²⁴⁹
- Dr Mervyn Glasser confined the term paedophilia strictly to extrafamilial offenders, and identified two categories:²⁵⁰
 - **Secondary** paedophilia, that is, that which occurs with some other pathology such as schizophrenia or organic disorder; and
 - **Primary** paedophilia, which constitutes a 'perversion' with a 'psychopathological structure' for which there were two sub-categories:
 - * the **invariant** offender, that is, one who has no sexual or social interest in adults, is constantly involved with children (mostly boys) and has no guilt about his activities; and
 - * the **pseudo-neurotic** offender, that is, one who is generally involved in adult sexual relationships (usually heterosexual) but at irregular intervals, seemingly in reaction to a stressful situation, carries out a paedophilic act for which he expresses great guilt and shame.

²⁴⁸ Lanning, 1987, op cit, pp. 272-73; Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, pp. 249-51.

²⁴⁹ Lanning, 1987, op cit, pp. 272-73; Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, pp. 251-52.

²⁵⁰ Glasser, 1989, op cit, p. 1.

3.24 There are some common elements in these definitions. It seems that Mr Wyre's 'fixated' paedophile, Mr Lanning's 'seduction preferential' offender, and Dr Glasser's 'invariant primary paedophile' offender exhibit common characteristics, and reflect the behaviour of the extrafamilial offender as found by the Commission. Mr Wyre's 'regressed offender', Mr Lanning's 'regressed situational offender', and Dr Glasser's 'pseudo-neurotic primary paedophile' reflect more closely the behaviour of the familial offender.

3.25 While these categories are useful for the purposes of detection and treatment of offenders, it should be remembered that they are mostly developed from convicted offender profiles and are neither definitive nor mutually exclusive.²⁵¹ Subject to these qualifications, they can provide a general framework within which assessment can occur, management strategies can be defined and some broad predictions as to outcome of treatment made.

B. THE FAMILIAL OFFENCE

3.26 Familial abuse is that which is perpetrated on a victim by a near relative, most often a natural parent, step-parent, foster-parent, uncle or aunt, guardian or a sibling and generally occurs within the family home.²⁵²

3.27 This form of child sexual abuse is often termed 'situational'²⁵³ meaning that the abuse occurs more out of the ease of access and/or as a result of stresses in the environment which act as triggers for offending, than out of primary sexual preference. It should not be overlooked that there are preferential offenders who perpetrate familial abuse, and who may go to great lengths to enter a marital or de facto relationship in order to have access to children.²⁵⁴ Nor should it be overlooked that there are offenders who have been able to establish satisfactory adult sexual relationships, but who when placed in close proximity with a child, develop clear paedophilic arousal.²⁵⁵

3.28 Familial abuse, when detected is often 'explained' or evaluated from the perspective of family dysfunction. In doing so, complicity by the non-offending parent and the victim is often inferred and the focus is removed from the actual incidence of abuse to broader considerations in which an explanation is sought for the offender 'behaving out of character'.²⁵⁶ Failing to isolate the behaviour of the offender in this way can lead to some 'preferential' familial offenders being labeled as 'situational' offenders²⁵⁷ and/or the incidence of abuse being subsumed by excuses and explanations of why the offence occurred.

3.29 The behaviour of familial offenders, whether truly 'regressed' or 'situational' offenders, can be triggered by one of several circumstances or stresses.²⁵⁸ They include:

- inability to establish appropriate adult relationships, or stress within an existing relationship;²⁵⁹
- the disinhibiting effects of alcohol;

²⁵¹ See W. F. Glaser, Paedophilia: The Public Health Problem of the Decade, keynote address presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97. Dr Glaser adds that attempts to categorise offenders are also deficient in their understanding of 'normal' male sexuality. He refers to several studies which indicate that many males fantasise about sexually initiating a female and many men admit to a wide range of sexual fantasies and deviant activities, see pp. 4-5. See also the Parliamentary Joint Committee on the National Crime Authority Report on Organised Criminal Paedophile Activity, November 1995, p. 12; and K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31578.

²⁵² A recent study by the Judicial Commission indicates that familial abuse generally occurs within the home of the victim, while extrafamilial abuse occurs in the home of the offender. See Gallagher, Hickey & Ash, 1997, op cit, p. xi.

²⁵³ More specifically a 'regressed situational offender'. See Lanning, 1987, op cit, p. 250.

²⁵⁴ Lanning, 1987, op cit, p. 258; Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 118.

²⁵⁵ A. Blaszczyński, RCT, 30/10/96, p. 33710.

²⁵⁶ W. F. Glaser, The Public Health Problem of the Decade, keynote address presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 5.

²⁵⁷ W. F. Glaser quotes figures from a survey conducted by Abel et al in 1988, of 199 'incest' offenders, 66% of whom were found to have offended against non-family members; ibid.

²⁵⁸ These triggers may be equally applicable to the 'situational' extrafamilial offender.

²⁵⁹ Lanning, 1987, op cit, p. 250.

- their own experience of sexual abuse while a child;²⁶⁰
- revenge or demonstration of power within a dysfunctional family;²⁶¹
- personality disorders of various forms displaying tendencies towards aggression, depression, self-pity, lack of social responsibility, or undue timidity;
- ignorance of what is acceptable; and
- adherence to cultural or social mores in which familial sexual activity is acceptable.

Care needs to be taken not to accept these factors as 'excuses' for the incidence of a familial offence. Mere desire for sexual gratification is a significant reason for such abuse.

3.30 There are some common aspects of the familial offence that deserve mention:

- the sexual abuse often begins with an extension of a normal/natural family interaction, such as fondling while playing or bathing, touching while hugging or sitting on a parent's or carer's knee. The abuse may remain at that level or gradually escalate to full penetrative sex;²⁶²
- the activity is often subtle and unacknowledged by the parent or carer, leaving the child with the feeling that the action was simply a mistake or that they imagined it.²⁶³ More often than not the abuse leaves a child confused about the boundaries in the relationship;²⁶⁴
- commonly the abuse is reinforced, and made more complex, by threats of reprisal if disclosed, or by entreaties to remain silent in case the family breaks up or the parent or carer is taken away. Quite often the offender fears exposure to the non-offending parent;²⁶⁵
- the offender may only abuse within the family unit and cease the activity if the family splits up;²⁶⁶
- offenders who return to the family setting following detection and/or conviction are immediately placed in a 'risk' situation both for any current or potential victim and for the offender;²⁶⁷
- the sexual abuse is often accompanied by other forms of abuse such as physical abuse, emotional abuse or neglect;²⁶⁸
- investigation of the abuse is complicated where a natural or de facto parent or sibling is the offender, as support for the child by a non-offending parent or partner may not be as automatic as in the case of extrafamilial abuse;²⁶⁹
- some familial offenders who are fathers of the victim believe they have a 'right' to sexually engage their children;²⁷⁰
- the abuse is likely to be long-term, sometimes lasting many years;
- the victim is more likely to be female;²⁷¹
- victims are often younger than those in extrafamilial abuse;²⁷² and

²⁶⁰ See A. Campbell, RCT, 14/8/96, pp. 30532-33.

²⁶¹ See F. J. Martin, RCT, 14/8/96, pp. 30573-83. See also P. Phelan, 'Incest and its Meaning: The Perspectives of Fathers and Daughters', *Child Abuse and Neglect*, vol. 19, no. 1, 1995, RCPS Exhibit 2378, p. 14.

²⁶² Phelan, 1995, op cit, pp. 9-10.

²⁶³ ibid, pp. 10-12 & 21.

²⁶⁴ F. Grunseit, RCT, 19/2/97, pp. 35919-20.

²⁶⁵ Phelan, 1995, op cit, pp. 17 & 22.

²⁶⁶ A. L. Godfrey, RCT, 12/4/96, p. 23412; C. McComish, RCT, 10/7/96, p. 28604.

²⁶⁷ K. L. Doyle, RCT, 4/7/96, p. 28273.

²⁶⁸ K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31577.

²⁶⁹ K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31580.

²⁷⁰ Phelan, 1995, op cit, p. 14.

²⁷¹ K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31584.

- familial offenders are likely to have few victims - sometimes only one, but will reoffend against the same victim on a regular basis.

3.31 Whether the offender has a primary preference for sex with children, or sexually abuses children within the family as a matter of opportunity, the ease of abuse is assisted by the ready access to children. For those who have clear preferential tendencies, access to children outside the family circle can be increased through interaction with other families.

3.32 In family situations a child will in many instances not reject the sexual approaches of a parent, grand parent, step-parent, de facto parent or guardian. There may be a number of reasons for this including fear, confusion and/or curiosity. Ultimately it is based on the trust children inherently have for their parents and those who care for them. It is this trust that is exploited and manipulated in familial abuse, and that makes complaint or resistance very difficult.

3.33 Some children are capable of adopting defence mechanisms to repress the relationship or to minimise its repetition. This is very much a feature of the familial offence. For example, a young girl may adopt the strategy of informing her abusive father that she would go to him on Friday nights, thus avoiding the worry about when he would next come to her room.²⁷³ This has been referred to as the 'accommodation syndrome',²⁷⁴ where the child is accommodating the abuse as a survival strategy. However, the consequences are to:

- shift the responsibility to the victim;
- leave the child feeling trapped;²⁷⁵ and also to
- encourage a distorted perception on the part of the abuser that the child is a willing partner.

3.34 A recent study in the USA compared the way 40 fathers perceived abuse of their daughter with the perceptions of the latter.²⁷⁶ There was very little difference in the way the offenders and the children described the circumstances in which the abuse was initiated, but there were marked differences in their interpretation of the activity, indicating to the researcher an inability on the part of the fathers to recognise their daughters' distress and pain.²⁷⁷

3.35 Many of the findings of this study are equally applicable to extrafamilial abuse, such as the perception that the sexual experience was enjoyed and encouraged by the victim, and the lack of impact of legal sanctions. The unique aspect, however, was the finding that many fathers felt that they had a 'right' to do what they did in relation to their own children, but not in relation to other people's children.²⁷⁸ This may be synonymous with Mr Wyre's experience with extrafamilial offenders who he says can develop empathy for other victims, but not their own.²⁷⁹

3.36 Familial sexual abuse generally ceases when:

- the victim is old enough to realise that the activity is not acceptable;
- the victim informs a close friend or family member;
- the abuse is inadvertently discovered by a non-offending family member;
- the victim reaches puberty and the threat of pregnancy prevents further abuse;²⁸⁰ or

²⁷² K. V. Lanning, RCT (video link to Washington, USA), 5/9/96, p. 31584; A. Blaszczyński, RCT, 30/10/96, p. 33711.

²⁷³ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, pp. 24201-02.

²⁷⁴ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24202; see also Volume V, Chapter 17 of this Report.

²⁷⁵ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24202.

²⁷⁶ Phelan, 1995, op cit, pp. 7-24. Interviews were conducted with a sample of fathers (biological and stepfathers) and their daughters attending the Child Sexual Abuse Program in San Jose California.

²⁷⁷ ibid, p. 16.

²⁷⁸ ibid, p. 14.

²⁷⁹ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24223.

²⁸⁰ A. Blaszczyński, RCT, 30/10/96, p. 33711.

- the victim moves out of the family home.

C. THE EXTRAFAMILIAL OFFENCE

3.37 Extrafamilial abuse is that which is perpetrated on a victim by an individual who is not a natural or de facto relative. The offender in this case could be:

- a close friend or acquaintance, particularly someone who goes out of his way to befriend the family and the child;
- a neighbour;
- a teacher, scout or youth leader, a babysitter, priest, minister, coach, instructor, adviser, health care professional or any other person in a position of trust; or
- less commonly, a complete stranger previously unknown to the child.

3.38 The abuse may involve:

- a single incident of abuse perpetrated as the result of coercion, payment (child prostitution) or simple encouragement;
- repeated but irregular acts of abuse on the same victim initiated as opportunity permits; or
- a 'relationship' fostered by the offender often on a pseudo-parental basis and justified on the basis that the 'relationship' is consensual.

3.39 A common belief about extrafamilial abuse is that it is the socially isolated and inadequate loner who is the principal offender. This is far from the truth. While such persons may engage in exhibitionism, voyeurism and scotophilia (obscene telephone calls) in relation to children, they are usually incapable of getting close enough to them to engage in sexual abuse, let alone to foster and maintain a sexual relationship.²⁸¹ Extrafamilial offenders may indeed be strangers who incite a child to engage in a single sexual act, but it is far more likely that they will be known to the victim and seek to encourage a 'relationship' which may last for months or even years. There are several reasons for this:

- they do not normally have the physical proximity to children that familial offenders have; nor
- do they benefit from the secrecy that is easy to maintain within a family setting.

3.40 Several offenders gave evidence to the Commission of the way that this type of relationship is formed. For most it became apparent that there was a degree of sexual satisfaction, if not a challenge, in gaining the attention and trust of a child to whom they were attracted. Commonly they would win the child over with gifts of money, meals, clothes, trips and even schooling. An essential element for them was the ability to provide the victim with material or emotional support that was lacking in his or her home life. For this reason, well placed offenders are often attracted to children from broken homes or of a lower socio-economic status, and gain pleasure in what they see as 'improving the child's lot' while at the same time achieving sexual gratification.²⁸²

3.41 One witness explained that the time it takes for a relationship to become sexual will vary depending on what the offender is looking for. It may only take a matter of minutes or hours if the offender is simply after a paid sexual encounter. If the offender is looking for a 'committed relationship' it may take 'weeks or months' before the relationship becomes sexual.²⁸³

²⁸¹ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24243.

²⁸² See generally the evidence of D1, RCT, 18/3/96, pp. 22004-53; W35, RCT, 20/8/96, pp. 30958-96; KR248, RCT, 20/8/96, pp. 30927-57.

²⁸³ D1, RCT, 18/3/96, p. 22009.

3.42 Numerous victims informed the Commission of their experiences at the hands of different offenders²⁸⁴ which involved:

- meeting the offender through a group or while participating in some activity with other children;
- determined and usually successful efforts by the offender to befriend their parents and to assume a position of influence or acceptance within the family;
- visits to the home or place of work of the offender;
- gifts of clothes, toys, sporting equipment, holidays and in some cases an education;
- permission to engage in activities banned or unavailable at home, for example, watching pornographic videos, smoking, drinking and drug taking;
- gradual introduction to masturbation or indecent touching;
- escalation of the sexual activity over time;
- acceptance of the sexual aspect of the relationship because of the material or emotional gains;
- fear of divulging the activity, especially for boys who were frightened of the reactions of people to the nature of the activity;²⁸⁵
- in the case of one female who said that she was seduced by an Anglican minister, the belief that the offender would eventually divorce his wife and marry her;²⁸⁶ and
- considerable distress and feelings of betrayal when the relationship was terminated and/or they were 'replaced' by a younger victim.

3.43 It would appear from the expert evidence before the Commission and the prosecution statistics referred to above, that extrafamilial offenders tend to have many more victims than familial offenders.²⁸⁷ There was evidence from Mr William Pithers,²⁸⁸ that the fixated/preferential offender may have as many as 300 victims over a lifetime,²⁸⁹ and may welcome the opportunity of sharing victims with friends and associates. Some offenders interviewed by the Commission fitted this description very well.

3.44 The ability of the fixated/preferential extrafamilial offender to offend against so many different victims is due to:

- their lesser access to a regular victim or victims compared with the familial offender;
- their tendency to have a fixation/preference for a certain age group, which causes them to discard and replace victims as they move out of that age bracket;²⁹⁰
- their promiscuity and need for frequent and repeated sex with children;²⁹¹ and

²⁸⁴ See the evidence of the various victims of sexual abuse who gave evidence, in particular RCT, 28/3/96-1/4/96, 16/4/96-17/4/96, 7/5/96, 1/7/96 & 12/8/96.

²⁸⁵ W35, RCT, 20/8/96, p. 30965; K. J. Buttrum, RCT, 29/5/96, pp. 26110-11; Miller, 14/4/97, op cit, p. 5.

²⁸⁶ AC2, RCT, 7/5/96, p. 24774.

²⁸⁷ N. McConaghy, RCT, 6/9/96, p. 31708; see also Gallagher, Hickey & Ash, 1997, op cit.

²⁸⁸ William D. Pithers is a child sexual abuse expert. He has a doctorate in psychology and started the first treatment program for sex offenders in Vermont, USA, RCT (video link to Vermont, USA), 3/9/96, p. 31369.

²⁸⁹ W. D. Pithers, RCT (video link to Vermont, USA), 3/9/96, p. 31391; see also D. Kenny, Opinion, Policy and Practice in Child Sexual Abuse: Implications for Detection and Reporting, paper presented at Australian Institute of Criminology Conference-Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 5, where she quotes research by Abel, Mittleman & Becker 1987 who found that 232 offenders admitted to an average of 76 victims.

²⁹⁰ Lanning, 1987, op cit, p. 251; Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, 1995, RCPS Exhibit 3220, p. 14; Miller, 14/4/97, op cit, p. 2.

²⁹¹ Lanning, 1987, op cit, p. 251.

- their tendency to engage in networking with like-minded offenders for peer approval and support, a practice that opens up access to other children who have been recruited into similar activities.

3.45 There is a group of extrafamilial offenders who believe, or purport to believe, that sexual relationships between an adult and child are not only acceptable but should be encouraged. They endeavour to justify their activities by arguments that:

- children are capable of consenting to sexual relations;
- children have rights, including the right to decide with whom they will associate, and become sexually involved;
- in the classical era such relationships were the norm;
- such relationships are acceptable if based on love, and are beneficial so far as they bring children into greater maturation, and sexual enlightenment;
- they provide the love and support which is lacking within the nuclear family, and they listen to children when their parents do not; and that
- existing mores and social attitudes are unenlightened.

3.46 From time to time such groups present spokespeople who advocate the benefits of adult/child love, commonly under the guise of being opponents of abusive relationships.²⁹² Some have been well organised and enduring, with newsletters, Internet addresses and the like.²⁹³

3.47 Although these groups deny engaging in illegal or harmful activity, they are, in truth a sham which exist solely to further the sexual interests of their members, to facilitate the exchange of child pornography and to arrange for the sharing of children.

3.48 Most of the members of these groups want to believe that the child gave consent and that their conduct is acceptable.²⁹⁴ As with familial offenders, they tend to redefine or reinterpret the survival or 'accommodating' behaviour of the child as consent, or otherwise engage in cognitive distortion to rationalise, minimise, or excuse their offence. This is all the more the case when the victim is vulnerable,²⁹⁵ that is, from a broken home, exhibits learning difficulties, or is a State ward. They overlook the circumstance that co-operation is not the same as consent, or that young children can never be in the position to understand the full repercussions of the relationship.²⁹⁶

3.49 Extrafamilial abuse generally ceases when:

- the offender is no longer attracted to the victim because the victim has passed his preferred age group;
- the activity is discovered and further access to the victim is denied and possibly sanctions, including legal sanctions, imposed;
- the child's family or the offender move away from an area; or when
- the child refuses to participate any further.

²⁹² eg. 'Boy Lovers Against Child Pornography'.

²⁹³ eg. NAMBLA, the North American Man/Boy Love Association which was started in 1978, is still active today and publishes a regular newsletter which is distributed around the world. NAMBLA claims to have 1,000 members worldwide; see Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, pp. 21-22.

²⁹⁴ K. L. Doyle, RCT, 4/7/96, p. 28255. Mr Doyle gave evidence about the sex offender inmates at Cooma prison. He explained that the fixated offenders considered themselves political prisoners not prisoners of the social justice system. They have no intention of claiming responsibility for the offence because they did not think that they were wrong. Society was wrong and they saw themselves as the victims of society.

²⁹⁵ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24203.

²⁹⁶ A. Blaszczyński, RCT, 30/10/96, pp. 33693-94.

D. ABUSE BY ADOLESCENTS

3.50 As with child sexual abuse generally, sexual abuse by adolescents tends to be minimised either by dismissing it as a 'one-off' incident²⁹⁷ or by explaining it on the basis that the offender was engaging in normal sexual exploration, or if the conduct is somewhat bizarre or involved a very much younger child, that the offender is mentally disturbed. It has largely been ignored through a lack of appreciation of its existence, or of the circumstance in which it occurs.²⁹⁸

3.51 Juvenile sex offenders can be just as predatory as adult offenders. Their abuse is often well-planned and thought out. Protected by the silence that has been characteristic of sexual abuse generally, juvenile offenders learn they can get away with it,²⁹⁹ and have time to fine tune the manipulative techniques which are characteristic of the recidivist offender. The danger in this is accentuated when it is understood that:

- when in treatment many adult offenders reveal that they started offending in adolescence,³⁰⁰
- the offence for which an offender is prosecuted is rarely his first offence,³⁰¹
- most sexual offender behaviour escalates over a period of time - it does not suddenly just happen,³⁰²
- unlike other young offenders who grow out of their offending behaviour, juvenile sex offenders tend to grow into it;³⁰³
- when in treatment juvenile offenders regularly disclose other offences for which they have not been prosecuted;³⁰⁴ and that
- some such offenders have themselves been the victims of abuse, and act out through confusion about appropriate sexual behaviour, anger, or simply out of learned behaviour.

3.52 As with adult offenders, adolescent offenders are not an homogenous group.³⁰⁵ Adolescent offences are both familial and extrafamilial, although offences against younger children generally occur within the family, where access is easier.³⁰⁶

3.53 There are obvious difficulties in assessing the incidence and potential ramifications of sexual abuse committed by juveniles against other children as the sexual activity is often viewed as a passing stage,³⁰⁷ and it can be difficult to classify the sexual contact as 'paedophilic' in nature when the age difference is not great.³⁰⁸

3.54 The Juvenile Sex Offender Program run by the Department of Juvenile Justice, and discussed later in this Report,³⁰⁹ was established in 1991 to address this problem. Most offenders on the program are aged around 16 years but there are also offenders as young as 12-14 years.

²⁹⁷ S. Goodman, RCT, 9/7/96, p. 28466.

²⁹⁸ S. Goodman, RCT, 9/7/96, pp. 28461-62.

²⁹⁹ S. Goodman, RCT, 9/7/96, p. 28461.

³⁰⁰ S. Goodman, RCT, 9/7/96, p. 28466; see also Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, pp. 13-14.

³⁰¹ Law enforcement experts promote the approach that other victims should always be considered when an offender is apprehended. See Miller, 14/4/97, op cit, p. 4; Lanning, 1987, op cit, p. 254.

³⁰² S. Goodman, RCT, 9/7/96, p. 28467.

³⁰³ P. Tidmarsh, Young Men, Sexuality and Sexual offending (Risk Management and Public Education), Paper presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, p. 1; see also Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, p. 14; Australian Catholic Bishops' Conference, Australian Conference of Leaders of Religious Institutes, Professional Standards Research Project: A National Treatment Program for Priests or Religious with Psycho-sexual Disorders: Final Report, 1996, RCPS Exhibit 2513C, p. 24.

³⁰⁴ S. Goodman, RCT, 9/7/96, p. 28475.

³⁰⁵ S. Goodman, NSW Department of Juvenile Justice, The role of Research in the Management of Adolescent Sexual Offenders with the NSW Department of Juvenile Justice, RCPS Exhibit 3051/17, pp. 4-5.

³⁰⁶ S. Goodman, RCT, 9/7/96, p. 28462.

³⁰⁷ Lanning, 1987, op cit, p. 254.

³⁰⁸ A. Blaszczyński, RCT, 30/10/96, p. 33695.

³⁰⁹ See Volume V, Chapter 19 of this Report.

By the nature of the offence, they cause particular difficulties for detention centres, homes and refuges, particularly as little has existed in the past by way of support or treatment for them.

3.55 Abuse by adolescents cannot be ignored if society is to address the problem of child sexual abuse since it is now clear that the problem offender very often emerges during childhood.³¹⁰ Although many experts believe that adult child sex offenders can never be 'cured' only managed,³¹¹ others believe that with appropriate strategies and support, behaviour modification can be achieved.³¹² Whichever view is correct, failure to address the problem at the earliest possible stage only increases the likelihood of recidivism. This is particularly so where the adolescent is acting out principally through sexual confusion, or lack of understanding, as to what is acceptable and unacceptable behaviour.

E. ABUSE BY WOMEN

3.56 The consensus among the experts who gave evidence at the Commission, supported by conviction statistics, has been that females rarely, if ever, sexually abuse children.³¹³

3.57 The limited statistical information available about female offenders reveals:

- in 1995, in both local and higher courts, there were 225 males convicted of sexual offences and three females;³¹⁴
- in the District Court in 1994 only three females were convicted of sexual offences;³¹⁵ and
- in 1993/94 in presentations to sexual assault services, females accounted for only 6% of the nominated offenders.³¹⁶

3.58 The low incidence of offending indicated in the above figures is supported by the fact that:

- the Juvenile Justice Sexual Offenders Program has had only three girls enter the program over a five year period; and that
- in seven years, the participants in the Pre-trial Diversion Program have all been men, although there have been inquiries made on behalf of female offenders.³¹⁷

3.59 A significant proportion of women who do offend are in fact associates of male offenders and are charged as accessories rather than as the party who initiated the offence.³¹⁸ The incidence of cases involving older women offending against younger women is considered to be particularly low.³¹⁹ It is, according to Mr Lanning, rare to find a female who offends in the 'preferential' category.³²⁰

³¹⁰ D1, RCT, 18/3/96, p. 22006; see also CJF, RCT, 30/5/96, p. 26194; A. Blaszczyński, RCT, 30/10/96, pp. 33694-95.

³¹¹ eg. R. K. Wyre, RCT, 26/4/96, p. 24216; M. J. Edwards, RCT, 11/7/96, p. 28613; F. Grunseit, RCT, 19/2/97, p. 35921; A. Blaszczyński, RCT, 30/10/96, pp. 33703-04; W. D. Pithers, RCT (video link to Vermont, USA), 3/9/96, p. 31379; KR248, RCT, 20/8/96, pp. 30943-44.

³¹² See Volume V, Chapter 19 of this Report.

³¹³ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24197; Lanning, 1987, op cit, p. 254; N. McConaghy, RCT, 6/9/96, pp. 31703-04; see also Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, p. 13.

³¹⁴ NSW Bureau of Crime Statistics, *Annual Report 1995*.

³¹⁵ Gallagher, Hickey & Ash, 1997, op cit, p. 13.

³¹⁶ These figures include biological and de facto mothers, grandmothers, sisters, 'female child under 16', and female adults known and unknown to the victim. See NSW Health Department, Women's Health Unit & Information and Publications Department, *Victims of Sexual Assault 1992/93-1993/94*, p. 12; N. R. Cowdery QC, Statement of Information, 26/6/96, RCPS Exhibit 2101/2, Annexure GG.

³¹⁷ D. Tolliday, RCT, 29/5/96, p. 26161.

³¹⁸ In Great Britain 3% of charged sex offenders (each year) are female and of that 1.5 % are the female charged with a male offender. See R. K. Wyre, RCT, 26/4/96, p. 24197; Lanning, 1987, op cit, p. 254; Commissioner J. R. T. Wood, RCT, 6/9/96, p. 31794.

³¹⁹ N. McConaghy, RCT, 6/9/96, pp. 31703-04.

³²⁰ Lanning, 1987, op cit, p. 254.

3.60 There is, however, some recent concern that the number of female offenders is growing³²¹ and that the offence could be more prevalent than has been believed.³²² Several circumstances would support such possibility, including the fact that:

- women are seen as society's care-givers and therefore escape suspicion when interacting with children;³²³
- there is a greater social acceptance of older female/younger male relationships which are generally not seen as abusive by society,³²⁴ and often regarded more as good luck than traumatic;³²⁵ and
- as with other forms of sexual abuse, minimisation and denial occurs.³²⁶

3.61 Although it is clear that women are far less likely than men to commit child sexual abuse, it would be imprudent to adopt an attitude of complacency. If anything has become clear from the Commission's inquiries it is that abuse continues to occur because the response has been one of denial and minimisation, and concentration on stereotype. The community should be alert to the possibility that women too can commit sexual assault.

F. RECRUITMENT OF VICTIMS AND NETWORKING

3.62 For both familial and extrafamilial offenders, recruitment of children into a sexually abusive relationship depends upon the existence of a bond between them:

- in the case of a familial abuser, it is based upon the trust which is inherent to the family unit; and
- in the case of the extrafamilial abuser, it depends either upon the 'grooming' process, whereby the victim is seduced into a friendship which leads on to a sexual relationship, or upon the existence of a relationship of authority in which the child is already conditioned to respect and obey the adult, who then uses that position to coerce the child into a sexual relationship.

THE FAMILIAL RELATIONSHIP

3.63 There is normally no need for the familial offender to frequent parks, amusement centres or known beats and prostitute pick up centres. By definition recruitment of victims occurs as a result of the status of the offender as parent, sibling or other close relative. However, there are some child sex offenders who enter adult relationships in order to gain access to the children of their partners.³²⁷ For those offenders, access to extrafamilial victims may be gained in similar ways to those described below.

THE EXTRAFAMILIAL RELATIONSHIP

3.64 What is clear from the Commission's inquiries is that extrafamilial offenders are rarely strangers to their victims.

3.65 One group comprises those who:

- are already family friends or acquaintances and gain access to their victims through that relationship; and those who

³²¹ A. Blaszczyński, RCT, 30/10/96, p. 33697; R. K. Wyre, RCT, 26/4/96, p. 24197.

³²² Lanning, 1987, op cit, p. 254; Glasser, 1989, op cit, p. 1; C. McComish, RCT, 10/7/96, p. 28589; and D. Gin, *The Fence on the Cliff*, book bound, Ourimbah, 1996, p. 81 et seq.

³²³ Lanning, 1987, op cit, p. 254.

³²⁴ ibid; N. McConaghy, RCT, 6/9/96, p. 31704.

³²⁵ A. Blaszczyński, RCT, 30/10/96, p. 33697.

³²⁶ S. Goodman, RCT, 9/7/96, p. 28475.

- endear themselves to the parents of the intended victim in order to gain their trust, and an opportunity to seduce the child, as part of a careful strategy.

3.66 In these cases the relationship tends to be more of a long-term kind. As the offender becomes attached to and liked by the family, the feelings of guilt and confused loyalty that arise complicate the relationship and render disclosure difficult.

3.67 Other offenders working with children in homes, schools, churches and the like, or dealing with State wards in their official capacity, gain access through their supervisory roles³²⁸ and rely on fear and authority to commit the offence and escape disclosure.

3.68 Those offenders who seek a brief sexual interaction tend to be less selective or organised, and access children through public places where their activity is relatively anonymous and they can blend in with other people in the area. Public toilets, railway stations and beaches are common venues for such offenders, as are the known haunts for under age prostitutes such as the Wall in Darlington, the park near Central Railway Station, or brothels which are not particular about the age of their workers. Runaways, the homeless, and drug users are the primary targets of these offenders. By virtue of the commercial nature of the relationship, and the anonymity of the exchange, detection is both difficult and unlikely.

3.69 For most extrafamilial offenders, there is a price to be paid for their relationship, whether it be money, or short-term accommodation in the last mentioned category, or holidays, clothing and other gifts by those who crave longer-term relationships. Rarely, if ever, is the relationship purely one of mutual affection, although for those children who are involved in a longer-term relationship and who are abandoned when they pass the preferred age for the offender, there is inevitably an enormous sense of betrayal, an emergence of guilt, and often a very harmful personal breakdown.³²⁹ This is not the case with transient relationships, but the regular abuse of children who find themselves in this situation and the greatly enhanced risk of sexually transmitted disease, including HIV, other illnesses and of physical assault, is no less damaging.

3.70 Several preferential extrafamilial offenders gave the Commission an insight into their typical behaviour that suggested they:

- listen to children in a way that other adults and especially parents do not;³³⁰
- notice children more than they notice adults, and do not have many adult friends except for those who also notice children;³³¹
- collect books on the sociology and psychology of children and about man-boy relationships;³³²
- collect child pornography or take photographs of children;³³³
- video or photograph their own abuse of children;
- involve themselves in activities that children enjoy, such as scouts, and church youth groups;
- attend places that children frequent,³³⁴ which have transient populations or which are known pick-up places;³³⁵

³²⁷ Lanning, 1987, op cit, p. 246.

³²⁸ See also Volume V, Chapter 12 of this Report.

³²⁹ See Volume V, Chapter 17 of this Report.

³³⁰ D1, RCT, 18/3/96, p. 22009.

³³¹ D1, RCT, 18/3/96, p. 22034.

³³² D1, RCT, 18/3/96, p. 22034.

³³³ Lanning, 1987, op cit, p. 261; and D1, RCT, 18/3/96, p. 22026.

³³⁴ K. J. Wallis, RCT, 8/7/96, p. 28327.

- befriend children and offer them money, trips, drugs, dinners, clothing and the like, to manipulate them;³³⁶
- target runaways, State wards and other disenfranchised children; and
- pass magazines, books and particularly photos they had personally taken, between themselves.³³⁷

3.71 Of particular concern is the exposure of children to drugs initially on a casual basis to lower their resistance, and later on a regular basis to secure their continuing co-operation and silence. Even if drugs are not directly provided, it is the common knowledge and expectation of the paedophile who picks up children for casual paid encounters that the payment will be used to feed a drug habit. This factor is almost certainly the driving force for most under age prostitution. The prevalence of its availability at the Wall, which is frequented by boy prostitutes, in the nearby streets where under age girls prostitute themselves, and in various brothels, was observed during the Royal Commission inquiries. Moreover, it was the experience of the Commission that many of the children abandoned by paedophiles when they grew too old, turned to drugs. Some committed suicide and few were able to go on to establish satisfactory adult relationships.³³⁸

3.72 The Commission was assisted by witness KR248, a paedophile in his late 30s, who gave evidence that:³³⁹

- he and his group of friends have been able to pursue their lifestyle without being arrested even though they have been carrying out their activities since 1981 in a beachside location known to police as a paedophile haunt, and in other areas;³⁴⁰
- the children picked up were invariably willing partners, those in the beachside location mainly living at home and seeking friendship; those in the city areas being runaways, State wards and travellers seeking money; and those in the inner west being children whose parents could not support them, and who were again after money;³⁴¹ and
- it was standard practice for his group to pass children around.³⁴²

3.73 Another offender, W35 gave evidence that:

- a number of his associates, with an interest in children as young as eight, favoured those who were obviously from poor and disadvantaged families;
- it was their practice to make an initial approach in the street, or in amusement arcades, and to make an assessment of the openness and family situation of the child;
- if things looked hopeful a long-term project would follow in which they took steps to be introduced to the mother, and to gain her confidence, so that they could obtain her permission for greater access;
- they preyed on the fact that the children had nothing and their mothers could not afford to provide for them; and that
- by filling this need and endearing themselves to the children and to their mothers, they obtained access and ultimately a sexual relationship.³⁴³

³³⁵ KR248, RCT, 20/8/96, p. 30933.

³³⁶ KR248, RCT, 20/8/96, p. 30932; see generally the evidence of A1-A10, RCT, 27/3/96-2/4/96.

³³⁷ D1, RCT, 18/3/96, p. 22029.

³³⁸ W14, RCT, 14/5/96, pp. 25209-10; W83, RCT, 16/5/96, pp. 25370-72; A2, RCT, 27/3/96, pp. 22641-72; C41, RCT, 28/3/96, pp. 22840-60; A. S. Peate, RCT, 21/3/96, p. 22343. See also RCT, 1/7/96, pp. 27914-16.

³³⁹ KR248, RCT, 20/8/96, p. 30931.

³⁴⁰ KR248, RCT, 20/8/96, p. 30932.

³⁴¹ D1, RCT, 18/3/96, p. 22014.

³⁴² KR248, RCT, 20/8/96, p. 30934.

³⁴³ W35, Statutory Declaration, 19/8/96, RCPS Exhibit 2438C.

3.74 Evidence also emerged of the type of paedophile who either in addition to or in lieu of direct sexual contact, gained gratification in making and/or collecting videos and photographs of sexual acts between children, or simply of children in their underwear or shorts, in public places. Evidence was led in relation to two committed and serious paedophile offenders who videotaped an extended holiday, the sole purpose of which seemed to be this form of activity, which was unknown to the children filmed.³⁴⁴ Prison officials from Cooma Prison³⁴⁵ also gave evidence that a group of offenders shared fantasy stories about children and compiled composite videos of children from television shows and advertisements.³⁴⁶

3.75 Another type of wealthier offender who rarely risks detection in Australia, but travels to countries where the laws are more liberal, and corruption of police and public officials is prevalent, emerged. A variant of this offender is the public official or seemingly altruistic individual who seeks employment in foreign missions or aid agencies, and whose primary motivation is to gain access to children in these countries, for sexual purposes. The Royal Commission received evidence in relation to trips to Asia of this kind by Mr Anthony Bevan and his friends, as well as some general information concerning sex tours by Australians to some Asian countries. These activities are now vulnerable to prosecution in Australia under Commonwealth legislation,³⁴⁷ but the difficulties of proving an offence are considerable given:

- the fact that many of the children involved earn their living from such activities and are not necessarily willing witnesses;
- the language difficulties involved;
- the problems of Australian law enforcement agencies working in another country; and
- the existence of official corruption in some of the countries where this occurs.

NETWORKS

3.76 In some quarters, particularly through the media, an impression has been created that there is a single covert and organised network of individuals, comprising highly placed offenders, who communicate with each other in order to procure children for sexual purposes, and who have the capacity to use their office or influence to protect one another.

3.77 The Commission looked for, but found no high level network of this kind.³⁴⁸

3.78 To maintain such a network would require a high degree of secrecy and official protection. The dangers of membership of an extended group of this kind, particularly of exposure and blackmail, are such that its existence is improbable. The Commission is, however, in no doubt that smaller informal groups do exist, and often include one member who acts as a procurer for the others. It found individuals of this type.

3.79 The Commission has spoken to numerous paedophiles and victims of abuse, none of whom endorsed the existence of any high level 'paedophile network'. They acknowledged the existence, from time to time, of various informal groups, made up of essentially male offenders.

³⁴⁴ R. J. Dunn video of young boys, RCPS Exhibit 1556/2; Transcript of video RCPS Exhibit 1556/1.

³⁴⁵ Cooma is one of three prisons to which child sex offenders have been sent. See also Volume V, Chapter 19 of this Report.

³⁴⁶ K. L. Doyle, RCT, 4/7/96, pp. 28265-66.

³⁴⁷ Part IIIA of the *Crimes Act 1914* (Cth) was amended by the *Crimes (Child Sex Tourism) Amendment Act 1994*.

³⁴⁸ This finding is supported by the Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 125: See also the Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, which concluded that there were no commercial 'organised' criminal paedophile groups currently in Australia, pp. vii, 27 & 54.

3.80 Networks may be:

- covert or vocal about their beliefs; and either
- commercial or non-commercial.³⁴⁹

3.81 Their purpose may include one or all of the following:

- exchange of information about available children, publications and videos;
- sharing of experiences, and reassurance of members that they are not unique or unusual;
- provision of support and validation for their lifestyle;
- provision of legal advice;
- organisation of activities in order to fight for their beliefs, such as children's rights; and
- exchange of victims from one offender to another.

³⁴⁹ Lanning, 1987, op cit, p. 279.

3.82 From the evidence presented to this Commission and the intelligence and research available, the networks in NSW have been of the loose-knit, covert and non-commercial kind, made up of like-minded individuals for the purpose of sharing experiences, and in some cases sharing children.

3.83 The members typically involved fall into the category of 'preferential', or 'fixated' offender. Like most marginalised people this type of offender tends to gravitate towards like-minded offenders in order to find friendship, understanding and acceptance.

3.84 Within a network the offender's life is enhanced, and the perceived legitimacy of his conduct is reinforced, when it is accepted by others within the group. This is so notwithstanding the knowledge that it is criminal, and likely to be damaging to the children involved, particularly when interest in them wanes. Evidence before the Commission concerning these groups highlighted the common occurrence that their victims turned to drugs and other destructive activities, including suicide, when abandoned by a person to whom they had an attachment and in some cases regarded as a mentor.³⁵⁰

3.85 The most prominent group found was that centred around Mr Bevan. Features of his ring of paedophiles were that:

- it was organised by Mr Bevan from Wollongong;
- it consisted of a number of persons living in Sydney and Wollongong, some of whom were wealthy businessmen, for whom he procured boys recruited either through his aviation interests in Wollongong, or found by him on his trips to Kings Cross;
- several of the boys involved were used to recruit other boys;
- those involved tended to frequent Costellos (also known as Castelllos) night club in Kings Cross;
- the service was largely conducted for the mutual sexual gratification of those involved rather than for the financial reward of Mr Bevan, although the boys involved were paid by the members of the group;
- a large number of boys were recruited, used and later abandoned; and that
- those who were involved also made overseas sex tours and exchanged information of interest to one another.³⁵¹

3.86 Some other groups were identified by witnesses and information concerning them has been passed on to the Police Service. According to the evidence received, some of these groups had common members.³⁵²

3.87 Some of the practical advantages of networks, apart from the feelings of legitimacy and shared experience which they generate, were identified. For example:

- D1 said that a network provides an environment in which a shy or unsure paedophile can build confidence in sexual activity with children; in his case he was able to overcome his shyness and fear of the legal system, because other paedophiles introduced him to young boys saying:

... these boys know about this; they've already had sex with other men. They think it's³⁵³ok.

³⁵⁰ W14, RCT, 14/5/96, pp. 25209-10; W83, RCT, 16/5/96, pp. 25370-72; A2, RCT, 27/3/96, pp. 22641-72; C41, RCT, 28/3/96, pp. 22840-60; A. S. Peate, RCT, 21/3/96, p. 22343. See also RCT, 1/7/96, pp. 27914-16.

³⁵¹ See the evidence of W14, RCT, 14/5/96, pp. 25150-216.

³⁵² KR248, RCT 20/8/96, p. 30936; see also generally the evidence of W35, RCT, 20/8/96, pp. 30958-95.

³⁵³ D1, RCT, 18/3/96, p. 22014.

- W35 said that a network provides access to a wider group of children, as there is a cultural practice to pass children on to other members of the group,³⁵⁴ to discuss the features, availability and relative safety of dealing with certain children,³⁵⁵ to advise which children are 'working' or not, and to identify pick-up places;³⁵⁶ and
- W35 also said that offenders learn from others various ways in which to approach children, and explained that a network facilitates the passing around of the child when sexual attraction has diminished, thereby enabling the offender to feel as though he is 'looking after' or 'letting (the child) down gently'.³⁵⁷

3.88 The evidence of W35 concerning the groups of paedophiles and pederasts who had operated within the State was graphic. He regarded himself as an extremely successful networker and informed the Commission that there were any number of groups, with different sexual interests in children. He was aware of three or four such groups in Sydney, one of which had a particular interest in trail bike riding, and another of which made videos, each being activities of potential interest to adolescents.

3.89 It is the group dynamic which is of most concern to those who treat offenders. Mr Wyre informed the Commission that, unlike other addictive behaviours which benefited from self-help groups, fixated/preferential offenders tended to gain strength and belief in the acceptability of their activities by sharing their experiences and by the reassurance that they were not alone in their deviancy.³⁵⁸

3.90 In the Cooma segment of the Commission's hearings there was some suggestion of the existence of a 'worldwide directory of paedophiles [with] names, addresses, telephone numbers, fax numbers, nicknames, sexual preferences, physical preferences ...' which was allegedly delivered to a prisoner and which supposedly contained over 7,000 names.³⁵⁹ Unfortunately, despite evidence showing that a copy seized at the Cooma gaol was delivered to local police,³⁶⁰ and then forwarded to Sydney for intelligence analysis,³⁶¹ the list could not be located.³⁶²

3.91 A somewhat less comprehensive but contemporary list was, however, found on the Internet by the mother of a child drawn into a 'boy love' group. It is discussed later in this Report.³⁶³

³⁵⁴ W35, RCT, 20/8/96, p. 30962.

³⁵⁵ W35, RCT, 20/8/96, pp. 30972-73.

³⁵⁶ W35, RCT, 20/8/96, p. 30973.

³⁵⁷ W35, RCT, 20/8/96, pp. 30964-65.

³⁵⁸ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24226.

³⁵⁹ K. L. Doyle, RCT, 4/7/96, p. 28261.

³⁶⁰ K. L. Doyle, RCT, 4/7/96, pp. 28261-63; B. Leonard, RCT, 8/7/96, pp. 28310-12.

³⁶¹ D. J. Taylor, RCT, 8/7/96, pp. 28367-69; M. E. Mayhew, RCT, 8/7/96, p. 28386.

³⁶² S. J. Ure, RCT, 9/7/96, p. 28398 & 10/12/96, p. 35388.

³⁶³ See Volume V, Chapter 16 of this Report.

3.92 Perhaps the most worrying form of network disclosed, which is also discussed later in this Report,³⁶⁴ was the 'Orchid Club'. This was a club formed in the United States comprising members resident in various States, as well as members from a number of countries, including one Australian resident:

- membership depended on submission of material, photographic, textual or otherwise, demonstrative of an adherence to paedophile beliefs;
- once admitted to the club a member could access various forms of child pornography, engage in conversation by e-mail and join child sex parties in a private chat room; and
- the facilities for such parties permitted visual depiction of live sexual acts by the host with a child, and personal participation by various members who were able to communicate, via the Net, acts which they wished the host to perform.

PAEDOPHILE PROMOTION GROUPS

3.93 On a more formal basis there are, and have been several support groups who have operated in an organised manner, producing publications, speaking at conferences, lobbying for recognition of their 'choice' and campaigning for child rights. The only such groups of which the Commission has become aware have been confined to men whose attraction is towards boys, but there is no reason why similar groups could not emerge catering for other preferences.

3.94 In the 1980s, the Paedophile Support Group in Victoria known as PSG was disbanded following action by the Victoria Police Delta Task Force.³⁶⁵ A former member of the PSG, Mr Emu Nugent, Commission witness D1, and several other paedophiles met in Sydney in the mid-1980s to form a similar group.³⁶⁶ In approximately 1987, this group adopted the title BLAZE.³⁶⁷

3.95 It produced a publication called The BLAZE Bulletin which promoted man/boy sex and support for men who had sex with boys. It claimed:

BLAZE is committed to supporting all boy lovers wherever and whoever they are and our magazine may help you to bring a little help and strength to those friends of ours who are lonely or simply scared of being found out, even though they might be some of the most loving and least harmful people in the world.³⁶⁸

3.96 The BLAZE Bulletin was used as a vehicle to report on, and involve others in, attempts to legalise paedophile activity, or sexual relationships between adults and children, most particularly men with boys.

3.97 Some members of BLAZE became particularly involved in writing to Government with research statistics in support of legislative change. Mr Nugent did not agree with this approach so he and D1 established a shop in Glebe, the Children's Liberation Railway where pamphlets and posters were produced proclaiming:

We are a commune for children's rights, activists, a place for young people escaping from homes, institutions, parents, schools. Stay with us. Join our struggle for children's rights.³⁶⁹

Two of the 'rights' promoted were:

Our rights to enjoy our own bodies and to choose who we love and have sex with;
No laws that punish voluntary relationships.³⁷⁰

³⁶⁴ See Volume V, Chapter 16 of this Report; see also Embassy of the USA, Press Release and indictment regarding the Orchid Club, 16/7/96, RCPS Exhibit 2543C/3; Australian Federal Police, Investigation file, 27/2/97, RCPS Exhibit 3054C/54; United States Attorney General's Department, Case material regarding Orchid Club case, RCPS Exhibit 5937C/1; San Jose Branch, Department of Justice, Flow charts, RCPS Exhibit 5937C/2.

³⁶⁵ D1, RCT, 18/3/96, p. 22015.

³⁶⁶ D1, RCT, 18/3/96, p. 22015.

³⁶⁷ An acronym for Boy Lovers and Zucchini Eaters. See D1, RCT, 18/3/96, p. 22015.

³⁶⁸ D1, RCT, 18/3/96, p. 22017.

³⁶⁹ BLAZE Bulletin, issue 1, November 1987, RCPS Exhibit 1523.

³⁷⁰ *ibid.*

3.98 These views are views shared by paedophiles both within BLAZE and other organisations such as the Paedophile Information Exchange (PIE) in England, the North American Boy Lovers Association (NAMBLA), the Boy Lover Network, the Rene Guyon Society³⁷¹ (with its infamous motto 'Sex before eight, or it's too late') and the Lewis Carroll Collectors Guild.

3.99 Some of these associations are quite brazen in their lobbying and promotion of paedophile activity and their potential influence has been enhanced by the Internet.³⁷² They are potentially dangerous, if for no reason other than the group support and 'legitimacy' they encourage.

G. RECIDIVISM

3.100 Exposure is what an offender fears most because of the moral and legal sanctions likely to follow. For most offenders there is no investment in being truthful about an allegation of child sexual abuse. What is almost certain is that the offender will not admit that his or her actions are the result of a sexual preference, or performed for sexual gratification. When faced with exposure, both familial and extrafamilial offenders tend to exhibit one or several of the following behaviours:³⁷³

- **denial** - often the first reaction of an offender. Generally it is the child's word against the adult's word and, without any corroboration or physical evidence, this can be a powerful response, particularly if the offender is an otherwise 'respectable' member of a community who is supported by friends and family;
- **minimisation** - where there is some evidence of abuse the offender may play down the activity, suggesting it was an accident, or that the child is imagining that there was more to it than there was;
- **justification** - the offender may try to justify his behaviour by suggesting that the child initiated and encouraged the exchange, or that he was providing sex education for the child;
- **fabrication** - the offender may simply invent a reason for the activity, for example that he was conducting research into child sexual abuse;
- **illness** (feigned or real) - the offender may claim that he or she is suffering from some form of psychiatric illness, personality disorder or physical condition which is disinhibiting or otherwise impairs control over sexual urges. This may in fact be true or fabricated, but it is unlikely for such an admission to be made prior to arrest;
- **sympathy** - the offender may attempt to elicit sympathy by a claim to being an upstanding community member, church-goer, or family person or by suggesting that he or she was abused as a child themselves;
- **attack** - the offender may attack the system and society; or question the credibility of the investigator or the motives of the complainant and police; and
- **suicide** - the offender may choose not to face the consequences of his actions, a particularly common reaction as was seen during the running of this Royal Commission.

³⁷¹ US investigators believe that the Rene Guyon Society was in fact a one-man campaign and did not have the membership numbers claimed by the Society; see Australia Parliament, *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament House, Canberra, November 1995, RCPS Exhibit 3220, p. 21.

³⁷² See Volume V, Chapter 16 of this Report.

³⁷³ Lanning, 1987, op cit, pp. 272-73.

3.101 Each of these responses, and the relatively high number of cases that are defended,³⁷⁴ underline the degree of denial and minimisation exhibited by both familial and extrafamilial offenders. The nature of the strong underlying sexual urge and the lack of any desire on the part of most fixated or committed paedophiles to moderate their behaviour, means that the risks of recidivism are high. For many familial offenders the problem is not quite so acute, as often the fact of disclosure breaks the connection with the family. The problems of treatment and recidivism are addressed later in this Report.³⁷⁵ It may, however, be observed that it is extremely difficult to estimate the rate of reoffending by reason of the fact that most incidents go unreported and unpunished. Self-reporting is rare.³⁷⁶

H. VULNERABILITY TO EXTORTION

3.102 This area of the criminal law provides a unique avenue for extortion, blackmail, and corruption in the hands of police, particularly in the case of well placed members of the community who are effectively living double lives, and for whom this is the only deviant part of their existence.

3.103 Some abusers prefer to suicide rather than to have their secret world exposed and face the shame of having to explain to family and friends the intense, and in their eyes uncontrollable, desire to have sex with children.

3.104 Whether this choice arises out of the realisation that this type of sexual expression is rejected almost universally, or the impossibility of justifying and/or correcting it, or out of fear of punishment, is of little moment. It is very much a reality of the form of criminality involved, which is not shared by other offenders against the criminal law.

3.105 This circumstance, and the fact that so many offenders have family, secure and influential employment, yet are prepared to run the risk of exposure, of prosecution, imprisonment and destruction of their reputation and everything they have established, is powerful evidence of the strength of the drive and of the difficulty in securing behaviour modification. Particularly is this so when it is well known that offences against children are considered the most heinous of crimes within the prison system where paedophiles are regularly subjected to violence and denigrated as 'rock spiders'.

3.106 One expert explained to the Commission that many child sexual abusers will:

... overcome quite significant barriers in order to pursue their particular behaviours despite the obvious inherent risks.³⁷⁷

This opinion was well borne out by the cases the Commission studied.

3.107 The resulting potential for extortion, blackmail and corruption through protection or omission must not be lost sight of in any assessment of the incidence of child sexual abuse, and in the provision of an appropriate response to it.

³⁷⁴ The Judicial Commission study found that 77% of proven offenders (which was 50% of alleged offenders), pleaded guilty which is considered a very low plea rate compared with earlier studies of child sexual abuse. The Judicial Commission point out that this could also be a result of an increased preparedness to prosecute where success is not assured, P. Gallagher, J. Hickey & D. Ash, *Child Sexual Assault: An Analysis of Matters Determined in the District Court of New South Wales During 1994*, Judicial Commission of NSW, Sydney, 1997, RCPS Exhibit 3227, p. ix.

³⁷⁵ See Volume V, Chapter 19 of this Report.

³⁷⁶ Self-reporting by known offenders is problematic and inaccurate in estimating recidivism rates. Without confidentiality, few offenders will be prepared to report their offences and there is a moral dilemma in sanctioning treatment programs which are based on self-reporting.

³⁷⁷ A. Blaszczyński, RCT, 30/10/96, p. 33706.0

CHAPTER 4

RECOVERED MEMORIES

4.1 The incidence of false accounts of victimisation is difficult to determine since:

- many complaints of child sexual abuse are not pursued, due to evidentiary difficulties, or because the complaint is subsequently retracted for reasons that have nothing to do with its validity;
- acquittal at trial does not necessarily mean that the complaint was untrue; and
- many cases are dealt with outside the justice system, without any clear determination of their truth.

4.2 It clearly is the case, however, that false complaints are made, and sometimes sustained, with consequent serious damage to the complainant, and the person against whom the allegation is made, and their immediate family members. These false complaints fall into two categories:

- complaints which are deliberately and knowingly false, generated out of revenge or for personal advantage (which may include a desire to gain compensation, custody of a child, or acceptance within a group which provides comfort or peer support); and
- complaints which are false but are believed, firmly and bona fide, by the complainant to be true.

A. VALIDITY OF UNDERLYING THEORY

4.3 It is with the second category that this chapter is concerned, since the complainants in these cases are truly false victims, who will harbour feelings of guilt and anger towards the assumed offender, and of resentment at having been failed or forsaken by their families, and by the justice system.

4.4 Most of the false victims within this category will have experienced a 'recollection' of some event of which they were previously unaware (hereafter referred to as recovered memory) - either through suggestion of friends and relatives, or through one or other of the forms of therapy or therapy techniques in vogue: for example, hypnosis, Eye Movement Desensitisation and Reprocessing (EMDR), 'age regression', primal therapy, guided visual imagery, inner child therapy, focused attention, drug abreaction (sodium amytal and other barbiturates), narcotherapy, 'feelings work', 'body work', 'body imaging', bioenergetics, guided imagery, dream analysis, imaginistic work, psychodrama, trance work, group therapy, diary/journal work, 'art therapy', or cultivation of flashbacks by which repressed memories are retrieved. Some of these therapies are of the 'New Age' genus.³⁷⁸

4.5 Occasionally, the recovered memory is claimed to have been retrieved by techniques not normally associated with mental health or the behavioural sciences, for example, kinesiology³⁷⁹ or reflexology, or to have been retrieved spontaneously, although this has usually followed exposure to TV programs, films, books or the like dealing with the subject.³⁸⁰

³⁷⁸ E. Loftus & K. Ketcham, *The Myth of Repressed Memory: False Memories and Allegations of Sexual Abuse*, St Martin's Press, New York, 1994, cited in I. Freckelton, 'Repressed memory syndrome: Counterintuitive or counterproductive?', *Criminal Law Journal*, vol. 20, February 1996, p. 18, citing: A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 9; A. Gibbs, RCT, 3/10/96, pp. 33677-78; K. M. McConkey, RCT, 20/2/97, pp. 36005-07.

³⁷⁹ *R v CPK*, Unrep., NSWCCA, 21/6/95, p. 3.

³⁸⁰ A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 4.

4.6 The debate on the validity and value of memory recovery is acrimonious, long-standing and complex.³⁸¹ It is well beyond the scope or expertise of this Royal Commission to solve as opinions are effectively divided as follows:

- that recovered memories of childhood abuse are invariably reliable and accurate; and
- that the theory of recovered memory should be dismissed outright as such memories are subject to the vagaries of memory storage and retrieval, and to the influence of media or therapist led suggestion.

4.7 The truth may lie between the extremes represented by these two divisions.³⁸² All that can be achieved here is to note some of the arguments advanced by the proponents and opponents of the concept of recovered memory, and to record the trend in its reception within the justice system. It needs to be observed, however, that the issue is an important one, having regard to the very serious consequences for family stability and harmony of false accounts of victimisation,³⁸³ and to the risk of secondary abuse to the 'victim' where the recovered memory is subsequently shown to be false.

4.8 A great deal of responsibility rests on the health profession to resolve the issue,³⁸⁴ by reference to sound clinical practice and scientific analysis, and by neutral and informed debate, with an understanding of:

- the influence of suggestion, preconception and leading questions in therapy particularly when steps have been taken to alter the patient's state of consciousness;
- the process of memory and in particular the differences between repression, suppression and ordinary forgetting;³⁸⁵
- the fact that a therapist or counsellor in a forensic or clinical setting cannot ever know for certain whether a patient's recollection of events is true or false;³⁸⁶

³⁸¹ It has been conducted at a professional level at very many conferences, and in professional journals. See eg. the following: *American Journal of Clinical Hypnosis*, vol. 36, no. 3, 1994, pp. 161-208; *International Journal of Clinical Experimental Hypnosis*, 1994, vol. XLII, no. 4, pp. 262-446; E. F. Loftus, 'The repressed memory controversy', *American Psychologist*, vol. 47, 1994, pp. 443-45; H. G. Pope & J. I. Hudson, 'Can memories of childhood sexual abuse be repressed?', *Psychol Med*, vol. 25, 1995, pp. 121-26; and many issues of *Child Abuse and Neglect*. It has also been conducted through the mass media, eg. 4 Corners, 'You Must Remember This', 29/8/94, RCPS Exhibit 2730/4; and in many magazine articles and books, eg. R. Guiliatt, *Talk of the Devil - Repressed Memory & the Ritual Abuse Witch-Hunt*, Text Publishing Company, Melbourne, 1996, RCPS Exhibit 2728; Loftus & Ketcham, 1994; op cit; M. D. Yapko, *Suggestions of abuse: True and False Memories of Childhood Sexual Trauma*, Simon & Schuster, New York, 1994.

(Here the Commission acknowledges the substantial assistance it has received for the purpose of this section from the analysis and collection of sources in an article by Freckelton, 1996, op cit.)

³⁸² A. Blaszczyński & C. Mason, Recovered Memories in Adults Sexually Abused in Childhood, paper presented in modified form at the 15th Annual Congress of the Australian & New Zealand Association of Psychiatry, Psychology and Law, Melbourne, 1995, RCPS Exhibit 2737, p. 2.

³⁸³ J. L. Gelb & C. Waterstreet, 'Reality revisited - repressed memory controversy', *Proceedings of the Medico-Legal Society of NSW*, 1996, vol. 13, no. 2, 1996, refer to the 'dangers of recovered memory therapy' including mental breakdown, suicide, family breakdown, marital breakdown, delay or prevention of appropriate treatment, abnormal illness behaviour and adoption of the sick role, psychiatric hospitalisation, the waste of scarce resources and the diversion of attention from legitimate childhood sexual abuse, RCPS Exhibit 2386, pp. 2-3.

³⁸⁴ See R. J. Ofshe & M. T. Singer, 'Recovered-memory therapy and robust repression: Influence and pseudomemories', *International Journal of Clinical and Experimental Hypnosis*, vol. 42, 1994, pp. 391-408; R. Ofshe & E. Watters, *Making Monsters: False memories, Psychotherapy and Sexual Hysteria*, Charles Scribner's Sons, New York, 1994.

³⁸⁵ This is discussed in more detail later in this chapter.

³⁸⁶ Yapko, 1994; op cit; K. M. McConkey, 'Memory, Repression and Abuse: Recovered Memory and Confident Reporting of the Personal Past', in L. J. Dickstein, M. B. Riba & J. M. Oldham (eds), *American Psychiatric Press Review of Psychiatry*, vol. 16, American Psychiatric Press, Washington DC, 1997, RCPS Exhibit 3296, p. 57.

- the susceptibility of vulnerable people, suffering from stress, depression or life crises to:
 - suggestion born out of obedience or respect for authority and the desire to please the therapist;
 - acceptance of an explanation for their distress or dysfunction, offered by a form of therapy which emphasises that remembering and confronting the cause of their problem is the key to healing; and
 - peer group reinforcement.

THE PROCESSES INVOLVED

4.9 There is general consensus that memory can be accurate, fallible, incomplete, malleable, and susceptible to external factors. It is a constructive and reconstructive process that is influenced by a wide range of cognitive and environmental events. Both internal and external factors can impact on the encoding (input or perception) of the original event, the storage or retention of the memory of the event, its retrieval, and its recounting. Memory is subject to matters such as infantile amnesia, physiological injury and change, distortion, decay and normal forgetting.³⁸⁷

4.10 The theory of recovered memory assumes that:

- sexual or other trauma results in the storage of memories of events in a way that leaves the individual completely unaware of them;
- even after lengthy delay, it is possible by suitable techniques to retrieve those hidden memories which are accurate and not susceptible to the usual processes of distortion, decay and forgetting;
- there is a causal link between current psychological symptomatology of the patient and the hidden memories; and that
- the recall of such hidden memories is necessary for psychological healing.

4.11 A starting point for understanding the theory of recovered memory is to identify the process or processes by which a memory can be retained by an individual, although he or she is unaware of it, and later revived or recovered. Two processes are involved:

- the concealment of the memory; and
- its recovery.

Concealment

4.12 Without proof of an acceptable scientific basis for the existence of a mechanism or process by which a memory can be stored and retained intact without it being apparent to the individual, the theory fails at the outset. The two mechanisms offered for concealment of the memory are:

- repression; and
- dissociation.³⁸⁸

Sometimes they are treated interchangeably.

³⁸⁷ McConkey, 1997, op cit.; and K. M. McConkey, RCT, 20/2/97, p. 36005; see also American Psychiatric Association Board of Trustees, Statement on Memories of Sexual Abuse, American Psychiatric Association, 1993, reprinted in *International Journal of Clinical and Experimental Hypnosis*, vol. XLII, no. 4, October 1994, pp. 261-64, RCPS Exhibit 2385; A. Gibbs, RCT, 30/10/96, pp. 33672-73.

³⁸⁸ See A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156.

4.13 Repression of memory is a psychodynamic concept originally described by Sigmund Freud.³⁸⁹ It is the cornerstone of psychoanalysis, being the major defence mechanism by which the hidden contents of the unconscious are kept from consciousness in order to protect the individual from psychological threat.³⁹⁰ In layman's terms, it rests upon the tenet that the mind can shield itself from ugly experiences, thoughts or feelings, by relegating them to a special 'timeless' region where they indefinitely remain a symptom-producing virulence.

4.14 Under Freudian theory, psychoanalysis effects change by bringing about an enhanced understanding of the relationship between the unconscious, where the repressed memories reside, and the patient's behaviour and emotions.³⁹¹ Significantly, under Freudian theory, repressed memories undergo no change - the unconscious is 'timeless' and all impressions are preserved.³⁹²

4.15 Dissociation is a concept derived by Pierre Janet whereby components of an experience are split off from each other, leading to an amnesia for certain traumatic events. When a traumatic event is experienced there is an alteration of thought, feeling or emotions, so that the information is not integrated with other non-traumatic information.³⁹³ It is understood to be a passive process which affects not only the way the experiences are encoded into memory but also the ability to retrieve the memory - it involves a form of divided mental control in which there is a lack of integration between mental activity and conscious awareness.³⁹⁴ It has been linked to the highly controversial diagnosis of multiple personality disorder (now dissociative identity disorder).³⁹⁵

4.16 According to supporters of the dissociation theory, there is a difference in the way in which general and traumatic memories are stored in the explicit and implicit memory, (or as others suggest, the declarative (or intentional) and somatosensory (automatic) memory, which reflect differences in language-oriented experiences and sensual or perceptive experiences.³⁹⁶ Because of the trauma associated with the event it is hypothesised that the sensory experiences and visual images are encoded within the implicit memory system as sensory components. As such, so the theory goes, they are less subject to distortion or fading than ordinary memories.³⁹⁷

Recovery

4.17 The hidden memory is retrieved, according to the recovered memory theory, when it is triggered by associations to trauma of the same kind as that which originally led to the repression or dissociation, or when it is unlocked in the course of psychotherapeutic intervention. The process of repression or dissociation has been seen as an explanation of a variety of disorders, notably anorexia nervosa, low self esteem, enduring depression and sexual dysfunction.³⁹⁸ The recovering or unlocking of these memories is seen by proponents of the theory to be the way of overcoming those problems. While the memories remain submerged they are considered to be psychologically destructive.

³⁸⁹ Freckelton, 1996, op cit, p. 9.

³⁹⁰ A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 6.

³⁹¹ N. Symington, *The Analytic Experience*, Free Association Books, London, 1986, p. 16.

³⁹² Freckelton, 1996, op cit, p. 9, citing S. Freud, *The Psychopathology of Everyday Life* (1901), Penguin Freud Library, Penguin, Middlesex, 1991, vol. 5, p. 339.

³⁹³ H. Wakefield & R. Underwager, 'Recovered memories of alleged sexual abuse: Lawsuits Against Parents', *Behavioural Sciences and the Law*, 1992, vol. 10, pp. 483-507 at p. 491.

³⁹⁴ J. J. Freyd, *Betrayal Trauma: The Logic of Forgetting Child Abuse*, Harvard University Press, Cambridge MA, 1996, p. 86.

³⁹⁵ *DSM-IV: Diagnostic and Statistical Manual of Mental Disorders*, 4th edn, American Psychiatric Association, Washington DC, 1994.

³⁹⁶ E. Bass & L. Davis, *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*, Cedar, London, 1990, p. 71; and Freckelton, 1996, op cit, p. 11; A. Cossins, Recovered memories of child sexual abuse: Fact or fantasy?, paper presented at Australian Institute of Criminology Conference - Paedophilia, Policy and Prevention, University of Sydney, 14/4/97, RCPS Exhibit 3057/13, pp. 3-5.

³⁹⁷ B. A. Van der Kolk, 'The body keeps the score: Memory and the Evolving Psychobiology of Post Traumatic Stress', *Harvard Review of Psychiatry*, vol. 1, 1994, pp. 253-65; Cossins, 14/4/97, op cit, p. 22.

³⁹⁸ Freckelton, 1996, op cit, p. 8.

4.18 Recovered memory has become largely synonymous with repressed memory, but the process of dissociation has become important for those therapists who see in their patients the presence of a psychiatric disorder, resulting from the abuse and the concealment of any memory of it.

4.19 The statement by Ellen Bass and Laura Davis, the authors of *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*³⁹⁹ has been regarded as the guiding star for some practitioners in the field of recovered memory, and has been particularly influential within government sexual assault services in this country:⁴⁰⁰

If you are unable to remember any specific instances like the ones mentioned above but still have a feeling that something abusive happened to you, it probably did ...

To say, "I was abused" you don't need the kind of recall that would stand up in a court of law. Often the knowledge that you were abused starts with a tiny feeling, an intuition ... Assume your feelings are valid. So far, no one we have talked to thought she might have been abused, and then later discovered that she hadn't been. The progression always goes the other way, from suspicion to confirmation. If you think you were abused and your life shows the symptoms, then you were.⁴⁰¹

4.20 This book places the female reader in a double bind situation so far as she is informed that:

If you have unfamiliar or uncomfortable feelings as you read this book, don't be alarmed. Strong feelings are part of the healing process. On the other hand, if you breeze through these chapters, you probably aren't feeling safe enough to confront these issues. Or you may be coping with the book the same way you coped with the abuse - by separating your intellect from your feelings.⁴⁰²

The only choice available is that the reader was abused. Moreover, the symptom check lists given are not specific to persons who are sexually abused, but represent the vast majority of problems for which patients seek the services of psychologists, psychiatrists and other behavioural therapists.⁴⁰³

4.21 The advice given in the book to those who 'recover a memory' of abuse is no less dogmatic. It includes encouragement to 'allow yourself to obsess', to visualise revenge, to fantasise about 'murder and castration', or as non-violent alternatives, to sue 'your abuser and [turn] him into the authorities'.

THE PROPONENTS OF RECOVERED MEMORY

4.22 The theory of recovered memory is supported by a range of psychiatrists, psychologists, and therapists, largely of a psychodynamic or psychoanalytic persuasion, who, from their experience with patients or by their own experience as 'survivors', are convinced of the validity of the underlying process. Similarly there is a group of 'survivors' who are convinced of their own disclosure of abuse.⁴⁰⁴

4.23 At the core of the arguments in support of the theory is the view that the trauma involved in childhood sexual abuse, wartime experiences, and similar highly stressful occurrences, is such that as a defensive mechanism, or as the result of dissociation, there is a forgetting of the information.

4.24 Reliance is placed on research and reports of clinical experiences which support the proposition/theory that traumatised individuals can repress memories and be amnesic for significant events, but Professor Alex Blaszczyński and Dr Catherine Mason make the point that while this is true, 'complete amnesia is far from being extensive or normative'.⁴⁰⁵ Comparison is made with the amnesia associated with post traumatic stress disorder and acute stress disorder, the occurrence of which is accepted by mainstream psychiatry.

³⁹⁹ Bass & Davis, 1990, op cit.

⁴⁰⁰ A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 11.

⁴⁰¹ E. Bass & L. Davis, *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*, Harper & Row, New York, 1988, pp. 21 & 22.

⁴⁰² *ibid*, p. 23.

⁴⁰³ A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 12.

⁴⁰⁴ For a selection of text supporting the theory, see Cossins, 14/4/97, op cit.

⁴⁰⁵ Blaszczyński & Mason, 1995, op cit, p. 8.

4.25 Dr Lenore Terr has suggested that suppression is often a way station to repression. She describes dissociation as a process causing traumatic memories to be set apart from normal consciousness, but considers that it would require multiple abuse to trigger the process.⁴⁰⁶

4.26 Reliance is also placed on the circumstance that:

- as a matter of common clinical experience, physical and sexual abuse can lead to severe and enduring psychological disturbances in many individuals, which may extend to adulthood;
- these psychological disturbances are of the same kind as those expressed by patients who report recovered memories; and
- hence, intuitively, it might be assumed they have a common causation.

However, as Professor Blaszczyński and Dr Mason point out a very wide array of symptoms and signs have been linked to childhood sexual abuse, to which diagnoses other than abuse can attach.⁴⁰⁷ Moreover physical and emotional abuse in childhood are known to bring about long-term harm, and are not easily separated out from sexual abuse.

4.27 Further support for the repressed memory theory is provided in Australia by bodies such as the Advocates for Survivors of Child Abuse, founded in 1995. It has compiled a book entitled, *Breaking the Silence*,⁴⁰⁸ which deals with the experience of 'victims', and offers advice in relation to therapy, going to court, and other relevant topics.

THE OPPONENTS

4.28 The key points made by the opponents of recovered memory are succinctly stated in a paper delivered by Dr Jerome L. Gelb⁴⁰⁹ to a conference in Sydney.⁴¹⁰ He observed that:

- there is no scientifically sound evidence of repression of memories,⁴¹¹ (that is, by empirical, controlled or null hypothesis studies);
- memory is fragile, unreliable and reconstructive;
- early memories are most likely to be distorted by time and by the occurrence of subsequent events;
- traumatic events such as sexual abuse are rarely forgotten;⁴¹²
- false memories can be easily created;
- memories whether true or false are responded to with emotions and those emotions can be mistakenly taken as proof of the veracity of the underlying memory;
- therapists cannot distinguish true, false or mixed memories; hence narrative truth must not be confused with historical truth;

⁴⁰⁶ L. Terr, *Unchained Memories: True Stories of Traumatic Memories, Lost & Found*, Basic Books, New York, 1994, pp. 85-87.

⁴⁰⁷ Blaszczyński & Mason, 1995, op cit, p. 10.

⁴⁰⁸ L. Mullinar & C. Hunt (eds), *Breaking the Silence: Survivors of Child Abuse Speak Out*, Hodder & Stoughton, Sydney, 1997.

⁴⁰⁹ Dr Jerome Gelb is a consultant psychiatrist in Melbourne and has been in the forefront of discussion on this issue.

⁴¹⁰ Gelb & Waterstreet, 1996, op cit, p. 1.

⁴¹¹ See D. Holmes, 'The evidence for repression: An examination of sixty years of research', in J. L. Singer (ed), *Repression & Dissociation: Implications for Personality Theory, Psychopathology and Health*, University of Chicago Press, Chicago, 1990, pp. 85-102; A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156, p. 3; K. M. McConkey, RCT, 20/2/97, p. 36013; A. Gibbs, RCT, 30/10/96, pp. 33699-700.

⁴¹² The American Psychological Association stated in 1995 that 'the reality is that most persons who are victims of childhood sexual abuse remember all or part of what happened to them'.

- suggestion underlies multiple personality disorder along with the phenomenon of satanic ritual abuse,⁴¹³ alien abduction and past life recall; and
- recovered memory therapy in fact harms people, risking mental breakdown, suicide, delay or prevention of appropriate treatment, adoption of the sick or victim role, family or marital breakdown, and false accusation of the innocent. Better treatments are available to help those with traumatic memories.

4.29 A criticism of the underlying theory is that after 1897, the focus of Freud, the original proponent of repressed memory, shifted from real trauma as the cause for repression of memory, to children's fantasies of being seduced and to the related internal conflicts. In other words, narrative and symbolic reality became more relevant for Freud than historical reality. Nor was Freud entirely definite as to whether repression was a conscious or unconscious mechanism.⁴¹⁴

4.30 It has also been argued that the notion of memory as advanced by supporters of repression, is analogous to film shot with higher than usual intensity light and characterised by better than normal implantation of detail, which simply does not accord with what is currently understood about the way memory operates.⁴¹⁵

4.31 There is a need to distinguish between repression, suppression and normal forgetting:

- repression involves the memory disappearing into the unconscious mind so that the individual is unaware of it;
- suppression involves the person being aware of past traumatic events (in this context sexual abuse) but failing to report it out of fear, shame, guilt, lack of trust, or a conscious decision to remain quiet - in such a case the memory is not forgotten, but by choice is not disclosed; and
- normal forgetting is a reflection of the fact that memories naturally fade and distort with time, although sometimes they can be refreshed by cues.⁴¹⁶

No difficulty arises where a patient discloses a memory with the explanation that it had been suppressed or was refreshed by cues. This falls within ordinary experience and understanding.

4.32 It is only in relation to the first category, repression, that questions arise. In this respect, a number of factors have been identified which, in the therapeutic setting, might increase the likelihood of suggestion being introduced into the patient's recollection, including:

- the natural desire of the patient to please the therapist and maintain their interest (particularly when the expert discloses a special interest in satanic ritual abuse or childhood sexual abuse);
- the vulnerability of the fragile patient (and the desire to get well);
- peer pressure to conform to the accepted model of a survivor of sexual abuse (as portrayed through the media and publications of survivor groups); and
- therapist factors such as confirmatory bias, direct suggestion on the basis of symptoms drawn from a check list, leading questions, the elaboration of ambiguous memories into evidence of abuse, the use of suggestibility enhancing techniques and instructions to patients to record any flashbacks or memories in journals and diaries, a process which is likely to encourage elaboration of memories.⁴¹⁷

⁴¹³ Satanic ritual abuse is discussed in detail in Chapter 5 of this Volume.

⁴¹⁴ Freckelton, 1996, op cit, pp. 10 & 32.

⁴¹⁵ Loftus & Ketcham, 1994, op cit, p. 58.

⁴¹⁶ Gelb & Waterstreet, 1996, op cit, pp. 1-2; See A. Gibbs, Submission to RCPS, 6/9/96, RCPS Exhibit 2529/156.

⁴¹⁷ Gelb & Waterstreet, 1996, op cit, p. 2.

4.33 The last-mentioned point is important because it does seem to be the case that there are therapists, social workers, counsellors and others working in this field who:

- sometimes claim themselves to have been survivors of childhood sexual abuse, and to possess multiple personalities; and/or who
- seem responsible for the detection of an undue proportion of patients with similar problems.⁴¹⁸

The problems of therapist/patient transference, and of iatrogenic (that is, medically induced) disorder, are so real that they should not be ignored when considering alternative explanations for recovered memory.

CURRENT TREND OF OPINION

4.34 There is currently a strong trend away from recovered memory,⁴¹⁹ both in its therapeutic and legal application, which has seen the formation of advocacy groups opposing the concept, including support networks for those who claim they have been wrongly accused as a result of a false memory.⁴²⁰ In addition, the label 'false memory syndrome' is now given by some to be:

a condition in which a person's identity and interpersonal relationships are centred around a memory of traumatic experience which is objectively false but in which the person strongly believes... The syndrome may be diagnosed when the memory is so deeply ingrained that it orients the individual's whole personality and lifestyle, in turn disrupting all sorts of other adaptive behaviours.⁴²¹

4.35 In 1993 the American Psychiatric Association published a statement on recovered memories of sexual abuse in which it made the following points:

- it is not known how to distinguish, with complete accuracy, memories based on true events from those derived from other sources;
- it is not known what proportion of adults who report recovered memories of sexual abuse were actually abused;
- there is no completely accurate way of determining the validity of the claims of remembered abuse in the absence of corroborating information; and
- clinicians who have not had the training necessary to evaluate and treat patients with a broad range of psychiatric disorders, are at risk of causing harm by providing inadequate care for the patient's psychiatric problems and by increasing the patient's resistance to obtaining and responding to appropriate treatment in the future.⁴²²

4.36 In 1995, the American Medical Association's Council on Scientific Affairs published a report, on memories of childhood abuse which recommended adoption of a policy statement that:

The AMA considers recovered memories of childhood sexual abuse to be of uncertain authenticity, which should be subject to external verification. The use of recovered memories is fraught with problems of potential misapplication.⁴²³

⁴¹⁸ S. M. Booth, RCT, 3/9/96, p. 31428.

⁴¹⁹ Again the Commission acknowledges the substantial assistance it has received from the article by Freckelton, 1996, op cit, pp. 7-33.

⁴²⁰ eg. the FMS Foundation in Philadelphia, referred to in the American Professional Society on the Abuse of Children's journal, *The APSAC Advisor*, vol. 5, no. 3, Summer 1992, p. 24.

⁴²¹ S. Armstrong, 'Memory syndrome under scrutiny', *Law Society Bulletin*, vol. 20, 1995, p. 21.

⁴²² American Psychiatric Association Board of Trustees', Statement on memories of sexual abuse, American Psychiatric Association, 1993, reprinted in *International Journal of Clinical and Experimental Hypnosis*, vol. XLII, no. 4, October 1994, pp. 261-64, RCPS Exhibit 2385. A copy of this and of each of the guidelines and statements referred to in this section may be found in Volume VI, Appendix P8 of this Report.

⁴²³ American Medical Association Council on Scientific Affairs, Report on memories of childhood abuse, American Medical Association, 1994, reprinted in *International Journal of Clinical and Experimental Hypnosis*, vol. XLIII, no. 5, April 1995, pp. 114-17, RCPS Exhibit 2385.

4.37 The Royal Australian and New Zealand College of Psychiatrists in May 1996 adopted guidelines for psychiatrists dealing with repressed traumatic memories which noted, among other things, that:

- memory is highly susceptible to influence and revision;
- the psychiatrist can facilitate and maximise the therapeutic potential of any memory recovery and respect the right of patients to secure their own uncontaminated memories, but should maintain clinical neutrality in the consulting room and should support patients rather than advocate for them as victims;
- scientific studies and publications on this topic have burgeoned, but include controversial and extremist works, and this has led to a disturbing increase in 'repressed memory' versus 'false memory' court cases and sensationalist popular press;
- in this climate psychologically positive outcomes are largely made impossible but psychiatrists should maintain 'the hope of a clinical haven' for those who need to explore their own issues in a neutral, supportive environment; and
- it is impossible to know what has occurred privately between two individuals, especially if one of them is a child.⁴²⁴

4.38 Guidelines for practice have also been developed and issued by bodies such as the Australian Psychological Society (1995), the British Psychological Society (1995), and the American Society of Clinical Hypnosis.⁴²⁵ Each recognises the need for care in relation to claims of recovered memory, and the need to maintain an ethical and neutral approach.

4.39 The points of convergence in these various statements and guidelines were summarised by Professor McConkey as follows:

- childhood sexual abuse is an unfortunate reality that has sometimes devastating consequences;
- memory is potentially unreliable and it is possible to hold memories that are not consistent with historical fact;
- repression of a memory of a traumatic incident such as childhood sexual abuse should not be rejected as impossible, but it can not be accepted without question;
- the presence of particular problems in adulthood can not be used as a reliable way of inferring that sexual abuse occurred in childhood;
- therapists should take care that in attempting to help their patients, they do not do more harm than good; therapists' responsibilities to their patients are best met through an approach of caution and care about the assumptions that they make and the techniques that they use;
- recovered memories of childhood sexual abuse may or may not be accurate, and independent corroboration is the only way of determining this; and
- therapists should be mindful that different assumptions, procedures, and demands operate in the clinical and legal contexts; professional and ethical responsibilities are best met by avoiding the excessive encouragement or discouragement of reports of childhood sexual abuse.⁴²⁶

4.40 Professor Kevin McConkey has cautioned that:

- the mechanisms used in memory recovery therapies tap into the same mechanism as those underlying hypnosis, may lower critical judgment, and increase fantasy;

⁴²⁴ Royal Australian and New Zealand College of Psychiatrists, Clinical memorandum #17, guidelines for psychiatrists dealing with repressed traumatic memories, May 1996, RCPS Exhibit 2730/6.

⁴²⁵ Australian Psychological Society, Guidelines relating to the reporting of recovered memories, 1995, RCPS Exhibit 2385; Recovered memories: the report of the working party of the British Psychological Society, 1995, RCPS Exhibit 2385; Guidelines for memory recovery in therapy, adapted from those developed by the American Society of Clinical Hypnosis, RCPS Exhibit 2385. See Volume VI, Appendix P8 of this Report for copies of some of these guidelines and statements.

- traumatic events are more likely to lead to the occurrence of recurrent and intrusive memories than to repression or dissociation;⁴²⁷
- even if repression is recognised as a concept, it does not necessarily follow that a recovered memory is historically accurate, or free of the distortions and constructive features of memory generally;⁴²⁸ and that
- the situation in therapy may be complicated by the tendency of therapists to accept and confirm the validity of abuse memories at face value for fear of rejecting the patient and causing secondary abuse through disbelief, a response which provides 'the essential approval for the patient to assume the validity of memories that may not be accurate'.⁴²⁹

THERAPEUTIC OUTCOME

4.41 The dispute concerning the therapeutic value of memory recovery is no less divided or bitter than that relating to its validity in achieving a disclosure of historic truth:

- for some, the recovery of a memory of sexual abuse is an essential part of the therapeutic experience and central to the successful outcome of treatment; and
- for others, the process encourages an unhelpful/unhealthy attitude of victimisation and is counterproductive to the successful outcome of therapy.⁴³⁰

4.42 The experts consulted by the Royal Commission informed it that, upon the current state of the literature, there is no convincing clinical evidence that recovered memory leads to improvements in well-being.⁴³¹ Professor McConkey considered it more helpful to focus on present day problems and to move forward from there, rather than locking the patient into past events which may intensify the problems of the present.⁴³²

B. LAW ENFORCEMENT

4.43 The concept of recovered memory has a very different relevance in the law enforcement context. It is for this reason that the role of the therapist dealing with a victim of sexual abuse must be carefully defined.

4.44 In a purely therapeutic role, it is not necessarily important for the therapist to know whether the narrative account given is historically correct, nor is it necessarily a priority to place an alleged abuser before a court. From a therapeutic viewpoint, it is appropriate to concentrate on recovery, and it may be preferable to spare the patient the ordeal of being involved in a prosecution.⁴³³

⁴²⁶ McConkey, 1997, op cit, p. 70.

⁴²⁷ ibid, p. 59.

⁴²⁸ K. S. Bowers & P. Farvolden, 'Revisiting a century-old Freudian slip - from suggestion disavowed to the truth repressed', *Psychology Bulletin*, 1996, vol. 199, pp. 355-380, cited by McConkey, 1997, op cit, p. 59.

⁴²⁹ McConkey, 1997, op cit, pp. 66-67; K. M. McConkey, RCT, 20/2/97, pp. 36009-10; See also Blaszczyński & Mason, 1995, op cit, p. 9.

⁴³⁰ McConkey, 1997, op cit, p. 67.

⁴³¹ K. M. McConkey, RCT, 20/2/97, p. 36019; A. Gibbs, RCT, 30/10/96, pp. 33687-88; A. Blaszczyński, RCT, 30/10/96, pp. 33714-15; S. M. Booth, RCT, 3/9/96, pp. 31429-30. See also, McConkey, 1997, op cit, p. 68; Blaszczyński & Mason, 1995, op cit, pp. 12-13.

⁴³² K. M. McConkey, RCT, 20/2/97, pp. 36011 & 36014.

⁴³³ McConkey, '1997, op cit, p. 62; K. M. McConkey, RCT, 20/2/97, p. 36037.

4.45 The difference between the investigative and therapeutic role in dealing with the concept of recovered memory are succinctly encapsulated in the following table:⁴³⁴

| INVESTIGATIVE ROLE | THERAPEUTIC ROLE |
|---------------------------|--------------------------------|
| Objective | Subjective |
| Historical truth | Narrative truth |
| Emotionally neutral | Emotionally oriented |
| Goal is no change | Goal is change |
| Suggestions undesirable | Suggestions required |
| Leading questions avoided | Leading questions required |
| Video taping required | Recording considered intrusive |

4.46 Where a complainant has recovered a previously absent memory of abuse, or had a partial memory improved, then decisions are likely to be required as to the reception of evidence from two sources:

- the complainant, concerning the details of that memory; and
- an expert or experts concerning the mental process generally by which a memory can be repressed and recovered, and specifically the experience and status of the complainant.

4.47 Different considerations apply, since the first source gives 'direct evidence' of the abuse, which often is the only evidence available. The second source does not give evidence of the original event. The expert is called to support the complainant's evidence, primarily in a counterintuitive role to explain to the jury why it was that:

- no complaint was made at the time of the offence; and that
- contrary to usual experience, the memory was not retained uninterrupted by the complainant, that is in a role akin to the child abuse accommodation syndrome and battered woman syndrome, each of which has general acceptance.

In addition the expert witness may be sought to bolster the account of the complainant.

4.48 A further question can arise in relation to a complainant who had some independent recollection of the abuse, but who for therapeutic reasons subsequently received treatment, for example, in the form of hypnotherapy, which it is then argued, has affected his or her reliability as a witness.

THE COMPLAINANT'S EVIDENCE

4.49 In some jurisdictions guidelines have been developed for the admissibility of the matters remembered by the complainant where, as the result of therapy or certain therapeutic techniques, their memory of abuse has been either recovered or improved.

4.50 The California Evidence Code prescribes a series of requirements for hypnotically induced evidence. It provides:

- (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events which are the subject of the witness' testimony, if all of the following conditions are met:
 - (1) The testimony is limited to those matters which the witness recalled and related prior to the hypnosis.

⁴³⁴ Freckelton 1996, op cit, p. 16.

- (2) The substance of the pre-hypnotic memory was preserved in written, audiotape, or videotape form prior to the hypnosis.
- (3) The hypnosis was conducted in accordance with all of the following procedures:
 - (A) A written record was made prior to hypnosis documenting the subject's description of the event, and information which was provided to the hypnotist concerning the subject matter of the hypnosis.
 - (B) The subject gave informed consent to the hypnosis.
 - (C) The hypnosis session, including the pre- and post-hypnosis interviews, was videotape recorded for subsequent review.
 - (D) The hypnosis was performed by a licensed medical doctor, psychologist, licensed clinical social worker, or a licensed marriage, family and child counselor experienced in the use of hypnosis and independent of and not in the presence of law enforcement, the prosecution, or the defence.
- (4) Prior to admission of the testimony, the court holds a hearing pursuant to Section 402 of the Evidence Code at which the proponent of the evidence proves by clear and convincing evidence that the hypnosis did not so affect the witness as to render the witness' pre-hypnosis recollection unreliable or to substantially impair the ability to cross-examine the witness concerning the witness' pre-hypnosis recollection. At the hearing, each side shall have the right to present expert testimony and to cross-examine witnesses.
- (b) Nothing in this section shall be construed to limit the ability of a party to attack the credibility of a witness who has undergone hypnosis, or to limit other legal grounds to admit or exclude the testimony of that witness.⁴³⁵

4.51 Without compliance with these requirements, it seems that the *per se* exclusionary rule applies.⁴³⁶

4.52 The requirements in the Californian Code have been adopted judicially, with some modifications, in New Zealand⁴³⁷ and in NSW.⁴³⁸ As such they are guidelines for the assistance of the court in determining whether to receive the evidence, but do not have legislative force to demand compliance as a precondition for admissibility.

4.53 The guidelines put forward by the New Zealand Court of Appeal⁴³⁹ are in the following terms:

... in all cases where the Crown proposes to call post-hypnotic testimony:

1. The fact that the witness was hypnotised should be disclosed to the defence, and all relevant transcripts and information provided on request.
2. If objected to, the evidence should be excluded unless the Judge is satisfied that it is safe to admit it in the particular circumstances.
3. The Judge should have regard to whether the hypnotism was carried out by a qualified person independent of the police and the prosecution, and with sufficient safeguards against the influencing of the subject by suggestions or otherwise.
4. Pending the establishment of New Zealand guidelines, in deciding whether safeguards are sufficient reference may be made to overseas guidelines, such as the Californian section set out in this judgment. They are not mandatory in New Zealand but indicate standards to be aimed at as far as reasonably possible.
5. The Judge should also have regard to the strength of any confirmatory or supporting evidence to be called by the Crown. This applies in all cases but is especially important in relation to any recollection or purported recollection which is not proved by the Crown to have existed before hypnotism.

⁴³⁵ *California Evidence Code*, (West's 1997 Compact Edn), West Publishing Co., St Paul, 1996, s. 795.

⁴³⁶ *People v Shirley* (1982) 31 Cal.3d 18; and *People v Guerra* (1984) 690 P.2d 635 (Cal. 1984).

⁴³⁷ *R v McFelin* (1985) 2 NZLR 750.

⁴³⁸ *R v Jenkyns* (1993) 32 NSWLR 712.

⁴³⁹ *R v McFelin* (1985) 2 NZLR 750 at 754-755.

6. If he admits the evidence, the Judge should warn the jury of the special need for caution before relying on post-hypnotic evidence. The warning need not be in any particular terms but should adequately alert the jury to the dangers referred to in this judgment.

4.54 In NSW⁴⁴⁰ where it has been held appropriate to follow the New Zealand guidelines in relation to hypnotically induced testimony, it has additionally been made clear that the onus lies upon the party seeking to introduce the evidence to establish that it is sufficiently reliable, and to provide a prima facie reason for its admission.⁴⁴¹

4.55 Guidelines have similarly been developed by the Home Office in England and given judicial endorsement by the UK Court of Appeal:

- (1) Before the hypnosis begins, the hypnotherapist should take a resume of the witness' recollection of the events in question in case fresh information may be revealed which would make it unnecessary to proceed with the session.
- (2) The whole of the interview, including the taking of the statement, should be video recorded, particularly if there is any risk that the witness may have to give evidence in court.
- (3) If there is any possibility of the witness giving evidence in court, the video recording should be treated as an exhibit and transcribed in full.
- (4) The hypnotherapist should make a short written statement recording the fact that the interview has been undertaken.
- (5) If any additional information, which is relevant to the offence, is obtained during the period of hypnosis, a fresh statement should be taken from the witness in the normal way at least 24 hours later. The officers taking that statement should take great care not to prompt the witness by revealing knowledge of any fresh information obtained under hypnosis.
- (6) If the case is to be brought to court, the Crown Prosecution Service should be fully informed about any resort to hypnosis.⁴⁴²

4.56 In the NSW case, *R v Tillot*⁴⁴³ a similar approach was taken in relation to EMDR, following assessment by the NSW Court of Criminal Appeal that, as a technique it presented similar risks of suggestibility, confabulation, pseudomemory, increased witness confidence, and possible falsity of the recovered memory, as associated with memories allegedly recovered under hypnosis.

4.57 Although the case was decided on admissibility by reference to non-compliance with the guidelines, it seems that it was also regarded as one suitable for an exercise of the discretion to exclude the evidence for unfairness, or upon the basis that its probative value would have been outweighed by its prejudicial effect.⁴⁴⁴

4.58 The distinction drawn in an earlier case in Western Australia⁴⁴⁵ between the use of EMDR for therapeutic purposes, as distinct from investigative or forensic purposes, was not accepted in *R v Tillot*. The purpose for which the technique is used can have no bearing on admissibility - any effect it has on memory, and the sufficiency of the protocol used for its validity, are the same.

4.59 The need for the prosecution to disclose to the defence any material in its possession concerning the circumstances in which the complainant in a child sexual abuse case has recovered a memory of abuse, or otherwise concerning the complainant's mental state, has also been confirmed by the NSW Court of Criminal Appeal.⁴⁴⁶

⁴⁴⁰ *R v Jenkyns* (1993) 32 NSWLR 712 at 714.

⁴⁴¹ cf *Wendo v The Queen* (1963) 109 CLR 559 at 572-73.

⁴⁴² *R v Browning* (1995) Crim.L.R. 227 at 288.

⁴⁴³ *R v Tillot*, (1995) 38 NSWLR 1.

⁴⁴⁴ See now the *Evidence Act 1995*, ss. 135 & 137; and *R v Haywood* (1994) 73 ACrimR 41.

⁴⁴⁵ *R v J (No 2)* (1994) 13 WAR 346.

⁴⁴⁶ *Regina v CPK*, Unrep., NSWCCA, 21/6/95 at p. 10.

4.60 In response to these decisions, the Commissioner of Police has issued revised instructions in relation to the use of hypnosis and EMDR, which conforms with a statement of practice prepared by the Office of the Director of Public Prosecutions (ODPP).⁴⁴⁷ The ODPP has advised that the evidence should be limited to matters which the witness has recalled and related prior to such intervention (that is, the original recollection). Details recalled for the first time in the course of, or following EMDR, can be called in support of the original recollection but not otherwise.

4.61 From the evidence presented to the Royal Commission and from its review of the literature, it seems that whatever form of therapy is used to bring about a recovery or enhancement of a memory,⁴⁴⁸ similar risks arise. Short of corroboration, there can be no certainty whether the memory is true or false. Spontaneous recovery, or recovery occurring outside a therapeutic setting, is in a somewhat different position, since no guidelines could be developed to meet that case. However, similar questions as to reliability, and as to discretionary exclusion still arise.

EXPERT EVIDENCE

4.62 The reception of expert evidence in this area, and its use by a jury, raises different considerations, depending on whether it is called to:

- explain the workings of memory and the concept of recovered memory;
- identify the complainant's symptoms, and explain the circumstances in which the memories were recovered;
- suggest that the complainant's symptoms are consistent with the symptoms of recovered memory; or
- conclude that the complainant is experiencing recovered memory syndrome.

4.63 Within the United States, reception of expert evidence concerning recovered memory has fallen to be determined according to either of two tests applicable to scientific evidence:

- in proceedings governed by the Federal Rules of Evidence, the Daubert⁴⁴⁹ test of falsifiability applies, and on current authority would probably lead to exclusion of the evidence;⁴⁵⁰ and
- in other proceedings, the Frye test,⁴⁵¹ which turns upon whether the theory has gained general acceptance within the relevant scientific community, applies. Similarly, upon the current state of the debate, inadmissibility would be likely to follow.

4.64 In New Zealand, expert evidence has been permitted to allow the jury a means of understanding the manner in which human memory works, and of its capacity to be affected by the psychological defences of dissociation and denial.⁴⁵² The admissibility of similar evidence has been approved by Canada.⁴⁵³

4.65 Expert evidence of the kind previously mentioned faces several problems, both in relation to its admissibility and discretionary exclusion. Questions to be addressed,⁴⁵⁴ and considered later in this Report⁴⁵⁵ turn upon the:

⁴⁴⁷ NSW Police Service, Commissioner's Circular 96/96, 18/11/96. See Volume VI, Appendix P9.

⁴⁴⁸ N. Hampton, 'Recovered memory syndrome v false memory syndrome', *New Zealand Law Journal*, 1995, p. 154.

⁴⁴⁹ *Daubert v Merrell Dow Pharmaceuticals*, (1993) 125 L Edn 2d 469.

⁴⁵⁰ *New Hampshire v Hungerford & Morahan*, Unrep., Superior Court, New Hampshire Hillsborough County, Groff J, 23/5/95.

⁴⁵¹ *Frye v United States* (1923) 293 F. 1013.

⁴⁵² *Regina v R* (1994) 11 CRNZ 402.

⁴⁵³ *R v Norman* (1993) 87 C.C.C.(3d) 153.

⁴⁵⁴ Freckelton, 1996, op cit, p. 27.

⁴⁵⁵ See Volume V, Chapter 15 of this Report.

- admissibility of expert evidence which is essentially oath helping⁴⁵⁶ and not an exception to the common knowledge exclusionary rule (where that rule is preserved);⁴⁵⁷
- appropriateness of leaving it to jurors to reach a decision as to the truth of the complainant's memory by reference to expert evidence on a topic of some complexity on which there is no scientific certainty or consensus, and upon which they are likely to receive conflicting expressions of opinion;⁴⁵⁸ and upon the
- danger of a jury attributing undue significance to the evidence by reason of its apparent scientific basis.

C. CONCLUSIONS

4.66 Questions concerning:

- the admissibility of the complainant's recovered memory of sexual abuse;
- the admissibility of expert evidence in this area, (in respect of which the onus lies on the prosecution); and
- the discretionary exclusion of the evidence (in respect of which the onus lies on the defence);

are essentially for the courts to resolve. The Royal Commission does not recommend any amendment of the *Evidence Act 1995* in this regard. The position will require review in the light of current expert opinion, which may reach greater consensus after further research.

4.67 However, for the meantime the Commission considers that considerable care needs to be exercised in this area. It would be appropriate for the guidelines issued by the Commissioner of Police relating to the use of hypnosis in recovering memory⁴⁵⁹ to be extended to encompass all forms of therapy and therapy techniques by which memories are recovered or enhanced.

4.68 It is important in any case of this kind to determine:

- the time at which there was a first recovery of memory, and the circumstances in which it occurred;
- the extent to which that memory expanded or changed;
- whether there has been any intervention by a therapist or counsellor, and if so:
 - the date/s and extent of that intervention;
 - its nature;
 - the modality of any treatment provided;
 - the existence of any suggestive influence during the intervention;
 - whether the therapist claims personally to be a 'survivor' and to have disclosed that fact to the complainant; and
 - the personality type, mental status, and vulnerability to suggestion, of the complainant;

⁴⁵⁶ *R v Haywood* (1994) 73 ACrimR 41.

⁴⁵⁷ It has been abolished in NSW by the *Evidence Act 1995*. See *Murphy v The Queen* (1989) 167 CLR 94; *Lavallee v The Queen* (1990) 55 C.C.C.(3d) 97 at 112; and *R v Runjanjic* (1991) 53 ACrimR 312.

⁴⁵⁸ *Chamberlain v The Queen* (1984) 153 CLR 521 at 558.

⁴⁵⁹ See Volume VI, Appendix P9 of this Report.

- whether the complainant has had any exposure to outside influences which may have been suggestive of him or her having been a victim of abuse; that is through incest or survivor groups, attendance at relevant conferences, the reading of books or newsletters, or through the viewing of films or TV programs dealing with the topic; and
- whether there is any corroboration available.

4.69 Of paramount importance in this inquiry is the first of these questions. If in fact the memory was 'recovered' before any outside influence, or has always been present but suppressed out of fear or shame or other pressures, then the fact of some later intervention or treatment is far less significant. Later intervention cannot be entirely ignored, as it raises the possibility of the original recollection having been altered, or of the complainant having become more convinced of the truth of the original recollection and therefore more convinced as to its validity. If on the other hand the memory has always been present it may be more persuasive.

4.70 From a therapeutic perspective there is a pressing need for impartial, but conclusive research, to:

- determine whether the theories of repression and dissociation of memories, and their recovery through psychotherapy or other forms of therapy, are valid;
- identify the need for appropriate protocols and therapy techniques to avoid the risks of confabulation and false memories; and to
- assess the therapeutic worth of memory recovery and associated modalities of treatment.

4.71 This is important not only for complainants, but also for those who are alleged to have been their abusers, each of whom is potentially a secondary victim of therapeutic rather than sexual abuse. It is also important for those who advocate and practice any form of memory recovery therapy since recent experience in the United States shows that they are vulnerable to civil action at the suit of their patients, and of the alleged offender where the memory is later proved to be false. For their protection, guidelines are needed to identify what a therapist needs to disclose to a patient about a therapy technique in terms of its potential benefits and risks, in order to obtain the patient's informed consent prior to using the technique⁴⁶⁰ and to identify what therapy techniques have been accepted professionally.

4.72 Additionally, this is an area that is ripe for complaints to professional or regulatory bodies such as the Health Care Complaints Commission, the Medical Board and the Psychologists Registration Board. Each has in recent times received complaints in relation to the treatment of patients who have 'recovered' their memories of child sexual abuse, particularly satanic ritual abuse. In one such case referred to the Health Care Complaints Commission, the investigation was terminated on the basis that the counsellor was an unregistered health practitioner.⁴⁶¹ This case confirms the need elsewhere addressed for registration of all persons purporting to work as health practitioners.⁴⁶²

4.73 Finally, it is to be observed that with justification, the law is most cautious in allowing the admission into evidence of memory said to be recovered under hypnosis or by other similar therapeutic techniques. The reasonable juror is likely to be sceptical or puzzled by any attempt to separate or distinguish imagination from reality in such circumstances. In the view of this Commission the present restrictions appropriate to the admissibility of such information in legal proceedings should in no way be relaxed unless and until there is strong consensus amongst experts as to the overall reliability of the information so adduced.

⁴⁶⁰ Blaszczyński & Mason, 1995, op cit, p. 11.

⁴⁶¹ Health Care Complaints Commission, Statement of Information, 15/10/96, RCPS Exhibit 5874C.

⁴⁶² See Chapter 9 of this Volume and Volume V, Chapter 17.

CHAPTER 5

SATANIC RITUAL ABUSE

5.1 Of all the allegations of sexual abuse, those involving activities commonly described as 'satanic ritual abuse' (SRA) are the most controversial and difficult to investigate. Various practices potentially fall within this category of abuse:

- those that are perpetuated by followers of the occult, or Satanism, the primary purpose of which is to comply with a prescribed ritual or ceremony;
- bizarre sexual practices or fetishes repeated in a ritualised way, the primary motivation for which is not some spiritual need but sexual gratification;
- sexual activity in the context of symbolism, or activities with religious, satanic, supernatural, or magical (or mystical) connotations, or involving storybook or cartoon characters or clowns, employed for the purpose of coercing unsophisticated victims into submission and silence, or to confuse them by the combination of abuse and play into assuming that nothing was wrong (pseudoritual abuse); and
- ritualised sado-masochistic sexual activity, sometimes accompanied by accidental death or murder.

5.2 By reason of:

- the interest of the Royal Commission in the Seabeach Kindergarten case;⁴⁶³
- the number of letters and telephone calls received by the Commission alleging the existence of rings of offenders engaged in SRA; and
- comments on the subject of SRA by holders of public office;

the Royal Commission made a careful examination of several past cases of alleged SRA, undertook a literature review on the subject, and consulted with, and took evidence from, a number of experts in the field, including psychiatrists and psychologists.

5.3 The Commission also carried out some inquiries into the somewhat non-specific allegations it received of current offences of this kind. Although it was unable to find sufficient evidence to justify further inquiries, the information received has been exhibited confidentially and disseminated to the Police Service for intelligence and possible further investigation.

A. DEFINITIONAL ISSUES

5.4 The label 'satanic ritual abuse' which attaches to this type of abuse is not entirely appropriate. Although the phenomenon has been given a great deal of prominence in seminars and conferences conducted by those involved in law enforcement and health, in the media and in popular, academic and professional literature, there is no agreement as to whether it warrants a special label.

5.5 Common features described in these various sources include some or all of the following:

- symbolism, (including pentagrams, crucifixes, demons, altars, masks, cloaks, candles and the like) which is not always pagan but often Christian;

⁴⁶³ See Chapter 7 of this Volume.

- physical abuse (including torture, letting of blood, bondage, flagellation, confinement, sacrifice and mutilation of animals and babies, abortions, vampirism, cannibalism, and various forms of medical experimentation or play);
- ritual mind altering chanting or singing, or stupefying drugs;
- mind control achieved through fear, brainwashing, programming, indoctrination, hypnosis, drugs, magical surgery and supernatural powers;
- degradation through consumption of urine, semen or faeces; and
- photographing and filming of the activities.

5.6 None of these features have of themselves a sexual connotation, but when accompanied by sexual molestation of children who are made to observe or participate, they commonly attract the label 'satanic ritual abuse'.

5.7 Those who write about these experiences often imply a continuum of behaviour and a common conspiracy, sometimes extending beyond national boundaries, in which significant elements are said to include:

- the involvement of senior public officials, judges, police, the clergy, medical practitioners, morticians and others who are able to suppress all evidence and contain any investigation;
- the involvement of families on an inter-generational basis, some of whom act as 'breeders' to give birth to and rear children for the sole purpose of ritual sacrifice;
- the involvement of kindergarten teachers or staff of day care centres who abduct and abuse children during the day; and
- the existence of a trade in child pornography fuelled by these practices.

5.8 Any attempt to group these activities is not free from difficulty. In particular:

- problems arise in defining Satanism or ritual abuse in any uniform way;⁴⁶⁴
- the various activities identified may be no more than the *modus operandi* of individual offenders motivated by different reasons, ranging from the excessive religiosity of the mentally disturbed, through idiosyncratic psychosexual aberration, to the simple desire to control, manipulate, confuse or frighten a child into co-operation and silence;⁴⁶⁵ and
- the demonisation of offenders by classifying them as satanic abusers, or by alleging they are part of a vast satanic conspiracy may be unhelpful in that it immediately attracts scepticism to any case where ritual or sadistic behaviour is involved.⁴⁶⁶

5.9 In so far as there is any common theme in these 'cases' they seem to share the following:

- sexual abuse;
- multiple young victims;
- multiple offenders;
- mind controlling tactics;
- bizarre or ritualistic behaviour; and

⁴⁶⁴ K. V. Lanning, *Satanic, Occult, Ritualistic Crime: A Law Enforcement Perspective*, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, 1989, RCPS Exhibit 2538/5, pp. 9-14; see also K. V. Lanning, RCT, 5/9/96, p. 31592.

⁴⁶⁵ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, pp. 24241-43.

⁴⁶⁶ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, pp. 24243-44.

- continuity of behaviour.

5.10 By reason of the definitional difficulties, Mr Kenneth Lanning prefers to refer to these kinds of cases as 'multi-dimensional child sex rings'⁴⁶⁷ which from his experience in the United States of America, typically involve one of four scenarios:

- adult 'survivors', nearly always women, who during therapy for a variety of personal problems, reveal previously unrecalled memories of bizarre childhood victimisation at the hands of multiple offenders, and who are frequently diagnosed as suffering from multiple personality disorder;
- day care cases involving children of both sexes who reveal victimisation by staff wearing costumes and engaging them in strange games, which are often allegedly accompanied by photographing or filming of the activities;
- family/isolated neighbourhood cases involving victimisation within a family or extended family, very often of a religious, conservative bent; or
- custody/access cases, which as the context suggests emerge in the course of bitter disputes, and are sometimes accompanied by diaries or tapes of interviews conducted by parents with the children involved.⁴⁶⁸

Each of these scenarios has arisen in Australia.⁴⁶⁹

B. SRA - FACT OR FICTION?

5.11 Without doubting the strength and sincerity of conviction of those who claim to be survivors of SRA, a number of difficulties arise, at least in relation to the more florid and complex cases.

5.12 From a law enforcement perspective:

- rarely, if ever, are bodies of the 'victims' or their graves found,⁴⁷⁰ nor do neighbours, friends or relatives report children missing in the numbers required to account for the allegations;
- there is rarely, if ever, any evidence of the kind which can be confirmed by modern forensic technology;⁴⁷¹
- signs of physical injury in the form of scarring, burns and the like, are not found upon medical examination of 'victims' who report torture of the most extreme and prolonged kind; more often than not the medical examination fails to confirm the abuse as alleged;
- in cases of criminal conspiracy, inter-group jealousies or disputes inevitably develop and throw up an informant. In cases of SRA, this rarely if ever occurs. Similarly a co-conspirator who is otherwise in trouble, and prepared to supply information in return for an immunity or assistance in sentencing, rarely emerges;
- again, contrary to experience with child sexual abuse generally, most of the offenders are reported to be females;

⁴⁶⁷ An alternative term which has emerged is 'sadistic ritual abuse', see K. V. Lanning, 5/9/96, RCT, p. 31592.

⁴⁶⁸ Lanning, 1989, op cit, p. 16; K. V. Lanning, *Child Sex Rings: A Behavioral Analysis for Criminal Justice Professionals Handling Cases of Child Sexual Exploitation*, National Center for Missing & Exploited Children, 1992, RCPS Exhibit 2538/3, pp. 308 & 325-32; K. V. Lanning, RCT, 5/9/96, p. 31590.

⁴⁶⁹ eg. *R v J*, Supreme Court of Western Australia, 17/10/94-27/11/94, also known as the Bunbury case in which a father was accused of 25 years of sadistic abuse by his daughters; the Seabeach Kindergarten case as referred to in Chapter 7 of this Volume; and the Task Force Disk investigation, see below in this chapter.

⁴⁷⁰ The House of Horrors case in England, and the recent killings in Belgium, are possible exceptions although whether they constitute SRA cases or sadistic serial killings of a different genus is difficult to determine, at this stage.

⁴⁷¹ K. V. Lanning, RCT, 5/9/96, p. 31587.

- although many ‘victims’ claim that photographs are taken and videotapes made of the activity, visual records of the kind are rarely found, nor does the large amount of child pornography in circulation portray the bizarre and ritualistic activities described; and
- so many people tell the same story, and allege the involvement of so many others in the events that it is difficult to see how there could not be independent evidence, or knowledge of it on the part of persons outside the alleged rings.

5.13 From a common sense perspective, while it must be recognised that apparently respectable and successful members of the community do commit child sexual abuse, a quantum leap in credibility is required to suppose that they would do so in the bizarre, ritualistic way described, which includes the infliction of serious, even fatal, injury and mutilation upon their own children.

5.14 From the perspective of health care professionals, there is an enormous polarisation of opinion, with almost no middle ground. For many, their concerns relate to the circumstance in which, and means by which, memories are recalled of these experiences, or histories are taken from the alleged victims:

- in the case of adult ‘survivors’, the disclosure almost invariably emerges in the course of therapy for a variety of personal problems, and with the assistance of a therapist who very often claims a shared experience and ‘expertise’ in SRA cases; and
- in the case of children, the disclosure very often emerges in circumstances where there has been contamination through leading questions, or close contact between the families of the ‘victims’.

5.15 Those therapists who accept the truth of their patient’s claim of SRA experiences emerging in the course of memory retrieval techniques, almost invariably report the presence of post traumatic stress disorder, multiple personality disorder, or some other form of dissociative disorder. Treatment, however, seems not necessarily to reduce the symptomatology, although again there is a polarisation of opinion on this. Some experts claim that the process of disclosure by patients, the subsequent realisation that they are not alone, and their attachment to support groups is wholly beneficial.⁴⁷² Others report it to be counter-productive and accompanied only by deterioration in the condition.⁴⁷³

ALTERNATIVE EXPLANATIONS

5.16 If the allegations are untrue, then consideration needs to be given to the question: Why are so many victims alleging things that do not seem to be true? Mr Lanning has identified a series of possible alternative answers.⁴⁷⁴ They include:

- **pathological distortion** - errors in processing reality influenced by underlying mental disorders, such as dissociative disorders, borderline or histrionic personality disorders, or psychosis, which manifest themselves in false accounts of victimisation in order to gain psychological benefits such as attention and sympathy (factitious disorder);

⁴⁷² eg. R. Fredrickson, *Repressed Memories: a Journey to Recovery from Sexual Abuse*, Simon & Schuster, New York, 1992.

⁴⁷³ eg. S. M. Booth, RCT 3/9/96, pp. 31429-30.

⁴⁷⁴ K. V. Lanning, 1989, op cit, pp. 21-24; K. V. Lanning, RCT, 5/9/96, pp. 31589-90.

- **the development of pseudomemories**, which 'victims' eventually come to believe, through dreams, substance induced altered states of consciousness, group influence, hypnosis and exposure to similar accounts through books, film or television, with which the subject identifies emotionally;
- **traumatic memory** - distortion of reality and confusion of events arising out of fear and severe trauma, which may be part of an elaborate defence mechanism;
- **normal childhood fears and fantasy**, in which children describe their victimisation in terms of evil as they understand it, that is, by reference to ghosts and monsters;
- **misunderstanding, confusion and trickery** attributable to:
 - the problems young children have in giving accurate accounts of sexual activity for which they have little frame of reference;
 - the use of drugs to deliberately cause confusion; or
 - the introduction of elements of Satanism, the occult, or simple magic into sexual exploitation, to confound or intimidate the victims, or to ensure its rejection as nonsense if it is ever reported;⁴⁷⁵
- **exposure to urban legends** which have been the subject of discussion at conferences held by health professionals or law enforcement agencies, and then blown up by the mass media because of their bizarre and attention grabbing nature;
- **the result of overzealous interviewers**, including family members, medical practitioners, therapists, social workers, law enforcement officers, or any combination thereof, who may have been hypervigilant and made unfounded assumptions or misinterpreted the histories given, and used leading questions, which result in the victim 'adopting' the version repeated back to them;
- **the result of overzealous parents** who have heard of allegations of SRA that may possibly involve their own children, then unwittingly contaminated their children's minds when asking them questions about the allegations; and
- **recovered memory** - for some adults, the emergence of a previously unrecalled memory of child sexual abuse, particularly of a bizarre and serious kind, may provide a welcome explanation for the problems that led them to seeking counselling, and may be seen by them and their therapist as a first step towards recovery. For others there may be quite different advantages in a recovered memory or disclosure of SRA, including:
 - the use to which it can be put in a custody dispute;
 - the possibility of receiving victim's compensation; and
 - the possibility of being awarded civil damages.

5.17 In any examination of this topic, it is important not to overlook the environment in which SRA has emerged:

- fear of satanic or occult activity has peaked from time to time throughout history, although not always with the same focus; concentration on unexplained deaths, desecration of grave sites, and animal mutilation in earlier times having now given way to allegations of satanic ritual abuse;

⁴⁷⁵ R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, pp. 24243-44.

- similarly, conspiracy theories, which traditionally are heavily dependent on a belief in high level complicity and cover-up, come and go. Many of the allegations are subsequently accepted as having been unfounded but while current attract strong public interest and support;
- during the 1980s, a series of powerful texts providing graphic accounts of SRA began to emerge, commencing with *'Michelle Remembers'*,⁴⁷⁶ and followed by works such as *'Satan's Underground'*,⁴⁷⁷ *'Satan's Children'*,⁴⁷⁸ *'Remembering Satan'*,⁴⁷⁹ and in Australia the newsletter *'Beyond Survival'*;
- these texts gave rise to radio and television documentaries and chat shows⁴⁸⁰ which reported the experiences recounted in the texts as though they were proven fact, and then expanded upon them with further stories from alleged survivors, or with comments by 'experts';
- a large amount of fictional but sexually explicit, violence-orientated and occult material has been available in the form of films,⁴⁸¹ videotapes, and video games, along with heavy metal and other music with an emphasis on similar themes, to which many children and adults have at least some exposure;
- contemporaneously with the emergence of accounts of SRA the concept of 'recovered memory' came into vogue, utilising a range of techniques such as hypnosis (which is notoriously capable of leading to confabulation and pseudomemory), age regression, primal therapy, guided visual imagery, inner-child therapy, focused attention, Eye Movement Desensitisation and Reprocessing (EMDR), and the other techniques discussed earlier in this Report;⁴⁸²
- as accounts of recovered memory emerged, and public interest was roused, there has been a virtual growth industry in therapists, counsellors, SRA survivor support groups and the like, some of whom publish newsletters, arrange meetings and otherwise share experiences. Some of these therapists appear to be driven by an almost religious fervour to stamp out child sexual abuse, or by a paranoia about SRA which lead them to a hypervigilant detection of past abuse in almost every person they treat;
- the practices of those allegedly involved in SRA were given recognition by a series of conferences, the first of which in Australia seems to have been a Ritual Abuse Conference in Sydney in 1991. That was followed, amongst others, by a Conference for Incest Survivors in July 1992 (which featured workshops on ritual abuse), a conference convened by the Australian Association of Multi Personality and Dissociation in 1992, and national meetings of Ritual Abuse Survivors and Supporters in 1992 and 1993;
- young children today interact socially much more extensively, and at a younger age than in the past. They are encouraged to be more verbal, and they have considerable opportunities for sharing experiences through play and talk. In these exchanges, bodily functions and curiosity about sexual matters are of considerable interest, an interest which may be fanned and distorted into bizarre dimensions in the accounts given by children who have in fact been the victims of molestation, psychological abuse or physical abuse at home; and
- at an adult level, a similar exchange of information, and encouragement or reinforcement of recovered memory of SRA, can be provided through group therapy sessions and SRA support networks.

⁴⁷⁶ M. Smith & L. Pazder, *Michelle Remembers*, Congdon and Lattis, New York, 1980.

⁴⁷⁷ L. Stratford, *Satan's Underground*, Harvest House, Eugene, 1988.

⁴⁷⁸ R. S. Mayer, *Satan's Children*, Putnam, New York, 1991.

⁴⁷⁹ L. Wright, *Remembering Satan*, Serpent's Tail, London, 1994.

⁴⁸⁰ eg. Documentary of ritual abuse, I. Leslie, *The Devil Made Me Do It*, Channel 10, 11/9/90; *Ritual and Satanic Abuse*, Channel 10 News, 28/10/91-31/10/91, RCPS Exhibit 2732C/17.

⁴⁸¹ eg. films such as *'Rosemary's Baby'*, *'Nightmare on Elm Street'* and *'The Omen'*.

⁴⁸² See Chapter 4 of this Volume.

5.18 Of some concern was the release in 1993 of the document 'Ritual Abuse Information for Health and Welfare Professionals' by the NSW Sexual Assault Committee, under the auspices of the Ministry for the Status and Advancement of Women.⁴⁸³ Looked at it in the most favourable light possible, it was a thoroughly uncritical and unscientific review of the topic. It signified the 'official recognition of ritual abuse within Australia', and reported activities uncovered, and *modus operandi* of perpetrators, as though they were proven facts, without any mention of the fact that virtually all of these cases and recovered memories had been hotly contested. There was no balance in the document, which has since been reprinted, the views of critics having been either ignored, discounted or misrepresented, and no caution having been sounded as to the need for extreme care.

5.19 Moreover, the document provided a catalogue of 'Indicators and Effects' of SRA for the use of:

- those working in organisations and agencies who provide counselling and/or support to child and adult survivors of ritual abuse.⁴⁸⁴

Such lists of signs or symptoms can very quickly become misused in the hands of the inexperienced or inexpert 'diagnostician' who can place too much reliance on them or ignore other possible causation for the indicators listed. At best they are extremely limited diagnostic tools.

C. TASK FORCE DISK

5.20 Task Force Disk was a major police investigation in NSW in 1990 into allegations of SRA reported by the parents of two children, a boy and a girl then aged eight and six years. It was the first case of SRA in this State to have been investigated in any depth and as such provides a relevant and helpful study into the way the Police Service responds to such cases. The investigation was, on any view, comprehensive. A Task Force was formed, over 370 interviews were conducted, a covert operation was mounted, surveillance was employed, and the assistance of the Australian Federal Police, Scotland Yard, the Federal Bureau of Investigation (FBI), and others was called upon.

BACKGROUND TO TASK FORCE DISK

5.21 In essence, it was alleged by the parents that:⁴⁸⁵

- a named male member of a Christian Church in Sydney and other members of that Church were involved in the sexual and satanic abuse of children, particularly the two children of the informants;
- the abuse occurred when the children attended Sunday school, and came to light in September 1989, when members of the Church, including the alleged principal perpetrator, visited their home to make inquiries as to why the children had failed to attend over several Sundays;
- when the six year-old boy was questioned by his mother about a conversation she had overheard between him and the alleged principal perpetrator during the visit, the boy informed her that this person had hurt him and had anally penetrated him;
- the boy subsequently disclosed to his de facto father that sexual abuse had occurred in the 'sick bay' at the Sunday school, with several children and adults being present, the latter in black clothes. Six other children including his sister were named as having been present;

⁴⁸³ E. O'Donovan, Ritual abuse: information for health & welfare professionals, NSW Sexual Assault Committee, Kings Cross, RCPS Exhibit 3252.

⁴⁸⁴ *ibid*, at Doc. 1730179.

⁴⁸⁵ NSW Police Service, Task Force Disk Report, 1991, RCPS Exhibit 2731C, Annexure 2, Records of interview with mother, March 1990; Annexure 3, Records of Interview with de facto father, March-April 1990.

- either in the course of this discussion, or subsequently, the boy reported that the principal perpetrator's mother (who at this time was aged in her eighties) was involved in the abuse. The boy reported that she would jump on the bed in the 'sick bay' and rub her breasts, while adults standing around in black coats did 'naughty things to her';⁴⁸⁶
- later when the girl was questioned by her mother she confirmed that, while nothing had happened to her, the children were abused in the way described by her brother. The mother reported her as saying:⁴⁸⁷

All the adults stand around in a circle with a star with candles on the points of the star and they all stand in different places in the circle ... the old lady, [name], she's the 'hag', she's the 'boss', she says these words and the smoke comes up, and that's the demon. They bang a drum like boom boom noise, and that's when all the rude things happen, with all the adults and all the children in the sick bay room ... It happened at the Camp too. I heard the kids crying. I saw [name] and [name] bent over at the same time with [name] and another man doing it to them - the same thing that [name] did to [name].

5.22 The matter was reported by the parents to the Police Service and to Family and Community Services (FACS). The boy was subsequently examined at Royal Alexandra Hospital for Children (RAHC) and found to have a fissure which could have been consistent with forced anal dilation. No evidence of trauma or penetration was found in relation to the girl. At that stage, after interviewing the children, police from the Child Mistreatment Unit (CMU), concluded that the evidence of the children was too contaminated to use, and that the boy was too young to be a reliable witness.

5.23 Mrs Grusovin, the Shadow Minister for FACS, took up the matter following an investigation by the freelance journalist, Ron Hicks, in which he suggested links to the Seabeach Kindergarten case,⁴⁸⁸ and to the disappearance of Samantha Knight. As a consequence of Mrs Grusovin's intervention the matter was reopened by the Police Service and a Task Force was formed.

5.24 In the course of subsequent investigations the mother of the children and her de facto were interviewed. They provided a number of audio tapes of their own questioning of the children.

5.25 The accounts 'given' by the children were expanded by the parents to include allegations that:⁴⁸⁹

- all the children who attended the Sunday School and the camp had been abused by the alleged principal perpetrator and by other adults;
- the principal perpetrator gave the children 'crystals' to put in their parents' coffee;
- the elderly mother of the principal offender was referred to as the 'hag' and described as being 'big and bluish grey in colour, with one long skinny leg and one short fat leg, and one long skinny arm and one short fat arm. They had claws, long tails and wings like a bat ... they had warts and growled and made horrible noises';
- the activities which allegedly took place included:
 - oral sex;
 - the stabbing of children in the chest following which their hearts were pulled out and thrown around before the blood was drunk from them and they were eaten;
 - a drawing of a goat's head at the Church;

⁴⁸⁶ ibid, at Doc. 545770.

⁴⁸⁷ ibid, at p. 6.

⁴⁸⁸ See Chapter 7 of this Volume.

⁴⁸⁹ NSW Police Service, Task Force Disk Report, 1991, RCPS Exhibit 2731C, pp. 9-12, Annexure 2, Records of interview with mother, March 1990; Annexure 11, Letter from mother to solicitor, 11/1/90.

- and smoke that was the ‘devil’ would come up through the floor, followed by a book that would come ‘flying up’ from which the hag would read; and
- after one named person finished preaching he and others went to the nursery, where he would ‘stick pins in the babies’ backsides and ... stick the bottle in the babies’ bum’.
- additionally it was reported that in the sick bay, while people stood around in black coats and played a tom-tom drum:
 - the children were put in chairs and rocked, there were chants and everyone ‘went funny in the head’;
 - there were ‘naughty things’ done;
 - the old lady hit the children with her walking stick, a hand was eaten, a leg was cut off from the knee, skinned and eaten, and an ankle bone was cracked with a hammer and its insides eaten; and
 - the heart was cut out of a little girl and thrown on the ground;
- it was further reported that:
 - in a room at the Church there were flowers and a grass hill into which semen from the men would be placed in a container, then taken out a couple of Sundays later and eaten after it had ‘gone like cheese’; and that
 - the children were made to eat the ‘poop’ and ‘wee’ of the old lady.

5.26 In a letter to her solicitor, the mother described the antics of the 80 year-old lady as allegedly reported to her by the girl.⁴⁹⁰

... rubbing herself all over her body, in an ecstasy type fashion, moaning and screaming out with sexual pleasure, then tearing off her clothing, (usually the cloak she was wearing, whilst naked underneath), she would then leap up onto the Altar (which resembles a bed) which the male adults would then proceed to sexually arouse [name] all over her body, in a XXX rated type of pornographic style, and then wildly have INTERCOURSE with her, as many as 3-4-5 different men at the same time, including her son, [name] involved ...

... 2 men would be engaged in intercourse with her both ways 2 men would be licking or sucking on her breasts, while another would be having Mrs. [name] engaged in oral sex with him, (& ALL AT THE SAME TIME !!!) & She would also be masturbating a man’s penis in either one or both hands !!!!...

5.27 The mother went on in the letter to describe oral sex, masturbation and touching involving the daughter.

5.28 During an interview with the police the de facto described a bizarre episode on the Sunday immediately following the alleged disclosure, in which he and the girl’s mother fled the family home ‘in terror’, leaving her locked in the house, because they believed her to be ‘possessed by demons’. This event supposedly occurred during a conversation with the girl when her voice changed to ‘a real deep voice’ her eyes were ‘dilating really fast, going from pin point to as big as the coloured part of her eye’, and a noise emerged from her which ‘sounded like a siren but a pulsating weird sound’. It was allegedly followed by a noise ‘like a big roar came out of the bedroom’. At that point the parents fled.⁴⁹¹

⁴⁹⁰ ibid, pp. 12-13, Annexure 11, Letter from mother to solicitor, 11/1/90, at Doc. 545770.

⁴⁹¹ ibid, p. 29; Annexure 3, Record of Interview with de facto, 6/4/90, p. 12.

5.29 The girl was later retrieved by neighbours, after receiving a telephone call from the mother. The front door to the house had by that time been secured by means of a chain and padlock, and entry had to be forced. When the neighbour later returned to the home with the parents, he did not hear 'an almighty roar, like a lion's roar' which the parents reported hearing as they approached the house.⁴⁹²

5.30 Significantly, one of the neighbours who retrieved the girl later told police that:

- the house was a putrid state;
- there were explicit pornographic books and posters of naked women in the boy's room;
- in the mother's room there were over 40 pornographic books in two piles beside the bed; and
- the walls of the downstairs toilet were covered in pornographic pictures.

The same neighbour said that in a later conversation the girl disclosed to her that the de facto had a book with 'devil language' in it, which he discussed with her.⁴⁹³

5.31 Following this incident, and after attending a Christian book shop and consulting a minister of religion, the parents arranged for an exorcism to be carried out at the house. The minister, together with one other, subsequently attended the house to conduct the ceremony. According to the minister, when he spoke to the girl she could not tell him anything about any form of satanic ritual or sexual abuse. He also reported seeing sexual and pornographic literature lying around the house. Both ministers involved in the exorcism were subsequently accused by the mother of also being involved in sexual abuse at the Church.⁴⁹⁴

5.32 Some discussion of these events was discovered on an audio tape found by police at the home. In the recorded conversation the de facto could be heard speaking of premonitions he had while lying in bed, relating to:

- 'people standing around a single bed, in black coats';
- 'an old lady'; and
- the word 'hag' coming into his head.

He then talked about playing a game with the children the next day during which they raised the words 'hags, witch and warlocks'.⁴⁹⁵

5.33 Arising out of their investigations, police came to learn of a young girl who had previously been boarding at the parent's home. They interviewed the girl and learned that she had an interest in numerology, often wore black clothing, including shirts displaying skulls, and wore a pentagram around her neck. She was 'into heavy metal' music which she played while burning black candles.⁴⁹⁶ She handed to police two pencil drawings made by the mother depicting the grim reaper, warlocks, witches and similar persona.⁴⁹⁷

⁴⁹² ibid, p. 30.

⁴⁹³ ibid, pp. 29-32, Annexure 16, Statement of neighbour, 23/4/90.

⁴⁹⁴ ibid, pp. 33-35.

⁴⁹⁵ ibid, p. 52.

⁴⁹⁶ ibid, pp. 35-36 & 48.

⁴⁹⁷ ibid, Annexure 18.

5.34 Following the initial disclosure, the mother contacted her sister whose son also attended the Church. The mother alleged that, in a private discussion with her nephew, he had confirmed the bizarre activities reported by her own children. Without the consent of the boy's parents she took him to two hospitals, the first of which refused to examine him because she was not his guardian, but the second of which went ahead with the examination, in the mistaken belief that she was the boy's mother. No abnormality or signs of trauma were found. When this boy was interviewed by police he denied any sexual assault or unusual occurrence at the Church. He had also denied any abuse when earlier interviewed by staff of the Child Protection Unit at the RAHC, and also when questioned by his own father.⁴⁹⁸

5.35 The remaining children named as victims were also interviewed, but did not corroborate any of the allegations. Each denied any unusual goings-on at the Church. The mother of one of these children reported receiving a somewhat hysterical phone call from the initial informant, in the course of which the latter was heard to be screaming at her daughter to come to the phone and repeat what she had seen. Over the course of the Task Force more than 100 other children and 80 parents or persons associated with the Church were interviewed. All similarly denied any untoward experiences or matters of concern in relation to the Church. The alleged offenders were similarly interviewed and denied any wrongdoing.⁴⁹⁹

5.36 There were other significant features of the police investigation:

- covert surveillance, maintained for two months on the Church, produced no evidence of any wrongdoing;
- a general practitioner who had treated the de facto, recorded in his clinical notes that more than three weeks before the initial disclosure the de facto had informed him that each of the children had been sexually penetrated at the Church, of their demonic possession, and of their addition of poisoned capsules to the parents' coffee; and
- it became apparent that the parents had a history of difficulties in coping with the children, had been under supervision and in receipt of assistance from FACS, and were users of drugs.

5.37 The family were referred to Dr Anne Schlebaum who saw them on a number of occasions from March 1990. She assisted police by providing them with a report and transcripts of her interviews with the children. It was her assessment that the children's primary disclosures about satanic rituals were true. Her opinion was based on the extensive knowledge she claimed to possess of the subject which had led her to the view that.⁵⁰⁰

- there were in excess of 30,000 people in Australia involved in these activities; and that
- it was well known that some of the satanic sects used children as sacrifices.

5.38 Dr Schlebaum informed the Commission during her evidence that there were at least 50,000 paedophiles in Sydney (2.5% to 4% of the male population)⁵⁰¹ and that there had been a number of SRA incidences in NSW, including two within the Lithgow/Blue Mountains district, in which children had been sacrificed.⁵⁰²

5.39 Dr Schlebaum's taped interviews with the children revealed a number of significant inconsistencies with the disclosures made by the children elsewhere, but leaving that aside, some other matters of concern arise:

⁴⁹⁸ ibid, pp. 14-17.

⁴⁹⁹ ibid, pp. 17-20.

⁵⁰⁰ ibid, p. 45.

⁵⁰¹ A. Schlebaum, RCT, 29/10/96, pp. 33617-18.

⁵⁰² A. Schlebaum, RCT, 29/10/96, pp. 33623-24.

- the report given to the police by Dr Schlebaum based on these interviews is in several respects quite different from the history they gave to her and appears to have drawn upon material derived by her from the parents rather than from the children;⁵⁰³
- the nature of Dr Schlebaum's questioning indicates that the two children were interviewed together (for a time in the presence of the mother); and that
- when there was any reluctance by the children to describe what had allegedly happened, there was a degree of persuasion exercised to secure their disclosure, including encouragement from the mother.

5.40 The last mentioned point is illustrated by the following extracts from the transcript of the interview of 1 March 1990 provided to the Royal Commission (in which the doctor is referred to as 'AS', the girl as 'G', the boy as 'B' and the mother as 'M'):

- In relation to a disclosure by the girl of the alleged sacrifice and eating of a little girl at Sunday school the interview proceeds (emphasis added).⁵⁰⁴

AS: How did they kill her?
 G: (long silence, looks wide-eyed, frightened, then laughs nervously)
 AS: I believe you ... keep it coming...
 G: Its a hard question.(shouts)
 AS: Ah
 G: I said its a very hard question.
 AS: Its a very hard question, and its very hard to talk about. But its very important that you do.
'Cos we want to stop them now, don't we?
 G: (nods)
 AS: Yeah. Can you tell me a bit?
 G: Well, they gave us a yellow drink and a biscuit. After, after when they done, after they killed her and that.
 AS: How did they kill her?
 B: (shouting in the background) The crazy witch did in that room.
 AS: Was B there too?
 G: Yes.
 AS: B, did you see them killing this girl?
 B: No.
 G: Yes you did.
 B: No I never.
 G: Yes you did.
 B: No.
 G: Mmm
 AS: Did you keep your eyes closed? Maybe he didn't want to see it, or maybe he's too scared to talk about it?
 G: Mmm
 AS: Yes I can understand that. What are you scared might happen if you talk about it.
 G: Well I'm not really scared. But ... it's hard for me to talk about it.
 AS: Mmm. but you're doing very well. Give it a try. This is a good day to be brave.

- In relation to a similar event at a church camp:⁵⁰⁵

AS: Can you tell me again what they did at the camp, in the sick bay?
 G: (loud sigh) (very longpause)
 AS: ... you almost ...
 G: No. B can talk.
 AS: I don't think he dares yet. I think its a bit scary.
 G: Yes.
 AS: I think for B its a bit too scary to talk.
 G: No it isn't.

⁵⁰³ NSW Police Service, Task Force Disk Report, 1991, RCPS Exhibit 2731C, p. 45.

⁵⁰⁴ ibid, Annexure 23, A. Schlebaum transcript, 1/3/90, pp. 4-5.

⁵⁰⁵ ibid, pp. 9-10.

AS: Mmm. B do you want to tell us ...
 G: (interrupts) ... he talks to Mum ...
 AS: Yes.
 B: ... I ...
 G: ... about it ...
 AS: But if they tell you they're gonna kill your mum ... gee ... its understandable that you'd get scared about that.

- In relation to abuse of the girl and others particularly by the old lady:⁵⁰⁶

AS: Mmmm. Right. What did they do to you?
 G: Nothing.
 AS: Mummy says they did. Might be a bit embarrassing to talk about.
 G: It is.
 AS: I know. But other children have come here, and they've told me. I believe that these things happened. And if you dare to talk about it, then we can stop it. So, how about you're brave for a little while longer, and tell me what they did to you? I won't get shocked, I promise.
 G: That's what Mummy said.
 AS: (laughs) What that I wouldn't get shocked?
 G: Mmm.
 AS: Yes. I know about those things. (Very long pause) I can see its very hard and embarrassing to talk about this. But I think she's brave enough to do it today.
 G: I can't. (Very long pause)
 B shouts from the background. G!
 AS: I know. How about we both close our eyes. And then you just say it - just the way it happened. That's how another girl did. Another girl told me she was very embarrassed ...

AS: O.K. Let's both close our eyes here. And then you just tell me what happened.
 G: (in very small voice) I can't say.
 AS: Yes you can
 G: No I can't.
 AS: You don't want to?
 G: I do but I can't (giggling)
 AS: (laughs)
 G: Its too hard.
 AS: You've already done it once.
 G: No I haven't.
 AS: You told mummy.
 G: She found out.
 AS: How did she find out?
 G: Of an expert.

AS: Have you told anybody about it?
 G: (shakes her head, in the negative)
 AS: Nothing at all?
 G: No. At at the hospital I told somebody. They didn't believe us.
 AS: Whom did you tell at the hospital? Do you remember their name?
 G: Yep. Bev.
 AS: Right. Yeah, its very hard to believe, isn't it? The grownups would do things like that to little kids. Yeah. I believe those things.

AS: Who else did she do it to?
 M: Did she do it to [name's] sister?
 G: Mmm. (sounded tearful)

⁵⁰⁶ ibid, pp. 10-13.

- M: She did. what did she do to [name] then? Can you tell me what she did to [name]? I was only trying to help [name] too. You're a friend of hers. And I can't if I don't know. 'Cos I can tell anybody what happened to her.
- AS: Did it happen to [name]? (G shakes her head)
- AS: Didn't happen to [name]. And did it happen to [name]?
- M: Was that, was that the time that [name's] mum was tickling you all over, kissing you all over and that, was that that one? Is that the one you're talking about?
- AS: No, that's the one she's not talking about.

5.41 The last investigative step was the interview of the children by police in October 1990. By this time the disclosure of the boy became confined to two somewhat vaguely described occasions of anal penetration by the alleged principal perpetrator. Misconduct by any other member of the Church was excluded. The girl would not elaborate on the matter beyond indicating that something had happened at the Sunday School that she did not like.

5.42 Following assessment by the Office of the Director of Public Prosecutions (ODPP), a decision was made, sensibly, not to proceed with any prosecution.⁵⁰⁷ The evidence was hopelessly contaminated. Not only was there no corroboration but the other alleged victims contradicted uniformly the accounts of the two children. There were other very real explanations for their disclosure.

5.43 This case does, however, usefully point to the need for considerable care to be taken in establishing the specific purpose of any interview arranged between a psychiatrist, psychologist or other health care professional and a child in this type of case, that is whether it is conducted for:

- investigative; or for
- therapeutic purposes.⁵⁰⁸

5.44 An interview conducted for investigative purposes must be conducted in a wholly different way from one conducted for therapeutic purposes. The investigative interview must be restricted to the obtaining of an 'unassisted' history, by relaxing the child and by communicating at an appropriate level. Attention should be given to detecting any sign of contamination, confabulation, or mental aberration. 'Facilitation of recall' through leading questions, or persuasion, must be avoided. Similarly, it is inappropriate for 'victims' to be interviewed together, or for any suggestion to be made that together the interviewer and the child are going to catch or stop the offender. The session should be audio or video recorded where possible, so that the impact of matters of this kind can be assessed.

5.45 Where the session is purely for counselling or therapeutic purposes care must still be taken to avoid creating pseudomemories in the child. Save in cases of emergency, remedial counselling is better left at least until after a comprehensive statement has been taken from the child by investigative experts.

5.46 The Commission is satisfied from its review of the case that the Task Force Disk investigations were comprehensive and professional. It is aware that the parents are not satisfied with the outcome and that they have continued to complain about it to persons holding public office and otherwise. So far as it might have been relied upon by counsellors/therapists or others as an illustration of the existence of a ring of paedophiles involved in SRA, it provides no support whatsoever. On the contrary, it provides an excellent example of:

- the care needed in the management of such cases;
- the requirement for an open mind;
- the need to be vigilant as to possible alternative explanations; and of

⁵⁰⁷ NSW Police Service, Task Force Disk Report, 1991, RCPS Exhibit 2731C, Annexure 30.

⁵⁰⁸ J. A. Boots, RCT, 20/2/97, pp. 36075-76.

- the professional detachment which should be exercised by, and is indeed expected of, health care professionals working in this area.

5.47 The Task Force was not, however, a waste of time or resources as it did incidentally unearth and lead to charges of unlawful sexual abuse by three persons who were unconnected with the central investigation.

D. CONCLUSION

5.48 For the proponents of the theory that SRA is common within the community a central proposition in support of their claims is often the premise that 'children never lie about sexual abuse or exploitation - if they have details it must have happened'. An associated question is 'why would the victims make up such allegations if they were not true?'

5.49 Mr Lanning, in addressing the first of these propositions, said that in his belief:

children rarely lie about sexual abuse or exploitation, if a lie is defined as a statement deliberately and maliciously intended to deceive. The problem is the oversimplification of the statement. Just because a child is not lying does not necessarily mean that the child is telling the truth. I believe in the majority of the cases, the victims are not lying. They are telling you what they have come to believe has happened to them.⁵⁰⁹

5.50 The distinction drawn here is an important one, and it seems not always to be drawn by therapists or counsellors. It is equally important to bear in mind that the disproof of some aspects of an account does not disprove it in whole. This is particularly so where there has in fact been abuse, but the child's perception of it has been affected through fear or trauma, ignorance, confusion or distortion, deliberately induced by the offender to secure co-operation or silence.

5.51 In the case of children, their suggestibility to leading questions, and their desire to please parents, interviewers or therapists with answers which they believe are wanted, must remain critical factors. Irrespective of the fact that the leading or suggestive questions may be put in good faith in an effort to learn the truth, the damage will have been done once the seeds of the idea have been implanted in the child's mind.

5.52 In the case of adults, the phenomenon of recovered memory,⁵¹⁰ in as much as it results in 'false' victims, is similarly of central importance. Significant questions arise as to whether serious or prolonged trauma of the kind involved in SRA can really be repressed or forgotten, and as to whether memories 'revived' by the techniques used can be said with any degree of certainty to be true memories.

5.53 These considerations call for particular care with SRA cases. Everything is possible, and minds must be kept open. On the one hand, it cannot be assumed that all disclosures of SRA can be discarded as hysterical, or untrue, or iatrogenically induced. On the other hand, there cannot be unquestioning acceptance of the truth of any such disclosure accompanied by over zealous investigation and prosecution.

⁵⁰⁹ Lanning, 1989, op cit, p. 25.

⁵¹⁰ See Chapter 4 of this Volume.

5.54 Preconception based upon categorisation is also not helpful because of the wide variety of cases and circumstances that fall within SRA. Experience has shown that psychosexual or sadistic abuse and murder of children does occur⁵¹¹ and that more than one person may be implicated in such crimes. Equally it is clear that some people, including parents, teachers and persons in authority, do abuse small children and engage them in games or employ trickery⁵¹² or stratagems, including medical play, to secure their co-operation, and to render the experience less threatening, and so lessen the likelihood of their reporting it.

5.55 Mr Lanning has appropriately cautioned that notwithstanding the scepticism that inevitably attaches to these cases, allegations of SRA should be aggressively and thoroughly investigated, with attempts made to corroborate the allegations and simultaneous attempts made to identify any alternative explanations.⁵¹³

5.56 The critical events or steps in the investigative process which he identified include:⁵¹⁴

- an open minded approach to each case;
- an application of the 'template of probability';
- determination of the disclosure sequence, and the number and purpose of all prior interviews;
- assessment of all relevant events in the 'victim's' life before, during and after the alleged abuse, to determine what light if any they throw on possible alternative explanations;
- in multiple victim cases, search for any sources of potential contamination and evaluation of whether the apparently consistent accounts victims give reflect their common experiences, or alternatively, reflect material in public circulation; and
- careful communication with parents to maintain their trust and to discourage their personal intervention in a way which might lead to contamination.

5.57 There are some risks⁵¹⁵ associated with these cases which seem not to have been fully appreciated by those who over zealously proclaim the existence of SRA, namely that:

- their well-intentioned activity may damage the prosecution potential of cases where some criminal activity did in fact occur;
- traumatised individuals may be encouraged to tell more and more outrageous tales of their victimisation in order to attract belief, reward, recognition or support;
- unless handled appropriately, the pendulum may swing from centuries of denial of child sexual abuse, to blind acceptance of any allegation of this kind, no matter how absurd or unlikely, and as a result families may be broken up and the innocent imprisoned; and
- akin to copy cat crime, SRA might become a self-fulfilling prophecy.⁵¹⁶

5.58 On the other hand, there is the risk that other professionals and law enforcement agencies may react against the extremists, and automatically dismiss all allegations of any hint of satanic or ritualistic overtones, as the fallacious product of hysteria, group contagion, or false memory implanted by therapists.

⁵¹¹ eg. the English House of Horrors case, and the Belgium murders.

⁵¹² eg. the Royal Commission heard of a case where a child reported being abused by an elephant. In fact she was abused, but by a man who turned the pockets of his pants inside out, exposed his penis and pretended to be an elephant; see R. K. Wyre, RCT (video link to Birmingham, UK), 26/4/96, p. 24244.

⁵¹³ Lanning, 1989, op cit, p. 33.

⁵¹⁴ ibid, pp. 33-37.

⁵¹⁵ ibid, p. 39.

⁵¹⁶ D. Lotto, 'On witches and witch hunts: ritual and satanic cult abuse', *Journal of Psychohistory*, vol. 21, no. 4, 1994, p. 392.

5.59 The solution is to steer a conservative course, along the lines recommended by Mr Lanning, in which prosecution would not be initiated unless:

- after a most rigorous check on the manner in which disclosure is made, and memory is recovered,⁵¹⁷ contamination can be excluded;
- at least some credible corroborative evidence is available;
- the 'victim' is kept away from SRA support groups at least until the initial assessment whether or not to prosecute is made, and preferably until the witness' evidence has been recorded; and
- parents are properly supported, kept informed as to the progress of the case, and firmly persuaded to stay out of the investigative process themselves.

5.60 A final note of caution needs to be sounded, which arises out of the recent tendency in the United States of prosecutors to suppress any element of Satanism or ritual conduct which might emerge for fear that it may discredit the prosecution.⁵¹⁸ Fairness dictates the need for full disclosure of any SRA elements, and in particular of the use of memory retrieval techniques. This has not always been the case in Australia. What is needed is a comprehensive record of the entire interview/disclosure/therapy process, which should be taped, preferably by video. That record, together with any clinical notes of a treating therapist, need to be available to the prosecution and defence alike. These matters are developed later in this Report.⁵¹⁹

5.61 The role of the therapist in all of this is very important. It is vital that assessment be performed only by highly trained and ethical professionals, subject to a code of conduct, and with special expertise in the assessment and treatment of young children.⁵²⁰ The possibility of registration and/or specialist accreditation in this area has been under discussion and is examined elsewhere in this Report.⁵²¹ However, it is appropriate, at this point, to observe that:

- a false negative judgment as to the truthfulness of a child's claims can affect them for the rest of their lives and be decisive in determining whether they recover from abuse or develop a lifelong dysfunctional personality disorder; and
- a false positive judgment can similarly profoundly affect the child's future and mental well being, apart from leading to the wrongful imprisonment of the innocent and destruction of families.⁵²²

5.62 The fundamental error and mischief of the following advice given by the authors of *The Courage to Heal*⁵²³ cannot be understated:

If you are unable to remember any specific instances like the ones mentioned above but still have a feeling that something abusive happened to you, it probably did ... If you think you are abused and your life shows the symptoms, then you were.

Nor can the equally unenlightened advice of Renee Fredrickson in her work *Repressed Memories*.⁵²⁴

Avoid being tentative about your repressed memories. Do not just tell them: express them as truth. If months or years down the road, you find you are mistaken about the details, you can always apologise and set the record straight.

⁵¹⁷ See Chapter 4 of this Volume.

⁵¹⁸ K. V. Lanning, RCT, 5/9/96, p. 31593.

⁵¹⁹ See Volume V, Chapter 15 of this Report.

⁵²⁰ S. J. Kelley, 'Ritualistic abuse of children in day care centres', in *Recovery From Cults: Help for Victims of Psychological and Spiritual Abuse*, M. D. Langone (ed), W. W. Norton, New York, 1993, pp. 352-3.

⁵²¹ See Chapter 9 of this Volume.

⁵²² For illustration see the Ayrshire case which dragged on between 1990 and 1995, and saw the children of several families removed for five years on allegations that were damned in the Court of Appeal.

⁵²³ E. Bass & L. Davis, *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse*, Cedar, London, 1990, RCPS Exhibit 2722, pp. 21-22 (emphasis added).

⁵²⁴ R. Fredrickson, *Repressed Memories: a Journey to Recovery from Sexual Abuse*, Simon & Schuster, New York, 1992, p. 204.

5.63 Although pronounced in relation to the topic of recovered memory, these 'exhortations' have particular relevance for SRA cases. Neither is sound in principle, and each invites danger. What is required is the very opposite approach, namely:

- avoidance of the trap that since trauma can lead to certain symptoms, the existence of those symptoms means that trauma has occurred;⁵²⁵
- recognition of the fact that therapists or counsellors cannot, in the vast majority of cases, know whether or not a patient's claims or recollections of child sexual abuse are true or false; and
- acceptance of the need to remain neutral and to avoid imposing personal beliefs or experiences into the session, through leading questions, hypnotic suggestion and the like.

5.64 A similarly critical and responsible approach needs to be taken by those in public office who level serious allegations of SRA and sex rings at others within the community. Unreasoned and uncritical support for the existence of rings of highly placed SRA offenders does not represent a sensible contribution to the debate on child sexual abuse.

⁵²⁵ D. Lotto, 1994, *op cit*, p. 384.

CHAPTER 6

THE NSW POLICE SERVICE (I) - APPROACH TO THE INVESTIGATION OF CHILD SEXUAL ABUSE

A. INVESTIGATIVE STRUCTURE

6.1 The Police Service has adopted a number of structures and procedures over the past 15 years to deal with child sexual abuse. The history over that period, prior to the Royal Commission has been one of:

- insufficient recognition of the complexities of this form of criminality;
- lack of proper commitment and application of sufficient resources to the problem;
- inappropriate planning for, and assessment of, the various strategies employed; and of
- insufficient liaison and co-operation with the Department of Community Services (DCS), which has itself suffered from similar problems.

6.2 The result has been one of ineffective policing,⁵²⁶ which has allowed those guilty of child sexual abuse to escape investigation and prosecution. In addition, there have been occasions where protection has been provided as a result of corrupt arrangements made with police. These matters, which fall within paragraph (d1) of the terms of reference, are examined in this chapter. The policing of child sexual abuse within specific settings such as schools, religious organisations and the like, and the special problems which have existed in those settings, are examined in the chapters which follow.

THE 1980s

Police Instruction 35

6.3 During the 1980s Police Instruction 35 governed police officers in their dealings with 'Children and Young Persons'.⁵²⁷ Police were relevantly instructed that the various sections of the *Crimes Act 1900*, concerning assaults upon children, particularly those of a sexual character, should be 'rigidly enforced'.⁵²⁸

The Child Mistreatment Unit

6.4 In 1980, Commissioner Lees announced that:

- a Child Mistreatment Unit (CMU) was to be formed to assist in developing a uniform response to matters of child abuse; and that
- the Service was to be involved in a joint effort with the NSW Department of Youth and Community Services (YACS) and the NSW Health Department (Health), to 'achieve a co-ordinated response to the problem'.⁵²⁹

⁵²⁶ A. S. Peate, RCT, 21/3/96, p. 22349.

⁵²⁷ NSW Police Service, Police Instruction 35 as amended 26/7/79.

⁵²⁸ NSW Police Service, Police Instruction 35.4.

⁵²⁹ NSW Police Service, Circular No. 81/87, 23/3/81, RCPS Exhibit 3129.

6.5 As part of the Criminal Investigation Branch (CIB) the CMU commenced operations in March 1981. It:

- consisted of four officers - two male detectives, one female detective and one female plain-clothes officer, stationed at Bankstown; and
- was provided with inter-disciplinary training by Professor Bowring at the Prince of Wales Children's Hospital.

6.6 Any child abuse cases or suspected child abuse cases discovered by, or reported to, police officers in the metropolitan area were thereafter to be referred to the CMU. It was required to immediately notify the Child Life Protection Unit within YACS. In country areas the police were to report cases of this nature to the YACS District Officer, and were then to notify the CMU.⁵³⁰

6.7 In all cases of child sexual abuse the victim was to be taken to HELP Centres, located at public hospitals, for forensic medical examination and/or counselling services. In country areas where Help Centres had not been established, the victim was to be taken to the local Government Medical Officer.⁵³¹

6.8 Pursuant to the functions assigned to the CMU, it was:⁵³²

- to be consulted before any officer took any action by way of an arrest in a child sexual assault case;
- to be available, on a 24-hour basis, to discuss and provide advice concerning matters of child abuse;
- to record in the CMU job books all child sexual assault matters reported in the metropolitan area which required follow-up; and
- to liaise with YACS in relation to child sexual assault cases, the decision to prosecute being left with the investigating police officer.

6.9 From the creation of such a structure it can be said that the Police Service recognised the need for:

- a 'joint effort' by the Service, YACS and Health;
- a uniform response;
- inter-disciplinary training in the area of child sexual abuse;
- a central point of recording information in relation to these cases;
- expertise in the area; and for
- access to that expertise by officers in the field.

6.10 Notwithstanding this recognition, the resources allocated to the CMU were obviously inadequate to meet the needs of the community. The lack of proper commitment by the Service to the problem at this time, set in place a mind-set, which has lingered into the 1990s, that child sexual abuse was not real police work.⁵³³

⁵³⁰ ibid.

⁵³¹ ibid.

⁵³² ibid.

⁵³³ E. J. Bassingthwaighe, RCT, 19/2/97, p. 35963.

6.11 Despite being under-resourced, the CMU was considered by the Children's Court to be handling its cases very well. However, it ran into difficulties with lack of co-operation on the part of officers from YACS which severely hampered its effectiveness.⁵³⁴ The CMU became a division of the Central Juvenile Services Bureau (JSB) when it was established in 1985.

The Juvenile Crime Squad

6.12 In November 1981, the Juvenile Crime Squad (JCS) was established, within the CIB, to operate in Kings Cross, the Rocks and the inner city. Its charter extended to:

- crimes committed by juveniles;
- crimes committed against juveniles; and to
- the suppression of exploitation of juveniles by others.

6.13 Juvenile Crime Units (JCUs) were later established in the outer areas where it was found that the majority of crimes involving juveniles were committed. These were attached to the Regional Crime Squads.

6.14 In 1983, it became apparent that it was necessary to lift the profile of the JCS. As a result, the Commissioner reminded all police that members of the squad were available to offer assistance in the investigation of any type of crime committed upon juveniles.⁵³⁵ The JCS and JCUs continued in this role until September 1985.

Criminal Assaults Complaints Course

6.15 In 1982 the Criminal Assault Complaints Course was developed to train operational detectives in the area of sexual assault, including the role of the CMU.⁵³⁶ The course was of five days duration, but was only available to female officers, for whom it was compulsory.⁵³⁷ It dealt primarily with offences against adult women but some general information on children was included.⁵³⁸ The decision to exclude male officers from the course left those in the Service with the impression that child sexual abuse was not serious police work and best left largely to women. Consistent with this approach, the label of 'Nappy Squad' became attached to those working in the area. Additionally, an assignment to these duties was perceived as a punishment.⁵³⁹

1984 Child Sexual Assault Task Force

6.16 In 1984 the then Premier Mr Wran established the Child Sexual Assault Task Force⁵⁴⁰ to examine and report, *inter alia*, on the formulation of appropriate policies and procedures for the health, welfare, police, education and legal services dealing with child sexual assault.

6.17 In its investigations the Task Force discovered that most police officers received no training in:

- interviewing children and young persons;
- child development; or

⁵³⁴ B. Holborrow, RCT, 3/9/96, pp. 31445-46.

⁵³⁵ NSW Police Service, Circular No. 83/297, RCPS Exhibit 3128.

⁵³⁶ Annexures to K. Moroney, Statement of Information, 22/8/94, RCPS Exhibit 26/4, at Doc. 150358-59.

⁵³⁷ M. J. Hungerford, Statement of Information, 17/10/95, RCPS Exhibit 1595C/4.

⁵³⁸ M. J. Hungerford, Statement of Information, 17/10/95, RCPS Exhibit 1595C/4.

⁵³⁹ R. M. Hunter, RCT, 19/3/96, p. 22113; L. A. Scott, RCT, 16/4/96, p. 23626; B. W. Rope, RCT, 8/8/96, p. 30103; M. W. Cox, RCT, 30/10/96, p. 33655. The same phenomenon occurred in the USA with labels 'Diaper Dicks' and 'Coochy Police'; see D. H. Jones, RCT, 3/7/96, p. 28095.

⁵⁴⁰ *Report of the NSW Child Sexual Assault Task Force to the Hon. Neville Wran QC, MP Premier of NSW*, NSW Government Printer, Sydney, 1985, RCPS Exhibit 1501.

- child protection and sexual assault matters.⁵⁴¹

6.18 This lack of training was seen as leaving children exposed to the risk of further trauma and to the possibility of lost opportunities to take a comprehensive statement.⁵⁴²

Policy and Procedural Guidelines 1984

6.19 In August 1984, the Police Service issued Circular 84/235 'Policy and Procedural Guidelines for Sexual Assault' (the Guidelines). These guidelines recognised the importance of a co-ordinated interagency approach noting that:

- YACS had the primary and statutory responsibility for 'intervention' in child abuse matters;
- Health had a complementary role in the provision of crisis care services, co-ordinated medical and counselling services and the development of preventative programs; and that
- the Police Service had a role to:
 - obtain services for the medical and emotional care of children and families who present to police;
 - liaise with YACS and Health personnel on the usefulness and feasibility of arrest and court action to protect the child;
 - liaise with medical practitioners regarding possible medical evidence; and to
 - take prosecution action if appropriate.⁵⁴³

6.20 At this time medical practitioners were the only persons required to notify YACS of suspected child abuse, although it was open for any person to so notify.⁵⁴⁴

6.21 By March 1985, when the Task Force provided its report to Government⁵⁴⁵ the number of officers at the CMU had risen to seven. It was recognised that even with this increase the CMU could by no means meet the demand for its services.⁵⁴⁶ The Task Force:

- recommended that the CMU be expanded and adequately staffed so that it would be able to provide services to regional areas;⁵⁴⁷ and
- advocated the separation of the CMU from any association with the JCS and the JCUs as being practically and conceptually inappropriate with the danger of confusing the victim and the offender.⁵⁴⁸

The Juvenile Services Bureau

6.22 Notwithstanding the views expressed by the Task Force in relation to the problems of combining the investigation of crimes against and by children or juveniles, in September 1985 a Juvenile Services Bureau (JSB) was established within the CIB. The officers from the CMU, the JCS and the JCUs were transferred to establish the JSB. It was 'segmented' into:

- the Central Bureau at CIB, Sydney; and

⁵⁴¹ ibid, p. 131.

⁵⁴² ibid.

⁵⁴³ NSW Police Service, Policy and Procedural Guidelines for Sexual Assault, Circular No. 84/235, 16/8/84, RCPS Exhibit 3222.

⁵⁴⁴ *Child Welfare Act 1939*, s. 148b.

⁵⁴⁵ *Report of the NSW Child Sexual Assault Task Force to the Hon. Neville Wran QC, MP Premier of NSW*, NSW Government Printer, Sydney 1985, RCPS Exhibit 1501.

⁵⁴⁶ ibid, p. 132.

⁵⁴⁷ ibid.

⁵⁴⁸ ibid.

- seven decentralised Juvenile Service Bureau Units, under the control of the Regional Crime Squads, but co-ordinated by the detective inspector in charge of the JSB.

The Central Bureau consisted of a JCU and the CMU.⁵⁴⁹

6.23 The JSB objectives included:

- investigating allegations of sexual molestation, exploitation, child pornography and child prostitution;
- maintaining a proactive approach towards child mistreatment and juvenile crime;
- monitoring and implementing child protection programs; and
- co-ordinating with other government departments and other agencies in the welfare and protection of children.⁵⁵⁰

1985 NSW Child Sexual Assault Programme

6.24 In November 1985 the Premier announced the establishment of a four year Child Sexual Assault Program. Key aspects of the program included:

- a law reform package;
- a \$1.8 million special allocation across departments for year one;
- a \$6.2 million allocation for year two; and
- the establishment of the Child Protection Council (the CPC).⁵⁵¹

6.25 The goals of the program were to:

- reduce the incidence of child sexual assault in NSW; and to
- facilitate optimum recovery by victims of child sexual assault and their families.⁵⁵²

6.26 Its objectives were to ensure that a range of services was available including:

- crisis intervention services;
- medical services;
- police services;
- accommodation services; and
- counselling services.⁵⁵³

6.27 The role of the Child Protection Council was to:

- co-ordinate, monitor and evaluate child protection programs in NSW; and to
- assist in the development of forward planning in all government departments, authorities and non-government agencies.⁵⁵⁴

⁵⁴⁹ NSW Police Service, Circular No. 85/175, 23/9/85, RCPS Exhibit 3130.

⁵⁵⁰ *ibid.*

⁵⁵¹ NSW Police Service, Juvenile Services Bureau, Child Abuse: A Resource Manual, RCPS Exhibit 3236, p. 1.

⁵⁵² *ibid.*, p. 4.

⁵⁵³ *ibid.*, p. 4.

⁵⁵⁴ *ibid.*, p. 1.

6.28 Between 1985 and 1987 police services in this area were delivered through the then JSB via the JCU and the CMU at the Central Bureau in Sydney, and the seven decentralised JSB Units.

Regionalisation 1987: CMUs Established in Regions⁵⁵⁵

6.29 In November 1987 regionalisation of the Police Service occurred, as a result of which:

- the JSB was abandoned;⁵⁵⁶ and
- the JSB Units were renamed CMUs within the Regions in which they had operated, in order to more accurately reflect the nature of their work.⁵⁵⁷

Juvenile Unit - Tactical Intelligence Section

6.30 In November 1987, in response to the establishment of the Children's Liberation Railway at Glebe by a group of paedophiles led by Mr Emu Nugent, it was reported that the then Premier, Mr Unsworth, had announced the formation of a 'paedophile squad', a 40-strong surveillance team to put child molesters out of circulation.⁵⁵⁸ This announcement was met with disbelief from police both as to the prospects of such a team being made available, and as to the need for it.

6.31 No such 'paedophile squad' was established. The reporting of this announcement was, however, close in time to the establishment, within the Police Service, of the Juvenile Unit of the Tactical Intelligence Section of the State Intelligence Group (the Juvenile Unit) an event which was in fact a direct response to Mr Nugent's activities. It had an authorised strength of four personnel and was located in the Technical Services Building. The Unit's goals were to:

- identify areas of child exploitation;
- identify locations where children were at risk;
- identify juvenile behaviour trends; and to
- identify any individual or organised group engaged in the criminal exploitation of children.⁵⁵⁹

6.32 The Juvenile Unit concluded that paedophiles had become organised in a subtle network on a State, interstate and international level. The Unit was expected to:

- establish criminal profiles on child exploitation groups and individuals;
- disseminate intelligence to the State Commander and Regional Commanders to assist them in the detection, monitoring and apprehension of offenders; and to
- provide programs and projects to Regional Commanders on strategies to combat child exploitation within their regions.

6.33 After regionalisation, the Unit's name was changed to the 'Child Abuse Desk'. It was commonly known as the 'Paedophile Desk'⁵⁶⁰ of the Tactical Intelligence Group.⁵⁶¹ It later became the Personal Safety Project Team of the State Intelligence Group (SIG).⁵⁶²

⁵⁵⁵ See Volume II, Chapter 3 of this Report, paras. 3.3 - 3.10.

⁵⁵⁶ M. J. Hungerford, Statement of Information, 22/2/96, RCPS Exhibit 1595C/3, para. 6.3, p. 4.

⁵⁵⁷ *ibid.*

⁵⁵⁸ B. Lagan, 'Paedophile unit below strength as blitz begins', *Sydney Morning Herald*, 14/11/87, RCPS Exhibit 1503.

⁵⁵⁹ NSW Police Service, Juvenile Unit, Tactical Intelligence Section, June 1988 Briefing, RCPS Exhibit 3237C.

⁵⁶⁰ L. A. Scott, RCT, 15/4/96, p. 23576; W. B. King, RCT, 27/5/96, p. 25909.

⁵⁶¹ NSW Police Service, Education Package No. 91/4, The Investigation and Management of Child Abuse: Police Procedures, 1/2/91, RCPS Exhibit 3245, at Doc. 1882593.

⁵⁶² S. J. Ure, RCT, 15/4/96, p. 28401.

6.34 The collection and dissemination of intelligence which followed was not to prove efficient. The process was described with 'grave concern' by the former Commander of the Criminal Research Bureau of the SIG as 'serendipitous'.⁵⁶³ He gave evidence that, as at March 1996, the Police Service was riddled with enclaves of data in this area with no capacity to recognise or synthesise its holdings.⁵⁶⁴

Children (Care and Protection) Act 1987

6.35 As a result of the recommendations of the 1984 Child Sexual Assault Task Force the *Children (Care and Protection) Act 1987* was enacted. At this time the Child Welfare Regulations were amended to extend the categories of persons required to notify YACS of suspected child abuse to school principals and deputy principals, teachers and early childhood teachers, as well as school counsellors and school social workers.⁵⁶⁵ However, there was no increase in the resources of the CMUs to meet any increase in notifications.

Police Instruction 35 Amended

6.36 In late 1988/early 1989 Police Instruction 35 was amended to require that:

- within the metropolitan area, all child sexual assault matters were to be referred to the closest Region CMU, which would then notify the Department of Family and Community Services (FACS) (as YACS had by then become);⁵⁶⁶ and that
- within rural areas, police were to make the initial report to FACS, and subsequently notify their Region CMU.⁵⁶⁷

6.37 The instruction noted that the CMU would have a 'proactive approach' towards the reduction of child mistreatment. Although the term 'proactive' had been used for some years in relation to the investigation of child sexual assault cases,⁵⁶⁸ little was done to meet such a requirement.⁵⁶⁹

Police Instruction 67

6.38 At the same time, Police Instruction 67, *Sexual Assault Offences*, was issued. Police were instructed that:

- the needs of the victim in such cases were paramount;
- within 72 hours of the offence, the victim should be interviewed before being taken to the nearest Sexual Assault Centre;
- assistance should be immediately obtained from detectives and arrangements made for a female officer to interview any female victim;
- if the victim did not wish to proceed with police action, or if the report was made more than 72 hours after the commission of the offence, the services of the Sexual Assault Centre or hospital should still be made available;⁵⁷⁰
- the victim should be encouraged to have a support person or counsellor present at the interview;⁵⁷¹

⁵⁶³ A. A. Graham, RCT, 20/3/96, pp. 22224-25.

⁵⁶⁴ A. A. Graham, RCT, 20/3/96, pp. 22225 & 22233.

⁵⁶⁵ *Child Welfare Act 1939* - Regulation gazetted on 17/7/87.

⁵⁶⁶ YACS had changed its name in 1988 to FACS, see Chapter 8 of this Volume.

⁵⁶⁷ NSW Police Service, *Commissioner's Instructions*, No. 35 as reprinted on 30/1/89, RCPS Exhibit 1505.

⁵⁶⁸ In the objectives of the CMU 1981 and the JSB in 1985.

⁵⁶⁹ NSW Police Service, Operational Response Committees, NSW Police Service response to paedophile activity, 22/8/95, Annexure A, pp. 6 & 14, RCPS Exhibit 1519B, at Doc. 547864 & 547872.

⁵⁷⁰ NSW Police Service, *Commissioner's Instructions*, No. 67.02, RCPS Exhibit 1510.

⁵⁷¹ NSW Police Service, *Commissioner's Instructions*, No. 67.05, RCPS Exhibit 1510.

- a manual containing Guidelines for the Investigation of Child Abuse, was available at patrol level;⁵⁷² and that
- DCS should be notified of any child who was reasonably suspected of being abused.⁵⁷³

6.39 The instruction identified the police role in child sexual assault cases as one in which they should:

- obtain services for the medical and emotional needs of children and families seeking help;
- liaise with DCS and Health personnel on the usefulness and feasibility of arrest and court action to protect the child;
- liaise with medical practitioners regarding possible medical evidence; and
- prosecute, when appropriate.⁵⁷⁴

1989 Initial Response Officer's Course (IROC)

6.40 In anticipation of an increased workload following commencement of the *Children (Care and Protection) Act 1987* and amendment of the regulations, the Police Service made a decision to establish an educational program to equip 'front-line' police to respond to initial complaints of sexual and physical abuse of children.⁵⁷⁵

6.41 The Initial Response Officer's Course (IROC) was accordingly designed to replace the Criminal Assaults Complaints Course. After a series of pilot courses during 1988, it was officially introduced in May 1989, after it had been approved by the Police Education Advisory Council (PEAC).⁵⁷⁶

6.42 It was not limited to female officers, and although it was not compulsory for any group, the candidates were 'selected'. The course was designed to be delivered in four phases:

- pre-residential;
- residential;
- post-residential field work; and
- assessment.

Experience over the first three years of its operation found that there were some difficulties which included the circumstances that:

- the majority of students were young females with little general policing experience; and that
- many students were nominated for the course at patrol level on the grounds of expediency rather than suitability.⁵⁷⁷

⁵⁷² NSW Police Service, *Commissioner's Instructions*, No. 67.10, RCPS Exhibit 1510.

⁵⁷³ NSW Police Service, *Commissioner's Instructions*, No. 67.11, RCPS Exhibit 1510.

⁵⁷⁴ NSW Police Service, *Commissioner's Instructions*, No. 67.10, RCPS Exhibit 1510.

⁵⁷⁵ Report of the External Review Committee Initial Response Officer's Course, May 1991, Annexure 37 in K. Moroney, Statement of Information, 22/8/94, RCPS Exhibit 26/4, at Doc. 150404.

⁵⁷⁶ Report of the External Review Committee Initial Response Officer's Course, May 1991, Annexure 37 in K. Moroney, Statement of Information, 22/8/94, RCPS Exhibit 26/4, at Doc. 150408.

⁵⁷⁷ *ibid*, at Doc. 150406.

THE 1990s

South West Region: A Solution?

6.43 In April 1990 the problems with the three CMUs in the South West Region⁵⁷⁸ were so severe that they were disbanded.⁵⁷⁹ The reasons cited by Assistant Commissioner Lauer were overwork and burn-out. This resulted from a number of factors including the circumstances that:

- the population serviced by the South West Region at that time was approximately 1.5 million;
- the South West Region Metropolitan CMU initially had four officers which had been increased to seven. There were three additional investigators at Wagga Wagga, and two at Campbelltown, giving it a total strength of 12 officers across the whole of the South West Region;
- the effective contribution of these 12 officers was reduced to a very minor commitment by such factors as:
 - annual leave;
 - in-service training;
 - court attendances;
 - sick leave; and
- notwithstanding the significant pressure of work, there was no capability for relieving or additional staff to be provided to supplement those working in the CMUs.⁵⁸⁰

6.44 Mr Lauer acknowledged that the Service had problems in investigating allegations of child mistreatment, but suggested that the disbanding of the CMUs would lead to a better use of police resources and a better service to victims.⁵⁸¹

6.45 A decision was made to trial the investigation of child sexual abuse cases in the South West Region at patrol level,⁵⁸² and to provide a consultancy group of three experienced officers who were to be available, on a 24-hour basis, to give advice. A need was also seen to give CMU officers the opportunity to do other investigation work to relieve burn-out, and to spread that work among a larger number of officers. Although a training process was initiated it was criticised because it did not conform to the models that existed for training in the other Regions.⁵⁸³

6.46 Other government agencies involved in the field became dissatisfied with the patrol-based delivery of the service as they preferred to deal with a central facility and experienced officers. There were delays in responding to cases and problems with the availability of appropriately trained police.⁵⁸⁴

⁵⁷⁸ One metropolitan, one in Wagga Wagga and one in Campbelltown.

⁵⁷⁹ 'Police to disband child abuse squads', *Sydney Morning Herald*, 13/4/90, p. 1, RCPS Exhibit 3246.

⁵⁸⁰ P. W. McKinnon, RCT, 21/3/96, p. 22337-38.

⁵⁸¹ 'Police to disband child-abuse squads', *Sydney Morning Herald*, 13/4/90, p. 1, RCPS Exhibit 3246.

⁵⁸² P. W. McKinnon, RCT, 21/3/96, pp. 22337-38.

⁵⁸³ P. W. McKinnon, RCT, 21/3/96, p. 22339.

⁵⁸⁴ P. W. McKinnon, RCT, 21/3/96, p. 22339.

6.47 This was a long way from implementing the 1984 Sexual Assault Task Force recommendation to expand and adequately staff regionally based CMUs. Indeed it was an unsatisfactory reaction to a situation of heavy caseload and burn-out, which called for more resources and support. Far from curing the problem, referral of the work to patrols only meant that their workload was increased. That pressure was compounded by requiring officers, who were untrained in this field, to take on the demanding and stressful work of child sexual abuse investigation. This trial continued for approximately one year when a decision was made to return to the CMU structure.⁵⁸⁵

State of Progress

6.48 The unsettled approach leading up to the end of 1990, in which the Service had utilised a number of different structures to deal with child sexual abuse, was unsatisfactory and had done little to engender:

- commitment or job satisfaction for those officers working in this area; or
- confidence in the community that the Service was committed to the delivery of a service to protect children.

6.49 The CMUs that were in place were under-funded and under-staffed, and lacking proper intelligence support. They had little hope of keeping on top of the reactive cases referred to them, let alone of preparing for and implementing the proactive work which was recognised as necessary. The priority given by the Service to child sexual abuse was very low, and attracted little interest or career development opportunities.

1990 Police Service Guidelines

6.50 In 1990, in the wake of the problems with the Seabeach Kindergarten case,⁵⁸⁶ the then Premier, Mr Greiner, requested all government departments to review their existing guidelines for the investigation and management of child abuse cases and asked that the Child Protection Council (CPC) be closely involved in that process.⁵⁸⁷ Detective Constable First Class (as she then was) Megan Hungerford, attached to the Child Protection Program in Police Service Headquarters, thereafter drafted the Police Service Guidelines for the Investigation and Management of Child Abuse.⁵⁸⁸ After circulation, and minor amendments, the guidelines were issued in August 1990. After further review and amendment a second edition was issued in June 1991.⁵⁸⁹

1990 Ombudsman Report

6.51 In 1990, the Ombudsman, in commenting on the critical state of the CMUs, noted:

We have had difficulties also with investigations of cases in all of the Child Mistreatment Units due to their severe lack of staff. It is not that those officers involved are being obstructive or reluctant to take on the cases but the sheer workload has become such that there is often a quite serious delay before offenders are questioned ... this produces great stress on the family as they are usually advised not to continue contact with the offender and their family who may well be personal friends, or child minders⁵⁹⁰

A recommendation was made that joint FACS/Police Service case plans be developed dealing with, among other things, agreed deadlines for medical examination, interview of the perpetrator and obtaining of other relevant evidence.

⁵⁸⁵ P. W. McKinnon, RCT, 21/3/96, p. 22339.

⁵⁸⁶ See Chapter 7 of this Volume.

⁵⁸⁷ Letter from Mr N. Greiner to Mr R. Carr, 11/9/90, RCPS Exhibit 1507/2.

⁵⁸⁸ NSW Police Service, Police Guidelines for the Investigation and Management of Child Abuse, August 1990, RCPS Exhibit 1506.

⁵⁸⁹ NSW Police Service, Police Guidelines for the Investigation and Management of Child Abuse, 2nd edn, June 1991, RCPS Exhibit 1508; M. J. Hungerford, RCT, 26/3/96, pp. 22526-27.

⁵⁹⁰ Dr S. Booth, Child Protection Unit, Royal Alexandra Hospital for Children, quoted in NSW Ombudsman, *Fifteenth Annual Report, Part 1*, 1990, p. 43.

1991 CPC Interagency Guidelines

6.52 As a result of the recommendations of the 1984 Child Sexual Assault Task Force, and the subsequently announced Child Sexual Assault Program, the CPC consulted with the various agencies involved to prepare effective interagency guidelines. These guidelines were finally released in 1991 and replaced the 1984 policy and procedural guidelines mentioned earlier.⁵⁹¹

1990-1992 Evaluation of Child Mistreatment Cases

6.53 In August 1992, the final report of the Planning and Evaluation Branch, co-ordinated by Senior Sergeant Doolan, entitled the Evaluation of the Handling of Child Abuse Notifications in the NSW Police (commonly known as the Doolan Report) was produced.⁵⁹²

6.54 This report found that:

- there were serious dysfunctions in the North, North West and South Region CMUs; and that
- removal from Patrol Commanders of the responsibility for the investigation and management of child abuse matters within the patrols, and their placement with CMUs, was a problem because Patrol Commanders were often unaware of investigations and could miss valuable intelligence.⁵⁹³

6.55 The Doolan Report advocated the reporting of all notifications to patrols, with Patrol Commanders having the responsibility to appoint investigation teams to manage these cases. This was to be done in consultation with Major Crime Squad Commanders and 'CMU specialists' were to provide expertise for 'complex investigations'.

6.56 The structure advocated in the Doolan Report was the structure under which the Seabeach matter had been investigated in 1988, with devastating effects for the prosecution, and for the children and families involved.⁵⁹⁴ In that case:

- the patrol officers were not skilled in dealing with child sexual abuse matters, particularly those involving allegations by children under the age of six;
- the patrol was under-resourced;
- the Regional CMU was occupied with another large investigation and did not provide any officers to assist the patrol detectives; and
- no consultation occurred with the CMU even when advice was offered.⁵⁹⁵

6.57 It is difficult to understand the recommendation for a patrol-based approach, not only because of the Seabeach experience, but also in the light of some of the other findings including the assessment that:

- the South West Region, with its patrol-based investigations, had not supplied a more timely service to customers than the specialist approach of the other Regions;⁵⁹⁶ and that
- CMU personnel produced better and more complete briefs of evidence than patrol police.⁵⁹⁷

⁵⁹¹ See para. 6.52 above. CPC, *Interagency Guidelines: Child Protection*, 1991, RCPS Exhibit 1797.

⁵⁹² NSW Police Service, Evaluation of the handling of child abuse notifications in the NSW Police Service (Doolan Report), Final Report, August 1992, RCPS Exhibit 1512.

⁵⁹³ *ibid*, p. iii.

⁵⁹⁴ See Chapter 7 of this Volume.

⁵⁹⁵ See Chapter 7 of this Volume.

⁵⁹⁶ NSW Police Service, Evaluation of the handling of child abuse notifications in the NSW Police Service (Doolan Report), Final Report, August 1992, RCPS Exhibit 1512, Section 8.4, p. 16.

⁵⁹⁷ *ibid*, Section 9.2, p. 21.

The Gull Report and Project Kestrel

6.58 As referred to earlier in this report,⁵⁹⁸ in February 1992 the Internal Police Security Branch (IPSB) report on Operation Gull was finalised. It recommended the establishment of a 'specialist unit' to investigate paedophiles. It reported that:

- NSW was one of the few States that did not have such a unit; and that
- investigations into paedophiles are quite different from 'normal child abuse investigations' because of the offenders':
 - *modus operandi*; and
 - ability to commit offences throughout Australia and internationally.⁵⁹⁹

6.59 In late 1992, in response to the Operation Gull Report, the Region Crime Squad Commanders and other senior police examined the feasibility of initiating a task force to investigate paedophiles. It was decided that an intelligence assessment of child sexual abuse and paedophilia would first need to be undertaken. That intelligence assessment, referred to as Project Kestrel, reported in June 1993 that the current resource allocation to child abuse investigation was not capable of dealing with paedophile activity, or with child abuse investigations generally. It noted:

Limited resourcing has led to a backlog in investigations of reported abuse, let alone development of intelligence to identify both networked offenders and the so-called 'silent victims'.⁶⁰⁰

6.60 Project Kestrel identified those individuals who were seen as key risk paedophile offenders. It called for further resources to be supplied in the form of dedicated investigators who were afforded the highest standard of education and training in this specialised field.⁶⁰¹

6.61 It is once again difficult to understand how such an unsatisfactory state of affairs, including the absence of any proactive investigation of key suspects, could have persisted in 1993 in the face of:

- the Service statements in 1981 and 1989 that CMUs would investigate child sexual abuse matters proactively;
- the Child Sexual Assault Task Force recommendation in 1985 that the CMUs be expanded and adequately staffed;
- the allocation of \$8.2m by the Government in the period 1986 to 1987 to child sexual assault matters;
- the Gull Report recommendations;
- the numerous conferences and surveys, and reports commissioned by the Service on the topic of the policing of child sexual abuse;⁶⁰² and
- the declaration by the Child Protection Council (CPC) in 1991 that all child protection services were then in a critical state.⁶⁰³

At the very least it was suggestive of poor management by Senior Command of the Service.

⁵⁹⁸ See Chapter 1 of this Volume.

⁵⁹⁹ Task Force 1, Professional Integrity Branch, Final Report, Operation Gull, April 1992, RCPS Exhibit 1509B.

⁶⁰⁰ NSW Police Service, The Consequences of shame: a report on paedophiles and child sexual abuse in New South Wales, c1993, RCPS Exhibit 1513/1, p. 22.

⁶⁰¹ *ibid*, p. 22.

⁶⁰² See eg. report by J. Heslop in 1990, Child sexual abuse: is there a place for multidisciplinary investigative teams in New South Wales?, RCPS Exhibit 1935; studies of various programs overseas leading to a report in 1990, *Child Abuse in the 1990's: investigation and prevention, can we do it better?*, RCPS Exhibit 1939; NSW Police Academy, The Management and Investigation of Child Abuse, Annual Conference - 26/10/91 - 27/10/91, Conference Papers, RCPS Exhibit 1597; NSW Police Service, The Consequences of shame: a report on paedophiles and child sexual abuse in New South Wales, c1993, RCPS Exhibit 1513/1.

⁶⁰³ NSW Police Academy, The Management and Investigation of Child Abuse, Annual Conference - 26/10/91 - 27/10/91, Conference Papers, RCPS Exhibit 1597, at Doc. 1948656. Further details of this assessment can be found in Chapter 8 of this Volume, under the heading 'Child Protection Council Review - 1991'.

6.62 The author of the Kestrel Report, when giving evidence, said that she saw the report as a 'first step' as there was a limited period of three months within which it was to be produced.⁶⁰⁴ Chief Superintendent McKinnon said that the individuals identified as representing the key threats required thorough investigation. He understood that the immediate corporate consideration was to determine the manner in which such investigations should be carried out.⁶⁰⁵

1993 Action Plan for the Investigation and Management of Child Abuse

6.63 On 15 November 1993, after Mr Colin Fisk had been interviewed on television and some of the details in the Gull report had been aired, the State Commander⁶⁰⁶ issued a press release announcing that:

- the report had been referred to the Independent Commission Against Corruption (ICAC) and the Ombudsman;
- a detailed package of improvements relating to the police handling of all matters affecting child abuse was to be developed; and that
- a dedicated paedophile intelligence cell was to be created.⁶⁰⁷

6.64 The 'dedicated paedophile intelligence cell' was not established.

6.65 In December 1993, the Service completed its 'Action Plan for the Investigation and Management of Child Abuse'.⁶⁰⁸ This plan was officially launched on 3 February 1994, by Commissioner Lauer, as the strategic blueprint for the police and other organisations, to deal with child abuse in the 1990s and beyond.⁶⁰⁹

6.66 The lack of commitment to, or implementation of, the recommendations of the 1984 Child Sexual Assault Task Force was recognised in the 1993 Action Plan which recommended that:

- the CMUs be adequately staffed to meet their workload;
- the CMUs receive supervisory support and leadership from senior police;
- the CMU staff be provided with every opportunity to develop their expertise and knowledge through training courses offered both internally and externally; and that
- CMU staff be involved in proactive policing in the form of identifying and targeting paedophiles.⁶¹⁰

Task Force Colo

6.67 The recommendations made in the final report of Operation Gull for a specialised unit to deal with paedophiles were not acted upon. Indeed the promotion of such a unit was to prove as difficult to achieve as was the proper resourcing of CMUs and CPITs.

⁶⁰⁴ J. A. Choat, RCT, 20/3/96, pp. 22207-08.

⁶⁰⁵ NSW Police Service, *The Consequences of shame: a report on paedophiles and child sexual abuse in New South Wales, c1993*, RCPS Exhibit 1513/1, Preface.

⁶⁰⁶ Senior Assistant Commissioner Mr Bruce Gibson.

⁶⁰⁷ NSW Police Service, Press Release 15/11/93, RCPS Exhibit 3134.

⁶⁰⁸ NSW Police Service, *Action Plan for the Investigation and Management of Child Abuse: Working with others for the care and protection of children*, December 1993, RCPS Exhibit 1515.

⁶⁰⁹ P. Bergin, RCT, 21/3/96, p. 22322.

⁶¹⁰ NSW Police Service, *Action Plan for the Investigation and Management of Child Abuse: Working with others for the care and protection of children*, December 1993, RCPS Exhibit 1515, p. 10.

6.68 The call for such a unit was never a popular theme of senior commanders. One explanation for this, advanced in evidence, was the fear of criticism in creating anything that looked like a re-emergence of the CIB.⁶¹¹

6.69 After the political and media spotlights were turned on this area in late 1993, the Police Service was, however, galvanised into action. Its response in February 1994 was to create Task Force Colo, to:

- investigate the alleged child exploitation activities of some of the persons identified in Kestrel and to gather evidence with a view to the commencement of prosecutions against them; and to
- investigate any further allegations of child sexual exploitation arising from those investigations.⁶¹²

6.70 The Task Force was never given a chance, as quickly became apparent to its commander, Detective Inspector Hunter of the Homicide Squad who was informed on Friday, 25 February 1994 that he was to head the new Task Force. He was advised that the terms of reference for the Task Force had not been settled but that it was to do with paedophiles and was to commence the following Monday.⁶¹³

6.71 Mr Hunter was instructed to see Chief Inspector Graham at the SIG to obtain more details.⁶¹⁴ Mr Hunter attended upon Mr Graham but was not given any intelligence or targets. Mr Graham told him he would have to consult Sergeant Choat who had been in charge of Project Kestrel, although she was not at that stage available.⁶¹⁵

6.72 Although Mr Hunter commenced as commander of the Task Force on Monday, 28 February 1994 he did not receive the terms of reference until 14 March 1994. He believed that the Task Force had been formed as a political reaction to the matters arising from Operation Gull and Mr Fisk's appearance on television. There was some support for that view in a memorandum from the State Commander which noted:

Please be aware that Parliament resumes on the 1 March, 1994 and it is common knowledge that questions on the subject of paedophilia and child sexual assault will be asked.⁶¹⁶

6.73 Mr Hunter was given a staff of six and was allowed three months to complete his investigations.⁶¹⁷ Surveillance police were not made available to the Task Force and it found it necessary to do its own surveillance, with intermittent assistance from regular surveillance operatives when they could be spared from other work.⁶¹⁸ The surveillance that was conducted was 'hit and miss', and certainly not of the kind required for a difficult investigation.⁶¹⁹

6.74 Mr Hunter found that the intelligence supplied to him by SIG was inaccurate and not up-to-date.⁶²⁰ He informed SIG accordingly. Throughout March, April and May 1994 he also complained, on a daily basis, about the lack of availability of surveillance operatives. As sufficient resources were not forthcoming, he concluded that the Task Force would be a total failure and should be terminated.⁶²¹

6.75 In his final report Mr Hunter recommended that:

⁶¹¹ P. W. McKinnon, RCT, 21/3/96, pp. 22300-01.

⁶¹² NSW Police Service, Task Force Colo terms of reference, RCPS Exhibit 1530.

⁶¹³ R. M. Hunter, RCT, 19/3/96, p. 22072.

⁶¹⁴ R. M. Hunter, RCT, 19/3/96, p. 22073.

⁶¹⁵ R. M. Hunter, RCT, 19/3/96, p. 22074.

⁶¹⁶ NSW Police Service, Memorandum from State Commander to the Commander, Operations Support, 10/2/94, RCPS Exhibit 1529.

⁶¹⁷ R. M. Hunter, RCT, 19/3/96, p. 22078.

⁶¹⁸ R. M. Hunter, RCT, 19/3/96, p. 22079.

⁶¹⁹ R. M. Hunter, RCT, 19/3/96, p. 22082; NSW Police Service, Chart of Task Force Colo surveillance operations, RCPS Exhibit 1531C.

⁶²⁰ R. M. Hunter, RCT, 19/3/96, p. 22086.

⁶²¹ R. M. Hunter, RCT, 19/3/96, pp. 22085-86.

- any further Task Force in this area should be staffed by members of whom at least 50% were Child Protection Investigation Team (CPIT) or IROC trained officers; and that
- no further Task Force should be approved without at least the identification of victims/complainants or witnesses or informants.⁶²²

6.76 Task Force Colo was hardly a response to a call for a centralised specialist unit, or a response to the Kestrel intelligence. It was an absolute failure in terms of securing any investigative results.⁶²³ By the time it was wound up in June 1994, the ICAC had commenced Phase 1 of Operation Carbon.⁶²⁴

Further Attempts to Establish a Specialised Paedophile Unit

6.77 It was during Operation Carbon that the Police Service focus was brought back to the topic of a specialised unit. In June 1994 Detective Inspector Masterson,⁶²⁵ the Chairperson of the Police Service working party for Operation Carbon, advised yet again that there was a need to create a co-ordinated multi-disciplinary specialist unit, capable of carrying out permanent and persistent investigations into child sexual abuse, utilising surveillance and covert operations.⁶²⁶

6.78 On 1 September 1994, Detective Inspector Masterson reported that the Service response to paedophile activity was noticeably flawed by futile reactive investigations (of which Task Force Colo was but one). He proposed that:

- a permanent multi-disciplinary unit be formed;
- the current intelligence held on paedophiles be validated and tested through that unit;
- the unit be commanded by an officer of commissioned rank with a proven knowledge and background in investigating paedophiles and their associates and victims; and that
- all outside agencies be encouraged to adopt similar strategies.⁶²⁷

6.79 Although his proposals were not supported by the Office of Professional Responsibility they were forwarded to the Strategy and Review Branch in case they 'may be of value' to it.⁶²⁸ There was no obvious or immediate response.

Joint Investigations

6.80 From at least 1985 it had been thought that an appropriate method of dealing with child sexual abuse victims was to have YACS, later FACS and now DCS staff carry out joint interviews in conjunction with police, in the hope of reducing the number of times an abused child needed to be interviewed.⁶²⁹

6.81 Both police and these agencies had a responsibility to the child:

- the Police Service to investigate the crime and in appropriate cases, in conjunction with the Office of the Director of Public Prosecutions, NSW (DPP), to bring the offender before the courts; and

⁶²² NSW Police Service, Task Force Colo Final Report, June 1994, RCPS Exhibit 1535AC.

⁶²³ J. A. Choat, RCT, 20/3/96, p. 22192; P. W. McKinnon, RCT, 21/3/96, p. 22300.

⁶²⁴ See Chapter 2 of this Volume.

⁶²⁵ Chairperson of the Operation Carbon Working Party for the New South Wales Police Service.

⁶²⁶ M. G. Masterson, Situation Report regarding the activity of the working party in relation to ICAC Operation Carbon, RCPS Exhibit 3133, at Doc. 1407786.

⁶²⁷ M. G. Masterson, Report re ICAC Operation Carbon, 1/9/94, RCPS Exhibit 3132.

⁶²⁸ D. P. Dillon, Memorandum, 14/9/94, RCPS Exhibit 3131.

⁶²⁹ Report of the NSW Child Sexual Assault Task Force to the Hon. Neville Wran QC, MP Premier of NSW, March 1985, RCPS Exhibit 1501, p. 11.

- DCS (or its predecessor) to ensure that the child was not at risk, and to provide support for the child and family where necessary.

6.82 As such it is obviously necessary that there be some co-ordination of their activities, and joint ownership of the problem. On the other hand their interests are not entirely congruent, since:

- DCS' primary concern is with the welfare of the child; while
- the police are primarily concerned with the enforcement of the criminal law, the consequences of which may be traumatic for the child and lead to family breakup.

6.83 The 'joint investigative' approach has been a controversial one marred at times by intransigent adherence to the separate cultures and philosophies of DCS on the one hand, and of the Police Service on the other.⁶³⁰

6.84 As earlier noted, the Ombudsman had from as early as 1990 recommended that DCS seek an agreement with the Police Service to develop joint action plans for all cases which involve both agencies. This did not happen.⁶³¹

6.85 Although the 1986 YACS Annual Report, the 1991 conference at the NSW Police Academy on the management and investigation of child abuse, the 1991 Annual Report of the CPC and the 1992 Doolan Report had all endorsed the need for agency co-operation and joint interviews of children, the Ombudsman reported again in 1993 that there was a lack of co-ordination and liaison in child sexual abuse cases between DCS and the Police Service.⁶³²

6.86 Notwithstanding the guidelines that had been developed by the Police Service, DCS and the CPC, the Ombudsman reached the conclusion that significant change was not evident on the ground, and in particular noted that there was no formalised joint plan operating between the two agencies.

6.87 The Police Service responded to this criticism in its 1994 Action Plan, which it suggested would bring about a change from the traditional way in which police had managed child abuse investigations, with a new theme 'Working Together'. The Plan recommended that the Service and DCS pilot two teams of officers, drawn from each agency, to work together on care and criminal response. These became known as Joint Investigation Teams (JITs), when the pilot began approximately nine months later.⁶³³

Summary of Progress Prior to Royal Commission

6.88 By late 1994, staffing in the CPITs remained at inappropriate levels to meet a caseload that was very heavy and increasing.⁶³⁴ In part this was due to the standard management practice of the Service to move resources around to address current crises. This has had a very detrimental effect on the capacity of the Service to provide a consistent and professional approach in dealing with child sexual abuse.⁶³⁵

⁶³⁰ D. L. Semple, RCT, 5/9/96, pp. 31656-57; KR5, RCT, 21/8/96, p. 31064; D. Pence, RCT (video link to Alabama, USA), 2/7/96, p. 27994; J. R. Heslop, RCT, 28/5/96, p. 26013.

⁶³¹ NSW Ombudsman, *Annual Report 1992-1993*, RCPS Exhibit 3117, pp. 98-100.

⁶³² *ibid.*, p. 99.

⁶³³ P. Bergin, RCT, 21/3/96, p. 22322.

⁶³⁴ P. Vickery, CPIT North Region, Proposal for the retention of the Child Protection Investigation Team (CPIT) for the North Metropolitan Region, 23/4/97, RCPS Exhibit 3243C.

⁶³⁵ R. Cant & R. Downie, Joint Investigative Team Evaluation Report, March 1996, RCPS Exhibit 1518, p. 69; M. J. Hungerford, RCT, 26/3/96, p. 22539.

6.89 Moreover, the Service has in the past placed a very low priority on this area of policing. The resources that should have been available to CPITs were continually used within patrols in the Major Crime Squads for other areas of work.⁶³⁶ When staff were made available from other areas for CPITs or child sexual abuse work, they were often untrained in this area of investigations.

6.90 Two JITs, one located at Bankstown and the other at The Entrance (later moved to Gosford) commenced operations in late November/early December 1994 for an initial pilot period of 12 months, which was subsequently extended.

6.91 In summary, the history of policing in this difficult area, by the time the ICAC and the Royal Commission began to work on it, was a series of false starts and investigative failures. Despite a number of reports and plans the problem still appeared to be beyond the Service, and to have been given very little priority despite the mounting concern in political circles and in the media. There were a number of paedophiles and pederasts abusing children on an ongoing basis, as the Royal Commission inquiries were to show, and familial sexual abuse was occurring on a large scale. The consequence was that through inaction and inappropriate delivery of policing services, a large number of offenders escaped proper investigation and prosecution.

6.92 The Service has by its various announcements and plans, led the community into believing that a properly resourced service was being delivered when it has since admitted that it was not.⁶³⁷ The Royal Commission was assisted by the exceedingly candid admissions of a number of senior officers which provided a very different picture from that which had been put forward to the community. The true position that they described was one of:

- serendipitous policing - stumbling across information and not using information systems appropriately;⁶³⁸
- an organisation riddled with enclaves of data, with no central facility able to recognise or synthesise the holdings;⁶³⁹ and one of
- an organisation seriously lacking in sufficiently trained investigators, but dependent on a group of heavily stressed officers on whom unreasonable demands were being placed.

6.93 The position was best described by Assistant Commissioner Peate's acknowledgment that the delivery of service to the community in this area by the police had been 'abysmal'.⁶⁴⁰

6.94 In these circumstances it became crystal clear during the Royal Commission that significant change must occur. To a considerable extent that has been achieved, but as the next section of this chapter reveals, not as readily or as easily as might have been hoped.

DEVELOPMENTS DURING THE ROYAL COMMISSION

6.95 In mid-1994, a CPC interdepartmental working party,⁶⁴¹ produced a report:

- concluding that additional resources were essential if the problem of sexual abuse of children in Aboriginal communities was to be addressed in any meaningful way;⁶⁴² and
- recommending that consideration be given to the creation of a permanent paedophile investigation unit with resourcing sufficient to allow for surveillance work.

⁶³⁶ R. Cant & R. Downie, Joint Investigative Team Evaluation Report, March 1996, RCPS Exhibit 1518, p. 76.

⁶³⁷ NSW Police Service, Operational Response Committee, NSW Police Service Response to Paedophile Activity, 22/8/95, pp. 2-3 & 6, RCPS Exhibit 1519B, at Doc. 547841 & 547845.

⁶³⁸ A. A. Graham, RCT, 20/3/96, pp. 22224-25.

⁶³⁹ A. A. Graham, RCT, 20/3/96, p. 22233.

⁶⁴⁰ A. S. Peate, RCT, 21/3/96, p. 22349; L. A. Scott, RCT, 15/4/96, p. 23569.

⁶⁴¹ CPC, Child Protection and Aboriginal Communities: Interdepartmental Working Party Report for Community Consultation, RCPS Exhibit 1601, p. 2.

⁶⁴² *ibid*, p. 7.

A response from all relevant ministers within two months was invited.

6.96 Seven months later, in February 1995, Assistant Commissioner Donaldson explained police inaction in responding to the report on the basis that it had been 'lost' by the Ministry for Police.⁶⁴³

6.97 Not unexpectedly, in its response the Police Service stated that the creation of a permanent unit was not supported as it was in conflict with Service policy on regionalisation, but it left the way open for reconsideration in the light of the work of the Royal Commission.⁶⁴⁴

6.98 In mid-1995, in response to the Commission's investigations, the Service developed position papers on various policy related issues, including one dealing with:

- the present structure for the police response to child protection; and with
- the arguments for and against a centralised unit.

6.99 Senior Constable Megan Hungerford prepared a position paper in which she concluded that the Service did not have the capacity to conduct effective proactive investigations of recidivist child abusers. In a very disturbing section of her report, after referring to investigations into certain individuals, she observed:

It is highly probable that they have continued to abuse children during that time and we have done nothing to prevent it. ... our failure to ensure the full investigation of paedophile intelligence can only lend support to the allegations of protection, conspiracy and negligence currently before the Royal Commission.⁶⁴⁵

6.100 The paper noted that:

- structure on its own account cannot guarantee an outcome;
- the last centralised CMU did not effectively target paedophiles in spite of a charter that included proactive investigation; and that
- structures, charters, ideologies and theories do not equate with staff, resources, training and management expectations.

The structure she developed for consideration involved the formation of a new specialised and centralised unit.⁶⁴⁶

6.101 On 17 August 1995 the State Command Action Team (SCAT) established a development/implementation team to work on an effective response to paedophilia.⁶⁴⁷

6.102 On 30 August 1995, a proposal for a Child Protection Enforcement Agency (CPEA)⁶⁴⁸ was put forward noting that:

- soon publicity would erupt on the issue by reason of the Royal Commission investigations;
- with the consequent increase in caseload, the Police Service had to be ready to deal with the situation; and that

⁶⁴³ W. R. Donaldson, Memorandum, 8/2/95, RCPS Exhibit 1601, p. 15, at Doc. 1948477.

⁶⁴⁴ NSW Police Service response to the child protection and Aboriginal communities consultation paper, para. 2.4, RCPS Exhibit 1601, at Doc. 1948480.

⁶⁴⁵ NSW Police Service, Operational Response Committee, NSW Police Service response to Paedophile Activity, 22/8/95, RCPS Exhibit 1519B, at Doc. 547845.

⁶⁴⁶ *ibid.*, p. 17.

⁶⁴⁷ The development/implementation team members nominated by SCAT were Assistant Commissioner McLachlan (Chair), Chief Superintendent P. McKinnon, Superintendent P. Wick (Major Crime Squad, South West), Detective B. Inkster (State Major Incident Group), Detective Senior Constable M. Hungerford, a representative from the SIG and a representative from the Ministry for Police. Only three of these authored the report (see below).

⁶⁴⁸ P. McKinnon, J. Davidson & M. Hungerford, A proposal for a Child Protection Enforcement Agency, 30/8/95, RCPS Exhibit 1519B, at Doc. 547886-94.

- the Service now realised that existing investigative arrangements had a limited capability to control the risk of harm to children.⁶⁴⁹

6.103 Within five days the proposal was adopted by the Minister for Police who announced, on 6 September 1995, the formation not only of the CPEA, but also of the Child Protection Directorate (CPD) as 'proof of the NSW Government and Police Service's commitment to provide the best possible protection for the children of this State'.⁶⁵⁰

6.104 The CPD was described as an executive level management team with responsibility for the continuous improvement of all police child protection services. The CPEA was to be 'fully operational' by early 1996, and to come under the command of Special Agencies. In announcing the formation of the CPEA and the CPD the Minister observed that:

- serial sexual abuse is a complex and difficult crime to investigate and its extent is largely unknown and hard to gauge which suggests that the extent of paedophilia is greater than we had realised;
- the CPEA would consist of 16 highly trained detectives including a commander, operations leader, a surveillance team and administrative officers; and that
- the CPEA would provide the capacity to fight paedophiles on an equally sophisticated level with adequate resources and provide a support network and intelligence source and also review the current training methods of CPITs and JITs.⁶⁵¹

6.105 The original structure for the CPEA was submitted in the form of a major concept draft on 31 August 1995.⁶⁵²

6.106 It was followed in October 1995 by a detailed organisational structure.⁶⁵³

6.107 This last proposal was rejected by the Deputy Commissioner as it offered a conventional approach based upon former squad concepts, which was not in line with the August major concept draft.

6.108 On 9 November 1995 Chief Superintendent McKinnon was asked 'to pick up the job and recover some lost ground'.⁶⁵⁴ He produced a plan of action which had the CPEA operating in Task Force mode until it developed a complete implementation plan.⁶⁵⁵

⁶⁴⁹ ibid, pp. 1-2.

⁶⁵⁰ NSW Police Service, Press Release, 6/9/95, RCPS Exhibit 3159.

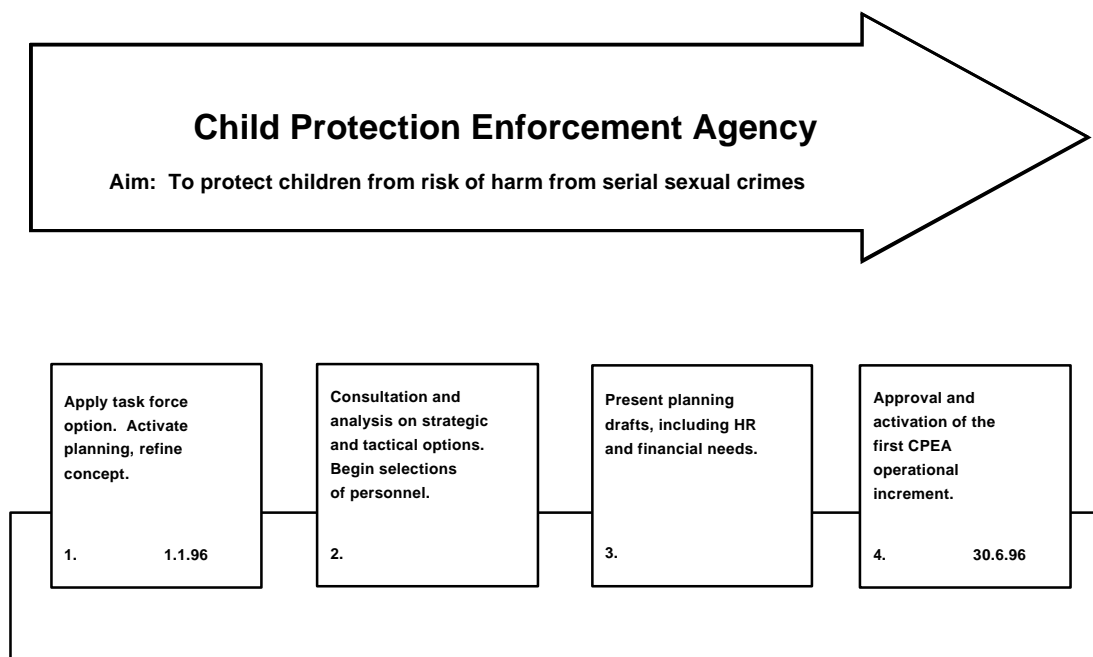
⁶⁵¹ T. Arthur (Police Media Unit), 'Child Protection Enforcement Agency', *Police Service Weekly*, vol. 7, no. 38, RCPS Exhibit 1558, p. 3.

⁶⁵² NSW Police Service, Child Protection Enforcement Agency major concept draft, 31/8/95, RCPS Exhibit 1560/1.

⁶⁵³ NSW Police Service, Child Protection Enforcement Agency proposed organisational structure, RCPS Exhibit 1559.

⁶⁵⁴ P. W. McKinnon, Implementation proposal - Child Protection Enforcement Agency, in P. W. McKinnon, Statement of Information, RCPS Exhibit 1555B, at Doc. 2005056.

⁶⁵⁵ Child Protection Enforcement Agency Implementation Plan, P. W. McKinnon, Statement of Information, RCPS Exhibit 1555B, at Doc. 2005054.



6.109 A decision was made to use Task Force Shad, which had been commissioned during 1995 to investigate specific suspected child sex offenders, as the interim operational arm of the CPEA.⁶⁵⁶

6.110 On 29 December 1995 the Police Service announced that the CPEA would formally start its operational activities on 1 January 1996 and that its members had been ‘carefully selected’ to ensure that it had a high level of investigative expertise as well as compassion for victims.⁶⁵⁷

6.111 An implementation team for the CPEA was put in place but, on commencing duties on 2 January 1996, it was given very general terms of reference and was left with substantial problems in implementation and project development.⁶⁵⁸ For example:

- the premises earlier earmarked for the CPEA had been lost with consequent delay in finding alternative accommodation;
- the advertisement for the commander’s position was cancelled with the need to re-advertise a month later;
- it was difficult to provide details of staffing requirements prior to the completion of the assessment of police holdings and intelligence;
- difficulties were experienced in securing the intelligence required to carry out the assessment since it was not available from a central source, and appropriately skilled analysts could not be readily found; and
- the funding proposal put to the Commissioner’s Expenditure Review Committee (CERC) had not been answered.⁶⁵⁹

6.112 On 19 February 1996 the proposed structure changed again. This structure proposed an authorised strength of 54 officers. It was as follows:

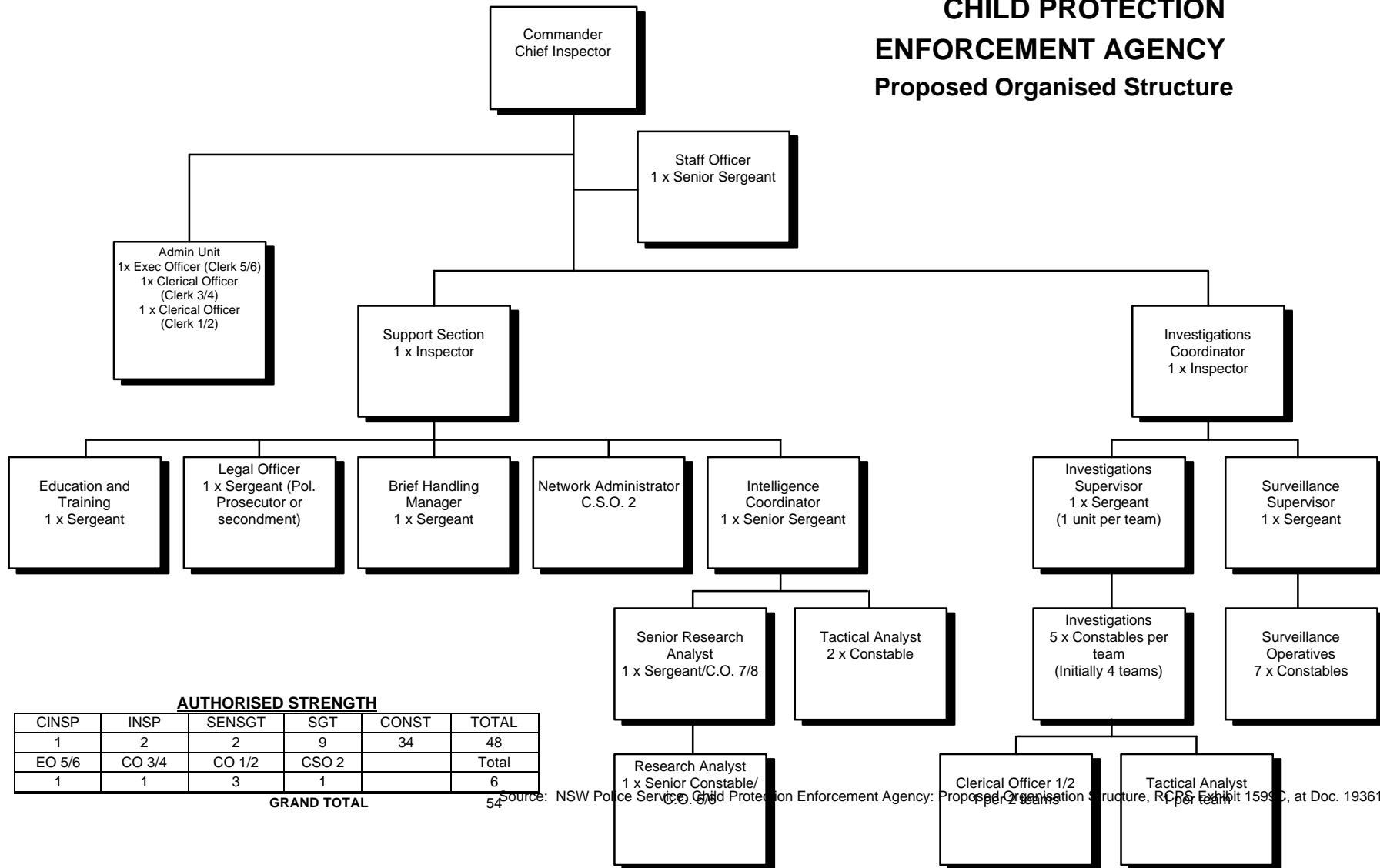
⁶⁵⁶ P. W. McKinnon, RCT, 21/3/96, p. 22305.

⁶⁵⁷ NSW Police Service, Press Release, 29/12/95, RCPS Exhibit 1557.

⁶⁵⁸ A. S. Peate, RCT, 21/3/96, p. 22347.

⁶⁵⁹ A. S. Peate, RCT, 21/3/96, pp. 22352-58.

CHILD PROTECTION ENFORCEMENT AGENCY Proposed Organised Structure



AUTHORISED STRENGTH

| CINSP | INSP | SENSGT | SGT | CONST | TOTAL |
|--------|--------|--------|-------|-------|-------|
| 1 | 2 | 2 | 9 | 34 | 48 |
| EO 5/6 | CO 3/4 | CO 1/2 | CSO 2 | | Total |
| 1 | 1 | 3 | 1 | | 6 |

GRAND TOTAL

54

Source: NSW Police Service, Child Protection Enforcement Agency: Proposed Organisation Structure, RCPSP Exhibit 1599 C, at Doc. 1936124.

6.113 Although the Minister had announced the formation of the CPD on 6 September 1995, it had only met twice between that time and 21 March 1996 when its Chairperson, Assistant Commissioner Peate, gave evidence to the Royal Commission. Nothing had been done by that time in setting the agenda or the terms of reference for the Directorate, nor had any communication occurred with DCS and/or Health either to involve them or to discuss how the Directorate would work.

6.114 Mr Peate saw the Directorate as having an umbrella role over the JITs, the CPEA and the CPITs.⁶⁶⁰ This concept, of having all child protection work, whether it is done by police officers alone or by joint teams, coming under one umbrella, is one with which the Commission agrees. It is dealt with later in this chapter.

6.115 On 27 March 1996 the Royal Commission was advised that the proposed structure for the CPEA had finally been approved.

6.116 It was described in the *Police Service Weekly*, in the following terms:

The agency has an intelligence group comprising research and tactical analysts as well as twenty four experienced investigators and is the largest dedicated unit of this type in Australia. At times, the CPEA might be supplemented by Task Forces operating under specific Terms of Reference regarding child abuse. Not all child abuse would be referred to the CPEA. It is envisaged the agency will deal with complex and protracted matters involving serial sexual abuse etc. but as a general rule it will not take over investigations of sexual abuse by family members. Another of the Agency's tasks will be to expand the database of child sex offences and child abuse in general.⁶⁶¹

6.117 Chief Superintendent McKinnon said, in his evidence, that he was only able to convince the senior executive of the Police Service to implement the CPEA because of the existence and 'clout' of the Royal Commission.⁶⁶² In the light of the history outlined above, and the poor record of the Service in the past in developing and implementing plans, noted in Volume II of its Final Report, the Commission is satisfied that this assessment was correct.

6.118 The CPEA recruited its staff between April and July 1996 and effectively took over the functions of Task Force Shad from 1 July 1996. Since that time it has proved itself to be an exceedingly skilful and effective investigative unit, and has taken over a number of investigations based on intelligence gathered by the Royal Commission.

JOINT INVESTIGATION TEAMS

6.119 In March 1996, Assistant Commissioner Peate gave evidence in relation to the two pilot JITs at Bankstown and Gosford. He described a number of difficulties which had been encountered including:

- personality conflicts across both agencies and within agencies;
- a divided management structure which provided little support for the JITs in the field;
- a lack of clarity as to the role of the team leaders;
- some ambivalence of DCS senior management in relation to the JIT model;⁶⁶³
- a perceived lack of resources by team members;
- questionable suitability of the location of the trial sites; and
- some possible resentment arising out of differences in industrial awards and conditions.⁶⁶⁴

⁶⁶⁰ A. S. Peate, RCT, 21/3/96, p. 22364.

⁶⁶¹ 'The child protection enforcement agency', *Police Service Weekly*, vol. 8, no. 26, 1/7/96, p. 3, RCPS Exhibit 2152.

⁶⁶² P. W. McKinnon, Statement of Information, 5/2/96, RCPS Exhibit 1555AC/2, at Doc. 1836473; P. W. McKinnon, RCT, 21/3/96, p. 22303.

⁶⁶³ See Chapter 8 of this Volume.

⁶⁶⁴ A. S. Peate, Statement of Information, 11/3/96, RCPS Exhibit 1561/2, p. 5.

6.120 He described these difficulties as ‘minor’ and thought them capable of being addressed with appropriate commitment by the police, and with a ‘little more work with the administration’ of DCS.⁶⁶⁵ The two JITs had also been the subject of an external evaluation.⁶⁶⁶ From that report and the experiences reported by other agencies, such as the ODPP,⁶⁶⁷ the advantages were assessed to far outweigh the minor difficulties noted. The advantages included:

- reduced emotional trauma for the victims and non-abusive carers;
- more efficient investigative process including:
 - reduced number of interviews;
 - one contact point for the investigation; and
 - the development of a better understanding and relationship between DCS and police;
- the production of higher quality briefs for the DPP; and
- a greater capacity for co-ordination of services to be delivered to the victims and families.⁶⁶⁸

1996 WORKING PARTY ON WORKING TOGETHER

6.121 The Working Party on Working Together (the Working Party) was formed in February 1996, and was placed under the direction of the CPC. It consisted of representatives from DCS, the Police Service, Health, DPP, DSE and the Pre-Trial Diversion of Offenders Programme, and was given terms of reference to:

- determine the desired outcomes from a joint approach to assessment/investigative work for the agencies and their clients;
- define those cases best suited to a joint assessment/investigative approach;
- examine and make recommendations on models of joint work, for example, JITs and serious abuse and neglect (SCAN) teams;
- consider and make recommendations on strategies that would facilitate a co-operative approach between agencies, for example, joint training;
- identify and make recommendations concerning any policies within agencies that might limit a joint approach; and to
- take into account the resource implications when considering options and making recommendations.⁶⁶⁹

6.122 The Working Party Report⁶⁷⁰ was produced to the Ministers for Health, Police and Community Services in May 1996 for submission to the Social Justice Committee. It recommended that:

- any child protection matter, involving actual or threatened personal or sexual assault against a child, which constitutes an offence under the *Crimes Act 1900* or an offence under the *Children (Care and Protection) Act 1987* be jointly investigated by the Police Service and DCS,⁶⁷¹

⁶⁶⁵ A. S. Peate, RCT, 21/3/96, p. 22370.

⁶⁶⁶ R. Cant & R. Downie, Joint Investigation Team Evaluation Report, March 1996, RCPS Exhibit 1518.

⁶⁶⁷ N. R. Cowdery QC, RCT, 1/7/96, pp. 27929-33.

⁶⁶⁸ R. Cant & R. Downie, Joint Investigation Team Evaluation Report, March 1996, RCPS Exhibit 1518, pp. i-ii.

⁶⁶⁹ Working Party terms of reference, RCPS Exhibit 1945.

⁶⁷⁰ CPC, Report of the Working Together Working Party on joint responses to child abuse and neglect, May 1996, RCPS Exhibit 3054C/12.

⁶⁷¹ *ibid*, recommendation 1, p. 28.

- any matter requiring a joint investigative response from DCS and the police be carried out by specifically trained police officers and child protection practitioners from DCS;⁶⁷²
- Health identify and have in place specialist medical staff, social workers, psychologists and other staff available to participate in the assessment of cases which are being jointly investigated by DCS and police;⁶⁷³
- the Service and DCS develop a joint training model for their staff undertaking joint investigations, which might give accreditation to participants;⁶⁷⁴
- the Service, Health and DCS develop an agreement that identifies the stages of intervention for police and district officers, and for Health assistance, and the principles that should inform practice at each stage;⁶⁷⁵
- where notifications to DCS indicate that an offence has been committed under the *Crimes Act 1990* and/or the *Children (Care and Protection) Act 1987*, joint work commence at the point of intake;⁶⁷⁶ and that
- DCS have the capacity to respond immediately to undertake joint work not only to ensure the safety of the child, but to assist the police secure evidence.⁶⁷⁷

6.123 The advantages of the JIT model were seen by the Royal Commission as outweighing the 'teething problems'⁶⁷⁸ that had been referred to by Assistant Commissioner Peate. In July 1996 the Royal Commissioner suggested that the 'fluid' situation in relation to the decision as to their adoption was an 'unhappy' one that needed final resolution.⁶⁷⁹

6.124 On 14 October 1996, the government endorsed the Joint Investigation Team project as the preferred model for investigation of serious child abuse throughout the State. It approved:

- the establishment of eight JITs in the metropolitan area (six in Sydney and one each in Newcastle and Wollongong);
- the establishment of a maximum of two additional JITs in rural areas where there was demonstrated evidence that demand warranted them; and
- the appointment of 24 additional DCS and police staff to provide a joint (but not co-located) specialist response in rural areas.⁶⁸⁰

6.125 By the time that decision was made, child sexual abuse cases were in fact being handled through a number of different structures:

- the newly formed CPEA and Task Force Shad were concentrating on the extrafamilial serial offenders;
- the CPITs were dealing with both familial and extrafamilial offenders in their areas. Their work also included historical cases where adults had presented with complaints that they had been abused as children. The CPIT staff were not co-located and DCS workers were contacted on an ad hoc basis for joint interviews when appropriate;
- the two JITs co-locating police and DCS staff were dealing mainly with familial cases, but also with cases of young children abused by persons outside the family; and

⁶⁷² *ibid*, recommendation 6, p. 46.

⁶⁷³ *ibid*, recommendation 7, p. 46.

⁶⁷⁴ *ibid*, recommendation 8, p. 46.

⁶⁷⁵ *ibid*, recommendation 12, p. 48.

⁶⁷⁶ *ibid*, recommendation 13, p. 50.

⁶⁷⁷ *ibid*, recommendation 14, p. 50.

⁶⁷⁸ J. R. Heslop, RCT, 28/5/96, p. 26037.

⁶⁷⁹ Commissioner J. R. T. Wood, RCT, 8/7/96, p. 28284.

- at a patrol level, where CPITs were not available, officers who had not been trained in child abuse cases were still investigating matters alone, or with IROC officers when they were available.

6.126 This hybrid approach was in the Commission's view an inappropriate method of policing. The history already outlined, and recognised within the Service for a number of years, pointed to a need for:

- a centralised agency;
- a multi-disciplinary and co-ordinated approach;
- specialised selection and training of staff; and
- a capacity to obtain information and to control a data base accessible by the police working in the area.

6.127 Two important steps had been achieved, to that point, during the Royal Commission in securing:

- the establishment of the CPEA; and the
- endorsement of the JITs.

More was needed.

6.128 The number of physical and sexual abuse cases presenting for police action in the 1995/96 financial year, in Sydney and the Central Coast, demonstrated a need for an increase in police resources to deal with these matters. The case-load was as follows:

| | |
|-----------------------|-------|
| Cumberland Prospect | 564 |
| Inner West | 560 |
| South West Sydney | 987 |
| South East Sydney | 578 |
| Northern Sydney | 660 |
| Central Coast | 353 |
| Nepean/Blue Mountains | 600 |
| | 4,302 |

6.129 The first four JITs, operational as at 28 July 1997, were located at Ashfield, Parramatta, Burwood and Liverpool.

6.130 The Commissioner of Police and the Directors-General of DCS and Health have now signed a Memorandum of Understanding recording the delineation of responsibility of each agency in providing the co-located JIT service. In addition, a policy and procedures manual has been prepared setting out the roles of police and DCS staff respectively.⁶⁸¹ This has been a welcome step. Success of the JIT model will, however, depend upon the calibre and commitment of the officers assigned to this work and upon their support by way of training and supervision. It, along with success of the CPEA, will also depend on the continued supply of sufficient staff to meet the workload.

⁶⁸⁰ The Cabinet Office, Letter to RCPS, 23/10/96, RCPS Exhibit 3076.

⁶⁸¹ The Cabinet Office, Letter to RCPS, 20/6/97, RCPS Exhibit 3152C; Memorandum of Understanding (unsigned) re Joint Investigation Teams (JITs), RCPS Exhibit 3290C; and JIT Policy and procedures manual (draft), 10/7/97, RCPS Exhibit 3291C.

PAEDOPHILE INTELLIGENCE AND INFORMATION

6.131 A significant matter which has compounded the problems for the Police Service in dealing with child sexual abuse cases has been its inadequate information management system and intelligence gathering and storage capability.

6.132 These problems are highlighted in some of the case studies later mentioned. The Police Service admitted early in the public hearings that:

- the management of paedophile intelligence was seriously flawed; and
- officers working in this field were fortunate to find relevant information in respect of targets they were pursuing.

6.133 To have such an important area of policing described as 'serendipitous' is an indictment of past planning and commitment to this type of work. The Commission has, however, been informed that the Service is giving serious consideration to the development of a professional databank, and it notes that the CPEA is developing programs and technology to ensure that it has a centralised databank in relation to all child sex offenders. Commitment to the Violent Crime Linkage Analysis System (ViCLAS) system also appears to be an imperative in this regard.

6.134 The Commission is acutely aware of the importance of an effective intelligence system in this area. It is important that the Police Service urgently fund and complete all the work needed to obtain a database and information system that will support officers working in the CPEA throughout the State, and which permits a link through the Australian Bureau of Criminal Intelligence (ABCI) to intelligence available on a national basis. If necessary supplementary funding should be made available for this purpose.

6.135 Another matter of significance which arose during the Commission hearings was the storage of information in relation to senior public officials including police, judicial officers and politicians. It seems that there was an ad hoc practice for such information to not appear on the Crime Information and Intelligence System (CIIS) but to be entered onto the FACOM Advanced Information Retrieval System (FAIRS) database, although at times it was simply stored in a safe. The FAIRS database became obsolete in December 1992, and was later converted into the ACID database under a project designed to capture threat or corruption intelligence in relation to senior public officials and cross-referenced against CIIS. The Computer Operated Policing System (COPS), was regarded as an inappropriate database for such entries because of the lack of appropriate security classifications.⁶⁸² The keeping of information in safes, without proper registration and recording, however, is a system which can lead to suspicion of misuse. It is appropriate that all such information be entered on a database, that is appropriately secure, but amenable to search by officers with appropriate authority.

1997 INTERAGENCY GUIDELINES

6.136 As elsewhere reported, the Interagency Guidelines came into force on 1 July 1997. These guidelines require true interagency commitment to case conferencing and case management of child sexual abuse cases in a multi-disciplinary setting. The training that has occurred to assist with that process will need to be ongoing and evaluated. It is important that the newer JITs have the benefit of the experience of those that are established earlier, and that there be a program of ongoing training.

⁶⁸² S. J. Ure, Statement of Information, 28/11/96, RCPS Exhibit 2884/2.

EXPERT CHILDREN 'S CENTRE

6.137 Later in this Report the Royal Commission examines and recommends the trialing of an Expert Children's Centre at the New Children's Hospital at Westmead. It is anticipated that the JITs will eventually evolve to bring within their fold health workers and staff from other relevant disciplines, consistent with the development of a true multi-disciplinary approach to this problem. The recommended trial would provide the basis for such a development.

CONCLUSION

6.138 This history has been recounted in some detail since it illustrates the struggle the Service has experienced in:

- establishing a comprehensive and proper structure to deal with child sexual abuse;
- maintaining a commitment to this area of activity;
- providing adequate resources in terms of investigative staff, surveillance, intelligence, and other support services; and in
- achieving co-ordination of effort with other government agencies and departments.

6.139 The consequences of the deficiencies in that regard will be examined in the following chapters. What has emerged, however, is that:

- Task Force Shad and the CPEA quickly developed into very effective operational units, initiating and pursuing their own inquiries as well as pursuing intelligence and evidence gathered and disseminated to them by this Royal Commission; and
- the pilot JITs at Bankstown and Gosford demonstrated that police officers with commitment and support, co-located with DCS officers, offer a far better service to the community.

6.140 It is absolutely essential that these developments be maintained, and that the Service not regress into old practices or attitudes of devaluing child sexual abuse investigations, insufficiently resourcing the agencies working in this field, or relieving the pressure on those who abuse children, whether in the familial or extrafamilial setting.

B. THE SPECIAL DEMANDS OF CHILD SEXUAL ABUSE INVESTIGATION

6.141 It was evident from the inquiries of the Royal Commission that:

- particular stresses exist in this area of work for all child sexual abuse investigators, whether they be police or welfare workers; and that
- in the past there has been insufficient training or support for such staff, which has led to burn-out, and disillusionment, to the point that effective policing has been threatened.

STRESS

The Problem

6.142 It is well recognised that chronic stress is emotionally draining and can lead to burn-out. It is believed that this is a syndrome combining emotional exhaustion, depersonalisation and feelings of reduced personal accomplishment. Such reactions are dangerous to both the worker and the client and can lead to low morale, absenteeism and a reduced quality of service.⁶⁸³

6.143 Between 1985 and 1993, although there had been a substantial increase in workload of the CMUs due to the increased community awareness of child sexual assault, there had not been a commensurate increase in staff numbers.⁶⁸⁴

6.144 In 1993, as a result of the 1992 report on the evaluation and handling of child abuse notifications in the NSW Police Service⁶⁸⁵ the Service Psychologist, Ms Michelle Fisher, undertook research on the psychological impact of working at the CMUs. The study examined:

- the degree of occupational stress experienced by CMU officers;
- the work environment of the CMU; and
- the appropriate period of tenure.⁶⁸⁶

6.145 The study found that the officers working in the CMUs were exposed to stress beyond the general occupational stress of policing because of the highly sensitive and emotionally charged nature of child abuse investigations.⁶⁸⁷ Some of the factors identified as adding to the officers' stress included:

- the need to establish a relationship of trust between the child and the officer, in order to obtain information, which led to a strong emotional bond being formed and a consequentially strong impact on the officer in the event of an acquittal;⁶⁸⁸
- the fact that many of the cases which proceed to prosecution result in acquittals,⁶⁸⁹ largely because of the age of the victims and questioning of their statements;
- the circumstances that when charges are dismissed officers often become the target of parental anger;⁶⁹⁰
- the fact that the child victim will often look to the police officer for support particularly when the outcome is an acquittal;⁶⁹¹

⁶⁸³ C. Maslach & S. E. Jackson, Maslach burnout inventory, Manual, 2nd edn, Consulting Psychologists Press, Palo Alto, California, 1981, quoted in NSW Police Association, Submission to RCPS, RCPS Exhibit 2529/105, at Doc. 2388906.

⁶⁸⁴ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, Introduction.

⁶⁸⁵ NSW Police Service, Evaluation of the Handling of Child Abuse Notifications in the NSW Police Service, August 1992, RCPS Exhibit 1512.

⁶⁸⁶ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517.

⁶⁸⁷ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, Introduction. The 1993 study found that CMU officers showed significantly higher stress levels than police in general. 35% of CMU officers showed stress levels in the high or severe range compared with 20% in the police in general. The source of stress was ranked in order of priority as follows:

- lack of appreciation for good work;
- conflicting demands;
- lack of recognition by other areas of the Police Service;
- quantity of work; and
- stigma of the CMU.

⁶⁸⁸ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, pp. 15-16.
⁶⁸⁹ *ibid.*, p. 2.

⁶⁸⁹ In 1993 there was an estimated 10% success rate. M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, p. 2.

⁶⁹⁰ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, p. 2.

⁶⁹¹ Detective Inspector Hunter giving an example of losing a case with an 11 year-old girl who at the end of the case was crying and clinging to him rather than her mother and relatives saying 'does that mean I am a prostitute now', see R. M. Hunter, RCT, 19/3/96, p. 22070.

- the knowledge that in all likelihood the offender who escapes conviction or gaol will continue to abuse the victim or other children;⁶⁹²
- the existence of a feeling of a lack of appreciation of work pursued in a professional manner;⁶⁹³
- the poor reputation of the work, and the epithet given to those who work in it as members of the 'nappy squad';⁶⁹⁴ and
- the need for officers not only to hear of the crimes perpetrated on young children but also to view substantial quantities of child pornography, particularly videos made by offenders depicting graphic abuse of very young children.⁶⁹⁵

6.146 Other factors have been identified by investigators, which has led some to leave and move to other work, while others stay and become extremely stressed with adverse effects on their health. The additional matters identified include:

- their excessive workload;
- understaffing;
- a lack of resources extending to matters as basic as office space, computers and phones;
- a lack of education and training in relation to stress and time management; and
- a lack of ability to recognise stress within themselves and in those around them.⁶⁹⁶

6.147 All of these factors have an inevitable impact on the officer and result in feelings of frustration and inadequacy. The officer feels that whatever he or she does, there will not be a recognition of the good work that is done and that they have been let down by the system.⁶⁹⁷ There is also a feeling that the officer will be stigmatised for working in this field and that there is no appropriate path for promotion.⁶⁹⁸

6.148 In August 1996 the Police Association conducted a survey of child protection workers.⁶⁹⁹ After concluding that this group suffered from high stress levels it recommended that:

- recognition be given to child protection work as a specialist branch of policing, with a thorough pre-employment specialist training program, appointment of a senior commander to provide leadership, and quality supervision and recognition;
- performance indicators be developed to assist and develop child protection workers;
- continuing education, adequate resources and intelligence systems be provided;
- research be conducted to identify a range of recruitment and selection strategies, to identify those best suited to the work using assessment centres, and to attract more volunteers; and that
- welfare and employee assistance be addressed, including 'time out' or temporary transfers away from child protection work, psychological counselling, informal peer networks, and internal and multi-agency teamwork.⁷⁰⁰

⁶⁹² M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, p. 2.

⁶⁹³ *ibid.*, p. 15.

⁶⁹⁴ D. H. Jones, RCT, 3/7/96, p. 28095; M. J. Hungerford, RCT, 26/3/96, p. 22550; A. L. Godfrey, RCT, 12/4/96, p. 23407; L. A. Scott, RCT, 16/4/96, p. 23626; and B. W. Rope, RCT, 8/8/96, p. 30103.

⁶⁹⁵ K. W. Watson, RCT, 26/3/96, p. 22589.

⁶⁹⁶ NSW Police Association, Submission to RCPS, RCPS Exhibit 2529/105, at Doc. 2388840.

⁶⁹⁷ M. Fisher, Occupational Stress in Child Mistreatment Units of the NSW Police Service, May 1993, RCPS Exhibit 1517, p. 2.

⁶⁹⁸ *ibid.*, Executive Summary & p. 17.

⁶⁹⁹ J. Westerink, P. Sheaves & M. Perkins, Child Protection Worker Survey, 1/8/96, in NSW Police Association, Submission to RCPS on Child Protection, 9/8/96, RCPS Exhibit 2529/105, at Doc. 2388893-952. The researchers emphasised that the results of their study could only be taken as indicative because of the small sample (45 officers) and minimal time available to follow up non-respondents: p. iv.

6.149 The American experience in prosecuting child abuse is consistent with the findings in this State relating to its impact on police. It has there been said that investigators and prosecutors in this area do not burn-out, they 'melt down'. It was likened by Assistant District Attorney, Ms Stephenson to a nuclear reaction. The common problems have been heavy case-loads, the stressful nature of the work, and the lack of peer support. On the other hand, team camaraderie, honesty and support help to counteract burn-out.⁷⁰¹

Conclusions

6.150 One of the strategies that has been used in the creation of the CPEA is psychological testing on selection, but before confirmation, of police and unsworn officers. Debriefing on a regular basis for all staff is planned. The Service now appropriately takes the view that it should not force investigators to do child protection work, as their performance is far more effective when they are psychologically suited and wish to do it.⁷⁰²

6.151 The Commission agrees with this approach and considers it important that a range of strategies be adopted to deal with the special stresses arising, which might include:

- opening up positional appointment upon application to officers of both genders;
- development of an in-service preliminary course for officers potentially interested in this work to test and screen suitable candidates, and to forewarn and prepare them as to what is involved, before they make any commitment to it;
- development of a specialist child protection investigation course within a multi-disciplinary setting, for those who wish to proceed on to this work accompanied by suitable specialist accreditation;
- stress, time and conflict management instruction, and welfare and counselling support;
- the opportunity for temporary transfers to combat the possibility of burn-out without prejudice to promotion prospects;
- more flexible procedures for rotation and transfer dependent on psychological assessment and taking into account the officer's wishes;
- suitable recognition of expertise in child protection as a matter for career advancement;
- consistency in case management;
- the provision of quality supervision and leadership through a Senior Commander;
- adequate staff resourcing to meet the workloads (accompanied by suitable monitoring); and
- continuing education and peer review.

TRAINING

6.152 Similarly to the findings of the 1984 Child Sexual Assault Task Force, the Police Association survey⁷⁰³ found that the level and type of training provided to police to equip them for child protection work varied enormously:

- some (11%) reported receiving no training at all;

⁷⁰⁰ J. Westernink, P. Sheaves & M. Perkins, Child Protection Worker Survey, 1/8/96, in Police Association of NSW, Submission to RCPS, 9/8/97, RCPS Exhibit 2529/105.

⁷⁰¹ D. Pearce, RCT (video link to Alabama, USA), 2/7/96, pp. 28002-03.

⁷⁰² J. R. Heslop, RCT, 28/5/96, pp. 26033-34.

⁷⁰³ J. Westernink, P. Sheaves & M. Perkins, Child Protection Worker Survey, 1/8/96, in NSW Police Association, Submission to RCPS, 9/8/96, RCPS Exhibit 2529/105, at Doc. 2388894-953.

- some attended very short courses (for example, two days); while
- others reported having had more intensive training.

Those who had completed more intensive training tended to have added to the Service component by attending external courses and specialist conferences. Several reported that this had been at their own initiative and expense.

6.153 The results of the survey prompted the Association to recommend improved initial training, and the introduction of ongoing education, an assessment which, for the reasons that follow, this Commission would support.

Past Experience

6.154 The IROC course was reviewed in 1991 by the External Review Committee. It identified a number of problems in that:

- the selection criteria did not look for or encourage volunteers;
- there was a lack of opportunity for practical experience in taking statements during the course;
- the course did not impart 'expert/specialist' status;
- the course was inadequately resourced; and
- students who completed the IROC course and returned to general duties were not being utilised in child sexual assault matters because of competing operational demands and hence had little opportunity to practice the skills learned.⁷⁰⁴

6.155 Several police officers who gave evidence before the Commission commented on problems with IROC, notably:

- the lack of a practical element or field training; and the
- absence of ongoing or updated training.⁷⁰⁵

6.156 Additionally, Detective Senior Constable Bassingthwaighte gave evidence that:

- he had experienced difficulties getting into the IROC course because he was a male,⁷⁰⁶ although it was work in which he had an interest;
- IROC trained officers were often worked off their feet;
- since they were usually general duties police, with multiple other duties they were often called in on an ad hoc basis, in situations of urgency, leading to a lack of preparedness on their part;
- often the IROC officers were relatively junior police lacking in background experience;⁷⁰⁷ and that
- joint training of police and DCS staff may overcome any basis of mistrust or philosophical differences in approach.⁷⁰⁸

⁷⁰⁴ Report of the External Review Committee on IROC, May 1991, contained in annexures to the statement of K. Moroney, 22/8/94, RCPS Exhibit 26/4, at Doc. 150405.

⁷⁰⁵ M. Hungerford, RCT, 26/3/96, pp. 22513-15; R. M. Hunter, RCT, 19/3/96, pp. 22067-68.

⁷⁰⁶ E. J. Bassingthwaighte, RCT, 19/2/97, p. 35959.

⁷⁰⁷ E. J. Bassingthwaighte, RCT, 19/2/97, p. 35950.

⁷⁰⁸ E. J. Bassingthwaighte, RCT, 19/2/97, p. 35949.

6.157 IROC was suspended and reviewed again in 1994. It was reintroduced in August 1995 after several months of redevelopment.⁷⁰⁹ As this Report is being completed the course is once again under review.⁷¹⁰ In what is seen as a positive development, Health has requested that it be involved in that review.⁷¹¹

6.158 A pilot Investigation and Management of Child Abuse Specialist Course was in fact developed for specialist investigators in this area. Officers were to be selected for this course which would qualify them for a Certificate of Child Abuse Specialist Investigation. It was to consist of four phases:

| | |
|-------------|--|
| Phase One | two months on-the-job self study; |
| Phase Two | nine days face-to-face residential skills training including case studies, practical exercises and lectures from forensic and academic experts; |
| Phase Three | up to 18 months on-the-job training. During this phase students were to be deployed in child abuse investigation, engaging in a number of cases as the primary investigating officer, under expert field supervision and tuition; ⁷¹² |
| Phase Four | assessment. |

Although this was a pilot course the Royal Commission has been informed that it is no longer available.⁷¹³

Conclusions

6.159 The past experience with training in this area is unfortunately consistent with the:

- low priority for this type of work;
- lack of support for those officers who are interested in it; and the
- lack of proper resourcing previously identified.

6.160 The interagency training that has been conducted under the auspices of the CPC, since the release of the interagency guidelines in February 1997, has been essential but it does not deal with the matters necessary for training of police at the front line. It is imperative that these officers are given the means and the support to:

- equip them for the job; and
- leave them confident that their work is valued and understood by management.

6.161 Multi-disciplinary training is a natural progression in the implementation of the JITs. If staff from different disciplines are expected to work together it is logical that they be trained by the same source. It provides the opportunity to:

- build skills and knowledge;
- allow specialist teams to establish professional relationships;
- create an environment in which workers can resolve conflict in a productive manner; and to

⁷⁰⁹ 'Initial Response Officers' Course - Child Abuse and Sexual Assault', *Police Service Weekly*, vol. 7, no. 29, 17/7/95, RCPS Exhibit 3093, p. 15.

⁷¹⁰ NSW Police Service, Memorandum from the Assistant Co-ordinator Investigation and Data Management to the Principal re current educational/instructional material used by the Police Service in advising the community on the issues of child sexual assault, 2/6/97, RCPS Exhibit 3250.

⁷¹¹ Health Department, Statement of Information, 24/1/97, RCPS Exhibit 5984/2, p. 8.

⁷¹² NSW Police Service, Investigation & Management of Child Sexual Abuse Specialist Course Documents, contained in annexures to the statement of K. Moroney, 22/8/94, RCPS Exhibit 26/4, at Doc. 150419-20.

⁷¹³ NSW Police Association, Submission to RCPS, 9/8/96, RCPS Exhibit 2529/105, at Doc. 2388843.

- delineate the respective responsibilities and outcomes for which each group must work.

6.162 Of the overseas models examined by the Commission, the New Zealand approach appears to be the best, both in its structure and training. This model sees social workers and police working together, from purpose-built premises, handling cases of child abuse for defined geographical areas. The JITS represent a development of this kind, although for reasons of demography it is not possible, in the immediate future, for them to cover the entire State.

6.163 Training courses in New Zealand are run by the Royal New Zealand Police College. They include a 'Child Abuse Interviewers Course' and a 'Child Abuse Investigation Course' and concentrate specifically on child abuse.⁷¹⁴ This is an obvious improvement on the IROC course, which was aimed primarily at adult sexual assault, and is both an introductory child abuse course and an interviewing skills course.

6.164 The Commission accordingly supports the training of all Police Service staff in child sexual abuse matters, in a multi-disciplinary setting, leading to specialist accreditation, along the lines of the New Zealand model. The course should:

- include a substantial component of practical training, including supervised field work; and
- continuing education, including encouragement and assistance in attending specialist conferences within Australia and overseas.

C. PREFERRED POLICING STRUCTURE

6.165 The Commission has had the opportunity of making a careful examination of the manner in which the Service has policed this area of criminality, which has, in recent times seen three groups, the CPEA, the CPITs and the JITS carrying out investigations. The time has arrived for some final solutions which will ensure that the Service:

- properly resources the investigation and prosecution of this area of criminality; and
- provides the most effective structure for the policing of both familial and extrafamilial abuse.

THE CPEA

6.166 The Commission is satisfied that it is essential for there to be a central specialised agency, in the form of the CPEA, to:

- provide specialist investigative services, both reactive and proactive, into serious extrafamilial sexual abuse of children;
- receive and co-ordinate intelligence on all forms of child sexual abuse, including missing children when they are possibly the subject of such abuse;
- develop strategies in relation to the prevention of child sexual abuse, and the education of the police and the public;
- act as an umbrella agency for the JITS;
- provide a co-ordinated response, with other policing agencies, on a national basis, and where appropriate in conjunction with Interpol and international law enforcement agencies; and to
- co-ordinate the recruitment and training of child sexual abuse investigators and ongoing support for them.

⁷¹⁴ See Chapter 8 of this Volume.

6.167 The CPEA, so far, has proved itself to be a highly effective agency, staffed by capable and dedicated investigators, and with high morale. Without this Royal Commission, it is unlikely that it would have been created, or if created, to be as well resourced as it is. It is absolutely essential, if the Service and the Government are truly serious about combating child sexual abuse, that it remain in existence and be provided with the resources and expert staff needed. Among other matters, its covert and surveillance capacity must never be removed or directed to other needs. The simple fact is that paedophiles have shown themselves to be well placed in the community, intelligent, influential, resourceful, capable of organising themselves into tightly knit groups, and not above securing protection. They need to be matched by commensurate resources.

THE NSW CRIME COMMISSION

6.168 From Commission inquiries it is clear there are instances where police leads and investigations are stymied by a lack of willingness on the part of potential witnesses to assist. The exercise of coercive powers including the conduct of hearings of the kind conducted by this Royal Commission and by the NSW Crime Commission, would substantially enhance the capacity of the Justice System to respond to this form of criminality. It would not be justified in the case of isolated or minor incidents of criminality, or in cases of familial abuse. The position is otherwise in the case of fixated paedophiles, serial offenders, networks of paedophiles and those who produce and distribute child pornography on a commercial basis.

6.169 The Crime Commission has jurisdiction to investigate matters relating to any criminal activity referred to it by the Management Committee for investigation.⁷¹⁵ The Crime Commission does not presently have a reference to investigate matters relating to serious paedophile activity. It is recommended that such a reference be given to the Crime Commission so that it can work in conjunction with the Child Protection Enforcement Agency in combating this form of criminal conduct, and provide assistance of the kind which this Royal Commission could provide.

THE JITs AND CPITs

6.170 The Royal Commission has received submissions in relation to the continuation of the function of the CPITs within patrols. Those in favour of maintaining a CPIT presence in the patrol area argue that:

- victims who do not need DCS services can be looked after by officers with specialist CPIT skills, who would be able to give the attention which generalist patrol detectives could not supply;
- the initial contact is often the most important contact and the point at which the commitment of the victim to participate in the judicial process is made; as such it is better made with a child protection expert than with a patrol detective without experience in this area; and that
- 'adult survivor' investigations (that is, historic cases of child abuse) require large amounts of police attention by experienced and focused officers,⁷¹⁶ which is lacking in generalist detectives.

6.171 The Royal Commission has received information in respect of recent investigations conducted by the Chatswood CPIT which should remain confidential as the matter is currently before the court. This case is a historical case with complex issues calling for sensitivity and professional skills. It involves an adult male who alleges the existence of serial sexual assault by a person in a trusted teaching role in a private school. Those associated with the complaint spoke to the

⁷¹⁵ *NSW Crime Commission Act 1985*, s. 6(1).

⁷¹⁶ P. Vickery, CPIT North Region, Proposal for the retention of the Child Protection Investigation Team (CPIT) for the North Metropolitan Region, 23/4/97, RCPS Exhibit 3243C.

Commission in glowing terms of the efficiency, dedication, sensitivity and overall professionalism of the CPIT officers involved.⁷¹⁷

6.172 The concern is that such expertise be maintained, priority given to those officers who obviously perform well in the field and a service provided which covers the State in a prompt and effective manner.

6.173 Historical cases of this kind, in patrol areas which are not appropriate for the CPEA central office and do not require JIT attention, could then be handled by those additional police officers located throughout the State, as members of the CPEA.

6.174 A case does exist for the preservation of the skills of CPIT or similarly experienced officers to provide policing services in locations not covered by the CPEA or JITs, and as a supplementary resource. This is particularly the case with adult complainants bringing forward historic matters where there is no reason to suspect ongoing criminality by the suspect, or cause for concern that children are currently at risk.

6.175 By letter dated 3 July 1997, the Commission was advised that:

- the JITs would have a command reporting line to the CPEA;
- the CPITs will be phased out but none will be 'disestablished' until there is a JIT to replace it;
- separate and special consideration needs to be given to rural areas to enhance the JITs;
- the centralisation of JITs and the CPEA will allow the Service to:
 - systematically identify operational problems and develop uniform solutions;
 - develop consistency in policy decisions regarding interagency issues;
 - resource interagency conflicts in a timely manner; and
 - identify and monitor a protected Child Protection Budget.⁷¹⁸

6.176 As to the further implementation of JITs across the State the Commission was advised that:

- the JIT implementation team will continue with the responsibility of establishing the JITs across the metropolitan area of Sydney and developing a joint investigation response for the rural areas; and
- the JIT implementation team for 1997 will be placed in the Deputy Commissioner's office.⁷¹⁹

6.177 It is recognised that there will be occasions when, as a matter of practical necessity, police at Local Area Command level will be required to provide an initial response, pending intervention by a JIT or by the CPEA. This can be accommodated without difficulty.

6.178 The Service has advised the Commission that although the JITs will fall under the command of the CPEA:

- the JIT Police Team Leaders will regularly brief the Local Area Commanders and Region Commanders within their catchment areas on:
 - the current status of child abuse notifications;

⁷¹⁷ Confidential letter to RCPS, 9/4/97, RCPS Exhibit 3244C, p. 4.

⁷¹⁸ NSW Police Service, Letter from the Assistant Commissioner to RCPS, 3/7/97, RCPS Exhibit 3247.

⁷¹⁹ *ibid.*

- emerging child protection issues; and
- any difficulties that might be experienced in relation to government or non-government agencies that are located within the local command areas.
- close liaison will assist Local Area Commanders to develop strategies to address local child protection issues;
- a memorandum of understanding between JITs and Local Area Commands is to be developed setting out:
 - the manner in which JITs will provide information to Local Area Commands;
 - the role of the JITs; and
 - the victim support role of the Local Area Commands.

The Commission commends this approach as sensible.

6.179 To avoid fragmentation, and to build a collegiate and professional spirit within the CPEA, the following steps are recommended by the Commission:

- all officers working in the area of child protection be categorised as officers of the CPEA;
- those officers who are allocated to work at a JIT site be regarded as CPEA officers providing services, in a joint model with DCS officers;
- at locations at which JITs are established, officers with CPIT or similar experience be accredited and recognised, to ensure that there is the capacity to handle those cases of child abuse in which a joint response or CPEA central office attention is not necessary;
- all officers in the CPEA should rotate through the Agency in the co-located JIT sites, separately located sites and central agency site;
- all officers involved should be required to take part in the continuing education program; and that
- all applicants for positions within the CPEA or JITs should be notified to the Children's Commission pursuant to the system outlined in Chapter 20.

6.180 It is recommended that the CPITs in the rural areas, which are not disestablished because of the creation of a JIT, be retained and renamed as rural JITs. It would be understood that in these rural areas co-location would probably not be possible, but there is no reason why officers of the agency could not conduct joint investigations with DCS District Officers, following the procedures outlined in the new interagency guidelines and the memorandum of understanding previously mentioned.

6.181 Together the arrangement would permit the JITs and CPEA to receive and respond to all allegations in respect of child sexual abuse whether made by a child, or by an adult who is complaining of assault as a child. This is in recognition of the circumstances that:

- whether the person is an adult or a child, complaints of this kind are in need of sensitive and experienced handling; and that
- intelligence, no matter how old, can be of significant value because of the repetitive nature of paedophile conduct.

To have these cases handled at patrol level can only be counter-productive, and is likely to return the Service to the confused state in which it found itself when this Commission began. For this reason it is important that JIT intelligence on all notified cases be communicated to the CPEA.

6.182 The budget for this area of operations is of sufficient significance to warrant further mention. It is essential in the Royal Commission's view that there be not only a protected Child Protection Budget but one that is realistic and has due regard to the number of reported cases throughout the State. From the history recounted in this chapter, and from the very serious consequences noted later, it is imperative that the Police Service give appropriate recognition to this area of policing, and maintain both the present commitment to this work, and the budget required to support it.

6.183 There is a very important matter in conclusion. The Service must ensure that there is no dysfunction between those officers who are co-located with DCS officers and those who are not. To ensure that there is an appropriate cross-pollination of experience and professional skills, it is recommended, as earlier noted, that officers be rotated through the JITS and the Agency to assist with their professional development and professional satisfaction. This strategy together with those earlier mentioned, is aimed at maintaining and attracting officers of calibre and commitment to this area of work.

THE CHILD PROTECTION DIRECTORATE

6.184 As indicated earlier, the Police Service developed the concept of CPD in conjunction with the establishment of the CPEA. It was to be 'an Executive Level Management Team with responsibility for the continuous improvement of all Police Child Protection Services'.⁷²⁰

6.185 By March 1996 this Directorate had met only twice, no external agencies or other parties had been invited to become part of it, nor had there been any agenda settled in respect of the way in which it would operate.

6.186 In August 1996, the Child Protection Interagency Operational Committee (IOC) was established. At its first meeting it was announced that the CPD had been wound up due to the establishment of the CPEA.⁷²¹ The newly formed Committee was to be 'operationally focused' with the objectives of:

- developing an effective interagency working relationship;
- providing executive level support for the implementation of Royal Commission recommendations;
- co-ordinating child protection operations for all agencies to maximise their outcomes, for example Operation Paradox; and of
- developing and co-ordinating child protection prevention strategies.⁷²²

6.187 The IOC initially consisted of representatives from the Police Service, Department of Juvenile Justice (DJJ), DPP, DCS, Department of School Education (DSE), Health and Department of Corrective Services. By November 1996 representatives from the Department of Housing and the Department of Aboriginal Affairs had joined the Committee.⁷²³

6.188 The development of the IOC is in the Royal Commission's view a very healthy development. It endorses the continuation of such Committee working in close association with the Children's Commission.

⁷²⁰ NSW Police Service, Press Release, 6/9/95, RCPS Exhibit 3159.

⁷²¹ Minutes of Child Protection Interagency Committee Meeting 29/8/96, Attachment C of N. Bridge, Statement of Information, 27/1/97, RCPS Exhibit 3248C.

⁷²² *ibid.*

⁷²³ *ibid.*

CHILDREN'S COMMISSION

6.189 As discussed in the final chapter of this Report, the Royal Commission recommends the establishment of a Children's Commission as a strategy to ensure that the agencies, relevantly here the Police Service, do not slip back into the disorganised and unproductive state which existed when the Royal Commission began its inquiries. A relevant function of the Children's Commission would be to support the Police Service in developing a professional approach to child protection work.

6.190 As proposed, the Children's Commission would contain a Centre for Child Protection (CCP) with which the CPEA would be expected to liaise in order to:

- keep abreast of developments in the field of child protection;
- network with advocacy groups and professionals in the field;
- contribute to the Centre's information bank on current trends in child sexual assault cases;
- participate in developing an annual conference similar to the San Diego Child Mistreatment Conference;
- provide officers with the opportunity to participate in the development of multi-disciplinary teaching modules and in teaching programs; and to
- establish a continuing education program for CPEA and JITs officers.

6.191 Consistently with its approach to the staff employed by the other agencies, as outlined in the final chapter of this Report, the Royal Commission considers that similar arrangements should apply in relation to:

- inquiry of the Children's Commission in relation to pre-employment vetting as to whether anything untoward is known in relation to a police officer;
- reporting any allegation or internal investigation relating to the sexual assault of a child by a police officer to the Children's Commission; and to
- the authority of Children's Commissioner to issue a certificate stating that an officer is an unacceptable risk to be employed in the care or supervision of children, subject to the officer being given the opportunity to be heard before any such certificate is issued, and subject to a right of appeal to the Administrative Decisions Tribunal (or alternatively to the Industrial Relations Commission (IRC)).

RECOMMENDATIONS

The Commission recommends the following:

- ◆ Development of an in-service course to screen and prepare officers potentially interested in child protection work before they make any commitment to it (para. 6.151).
- ◆ Development of a specialist child protection investigation course within a multi-disciplinary setting, accompanied by suitable specialist accreditation and opportunity for career advancement, for those who wish to work in the child protection area (paras. 6.151 & 6.164).
- ◆ Adoption of strategies to deal with the special skills needed and the stresses arising for staff involved in child protection work (para. 6.151), including:
 - stress, time and conflict management instruction, and welfare and counselling support;
 - the opportunity for temporary transfers to combat the possibility of burn-out without prejudice to promotion prospects;
 - flexible procedures for rotation, including rotation through the CPEA and JITs (para. 6.183);
 - suitable recognition of expertise in child protection as a matter for career advancement;
 - consistency in case management;
 - the provision of quality supervision and leadership through a Senior Commander;
 - adequate staff resourcing to meet the workloads;
 - continuing education and peer review.
- ◆ Retention of the CPEA as a permanent and separate agency, provided with adequate resources and expert staff including an effective covert and surveillance capacity of its own (paras. 6.166 - 6.167).
- ◆ The NSW Crime Commission be given a reference to investigate matters relating to paedophile activity so that its coercive powers can be utilised where that might assist the CPEA in relation to the investigation of organised and serious criminality or networking in this area (paras. 6.168 - 6.169).
- ◆ Establishment of the CPEA as the umbrella agency in relation to the investigation of child sexual abuse, and structured so that:
 - all officers working in child protection would be categorised as CPEA officers, including those officers who are allocated to work at JIT sites;
 - at locations at which JITs are established, officers with CPIT or similar experience would be accredited and recognised, to ensure that there is a backup capacity to handle those cases of child abuse in which a JIT response or CPEA central office response is not necessary;
 - provision would be made for CPEA officers to rotate through the Agency and in the co-located JIT sites, and separately located sites;
 - provision would be made for all officers to take part in the continuing education program;

- provision would be made for clearance of all officers to ensure that they are suitable to work in child protection (para. 6.179).
 - the CPITs in the rural areas which are not disestablished because of the creation of a JIT, would be retained and renamed as rural JITs and, although not co-located, they should so far as practicable conduct joint investigations with DCS District Officers, following the procedures outlined in the new Interagency Guidelines and the memorandum of understanding (para. 6.180);
 - for effective intelligence gathering purposes all allegations or intelligence in respect of child sexual abuse whether made by a child, or by an adult who is complaining of assault as a child, received by the JITs would be passed to the CPEA (para. 6.181);
 - there would be a protected child protection budget that is realistic and ensures appropriate response by the Service throughout the State to child sexual abuse (para. 6.182); and
 - the role of the Child Protection Interagency Operational Committee would be confirmed (para. 6.188).
- ◆ Establishment of liaison arrangements with the Children's Commission to permit implementation of proposals developed in Volume V, Chapter 20 of this Report (para. 6.191), and also to assist the CPEA in keeping abreast of current developments in the field of child protection and in providing continuing education (para. 6.190).
 - ◆ The establishment by the Police Service of a comprehensive database and information system that will support officers working in the CPEA, permit a link through the ABCI to paedophile intelligence available on a national basis (para. 6.134), facilitate modern investigative techniques based on intelligence matching, and provide appropriate security for sensitive information (so as to avoid the existence of enclaves of hidden intelligence) (para. 6.135).

CHAPTER 7

THE NSW POLICE SERVICE (II) - SOME CASE STUDIES

7.1 Among the many cases examined by the Royal Commission, a group has been selected for detailed analysis in this Report, to underline the problems and deficiencies which affected their investigation⁷²⁴ and which have led to the recommendations the Commission has made. They relate to:

- suspect paedophile activity occurring in the late 1980s, where corrupt protection was sought or provided;
- the kindergarten cases where through a combination of circumstances, the Service was unable to conduct effective investigations; and to
- a series of cases where questions arise as to whether undue deference was paid to persons in positions of influence or standing in the community, leading to incomplete investigations.

A. ARRANGEMENTS WITH SUSPECTED OFFENDERS

7.2 Early in its hearings the Royal Commission examined the police investigations, during the 1980s, into the activities of Mr Colin Fisk, Mr Philip Bell, Mr Robert Dunn and persons known to them. As a warrant exists for the arrest of Dunn, prosecutions are currently on foot for one of his associates identified in the Royal Commission and of Bell and Fisk, it is inappropriate for:

- findings to be made which might affect these proceedings; or for
- there to be any media coverage of this section of the Report of a kind which might prejudice their fair trial.

7.3 Although some circumspection is required, the Commission must report on these investigations because of their central relevance to the terms of reference and to an appreciation of the problems which emerged. Those matters which particularly concern Bell, and require more detailed mention, are dealt with in a separate Report, which would be suitable for tabling and public release at the conclusion of his trial.

FISK AND HIS ASSOCIATIONS

7.4 Mr Fisk was born in Sydney in 1948 and lived in Rose Bay. In evidence he acknowledged a long-term sexual interest in boys aged 14 to 16 years, which he described as 'hebephilia'.⁷²⁵

7.5 When he was approximately 18 years of age Mr Fisk met Philip Bell at the Rose Bay Jetty and a friendship developed which spanned some 20 years.⁷²⁶

7.6 By 1971 Mr Fisk was living in Surry Hills and working for a giftware outlet as a sales representative.⁷²⁷ As a result of reporting the theft of some of his stock to police, he came into contact with Detective Ronald Fluit.⁷²⁸

⁷²⁴ See terms of reference, Volume VI, Appendix P1.

⁷²⁵ C. J. Fisk, RCT, 30/5/96, p. 26194.

⁷²⁶ C. J. Fisk, RCT, 30/5/96, pp. 26196-99.

⁷²⁷ C. J. Fisk, RCT, 30/5/96, p. 26206.

⁷²⁸ C. J. Fisk, RCT, 30/5/96, p. 26207; R. M. Fluit, RCT, 13/8/96, p. 30428.

7.7 Mr Fisk struck up a friendship with Mr Fluit, who introduced him to Detective Larry Churchill.⁷²⁹ Mr Churchill described Mr Fisk as a person who hung around places where police socialised, particularly hotels.⁷³⁰ Mr Fisk met another police officer, Detective Wells, when the latter attended a robbery at his home in Chippendale.

7.8 Mr Fisk also struck up an association with two other persons of relevance during the 1970s and 1980s, who similarly shared his interests. They were:

- Mr Robert Dunn, a Catholic school teacher with whom he lived in Ivy Street, Chippendale;⁷³¹ and
- a lawyer identified in Commission hearings as KR5, whom he met through a mutual association with Mr Bell.⁷³²

7.9 KR5 acknowledged that he and Fisk discussed their mutual interest in 'teenage boys'.⁷³³ He felt vulnerable because of disclosures he had made to Fisk about certain events of which he was 'very much ashamed'. He was concerned that Fisk would use those admissions to damage him.⁷³⁴

7.10 In the late 1970s and early part of 1980s Fisk introduced KR5 to Churchill. KR5 said that, at this meeting, Fisk spoke of various people who had been charged with sexual offences, and of the opportunities for shakedowns that might be available to them.⁷³⁵ KR5 understood that it was Fisk's suggestion that he be included in such activities, although at that time he said it was not his intention to become involved.⁷³⁶

7.11 KR5 said that he met Mr Churchill again some years later, prior to the end of 1983, when, with Mr Fisk, he went to the Police College in Manly. He recalled that over lunch, Fisk and Churchill discussed a 'fraud they had pulled off'. He gathered that this involved an insurance scam, the proceeds from which were used for the joint purchase of a 'run-about'.⁷³⁷

7.12 KR5 accepted that on both occasions the discussions at which he was present related to corrupt activity.⁷³⁸ He believed that his presence at these discussions put him deeper into a position of vulnerability at Fisk's hands.⁷³⁹

7.13 He felt that if he did not co-operate in Fisk's plans he might be exposed in relation to those matters of which he was embarrassed. He recounted occasions when Fisk made implicit threats of exposure.⁷⁴⁰ As he saw it, the situation was one in which he was 'treading water' to avoid being 'sucked under' but 'it was impossible to get away'.⁷⁴¹ KR5 said that he could not go to the police or to his professional association out of fear of criminal or disciplinary action, and consequential embarrassment and harm to his family.⁷⁴² As a consequence he entered into corrupt dealings with Fisk, and his police associates, to assist various clients involved in the sexual abuse of children.

⁷²⁹ Fisk gave evidence that he met Churchill through Fluit, RCT, 30/5/96, pp. 26208-09; Churchill said he could not remember who introduced him to Fisk, only that Fisk was at a pub and that 'everyone seemed to know him', RCT, 22/5/96, p. 25688; Fluit said he may have introduced Fisk to Churchill, RCT, 13/8/96, p. 30426; Mr Wells said that he, Fisk and Fluit knew each other by the time Fluit went to work at Glebe detectives where Churchill was stationed.

⁷³⁰ L. G. Churchill, RCT, 21/5/96, p. 25586.

⁷³¹ C. J. Fisk, RCT, 30/5/96, p. 26221.

⁷³² Fisk said that he met KR5 through Mr Bell, RCT, 31/7/96, p. 29634; KR5 said it was possible that he met Mr Fisk through Mr Bell, RCT, 1/8/96, p. 29735.

⁷³³ KR5, RCT, 1/8/96, p. 29739.

⁷³⁴ KR5, RCT, 1/8/96, p. 29743.

⁷³⁵ KR5, RCT, 1/8/96, pp. 29739-40.

⁷³⁶ KR5, RCT, 1/8/96, p. 29742.

⁷³⁷ KR5, RCT, 1/8/96, pp. 29740 & 29753.

⁷³⁸ KR5, RCT, 1/8/96, p. 29740.

⁷³⁹ KR5, RCT, 1/8/96, p. 29753.

⁷⁴⁰ KR5, RCT, 1/8/96, p. 29743.

⁷⁴¹ KR5, RCT, 1/8/96, p. 29753.

⁷⁴² KR5, RCT, 1/8/96, p. 29754.

K Roo

7.14 In the late 1970s and early part of 1980, an enterprise known as K Roo operated in Albion Street in the city. It was variously described to the Royal Commission as a 'prostitution service',⁷⁴³ and a 'boy brothel'.⁷⁴⁴

7.15 Two school boys aged 15 informed the police that they had:

- posed for nude photographs, for the proprietors of K Roo and its clients, for money; and had
- engaged in sexual intercourse with the proprietors of K Roo, and with its clients for money.⁷⁴⁵

7.16 Mr Fisk said that KR5 took him to K Roo, and introduced him to its proprietors (code-names KR1 and KR2).⁷⁴⁶ Mr Fisk said that KR5 introduced him as a police officer who could help them stay in business as they had no protection.⁷⁴⁷

7.17 KR5's recollection of the meeting is in some respects different from that of Mr Fisk. He could not recall introducing Mr Fisk as a police officer, and said that he would be surprised if he had done so.⁷⁴⁸ He did recall Mr Fisk saying at a meeting with KR1 that the business 'could hardly succeed unless it went into the area of prostitution and pornography and, if it did that ... it wouldn't succeed unless the police were giving it protection'.⁷⁴⁹ KR5 recalls that there was a sum of money mentioned at the meeting.⁷⁵⁰

7.18 Mr Fisk said that shortly after this meeting he received a telephone call from KR5, who informed him that:

- K Roo had been raided;
- KR1 and KR2 had been charged;⁷⁵¹ and that
- they had asked whether he could make contact with someone, as his clients were willing to deal.⁷⁵²

7.19 KR5 acknowledged that he had received a telephone call from KR1 who informed him of the raid. He met KR1 and was asked to see whether Fisk could do something about the matter.⁷⁵³ He understood that this would involve the possible resolution of the matter by 'corrupt conduct'.⁷⁵⁴ KR5 telephoned Fisk, advised him what had happened, and then left it to him to take up 'the corrupt ball and run with it'.⁷⁵⁵

7.20 After KR5's telephone call, Mr Fisk said that he rang Mr Churchill and arranged a meeting at the Different Drummer Restaurant. Mr Fisk said that:

- he informed Churchill that K Roo was a boy brothel that had been raided by the police, that the operators had been charged, and that they were 'willing to deal';⁷⁵⁶
- in response to Churchill's question he named the arresting officers; and that

⁷⁴³ KR5, RCT, 1/8/96, p. 29746.

⁷⁴⁴ C. J. Fisk, RCT, 31/7/96, p. 29628.

⁷⁴⁵ NSW Police Service, Statements dated 24/7/80 and 11/7/80, RCPS Exhibit 2335C.

⁷⁴⁶ C. J. Fisk, RCT, 31/7/96, p. 29629.

⁷⁴⁷ C. J. Fisk, RCT, 31/7/96, p. 29629.

⁷⁴⁸ KR5, RCT, 1/8/96, p. 29744.

⁷⁴⁹ KR5, RCT, 1/8/96, p. 29744.

⁷⁵⁰ KR5, RCT, 1/8/96, p. 29744.

⁷⁵¹ C. J. Fisk, RCT, 31/7/96, p. 29631.

⁷⁵² C. J. Fisk, RCT, 31/7/96, p. 29632.

⁷⁵³ KR5, RCT, 1/8/96, p. 29747.

⁷⁵⁴ KR5, RCT, 1/8/96, p. 29748.

⁷⁵⁵ KR5, RCT, 1/8/96, p. 29748.

⁷⁵⁶ C. J. Fisk, RCT, 31/7/96, p. 29632.

- Churchill then left him for about five minutes before returning and advising him that the officer in charge of the matter would not be involved in any corrupt dealing, but that his associate would.⁷⁵⁷

7.21 Mr Fisk said that the price that Churchill gave him was \$5,000 up front and \$500 per month to stay open.⁷⁵⁸ Fisk then phoned KR5 in his office and 'gave him the price'.⁷⁵⁹ Fisk said that KR5 indicated that his clients were with him. After some muffled conversation, he said that KR5 replied 'they did not have the money'. Fisk said that he then informed Churchill that the deal was off.⁷⁶⁰

7.22 KR5's recollection is that Mr Fisk rang him back, said that he had spoken to Churchill and indicated that the police were willing to enter into an arrangement. He said that by this time, because of his fear of exposure, he was trying to tread a very thin line between appeasing Fisk and not getting himself into more difficulties.⁷⁶¹ However, as his clients could not afford to pay for protection, the 'deal' was not taken any further.⁷⁶²

7.23 Mr Churchill denied his involvement in any discussions to secure corrupt protection in relation to this matter.⁷⁶³

ALLEGED INSURANCE FRAUD - JUNE 1985

7.24 Mr Fisk said that while he and Churchill were drinking in the White Horse Hotel at Surry Hills around June 1985 they decided to carry out an 'insurance rort' in respect of the premises in Ivy Street, Chippendale owned by Dunn in which Fisk was living.⁷⁶⁴ According to him they decided to stage a 'theft' of property of a nominal value of about \$25,000, which would then be the subject of an insurance claim.⁷⁶⁵

7.25 Mr Fisk described the scheme as follows:

- he arranged a cover note over the phone with the GIO;⁷⁶⁶
- he advised Dunn not to let anyone come around to the house to observe its contents;⁷⁶⁷
- he and Churchill went to the premises to work out a point of entry for the 'thief'. Churchill smashed the back door in;⁷⁶⁸
- Churchill instructed him to telephone Redfern detectives, and arrange for Detective Wells to attend and do a criminal investigation report;⁷⁶⁹
- Churchill gave Fisk a list of items that were to be claimed as stolen, including a large amount of electrical equipment and some diving gear. He was also given an explanation of the various diving items by Churchill as he knew nothing about that activity;⁷⁷⁰
- he rang Redfern detectives as instructed;⁷⁷¹
- the detective assisting Wells came around to the premises the following night and gave him a list which he was to write out in his own hand and return;⁷⁷²

⁷⁵⁷ C. J. Fisk, RCT, 31/7/96, p. 29633.

⁷⁵⁸ C. J. Fisk, RCT, 31/7/96, p. 29634.

⁷⁵⁹ C. J. Fisk, RCT, 31/7/96, p. 29634.

⁷⁶⁰ C. J. Fisk, RCT, 31/7/96, p. 29634.

⁷⁶¹ KR5, RCT, 1/8/96, p. 29751.

⁷⁶² KR5, RCT, 1/8/96, p. 29749.

⁷⁶³ L. G. Churchill, RCT, 31/7/96, pp. 29608-09.

⁷⁶⁴ C. J. Fisk, RCT, 30/5/96, p. 26222.

⁷⁶⁵ C. J. Fisk, RCT, 30/5/96, p. 26221.

⁷⁶⁶ C. J. Fisk, RCT, 30/5/96, p. 26222.

⁷⁶⁷ C. J. Fisk, RCT, 30/5/96, p. 26224.

⁷⁶⁸ C. J. Fisk, RCT, 30/5/96, p. 26224.

⁷⁶⁹ C. J. Fisk, RCT, 30/5/96, p. 26224.

⁷⁷⁰ C. J. Fisk, RCT, 30/5/96, p. 26225.

- the police officers visited the adjoining premises ostensibly to make inquiries of neighbours as to whether they had seen or heard anything;⁷⁷³
- the following day a police officer attended for the purpose of taking fingerprints;⁷⁷⁴
- the insurance claim was lodged,⁷⁷⁵ and he received a total payout of \$15,000;⁷⁷⁶
- he requested that the insurance company make out separate cheques so that he could avoid sharing some of the payout;⁷⁷⁷
- he informed Churchill he had received \$10,000;
- he gave the cheque for that sum to Churchill who said that his boss would take the 'lions share' and pay the other police involved; and
- he was later given \$2,000 by Churchill.⁷⁷⁸

7.26 A Police Incident Report was in fact completed by Detective Wells. The property listed as stolen included electrical items and diving gear. Mr Fisk said that the scam helped him financially as he had developed a gambling problem and was drinking heavily.⁷⁷⁹

7.27 Mr Churchill and Detective Wells denied any involvement in the scheme described by Mr Fisk,⁷⁸⁰ although Wells acknowledged having been called in to investigate an alleged break enter and steal in respect of the premises.⁷⁸¹

ALLEGED 1985 EXTORTION

7.28 Another witness, code-named CS7, who was associated with a boys' ice hockey team,⁷⁸² informed the Royal Commission of his sexual attraction to young males between 11 and 14 years.⁷⁸³ He met a boy aged between nine and 11 years, (known in the proceedings as CS1), who helped with drinks for the ice hockey team.⁷⁸⁴ CS7 had a friend, code-named CS8, who shared his sexual attraction towards boys. CS7 introduced him to CS1, who subsequently complained to the police that he had been sexually assaulted by CS8.⁷⁸⁵

7.29 CS7 informed the Commission that he was contacted by police whose names he claimed he did not recall. He was advised that he was in a 'lot of trouble'. A demand was made for \$15,000.⁷⁸⁶ CS7 consulted with CS8 who advised him to see a lawyer. CS7 thereafter rejected the demand for money.⁷⁸⁷

⁷⁷¹ C. J. Fisk, RCT, 30/5/96, p. 26230.

⁷⁷² C. J. Fisk, RCT, 30/5/96, p. 26229.

⁷⁷³ C. J. Fisk, RCT, 30/5/96, p. 26231.

⁷⁷⁴ C. J. Fisk, RCT, 30/5/96, p. 26229.

⁷⁷⁵ See Brief of Evidence in the matter of L. G. Churchill, P. J. Wells and B. G. Hosemans - Conspiracy to Act Corruptly in the Discharge of their Public Duty, RCPS Exhibit 2283/7.

⁷⁷⁶ C. J. Fisk, RCT, 30/5/96, p. 26237 & C. J. Fisk, RCT, 31/7/96, p. 29611.

⁷⁷⁷ C. J. Fisk, RCT, 30/5/96, p. 26237. This did in fact occur, see GIO Claims Discharge Form, RCPS Exhibit 1957, at Doc. 2202211.

⁷⁷⁸ C. J. Fisk, RCT, 30/5/96, p. 26238.

⁷⁷⁹ C. J. Fisk, RCT, 30/5/96, p. 26218.

⁷⁸⁰ P. J. Wells, RCT, 31/7/96, pp. 29604-05; L. G. Churchill, RCT, 22/5/96, pp. 25720-21.

⁷⁸¹ P. J. Wells, RCT, 23/5/96, p. 25877.

⁷⁸² CS7, RCT, 30/7/96, p. 29486.

⁷⁸³ CS7, RCT, 30/7/96, p. 29487.

⁷⁸⁴ CS7, RCT, 30/7/96, p. 29486.

⁷⁸⁵ L. G. Churchill, RCT, 30/7/96, p. 29471; Police incident report re indecent assault, 7/8/85, RCPS Exhibit 2370C.

⁷⁸⁶ CS7, RCT, 30/7/96, p. 29490.

⁷⁸⁷ CS7, RCT, 30/7/96, pp. 29490-92.

7.30 CS8, who gave evidence from overseas by satellite link, informed the Commission that:

- in 1985, he found Churchill's card under the door of his home at Redfern with a message 'urgent see you' written on it. He did not contact Churchill but went to stay elsewhere for a period taking what he described as 'evasive action';⁷⁸⁸
- he did, however, speak to Dunn, who said that he could 'fix things' as he had a friend with police contacts;⁷⁸⁹
- he attended Dunn's premises in Dulwich Hill where he met Fisk, who passed himself off as somebody who worked inside police headquarters;⁷⁹⁰
- Fisk advised CS8 that he could fix the matter for \$12,000. CS8 responded that he was not going to be involved and left the premises;⁷⁹¹
- on the morning of 13 September 1985, CS8 was arrested at his place of work by Churchill and another officer and taken to Redfern Police Station;⁷⁹²
- when he asked to contact his lawyer Churchill said:

you really are being stupid and you are not listening to us. We are fully aware that you would of course beat any charges that were brought against you. However as we propose to charge you with 20 counts of buggery and invite every single newspaper we can get into the courtroom - that won't do your career prospects a great deal of good. How much is that worth to you?
- police said they knew that CS7 was also involved but that CS8 was to be the paymaster for both;⁷⁹³
- Churchill and his 'offsider' indicated they would take \$8,000 when CS8 said that he could not find \$12,000;⁷⁹⁴
- Churchill's 'offsider' took CS8 to the Bank of NSW and to the Commonwealth Bank in the city and collected the sum of \$8,000, from him;⁷⁹⁵ and that
- after this event CS8 decided to leave the country which he did in 1986.⁷⁹⁶

7.31 Mr Churchill's duty book for 13 September 1985 records that he went 'out with Detective Sergeant Fluit and patrol to Elizabeth Street, Sydney - interview [CS8] born [date of birth supplied] then to Redfern office re same denied offence of sexual assault'.⁷⁹⁷ The physical description CS8 gave of Churchill's 'offsider'⁷⁹⁸ accords with the appearance of Mr Fluit.

7.32 Mr Fisk's version of these events was as follows:

- Dunn visited him late one evening in 1985. He had Churchill's card with him and informed him that it had been given to him by CS8;⁷⁹⁹
- Dunn informed him that CS8 was in trouble in relation to a 14 year-old 'lad' and asked if he could help;⁸⁰⁰

⁷⁸⁸ CS8, RCT, 13/8/96, pp. 30461-62.

⁷⁸⁹ CS8, RCT, 13/8/96, p. 30462.

⁷⁹⁰ CS8, RCT, 13/8/96, p. 30462.

⁷⁹¹ CS8, RCT, 13/8/96, p. 30463.

⁷⁹² CS8, RCT, 13/8/96, pp. 30460-61.

⁷⁹³ CS8, RCT, 13/8/96, p. 30464.

⁷⁹⁴ CS8, RCT, 13/8/96, p. 30465.

⁷⁹⁵ CS8, RCT, 13/8/96, p. 30466.

⁷⁹⁶ CS8, RCT, 13/8/96, p. 30468.

⁷⁹⁷ L. G. Churchill, Duty Book entry for 13/9/85, RCPS Exhibit 2266C/2.

⁷⁹⁸ CS8, RCT, 13/8/96, pp. 30461 & 30465.

⁷⁹⁹ C. J. Fisk, RCT, 1/8/96, p. 29650.

⁸⁰⁰ C. J. Fisk, RCT, 1/8/96, p. 29651.

- the following morning he rang Churchill, who said 'we'll deal, but it is a bad one'. Churchill mentioned \$20,000 or \$25,000;⁸⁰¹
- he arranged a meeting with CS8, also attended by Dunn, and informed him of the \$20,000 or \$25,000 needed. CS8 suggested that he would make monthly payments;⁸⁰²
- he discussed the proposal with Churchill who informed him that it sounded as though CS8 was going to do a 'runner'. Churchill asked him for CS8's work address which he then obtained from Dunn;⁸⁰³
- Churchill subsequently advised him that a deal had been done, for \$8000,⁸⁰⁴ and
- he did not receive any payment for this extortion as he was doing a favour for Dunn.⁸⁰⁵

7.33 Mr Churchill denied the allegations made by CS7 and CS8 and by Fisk.⁸⁰⁶ Mr Fluit agreed that the description of the offsider given by CS8 was consistent with his physical appearance,⁸⁰⁷ but said that:

- he had 'no recollection' of being with Churchill as described in Churchill's duty book;⁸⁰⁸
- he could not offer any explanation why his name appeared in Churchill's book on the day of the interview with CS8,⁸⁰⁹ and
- he had 'no recollection' of the matter⁸¹⁰ but was able to say that he did not take CS8 or anyone else to the bank as alleged.⁸¹¹

7.34 No further proceedings were taken in relation to CS1's complaint. By reason of their circumstances, there was no room to suspect any collaboration between Mr Fisk, CS7 or CS8 before they were called as witnesses before the Royal Commission.

ALLEGED 1987 EXTORTION

7.35 Mr Fisk said that in 1986 Dunn informed him that:

- he had a friend who had absconded whilst on bail in relation to allegations of sexual activity with children, and who was soon to arrive in Sydney from interstate; and that
- his friend would need 'some help' which he understood to mean police protection.⁸¹²

7.36 Mr Fisk said that Dunn took his friend to meet him at Helensburg. During this meeting, Mr Fisk said, he became aware that Dunn's friend had approximately \$58,000 cash and was looking to buy a business. Mr Fisk said that he arranged an introduction to a former landlord and a plan was then made to open a pinball parlour, financed by the friend.⁸¹³ The \$58,000 was deposited to Dunn's Commonwealth Bank account to avoid it being traced.⁸¹⁴ Of that money \$18,000 was invested in the business.

⁸⁰¹ C. J. Fisk, RCT, 1/8/96, pp. 29651-52.

⁸⁰² C. J. Fisk, RCT, 1/8/96, p. 29653.

⁸⁰³ C. J. Fisk, RCT, 1/8/96, p. 29654.

⁸⁰⁴ C. J. Fisk, RCT, 1/8/96, p. 29655.

⁸⁰⁵ C. J. Fisk, RCT, 1/8/96, p. 29655.

⁸⁰⁶ L. G. Churchill, RCT, 30/7/96, p. 29476.

⁸⁰⁷ R. M. Fluit, RCT, 15/8/96, p. 30596.

⁸⁰⁸ R. M. Fluit, RCT, 15/8/96, p. 30597.

⁸⁰⁹ R. M. Fluit, RCT, 15/8/96, p. 30598.

⁸¹⁰ R. M. Fluit, RCT, 15/8/96 pp. 30598 & 30668.

⁸¹¹ R. M. Fluit, RCT, 15/8/96, p. 30597.

⁸¹² C. J. Fisk, RCT, 30/5/96, p. 26210.

⁸¹³ C. J. Fisk, RCT, 30/5/96, p. 26211.

⁸¹⁴ C. J. Fisk, RCT, 30/5/96, pp. 26210-12.

7.37 Mr Fisk said that in mid-1987, as a result of a disagreement with Dunn's friend, he drank a bottle of Scotch and then telephoned Churchill,⁸¹⁵ to enlist his help in setting up a scam to take the balance of the monies deposited to the account. He assessed Dunn's friend to be vulnerable because of:

- his difficulties interstate; and because of
- his association with Dunn who was living at the time with an adolescent boy; and had a collection of videos, including child pornography from overseas and videos of himself having sexual intercourse with pre-pubescent children.⁸¹⁶

7.38 A former police officer (name suppressed) informed the Commission that:

- Wells indicated that if he did a job with him on the following day there might be a 'quid in it for him';⁸¹⁷
- he understood that Wells had obtained a search warrant for premises where a person wanted in Queensland might be found;⁸¹⁸
- he and Wells went to the premises the following morning where they found Dunn and his friend;⁸¹⁹
- each was taken back to the Sydney Police Centre, together with some items that were seized including some videos of naked young boys;⁸²⁰
- at the Police Centre, in discussions with Churchill, an arrangement was made to release Dunn and his friend in exchange for \$40,000;⁸²¹
- on Churchill's instructions,⁸²² he and Wells took Dunn and his friend back to Dunn's premises to get the necessary banking documents, and then to the Commonwealth Bank in Martin Place. He waited outside whilst Wells went into the bank with Dunn and his friend;⁸²³
- Wells, Dunn and his friend returned to the car with money in a bank bag;⁸²⁴
- they then dropped Dunn and his friend off and returned to the Police Centre with the money;⁸²⁵
- he, Wells and Churchill went to the toilet area near the detectives offices where the money was counted and divided;⁸²⁶ and that
- Churchill received \$25,000 as he had to look after his informant Fisk. Wells received \$9,000 and he received \$6,000.⁸²⁷

⁸¹⁵ C. J. Fisk, RCT, 30/5/96, p. 26214.

⁸¹⁶ C. J. Fisk, RCT, 30/5/96, p. 26214.

⁸¹⁷ Witness name suppressed, RCT, 20/5/96, p. 25514.

⁸¹⁸ Witness name suppressed, RCT, 20/5/96, p. 25514.

⁸¹⁹ Witness name suppressed, RCT, 20/5/96, p. 25514.

⁸²⁰ Witness name suppressed, RCT, 20/5/96, p. 25515.

⁸²¹ Witness name suppressed, RCT, 20/5/96, p. 25518.

⁸²² Witness name suppressed, RCT, 20/5/96, p. 25520.

⁸²³ Witness name suppressed, RCT, 20/5/96, pp. 25520-21.

⁸²⁴ Witness name suppressed, RCT, 20/5/96, p. 25521.

⁸²⁵ Witness name suppressed, RCT, 20/5/96, pp. 25521-22.

⁸²⁶ Witness name suppressed, RCT, 20/5/96, pp. 25522-24.

⁸²⁷ Witness name suppressed, RCT, 20/5/96, pp. 25524-25.

7.39 Mr Churchill and Mr Wells denied that any such corrupt arrangement took place.⁸²⁸ Churchill, Wells and the former police officer were acquitted in 1994 on charges relating to this alleged extortion,⁸²⁹ but the former police officer informed the Royal Commission that his evidence at that trial was perjured. It was shown by banking records that \$40,000 was in fact withdrawn from Dunn's account on 21 August 1987.⁸³⁰ Fisk corroborated the former police officer and said that Churchill forgave him a debt of about \$10,000 on a Volvo which he had sold to Churchill while encumbered.⁸³¹

OPERATION HAWKESBURY 1989

7.40 In November 1988, Mr Churchill, who was stationed at Kings Cross arrested a drug dealer Alan John Saunders.⁸³² Churchill struck a deal with Saunders whereby for the payment of money, the charges would be lessened and he would be protected for future drug dealing. Between November 1988 and February 1989 Saunders and Churchill engaged in various illicit activities.⁸³³

7.41 One of Mr Dunn's friends, Mr Jim Hayden, was arrested in February 1989 on drugs charges. Although the police took possession of a quantity of drugs, they missed those which he had buried in the back yard of a Green Valley property.⁸³⁴

7.42 Mr Hayden, who was refused bail, informed Mr Dunn of his predicament and of the location of the buried drugs. Dunn contacted Fisk to see if he could secure Churchill's assistance in arranging bail.⁸³⁵

7.43 Mr Fisk arranged a luncheon meeting in early March 1989 at a restaurant in the Kings Cross area.⁸³⁶ Those present included Fisk, Churchill and another police officer.⁸³⁷

7.44 Fisk informed Churchill of Hayden's predicament and was assured of Churchill's interest.⁸³⁸ Churchill was due to travel to the Philippines on holiday so he arranged for another police officer to look after the matter whilst he was overseas. Mr Churchill informed Fisk that he should do whatever that officer instructed him to do.⁸³⁹ Mr Dunn understood that the buried drugs would be recovered and would constitute payment for Churchill's assistance in obtaining bail, and for Fisk looking after him so that he would not be stood over.⁸⁴⁰

7.45 Churchill made contact with Saunders and recruited him into the scheme. It was to be his role to sell the drugs once they were recovered.⁸⁴¹

7.46 What Churchill, Saunders, Dunn and Fisk had not anticipated was that the other officer would report the matter to Internal Police Security Branch (IPSB), and assist it with a covert investigation which was to become known as Operation Hawkesbury.

⁸²⁸ L. G. Churchill, RCT, 22/5/96, p. 25704.

⁸²⁹ Transcript of evidence for *R v Wells & anor.*, 14/3/94, RCPS Exhibit 1957, at Doc. 2201019-784; Transcript of evidence for *R v Churchill*, 18/4/94, RCPS Exhibit 1957, at Doc. 2201785-2199.

⁸³⁰ R. J. Dunn, Statements to the NSW Police Service, RCPS Exhibit 1605C, at Doc. 1982459.

⁸³¹ C. J. Fisk, RCT, 30/5/96, p. 26217.

⁸³² *R v Alan John Saunders* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202249.

⁸³³ *ibid.*

⁸³⁴ *R v Colin John Fisk* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202243-44.

⁸³⁵ *R v Robert Joseph Dunn* (1990), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202239.

⁸³⁶ *R v Colin John Fisk* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202244.

⁸³⁷ *ibid.*

⁸³⁸ *ibid.*

⁸³⁹ L. G. Churchill, RCT, 21/5/96, p. 25590.

⁸⁴⁰ *R v Robert Joseph Dunn* (1990), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202240.

⁸⁴¹ *R v Larry Glen Churchill* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202233.

7.47 The officer wore a listening device at subsequent meetings with those involved. One of the meetings was in the Guys and Dolls Hotel at Broadway on 26 March 1989.⁸⁴² Although the device did not work at that meeting, the officer reported that Fisk had informed him that:

- it all started 20 years ago when Churchill was at Glebe;
- Detectives Schweinsburg, Fluit and Churchill 'ran us old peds';
- Churchill had taken hundreds of thousands of dollars from them; and that
- if someone was arrested or under suspicion these police would fix up any problems.⁸⁴³

Mr Fisk generally supported the truth of this account, in his subsequent interview with IPSB,⁸⁴⁴ and in his evidence to the Royal Commission.⁸⁴⁵

7.48 On 30 March 1989, Churchill returned from the Philippines and was contacted by Fisk to arrange distribution of the profits from the drug sales.⁸⁴⁶ Subsequent to that call Churchill received a coded phone call from Detective Sergeant Kim Thompson,⁸⁴⁷ warning him of IPSB interest.⁸⁴⁸

7.49 The police arrested Churchill, Saunders and Fisk on 31 March 1989. Each was refused bail. Dunn fled the State.

7.50 When Dunn was eventually arrested in Victoria, in October 1989, 17 videos were seized including several which depicted him having sexual intercourse with pre-pubescent children. These videos were handed over to the IPSB.⁸⁴⁹

7.51 After Fisk had been in gaol for some weeks he decided to inform IPSB of his unlawful associations with police. He took part in a number of records of interview in respect of his own activities, and also in relation to his knowledge of the illegal activities of others, particularly those whom he claimed were engaged in sexual relationships with children.⁸⁵⁰

7.52 On 17 August 1989, Mr Fisk adhered to a guilty plea which he had entered on 19 July 1989 and was sentenced by Judge Court in the District Court for his part in a conspiracy, and for a further offence of supplying methylamphetamine. A letter acknowledging his assistance was taken into account and he was given a concurrent sentence of five years' penal servitude on both charges, with a non-parole period of three years both to date from 31 March 1989.⁸⁵¹

7.53 His co-conspirators received head sentences ranging from:

- 12 years for Churchill;
- six years for Saunders, who also received a significant discount for his assistance; and
- a minimum term of two years and three months and an additional term of nine months for Dunn who was also the recipient of a discount for his assistance.⁸⁵²

⁸⁴² Extract from Statement of (name suppressed) in the matter of Churchill, 25/8/89, RCPS Exhibit 3067C, p. 11.

⁸⁴³ Record of Interview of (name suppressed), 27/3/89, RCPS Exhibit 3068C.

⁸⁴⁴ C. J. Fisk, Statement to IPSB, 7/12/89, RCPS Exhibit 1604C, Annexure B; and C. J. Fisk, Statement to IPSB, 2/10/90, RCPS Exhibit 1604C, Annexure C.

⁸⁴⁵ C. J. Fisk, RCT, 31/7/96, pp. 29614-16; C. J. Fisk, RCT, 30/5/96, pp. 26208-10; C. J. Fisk, RCT, 1/8/96, pp. 29648-49.

⁸⁴⁶ *R v Larry Glen Churchill* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202234.

⁸⁴⁷ See Volume I, Chapter 5, paras. 5.13 - 5.14 of this Report.

⁸⁴⁸ L. G. Churchill, RCT, 21/5/96, pp. 25572-73.

⁸⁴⁹ K. W. Watson, RCT, 26/3/96, p. 22588.

⁸⁵⁰ C. J. Fisk, Statutory Declaration, 17/4/95, RCPS Exhibit 1604C.

⁸⁵¹ *R v Colin John Fisk* (1989), Parramatta District Court, Judge Court remarks on sentence, RCPS Exhibit 1957, at Doc. 2202243-47.

⁸⁵² *R v Larry Glen Churchill* (1990) Parramatta District Court, Judge Court remarks on sentence, *R v Robert Joseph Dunn* on 28/5/90, *R v Alan John Saunders* on 17/8/89, RCPS Exhibit 1957.

7.54 Mr Dunn agreed to assist police in their inquiries in relation to the protection of paedophiles and provided several records of interview.⁸⁵³ Dunn's friend who had paid \$40,000 to the police in 1987, in the circumstances earlier noted, also agreed to assist police.

7.55 Mr Dunn informed IPSB that he had been aware of the Fisk plan earlier mentioned to use his premises for a fraudulent insurance claim. When Dunn indicated some hesitancy, Fisk cautioned him that Churchill might go to the school where he was teaching, and inform his employer of his sexual activities. Dunn then agreed to the scam going forward.⁸⁵⁴

7.56 This highlights the great vulnerability of the child sex offender to extortion at the hands of the corrupt.

7.57 Although at the Royal Commission, despite his conviction, Mr Churchill denied his participation in any corrupt relationship or even a friendship with Mr Fisk, he did say that:

- in 1984/85 he lent \$6,000 to Fisk at a time when his salary was \$35,000, even though he had never made any other similar loan and had no idea why it was made on this occasion,⁸⁵⁵
- he had lent him other money from time to time,⁸⁵⁶
- he allowed Fisk use of his mini-moke, a gesture he explained as 'just part of his generous approach to [him]';⁸⁵⁷ and that
- Fisk had been to his home,⁸⁵⁸ and they had visited hotels together.⁸⁵⁹

7.58 In addition he wrote to Fisk on 16 May 1989 whilst each was in gaol, encouraging him to put in an application for a transfer to Long Bay. In that letter he said:

- 'we must stay together';
- 'Philip (Bell) is going to drop you a line and let you know how important it is'; and
- 'Col, we've known each other for too long to bullshit to each other. We had our birthdays in here old son - 40 bloody 1. Get back here and lets pool our resources, all 3 of us'.⁸⁶⁰

7.59 After Fisk had pleaded guilty and been remanded for sentence, Churchill wrote to him, in a letter dated 26 July 1989, in which he said:

- 'Haven't heard of you coming back here mate? Still hope you do. Don't listen to their deals. They will throw you to the wolves when they are finished with you'; and
- 'I was told that you were giving evidence against me. I don't know what you can say but I know you'll do what your conscience tells you to do. I know also that you have to try to protect yourself. Hope to hear from you soon old son'.⁸⁶¹

⁸⁵³ R. J. Dunn, Statements made to NSW Police Service, RCPS Exhibit 1605C.

⁸⁵⁴ *ibid.*

⁸⁵⁵ L. G. Churchill, RCT, 21/5/96, p. 25584.

⁸⁵⁶ L. G. Churchill, RCT, 21/5/96, p. 25586.

⁸⁵⁷ L. G. Churchill, RCT, 21/5/96, p. 25585.

⁸⁵⁸ L. G. Churchill, RCT, 21/5/96, p. 25586.

⁸⁵⁹ L. G. Churchill, RCT, 21/5/96, p. 25586.

⁸⁶⁰ Letter to C. J. Fisk from L. G. Churchill, 16/5/89, RCPS Exhibit 1917/2.

⁸⁶¹ Letter to C. J. Fisk from L. G. Churchill, 26/7/89, RCPS Exhibit 1917/1.

7.60 On 16 January 1990, after both Fisk and Churchill had pleaded guilty and been sentenced, Churchill wrote another letter:

I understand we have to be careful what we write mate. Fuck the ISU, there's nothing they can do to you now. Just remember, don't talk to them ... have your solicitor serve a letter on them stating that you will not be interviewed ... just keep yourself to yourself. Your own counsel if its not too late. If you know of any further attacks please let me know as I would do for you OK?

Please write soon Col. Remember don't cut your own throat by talking to them, to anyone OK. Keep your own counsel about your case.⁸⁶²

7.61 These letters inevitably suggest that Mr Churchill's relationship with Mr Fisk was much closer, and that he knew very much more about past corrupt dealings with paedophiles, than he admitted to the Royal Commission. Moreover, there was abundant material available, via analysis of his financial affairs, to suggest that he was living far beyond his police salary, and making numerous overseas trips for purposes that he could not adequately explain.⁸⁶³

UNDERTAKINGS NOT TO PROSECUTE

7.62 To secure the assistance of Fisk and Dunn in giving evidence against Churchill, Wells and a former police officer, in respect of the alleged 1987 extortion, Chief Inspector Watson sought an immunity from prosecution.⁸⁶⁴

7.63 Chief Inspector Watson was aware that the videos which had been seized by the Victorian Police at the time of Mr Dunn's arrest included footage of him having intercourse with pre-pubescent children.⁸⁶⁵ These videos were available to the prosecuting authorities at the time of the Churchill/Wells committal on the extortion matter.⁸⁶⁶

7.64 On 3 April 1990 the Attorney General signed undertakings that no criminal proceedings would be brought against Mr Dunn or Mr Fisk for any offence committed by them 'arising out of or associated with the receipt of a sum of money or part thereof which was withdrawn from the bank account of Robert Dunn on or about 21 August 1987'.⁸⁶⁷

7.65 During the committal proceedings a question arose as to whether the undertaking extended to protect Mr Dunn in respect of any admissions he made of illegal sexual activity.⁸⁶⁸ The presiding magistrate took the view that it did not have this effect. The Senior Deputy Director of Public Prosecutions wrote to the Attorney General on 14 August 1990⁸⁶⁹ noting that:

- the witnesses were paedophiles;
- they were not covered by the existing undertakings against any admissions made in that regard;
- the Crown wished to lead evidence of the whole circumstances leading to their arrest and subsequent misconduct; and that
- apart from their own admissions there was 'no other evidence available of any homosexual offences' on their part.

In those circumstances, he recommended an extension of the undertakings.

⁸⁶² Letter to C. J. Fisk from L. G. Churchill, 16/1/90, RCPS Exhibit 1917/3.

⁸⁶³ L. G. Churchill, RCT, 22/5/96, 30/7/96; L. G. Churchill, Financial documents, RCPS Exhibits 2257-2260.

⁸⁶⁴ K. W. Watson, RCT, 26/3/96, p. 22600.

⁸⁶⁵ K. W. Watson, RCT, 26/3/96, p. 22589.

⁸⁶⁶ K. W. Watson, RCT, 26/3/96, p. 22590.

⁸⁶⁷ NSW Attorney General, Indemnity granted to Mr Robert Dunn, 3/4/90, RCPS Exhibit 1608C; NSW Attorney General, Indemnity granted to Mr Colin Fisk, 3/4/90, RCPS Exhibit 3160.

⁸⁶⁸ M. A. Viney, Letter to the Attorney General, 14/8/90, RCPS Exhibit 1710C.

⁸⁶⁹ *ibid.*

7.66 The Attorney General and the Solicitor General were not, however, informed that the Crown had in its possession video evidence of Mr Dunn having sexual intercourse with numerous pre-pubescent male children. Chief Inspector Watson agreed that, by omission of this significant fact, both the Solicitor General and the Attorney General were misled. So far as he was concerned, he had made the contents of the videos clear to his superiors and to the prosecuting authorities.⁸⁷⁰

7.67 The Attorney General granted a further undertaking, on 15 August 1990, that 'any answer given, or statement or disclosure made by Dunn or the fact that he disclosed or produced a document or other thing in the proceedings would not be used in evidence against him'.⁸⁷¹ The same undertaking was provided to Fisk.

7.68 After Mr Churchill and Mr Wells were committed for trial, further investigations were carried out in relation to Dunn arising out of the matters contained in the videos.⁸⁷² Mr Luland QC, then a Crown Prosecutor and Senior Deputy Director of the DPP, delivered an opinion that the undertakings given would not protect Dunn against any charges that may arise from the videotapes.⁸⁷³ However, by the time this advice was delivered, the children, so far as they had been identified, indicated that they did not wish to proceed with the matter.⁸⁷⁴ As a consequence neither Dunn nor Fisk were charged with any offences in NSW at that time. Each gave evidence at the trials in 1990 which resulted in the acquittal of Churchill, Wells and the other former police officer.

7.69 Chief Inspector Watson described the contents of Dunn's videos as 'horrifying' and accepted that they clearly depicted him committing crimes on young children.⁸⁷⁵ He acknowledged that he had given a higher priority to the prosecution of the police than to placing Mr Dunn before the court.⁸⁷⁶ In the result, Fisk, who was returned to Victoria to face sentence and prison, fared worse than Dunn, who remained at large, having left Australia in January 1996 after being served with a summons to appear before the Royal Commission.

OPERATION GULL

7.70 In November 1989 Chief Inspector Watson sought and received approval to commence an operation, based on the information supplied by Fisk and Dunn, which later became Operation Gull.⁸⁷⁷ Its main objective was to find out whether police had protected paedophiles.⁸⁷⁸

7.71 It was appreciated, relatively early, that a prolonged investigation was required because of the complexity and networking of paedophile organisations.⁸⁷⁹ One matter arising out of this inquiry, which impacted on future investigations was the placing of a caveat on the information supplied by the informants. This caveat was to ensure confidentiality, but by the time the Royal Commission commenced its public hearings in 1996, it was apparent that valuable intelligence had not been released for investigation.⁸⁸⁰

⁸⁷⁰ K. W. Watson, RCT, 26/3/96, pp. 22614-15.

⁸⁷¹ NSW Attorney General, Indemnity granted to Mr Robert Dunn, 15/8/90, RCPS Exhibit 1710C, at Doc. 1968345-46.

⁸⁷² K. W. Watson, RCT, 26/3/96, p. 22621.

⁸⁷³ C. A. Luland QC, Letter to the Assistant Commissioner, Professional Responsibility, 10/3/92, RCPS Exhibit 1672AC.

⁸⁷⁴ K. W. Watson, RCT, 26/3/96, p. 22624.

⁸⁷⁵ K. W. Watson, RCT, 26/3/96, p. 22589.

⁸⁷⁶ K. W. Watson, RCT, 26/3/96, p. 22601.

⁸⁷⁷ K. W. Watson, RCT, 26/3/96, p. 22617; Operation Gull was previously Operation Speedo. That name was chosen when there were no particular procedures for operational names. It was soon realised that it could cause offence and sensibly the Police Service decided to rename the operation.

⁸⁷⁸ K. W. Watson, RCT, 10/4/96, p. 23237.

⁸⁷⁹ L. A. Scott, Briefing Note, 24/7/90, RCPS Exhibit 1663C/5.

⁸⁸⁰ J. A. Choat, RCT, 20/3/96, pp. 22181-82; A. S. Peate, RCT, 21/3/96 p. 22358; A. A. Graham, RCT, 20/3/96, p. 22234; L. A. Scott, RCT, 7/8/96, pp. 29998-99.

7.72 Although the information that had been provided to IPSB was vast, the investigative, surveillance and technical resources of IPSB were stretched to the limit. Detective Sergeant Lola Scott, a co-ordinator of Operation Gull, warned that it would require those resources on a full-time basis.⁸⁸¹

7.73 On 6 September 1990, the Honourable Mrs Grusovin MLC raised in the Legislative Assembly the fact that:

- serious allegations had been made that certain police officers had been involved in a paedophile protection racket;⁸⁸²
- she wished to make available to the Premier information, arising out of a record of interview with a self-confessed paedophile, suggesting that the officer in charge of the Seabeach Kindergarten case was linked to the racket;⁸⁸³ and that
- the Attorney General had granted immunity to the paedophile she was referring to so that he might testify in another case.⁸⁸⁴

7.74 The Minister for Police, the Honourable Mr Pickering MLC confirmed that Internal Security were carrying out an investigation into police protection of paedophiles.⁸⁸⁵ Mr Watson and Ms Scott took the view that this disclosure would have alerted corrupt police and paedophiles to the inquiry. As a result, they suspended covert operations to protect investigators and surveillance officers from exposure.⁸⁸⁶

7.75 On 7 September 1990, at a meeting attended by Mr Pickering, Commissioner Avery, Assistant Commissioner Cole, and Mr Temby QC:

- the ICAC was briefed in relation to the police investigations;
- the ICAC agreed to monitor the investigations, subject to the proviso that, at some stage, it might elect, or be asked, to commence investigative action of its own; and
- it was agreed that joint monthly briefings would occur.⁸⁸⁷

7.76 Mr Temby saw the ICAC's role as monitoring the investigations 'to ensure there was no protection of police by police'.⁸⁸⁸ Although there were no subsequent meetings between Mr Temby and the Minister,⁸⁸⁹ there were a number of meetings between ICAC officers and police between October 1991 and June 1991.

7.77 On 6 May 1991 a review of Operation Gull was delivered by Mr Watson to the Commander of IPSB, in which he reported that:

- many inquiries were still to be made and information analysed and assessed;
- further staff increases would be required to enable a proper investigation; and that
- the anticipated time frame for the operation would extend to February 1992 and perhaps longer depending on the information that was forthcoming.⁸⁹⁰

⁸⁸¹ L. A. Scott, Briefing Note, 24/7/90, RCPS Exhibit 1663C/5.

⁸⁸² NSW Parliament, *Hansard*, Legislative Assembly, 6/9/90, p. 6751.

⁸⁸³ *ibid.*, p. 6757.

⁸⁸⁴ *ibid.*

⁸⁸⁵ 'ICAC may investigate paedophiles', *Daily Telegraph*, 8/9/90.

⁸⁸⁶ IPSB, Briefing note re Operation Speedo, 10/9/90, RCPS Exhibit 1663C/9.

⁸⁸⁷ ICAC, Letter to RCPS regarding its holdings on Operation Gull, 29/1/96, RCPS Exhibit 1664.

⁸⁸⁸ *ibid.*

⁸⁸⁹ E. P. Pickering, Statutory Declaration, 15/1/96, RCPS Exhibit 3146C, at Doc. 1670949.

⁸⁹⁰ NSW Police Service, Task Force 1, Professional Integrity Branch, Operation Gull Review, May 1991, RCPS Exhibit 1663C/17, at Doc. 468358.

7.78 By August 1991, IPSB were experiencing difficulties with resources, particularly surveillance, because of their involvement in other sensitive matters.⁸⁹¹

7.79 A further review of the operation was conducted by Mr Watson in September 1991, and forwarded to the Commander of IPSB, Detective Chief Superintendent Myatt, in which he:

- warned that there would be extreme difficulty in the further prosecution of police because of the problems in obtaining an indemnity for Fisk and Dunn,⁸⁹² and
- reported that between 27 June 1991 and 27 September 1991, little had been done with Operation Gull because of the involvement of staff in unrelated investigations, and because of leave and court commitments.⁸⁹³

7.80 Mr Watson informed the Royal Commission that:

- IPSB was under-resourced in surveillance during Operation Gull, but his requests for more resources had fallen on deaf ears;⁸⁹⁴ and that
- he was being 'pushed' by Mr Myatt⁸⁹⁵ to complete the operation because:
 - it had been running for a lengthy period and was using up resources; and because
 - Mr Myatt wanted to get onto the other work that had been coming in.⁸⁹⁶

7.81 Notwithstanding, he remained of the view that there was a lot more to be done in relation to the inquiry.⁸⁹⁷

7.82 IPSB, by then named the Professional Integrity Branch (PIB), forwarded a final report on Operation Gull to the Minister, the Ombudsman and the ICAC on 7 April 1992. It reported that the operation:

had revealed corrupt practices did exist between police officers of the NSW Police Service and paedophiles up until 31 March 1989

but that there was no evidence as at February 1992 'to indicate this activity still exists'.

7.83 The corrupt practices identified in the report related to the matters outlined earlier.

7.84 The Final Report noted that arising out of the operation 116 criminal charges had been laid involving nine accused, and that further criminal and departmental charges had been recommended against a number of officers.⁸⁹⁸

7.85 In March 1993, the ICAC reviewed Operation Gull. In that process it conferred with Detective Chief Inspector Watson who confirmed that he was confident that all police involvement in the paedophile 'racket' had ceased by 31 March 1989.⁸⁹⁹

⁸⁹¹ L. A. Scott, Situation Report, 6/8/91, RCPS Exhibit 1663C/20, at Doc. 545510.

⁸⁹² NSW Police Service, Task Force 1, Professional Integrity Branch, Operation Gull Review, September 1991, RCPS Exhibit 1663C/21, at Doc. 468311.

⁸⁹³ NSW Police Service, Task Force 1, Professional Integrity Branch, Operation Gull Review, September 1991, RCPS Exhibit 1663C/23, at Doc. 468312.

⁸⁹⁴ K. W. Watson, RCT, 10/4/96, p. 23239.

⁸⁹⁵ K. W. Watson, RCT, 10/4/96, p. 23254.

⁸⁹⁶ K. W. Watson, RCT, 10/4/96, p. 23254.

⁸⁹⁷ K. W. Watson, RCT, 10/4/96, p. 23254.

⁸⁹⁸ NSW Police Service, Task Force 1, Professional Integrity Branch, Final Report Operation Gull (Confidential), April 1992, RCPS Exhibit 1509AC, Doc. 468556-63.

⁸⁹⁹ The day on which Fisk. was arrested.

7.86 The review of the operation concluded that:

- it was prima facie successful;⁹⁰⁰
- the investigations were prima facie adequate;
- the police were hampered by suspects maintaining their right to silence;⁹⁰¹
- victims were not willing to assist;⁹⁰² and that
- one police officer, Churchill, was in gaol over drug matters and a number of police named by Fisk and Dunn (including Churchill, Fluit and Schweinsburg) had left the Service or retired medically unfit.⁹⁰³

7.87 Consideration was given to the use of ICAC's powers to call at least Mr Fisk and Mr Dunn to give evidence of the protection that had been provided by police to paedophiles. On 21 May 1993 it was decided that as the investigation relied on 'two dubious informers', there would be no further investigation.⁹⁰⁴

CONCLUSION

7.88 Although it is inappropriate for the Royal Commission to reach specific conclusions in relation to the individuals named, in view of pending legal proceedings, there are strong prima facie grounds arising out of the earlier trials, and the admissions made both to IPSB and to the Royal Commission, that:

- there were police prepared to implement corrupt arrangements with paedophiles, or to stand over them with a view to extortion; and
- the paedophiles concerned were particularly vulnerable to such approaches and were sufficiently well organised to arrange for favoured treatment through an intermediary.

7.89 It is evident that the various police inquiries were seriously affected by a lack of resources (particularly surveillance), by unco-ordinated intelligence, and by an absence of sufficient commitment from Senior Command, which was more interested in policing other activities.

7.90 The failure of the Service and of the Ministry to establish a dedicated paedophile unit, was a serious and obvious failure. There was more than enough evidence to suggest the presence in the State of a number of active paedophiles, many of whom had informal links or associations. They were not targeted in any effective way.

7.91 The low priority given by the Service to the whole area of child sexual abuse was a serious indictment on its performance before announcement of the Royal Commission. In this respect omission or inaction was as unsatisfactory as corrupt protection.

7.92 Additionally, this case study demonstrated, as did other areas of inquiry, the risk that legal practitioners can become compromised, and then used as agents of influence in the facilitation of corrupt arrangements. The dangers of this need to be recognised.

⁹⁰⁰ ICAC, Review of Operation Gull, 14/4/93, RCPS Exhibit 3221C, at Doc. 1852974.

⁹⁰¹ *ibid.*

⁹⁰² *ibid.*, at Doc. 1852969.

⁹⁰³ *ibid.*, at Doc. 1852974-75.

⁹⁰⁴ *ibid.*, at Doc. 1852984.

B. THE KINDERGARTEN CASES

THE SEABEACH KINDERGARTEN

7.93 In 1988 a kindergarten known as the Seabeach Kindergarten in Mona Vale, came under police notice. It was directed and controlled by Mrs Dawn Helen Deren and was licensed for 40 children. The children who attended were aged between two-and-a-half and five-and-a-half years. There was also an 'after school' group who were older. Mrs Deren employed seven female employees at the kindergarten.⁹⁰⁵

7.94 The Chief of Detectives at Mona Vale in October 1988 was Detective Sergeant Ronald Fluit. Neither he nor any of the five detectives at the station had any formal training or other than limited experience in child sexual assault matters.⁹⁰⁶

First Disclosure

7.95 On 27 October 1988, three sets of parents who between them had four children at the kindergarten⁹⁰⁷ approached the police with some information. Mr Fluit interviewed them.⁹⁰⁸

7.96 The first parent (SB41), gave an account of an event that had occurred the previous evening when she and her husband (SB43)⁹⁰⁹ were dining at a local restaurant with their two youngest children, a girl aged three years 11 months, and a boy aged five years, both of whom attended the kindergarten. She informed Fluit that her daughter had slipped down off her chair in the restaurant and spread her legs apart, pushing her chest forward and her arms back, with her head tilted back. She was concerned that her daughter looked as though she 'was posing for a photographer'.⁹¹⁰ When she asked her daughter where she had learned to do that, the girl replied that 'Mr Bubbles' had showed her.⁹¹¹

7.97 SB41 informed Fluit that:

- the girl then said that she had been taken to see 'Mr Bubbles' in Mrs Deren's car with two other children from the kindergarten;⁹¹²
- when she was asked 'do you take your clothes off?' she responded 'yes and I go in the bubbles. The bubbles go round and round';⁹¹³ and
- when she spoke to her son he confirmed that the daughter had gone in Mrs Deren's car and that he had also gone out in Mrs Deren's car the year before.⁹¹⁴

7.98 SB41 reported that, after leaving the restaurant, she had driven to the home of the second parent (SB70), who was the mother of one of the children named by her daughter⁹¹⁵ as having been taken to see 'Mr Bubbles'. The conversation was reported to the mother.

⁹⁰⁵ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁰⁶ Detective French told the Commission he had only worked on 'one or two' cases involving child sexual assault and they both involved single victims and single offenders, M. J. French, RCT, 5/8/96, pp. 29825-26; Detective Fluit told the Commission he had no experience interviewing children, R. M. Fluit, RCT, 13/8/96, p. 30454; SB115 informed the Commission that he had never interviewed a three year-old, RCT, 5/8/96, p. 29863.

⁹⁰⁷ NSW Police Service, Prosecution brief in relation to Anthony Deren, Statement by R. M. Fluit, 6/11/88, RCPS Exhibit 2304C; Fluit spoke to parents known in the proceedings as SB41 and 43, SB70 & SB76.

⁹⁰⁸ R. M. Fluit, Statement to Police, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; SB43, Statement to RCPS, 24/7/96, RCPS Exhibit 2314C, p. 1.

⁹⁰⁹ Operation Seabeach code-names, RCPS Exhibit 2300C.

⁹¹⁰ SB41, Statement made to NSW Police Service, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹¹¹ *ibid.*

⁹¹² Known in Royal Commission proceedings as SB69 and SB95, Operation Seabeach code-names, RCPS Exhibit 2300C.

⁹¹³ SB41, Statement made to NSW Police Service, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹¹⁴ *ibid.*

⁹¹⁵ NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

7.99 SB70 informed Fluit that she had a conversation with her daughter, aged four years, the following morning over breakfast. She began by telling the girl that her friend from kindergarten⁹¹⁶ had been to visit the previous evening to see how she was and had told her a 'lovely story about Mr Bubbles'.⁹¹⁷ The conversation was tape recorded.

7.100 The third parent (SB76) interviewed had been spoken to by SB70. She had subsequently discussed the matter with her own daughter. After asking her daughter whether she had heard of Mr Bubbles or had been to his house, the daughter said 'they went on the bikes and for a run'.⁹¹⁸ SB70 asked the girl whether their clothes were on or off, to which her daughter said they took their clothes off and put beautiful clothes on. When asked whether Mr Bubbles touched her bottom she said 'no, that's not very nice'.⁹¹⁹ She reported to Mr Fluit that she had asked her daughter if Mr Bubbles took his clothes off and that her daughter had answered 'yes'. When asked if he had hurt her she had answered 'no, he was very friendly'.⁹²⁰

7.101 On 28 October, SB70 spoke again to Mr Fluit and advised him of the following exchange with her daughter:

Mother: Do you take your clothes off when you're with Mr Bubbles?
 Daughter: Yes.
 Mother: Does he take your picture when you've got your clothes off?
 Daughter: Yes.⁹²¹

A Surveillance Operation

7.102 After these initial complaints were received a decision was made to mount a surveillance operation to determine whether any corroboration could be obtained.⁹²² That operation commenced on 28 October 1988.

7.103 On that morning at 11.01 am it was noted in the logs that:

A female described as: 30 to 35 old medium build, 160 cms tall, light brown shoulder length hair wearing blue dress walks from kindergarten to motel.⁹²³

There was a motel across the road from the kindergarten but at this stage of the investigation not a great deal of significance was attached to that observation. No other observations of note were made during the week that surveillance continued.⁹²⁴

7.104 Mr Fluit was contacted by Detective Sergeant Brian Rope, who was working at the Programs Branch at Headquarters, and considered to be a leading child protection expert.⁹²⁵ He had heard of the complaints from a welfare worker on the peninsula.⁹²⁶

7.105 Detective Sergeant Rope was informed of the stage reached in the investigation.⁹²⁷ He telephoned the Regional Director of the Metropolitan East Region of FACS and asked that notification be deferred as police were attempting to maintain the strictest secrecy and had the kindergarten under surveillance. FACS kept in contact with Mona Vale detectives.⁹²⁸

⁹¹⁶ SB40.

⁹¹⁷ SB70, Statement made to NSW Police Service, 27/10/96, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹¹⁸ SB76, Statement made to NSW Police Service, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹¹⁹ *ibid.*

⁹²⁰ *ibid.*

⁹²¹ SB70, Statement made to NSW Police Service, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹²² L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, p. 3; R. M. Fluit, RCT, 13/8/96, pp. 30448-49.

⁹²³ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C; R. M. Fluit, RCT, 13/8/96, pp. 30448-49.

⁹²⁴ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹²⁵ L. A. Scott, RCT, 6/8/96, p. 29951.

⁹²⁶ B. W. Rope, RCT, 8/8/96, p. 30134.

⁹²⁷ B. W. Rope, RCT, 8/8/96, p. 30133.

⁹²⁸ FACS memo 7/11/88, RCPS Exhibit 2500C/1.

7.106 The parents involved were concerned about the children continuing to attend the kindergarten. Mr Fluit thought that surveillance might relieve any anxiety in this respect,⁹²⁹ it being part of the plan that if a child was taken away from the kindergarten, police would move in.⁹³⁰

7.107 A week later Mr Fluit was informed that surveillance could no longer be afforded.⁹³¹ It was terminated on 4 November 1988, hardly an adequate response for a case where a large number of children were at risk, if the complaints had any foundation.⁹³²

More Complaints

7.108 SB41 informed her sister SB14 SB14 (the fourth parent), about the incident at the restaurant then had a discussion with her son, aged three years 11 months.⁹³³

7.109 SB14 asked him if he knew 'the Bubbleman',⁹³⁴ to which he replied 'yes' and said that he had seen him at kindy. After describing where the Bubbleman lived,⁹³⁵ and referring to a party, he was asked 'do you have your clothes on' to which he responded 'no' as he took them off to have a shower. He said that he slept at Bubble's place all night, an observation that could not strictly have been correct. When asked if the 'Bubbleman' does nasty things he replied in the negative, adding that he was 'his friend'.⁹³⁶

7.110 The following day the boy was asked by his aunt SB41 whether the Bubbleman:

- had a bath - to which he responded that he did, and that he went into it after he had had his shower;
- had a shower with him - to which he responded that he did and that he didn't have his clothes on; and whether Bubbleman;
- took a lot of photos - to which he responded that 'he did', and that when this occurred he 'played with the birdie like this', at which stage he knelt down placing his hands on the floor.⁹³⁷

7.111 The following day, in answers to questions as to whether he had ever hurt himself at the Bubbleman's party, the boy informed his mother that sometimes his bottom would feel sore when he woke up 'because there are sharp things on the bed'. He reported that the Bubbleman had given him a 'black, red, brown and green birdie which went up in the air and landed on another boy's head'.⁹³⁸ He was asked a number of other questions in the course of which he said that he went to the Bubbleman's house before morning tea and stayed there all day.⁹³⁹

7.112 This parent recalled after these discussions that she had previously observed bruises on her son's buttock which she characterised as being similar to a 'love bite'.⁹⁴⁰

⁹²⁹ R. M. Fluit, RCT, 13/8/96, p. 30451.

⁹³⁰ R. M. Fluit, RCT, 13/8/96, p. 30452.

⁹³¹ R. M. Fluit, RCT, 13/8/96, p. 30452.

⁹³² L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, at Doc. 842833-41.

⁹³³ SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹³⁴ There is no explanation in SB14's statement as to why she used the expression 'Bubbleman', when her sister's (SB41's) statement refers to 'Mr Bubbles'; SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹³⁵ SB13 told his mother the Bubbleman lived 'Near pa's home'; SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹³⁶ SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹³⁷ *ibid.*

⁹³⁸ SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; the other boy was SB42.

⁹³⁹ SB14, Statement made to NSW Police Service, 31/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁴⁰ *ibid.*

The Motel

7.113 On 31 October 1988 SB14 went to Mona Vale Police to report the conversation with her son. The following evening, she went with her husband, son, and two detectives to the motel across the road from the kindergarten.⁹⁴¹ The manageress of the motel explained that in the course of recent renovations the furnishings had been changed including the bedspreads. An old brown bedspread was placed on a bed in one of the rooms to which the boy was taken. His conduct at the motel was interpreted as meaning that he had recognised that bedspread.⁹⁴²

7.114 The manageress of the motel informed the police that:

- she had been managing the motel since late May 1988;
- in early to mid-September 1988 she saw a woman with at least two, and possibly three, children in her company in the downstairs hallway of the motel;
- she did not recognise the woman as a guest and asked whether she was all right, to which she responded 'we are just going to see their grandfather'; and that
- she particularly noticed a little boy approximately four years of age with the woman as he was about the same age as her grandson.⁹⁴³

7.115 In her statement to police on 6 November 1988 the manageress claimed that the woman she had seen was Mrs Deren. In a further statement 10 days later she said that the boy she had seen in September was SB14's son.⁹⁴⁴ These identifications were made in dubious circumstances as the manageress did not know either Mrs Deren or SB14's son. Additionally, the identification of Mrs Deren was made after the police had been to the motel (with the boy), and the manageress had been to the police station and to the kindergarten (all on 31 October 1988).⁹⁴⁵

The Medical Evidence

7.116 Each of the five children, so far the subject of complaints, were examined by medical practitioners. No abnormalities were detected in respect of four of the children.⁹⁴⁶ In respect of the fifth child,⁹⁴⁷ the medical practitioner noted that her hymen had a disrupted and irregular edge and that the opening of the vagina, 5 mm, showed a very small deviation from the normal range.⁹⁴⁸ This finding was interpreted as 'consistent with a degree of trauma'.⁹⁴⁹ Other opinions suggest that these findings were not indicators of sexual abuse in the absence of scarring, which was not present in this case.⁹⁵⁰

7.117 The medical findings in relation to this child were inaccurately recorded by the police as revealing 'an enlarged vagina and some tearing of the hymen'.⁹⁵¹

Search Warrants

7.118 Search warrants were obtained and executed on the homes of Mr and Mrs Deren, and the teacher in charge of the older group of children, on the morning of 6 November 1988.⁹⁵² At this time five children⁹⁵³ had been identified as possible victims.

⁹⁴¹ Also R. M. Fluit, RCT, 13/8/96, pp. 30448-49 & L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁴² SB14, Statement made to NSW Police Service, 15/11/88, p. 5, NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; See also R. C. Ralston, RCT, 12/8/96, p. 30312.

⁹⁴³ JB, Statements made to NSW Police Service, 6/11/88 & 16/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁴⁴ *ibid.*

⁹⁴⁵ JB, Statement made to NSW Police Service, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁴⁶ RCPS Exhibit 2302C.

⁹⁴⁷ SB69 age 4.

⁹⁴⁸ B. J. Turner, Statutory Declaration to RCPS, RCPS Exhibit 2390C/2, paras. 31-35.

⁹⁴⁹ B. J. Turner, Statutory Declaration to NSW Police Service, 28/10/88, RCPS Exhibit 2390C/2, at Doc. 2103683.

⁹⁵⁰ S. M. Booth, Statutory Declaration to RCPS, RCPS Exhibit 2390C/1, at Doc. 1847003.

⁹⁵¹ Search Warrant Applications & Occupiers' Notices, 2/11/88, RCPS Exhibit 2358C.

7.119 A number of items including a camera tripod, video cassettes, photographs, various books and newspaper clippings, a yellow and tinsel wand, a transceiver and a collar were seized by the police at the Deren home.⁹⁵⁴ Mr and Mrs Deren were taken to Mona Vale police station for interview. Although the videos were not viewed at this time, they were unconnected with any form of child pornography.

Identification

7.120 Until this time there had been no physical identification of any person as the 'Bubbleman' or 'Mr Bubbles'. Later that morning Detective Constable Mark French and Sergeant SB115 went to SB14's home.⁹⁵⁵

7.121 Photographs taken during the search, including a single photograph of Mr Deren holding a blue bucket, were shown to SB14's son, in circumstances that were to become somewhat controversial. The other photographs were either of two or three individual parents and children or groups of children and adults.⁹⁵⁶

7.122 Mr French prepared a handwritten statement noting that:

- SB115 asked the boy whether he knew anybody in the photographs;
- in relation to the '1st' photograph the boy said 'yes';
- when asked by SB115 'where do you know him from?' the boy said 'I don't'; and that
- 10 other photographs were shown to the boy.⁹⁵⁷

7.123 The statement recorded that:

- French then went outside the house alone with the boy, and had a discussion with him in which he asked him whether he had seen any men in the photographs that he knew to which the boy responded 'yes'. When French asked him 'which man' the boy said 'I can't know him';
- the photographs were again shown to the boy and at the individual photo of Mr Deren the boy pointed his finger and the following exchange took place:

| | |
|---------|---------------------------------------|
| French: | Do you know him? |
| Boy: | Yes. |
| French: | Who is he? |
| Boy: | Bubbleman. |
| French: | Where did you see him? |
| Boy: | At Bubbleman's house. |
| French: | How did you get to Bubbleman's house? |
| Boy: | Bubbleman took me. |
| French: | How? |
| Boy: | In a car. |
| French: | What kind of car? |
| Boy: | A red car. |
| French: | Who else was with you? |
| Boy: | No one. ⁹⁵⁸ |

⁹⁵² L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C; R. M. Fluit, Statement made to NSW Police Service, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁵³ SB40, SB42, SB69, SB77, & SB13.

⁹⁵⁴ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, Exhibit book records, at Doc. 842878-82.

⁹⁵⁵ M. J. French, RCT, 5/8/96, pp. 29830-33.

⁹⁵⁶ Photographs used by Detectives French and SB115, RCPS Exhibit 2310C.

⁹⁵⁷ Handwritten statement by M. French, 6/11/88, NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁵⁸ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, M. French, Handwritten statement, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

7.124 The statement recorded that:

- French showed the boy some of the other items found during the search, as a result of which there was further discussion during which the boy said that the Bubbleman had similar items, including a belt or collar which he wore on his head;
- in the presence of the boy's parents and SB115, French again showed him the photograph of Mr Deren and he asked 'who is this man', and the boy responded 'I can't know him', to which French said 'you told me it was Bubbleman, is it?' It was then recorded that 'he hesitated and said yes'; and that;
- in the lounge room SB115 showed the boy a photograph, and asked whether he knew anybody in the photograph, to which the boy said, 'Bubbles'.⁹⁵⁹

7.125 SB115 informed the Royal Commission that he had not seen the statement prepared by Mr French, before it was shown to him by Commission investigators. So far as he was concerned, it was not a 'true record of what occurred' that day. He denied putting any questions to the child and said that he did not know enough about the inquiry to do so.⁹⁶⁰

7.126 When SB115 gave evidence he was a little less definitive, although he thought at the time that he made his statutory declaration, it was true.⁹⁶¹

7.127 Mr French returned to the station and reported this 'identification' process.⁹⁶² He then assisted Mr Fluit in an interview of Mr Deren. Mr Fluit asked Mr Deren if he would participate in an identification parade. The interview was suspended, and the identification parade was conducted. On resumption of the interview, Mr Fluit informed Mr Deren that he had been identified as the man Mr Bubbles⁹⁶³ and was being placed under arrest.⁹⁶⁴

7.128 The children the subject of the first disclosure were taken into the lineup. Neither made any identification. The daughter of the second parent, SB70, did, however, identify Mr Deren as 'Mr Bubbles'.⁹⁶⁵

7.129 The child, SB69, who identified Mr Deren in the lineup had by that stage been through a series of discussions with her parents and with police. Her mother reported to the police that when she asked her daughter, 'do you know who Mr Bubbles is' the girl had answered, 'Yes. He's the man that takes pictures'.⁹⁶⁶

7.130 The tape made by the parents, however, records that part of the conversation as follows:

Mother: Do you know who Mr Bubbles is?
 Daughter: Who?⁹⁶⁷

⁹⁵⁹ M. J. French, Handwritten statement, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁶⁰ SB115, Statutory Declaration to RCPS, 13/6/96, RCPS Exhibit 2313C, p. 5.

⁹⁶¹ SB115, RCT, 5/8/96, p. 29862.

⁹⁶² M. J. French, RCT, 5/8/96, p. 29847.

⁹⁶³ The Record of Interview commenced at 12.50 pm on 6/11/88 and was suspended at 2.40 pm for the identification parade and resumed at 4.05 pm, see record of interview between R. Fluit and A. Deren, 6/11/88, NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; see also M. French, RCT, 5/8/96, pp. 298475-47 & R. M. Fluit, RCT, 13/8/96, pp. 30455-56.

⁹⁶⁴ R. M. Fluit, Statement made to NSW Police Service, 6/11/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁶⁵ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁶⁶ SB70, Statement made to NSW Police Service, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C, at Doc. 857928.

⁹⁶⁷ Tape and transcript of SB670 & SB71 interview of children SB69 & SB68, RCPS Exhibits 2329C/1 & 2.

7.131 The mother also reported to the police that her daughter had said that she took her clothes off when she was with Mr Bubbles, and that he took pictures of her in that state.⁹⁶⁸ The tape recording of the conversation, however, records the following conversation:

Mother: Do you take your favourite dress off at all?
 Daughter: No.⁹⁶⁹
 Mother: And did he take lots of pictures with your clothes on or off?
 Daughter: On.
 Mother: Any with your clothes off?
 Daughter: No.⁹⁷⁰

and later:

Daughter: We didn't take our clothes off cause MBubbles was horrible.
 Mother: Is Mr Bubbles a real man or pretend man?
 Daughter: He is a robot?.⁹⁷¹

7.132 At a later point her brother joined the discussion. He named a person (who was not Mr Deren or anyone associated with the kindergarten) who he said was Mr Bubbles.⁹⁷² The mother then asked the girl whether Mr Bubbles looked like the person her brother had mentioned, to which she replied in the affirmative.⁹⁷³ Later in the tape the following exchange was recorded:

Mother: What sort of hair has MBubbles got?
 Daughter: He's got curly hair.
 Mother: What colour?
 Daughter: Yellow hair.⁹⁷⁴

7.133 When asked earlier in the discussion to describe Mr Bubbles the girl had said that he had a red stripe on his neck; green stripes on his bottom; green stripes on his penis; and red stripes on his eyes.⁹⁷⁵ The father asked whether Mr Bubbles took his clothes off. This question was repeated by the mother after which the girl said he 'didn't but that baby bubbles does in the bath with his clothes off'.⁹⁷⁶

7.134 On the afternoon of 4 November 1988, Mr Fluit had a discussion with this child in the presence of her mother at Mona Vale Police Station. When he asked her whether Mr Bubbles had his clothes on, she answered inconsistently with the earlier version, 'No. He takes own off and we take our own off'. She also said that she had no clothes on and went into the bubble bath with Mr Bubbles. On this occasion she was asked whether Mr Bubbles touched her she said 'on my tummy'.⁹⁷⁷

⁹⁶⁸ SB70, Statement to Police, 27/10/88, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C.

⁹⁶⁹ Tape and transcript of SB670 & SB71 interview of children SB69 & SB68, RCPS Exhibits 2329C/1 & 2.

⁹⁷⁰ *ibid.*

⁹⁷¹ *ibid.*

⁹⁷² *ibid.*

⁹⁷³ *ibid.*

⁹⁷⁴ *ibid.*

⁹⁷⁵ *ibid.*

⁹⁷⁶ *ibid.*

⁹⁷⁷ Record of conversation between SB69 and Detective Fluit, 4/11/88, NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, at Doc. 843028.

7.135 This child was interviewed again, on 23 November 1988, by Mr Fluit in the presence of her mother. On this occasion she placed other teachers from the school at 'the bubble party'. According to the record typed up from this conversation, she informed Fluit that:

- Mrs Deren scrubbed her back and tummy and scrubbed her 'nooshy' (pointing to her vagina);
- one of the other teachers was present and also touched her on the 'nooshy';
- Mr Bubbles touched her on her 'nooshy';
- Mr Bubbles took his clothes off; and that
- yet another teacher washed her whilst she was at the party.⁹⁷⁸

7.136 The two children the subject of the initial disclosure were interviewed by a constable during November 1988, and by Fluit and French while the interview of Mr Deren was suspended for the identification parade. Mr Fluit said that the interviews took place on the grassy area outside one of the demountables at the police station.⁹⁷⁹ The parents of these children, however, have no recollection of them leaving their presence for an interview on that day.⁹⁸⁰

7.137 One of these children, the girl, was subjected to a session of hypnosis with Senior Sergeant Johnson on 9 November 1988. A tape recording of that session indicates that:

- Mr Johnson introduced the concept of photographs and of the person Bubbles;
- when the girl was asked where Mr Bubbles was she responded 'I don't know', but when pressed on that said 'she was took off the plane now'; and
- when asked whether Mr Bubbles, one of the teachers and Mrs Deren were at the party, she replied each time, in the negative.⁹⁸¹

7.138 It was not until 10 July 1989, during the committal, that Mr Johnson signed a statement, in which he said that he realised that the child would not allow herself to concentrate on any one thing long enough for even the mildest form of hypnosis to be successful. He said that he did not attempt any further induction but continued to talk and generally play with the child.⁹⁸² This was inconsistent with the audio tape of the 'session' in particular the ending in which he purported to 'awaken' the child.⁹⁸³ No official permission was given to conduct this interview, and so far as the Commission can ascertain, expert advice was not sought as to its appropriateness.

The Derens are Charged - Fluit Requests Help

7.139 On 6 November 1988 when Mr and Mrs Deren were interviewed they denied any wrongdoing. They were charged later that day in respect of the five children.⁹⁸⁴ After they were charged the kindergarten was named on radio⁹⁸⁵ and the matter became the subject of wide and sensational media coverage including allegations that there had been parties involving the children where they had been photographed and videotaped.⁹⁸⁶ Not surprisingly other parents became very concerned. Several attended the Mona Vale Police Station to be interviewed and to have their children spoken to by police. FACS also received numerous calls from parents expressing concern that they had not been interviewed.⁹⁸⁷

⁹⁷⁸ Record of conversation between SB69 and Detective Fluit, 23/11/88, NSW Police Service, Prosecution brief in relation to Anthony Deren, RCPS Exhibit 2304C; L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁷⁹ R. M. Fluit, RCT, 15/8/96, pp. 30628-29.

⁹⁸⁰ SB43, Statement to RCPS, 24/7/96, RCPS Exhibit 2314C, paras. 8-12.

⁹⁸¹ Transcript of interview by R. W. Johnson of SB40 under hypnosis, 9/11/88, RCPS Exhibit 2367C/2.

⁹⁸² R. W. Johnson, Statement re interview of SB40, 10/7/89, RCPS Exhibit 2367C/1.

⁹⁸³ Transcript of interview by R. W. Johnson of SB40 under hypnosis, 9/11/88, RCPS Exhibit 2367C/2.

⁹⁸⁴ SB40, SB42, SB69, SB77 and SB13.

⁹⁸⁵ Radio 2UE by a caller to Mr Alan Jones; *Daily Telegraph*, 9/11/88.

⁹⁸⁶ eg. 'Pre-school sex parties - teacher, husband arrest', *Daily Mirror*, 7/11/88.

⁹⁸⁷ FACS memo, 7/11/88, RCPS Exhibit 2500C/1, p. 3.

7.140 Although not being able to recall the specific conversation Mr Fluit said that he telephoned Detective Inspector Hagen for help, but was subsequently informed that none was available and that he was to do the best he could.⁹⁸⁸

7.141 Detective Sergeant Clear said that he was informed by Mr Hagen that:

- Fluit had inquired whether the CMU was in a position to respond to the Sea Beach notification;
- he had informed Fluit that the CMU had a very heavy case load at that time;⁹⁸⁹ and that
- Fluit had said 'that he had the necessary resources to conduct the inquiry'.⁹⁹⁰

The DPP Involvement

7.142 There was a difference in the recollections of Mr Fluit and Mr Roger Ralston, the acting principal solicitor of the Child Sexual Unit of the DPP, as to whether the latter gave the police any advice as to the sufficiency of the evidence to charge the Derens before they were charged:

- Fluit said that Mr Ralston had been consulted for that purpose in October,⁹⁹¹ while
- Ralston said that it was after Mr and Mrs Deren had been charged, but before the other two employees of the kindergarten were charged, that he first provided any advice about the sufficiency of the evidence.⁹⁹²

7.143 Detective Sergeant Scott (as she then was) in her report to the Minister in 1990, following a review of the matter, noted that on the advice of the DPP the police had believed that there was no need to view the videos seized at the Derens' home prior to interview (or charging) because there was sufficient evidence available from the children.⁹⁹³ Mr Ralston said that such a statement was 'completely incorrect'.⁹⁹⁴

7.144 Ms Scott also recorded that prior to the Derens being charged, Detective Bernasconi, who had been involved in the investigation, had expressed some concerns to Mr Fluit about the problems associated with lack of corroboration in cases involving children of tender years. Ms Scott's report asserted that the ODPP was informed of these concerns and that investigating police relied upon Mr Ralston's advice that they had sufficient evidence to arrest the Derens.⁹⁹⁵

7.145 Mr Ralston disagreed with this and with Ms Scott's assertion that, on 25 July 1990, he had confirmed to her that 'he had advised police they had sufficient evidence to charge the Derens prior to 6 November 1988 without any further evidence becoming available'.⁹⁹⁶

FACS Involvement

7.146 In 1988 FACS had a 'lack of manpower resources' on the Peninsula. Faced with this case it became very concerned to get a group together as a matter of urgency.⁹⁹⁷ The parents of the children at the kindergarten were notified that there would be a public meeting, at the Salvation Army Hall at

⁹⁸⁸ R. M. Fluit, RCT, 15/8/96, p. 30606.

⁹⁸⁹ CMU was then working on another investigation in relation to a kindergarten where allegations had been made of sexual abuse of numerous children by the kindergarten operator.

⁹⁹⁰ P. Clear, Statement, 3/10/95, RCPS Exhibit 2355C, p. 7.

⁹⁹¹ R. M. Fluit, RCT, 15/8/96, p. 30607.

⁹⁹² R. C. Ralston, RCT, 12/8/96, pp. 30303-6; but cf the letter sent by the Office of the DPP to Detective Sergeant Scott; L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C, which is inconsistent with his recollection.

⁹⁹³ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁹⁴ R. C. Ralston, RCT, 12/8/96, p. 30308.

⁹⁹⁵ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C; R. C. Ralston, RCT, 12/8/96, p. 30309.

⁹⁹⁶ *ibid.*

⁹⁹⁷ FACS memo, 7/11/88, RCPS Exhibit 2500C/1.

Dee Why, on 14 November 1988. Prior to this meeting FACS officers attended at the home of one of the kindergarten employees, on 8 November 1988, and interviewed her. She had already been interviewed by the police on 6 November 1988⁹⁹⁸ but had not at that stage been charged.

7.147 In her interview with FACS, the employee said that the alleged offences could not have happened as:

- the children were never out of her sight; and as
- it was a small community in which everybody knew what was going on.⁹⁹⁹

7.148 She also informed the FACS employee that:

- lately there had been a lot of parties for the children which had been attended by clowns, one of whom had pink hair; and that
- one of the parents had informed her that there had been a flyer on the kindergarten noticeboard about clown parties referring to a Mr Bubbles.¹⁰⁰⁰

7.149 It is the fact that there was a troupe of clowns in the northern peninsula at the time known as the Rose and Tanner Clowns.¹⁰⁰¹ They used the names 'Bubbles, Poncho and Pimple',¹⁰⁰² and they were available for children's parties and other engagements. Photographs provided to the Royal Commission show that they had curly hair and painted faces. They had no contact with the kindergarten, and there is absolutely no suggestion that they had been engaged in unlawful activity of any kind. So far as the Commission can ascertain, the possibility of a connection in the minds of the children with this troupe was never appreciated or investigated properly by FACS or the police.

7.150 On 14 November 1988, the public meeting was attended by police, FACS staff, other professionals,¹⁰⁰³ and parents. FACS and police representatives informed the parents that although it was inappropriate to discuss the case, all proper inquiries were being made and there would be a system of support for the children and adults involved.¹⁰⁰⁴ The meeting was intended to pacify the community after the press reports following the arrest of Mr and Mrs Deren.¹⁰⁰⁵

More Complaints

7.151 After the public meeting many more parents contacted Royal Alexandra Hospital for Children (RAHC)¹⁰⁰⁶ FACS, and the police, anxious to have their children interviewed and examined. With resources stretched to the limit, a probationary constable,¹⁰⁰⁷ who had no experience in child sexual assault cases and who had never interviewed a victim of such an assault, was directed to carry out many of the interviews with the children. Mr Fluit knew that his officers were out of their depth but he took the view that he had to get on and do his best with what he had.¹⁰⁰⁸

⁹⁹⁸ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

⁹⁹⁹ Record of Interview between FACS and RM, November 1988, RCPS Exhibit 3178C, p. 2.

¹⁰⁰⁰ She had searched for that poster but was not able to find it. Record of Interview between FACS and RM, November 1988, RCPS Exhibit 3178C, p. 3.

¹⁰⁰¹ Documents re the Rose and Tanner Clowns, RCPS Exhibit 2368/1 & 2368/2.

¹⁰⁰² *ibid.*

¹⁰⁰³ Other professionals included Dr Anne Schlebaum who said she attended as she had been aware of multi-victim, multi-offender cases from overseas and she thought she might be required to give some assistance. Dr Schlebaum said that she had a little group of parents talking to her at the meeting. A. Schlebaum, RCT, 29/10/96, p. 33556; see also B. W. Rope, RCT, 8/8/96, pp. 30141-42.

¹⁰⁰⁴ L. A. Scott, RCT, 7/8/96, p. 30017.

¹⁰⁰⁵ B. W. Rope, RCT, 8/8/96, p. 30141.

¹⁰⁰⁶ Detective Rope suggested to Fluit that he liaise closely with the Royal Alexandra Hospital for Children during the investigation, B. W. Rope, RCT, 8/8/96, p. 30136.

¹⁰⁰⁷ S. Rogan, Statement to RCPS, 9/7/96, RCPS Exhibit 2330C.

¹⁰⁰⁸ R. M. Fluit, RCT, 15/8/96, p. 30607.

7.152 Following a meeting with Mr Ralston in which Mr Fluit received advice that there was enough evidence to charge two further employees of the kindergarten, they were also charged in late November 1988.¹⁰⁰⁹

7.153 The probationary constable at times interviewed the children alone. As she found it difficult to record the conversations much was lost, and the detail noted could not be relied upon as accurate. There were other times when she carried out interviews in the presence of other children. This created an unacceptable risk of contamination. The statements that were ultimately produced were inaccurate and, in many respects, bore little resemblance to the notes she had made either contemporaneously or immediately after the interviews.¹⁰¹⁰

7.154 She also had difficulty dealing with the parents, who were understandably very anxious. She was concerned whether the children were repeating things that they had heard from them or from other children. She found that while the parents had been asked not to talk to their children about the case, they continued to pass on information to them.¹⁰¹¹ She soon found herself out of her depth.

7.155 She adopted the course that, if she formed the impression in general conversation with a child that nothing untoward had occurred, then she would not pursue the matter nor would she take any notes.¹⁰¹² In retrospect, despite her best endeavours, she recognised the inadequacy of the inquiry. She said she would never again attempt such interviews without proper training.¹⁰¹³ At the time she simply did not have the experience to appreciate the problems confronted.

7.156 Because of the lack of resources, and the increasing number of parents attending the Mona Vale Police Station for interview, Mr Fluit decided to issue pro forma sets of questions for the parents to ask their children,¹⁰¹⁴ thereby running the risk of unskilled and uncontrolled interviews and possible contamination of any subsequent interview.

7.157 FACS did not conduct any interviews with the children and were not involved in the collection of evidence. Staff attended the community meeting to provide assistance to parents in approaching support agencies. FACS also conducted two evening workshops on child sexual assault on 13 and 14 February 1989 and provided counselling to some of the families.¹⁰¹⁵

7.158 Arising out of the further interviews and investigations, Mr and Mrs Deren, and two teachers, were charged with multiple charges¹⁰¹⁶ involving a total of 17 children.¹⁰¹⁷

An Offer of Help from the CMU

7.159 In January 1989, Mr Fluit asked Mr French to photocopy the police brief for delivery to the DPP. He went to Chatswood Police Station for that purpose, where coincidentally he spoke to Detective Sergeant Pat Clear, who was the head of the Northern Region CMU. French left a copy of the brief with him.¹⁰¹⁸ When he returned to Mona Vale Police Station and informed Fluit of this, he was advised that he had overstepped the mark, and should retrieve the copy.¹⁰¹⁹

¹⁰⁰⁹ One employee was charged with seven charges under s. 89 taking away by force with intention to carnally know a child and six counts of acts of indecency (s. 61E(2a)). The other employee being charged with one count under s. 89 and seven counts under s. 61E(2)(a), RCPS Exhibit 2301C.

¹⁰¹⁰ S. Rogan, Statement to RCPS, 9/7/96, RCPS Exhibit 2330C.

¹⁰¹¹ *ibid.*

¹⁰¹² *ibid.*, para. 28.

¹⁰¹³ *ibid.*, para. 98.

¹⁰¹⁴ R. M. Fluit, RCT, 15/8/96, p. 30633.

¹⁰¹⁵ FACS were concerned that they were erroneously implicated in the contamination of the children's' evidence, see FACS ministerial briefing on Seabeach dated 21/9/90, RCPS Exhibit 2504C/26.

¹⁰¹⁶ Charges fell under ss. 61E(1a), 61E(2a), 66A, 61EA(1), 61E(2), & 89 *Crimes Act 1900*.

¹⁰¹⁷ See schedule of charges, RCPS Exhibit 2310.

¹⁰¹⁸ M. J. French, RCT, 6/8/96, pp. 29924-25.

¹⁰¹⁹ M. J. French, RCT, 6/8/96, p. 29925.

7.160 The following morning Mr Fluit telephoned Clear and advised him that he wanted the brief back, as he did not want anyone not involved with the case to have access to it for 'security reasons'.¹⁰²⁰ Mr French attended Chatswood Police Station and collected the brief. Mr Clear had no further involvement with the matter.

The Private Investigator

7.161 Mr John Bracey, a private investigator, was hired by the Derens in late 1988 to assist with their defence.¹⁰²¹

7.162 Mr Bracey informed the Commission that soon after he took on the case he met Mr Fluit at the Forest Way Hotel.¹⁰²² According to him, Fluit said that:

- he was wasting his time as his clients were 'as guilty as hell';
- people had to be protected from 'these sort of people'; and that
- he should get as much money as he could because the Derens were going away for a long time, and 'we've got them fitted'.

7.163 Mr Bracey believed this last expression to mean that the 'evidence had been manufactured'.¹⁰²³ It is, however, equally consistent with Mr Fluit's expression of an opinion that a strong case existed against the accused.¹⁰²⁴

7.164 Mr Bracey had further contact with Mr Fluit in March 1989 when he contacted him to arrange the return of some his clients' property. He said that Fluit suggested that he call in at the Mona Vale Police Station and take Fluit and another officer to lunch as 'his client could afford it'.¹⁰²⁵ Fluit said that it was Bracey who proposed the lunch saying that the case was the best thing that had ever happened to him and he had a 'meal ticket for life'.¹⁰²⁶

7.165 Mr Bracey did in fact take Mr Fluit and another officer to lunch at the Newport Arms Hotel.¹⁰²⁷ He said that, in the absence of the other officer, Fluit put a proposition to him that:

- his clients had made a lot of money out of the videos; and that
- if they paid \$30,000 he would be able to make sure that the matter did not stand up at committal.¹⁰²⁸

7.166 Mr Bracey said that he put the proposition to his clients, and advised Mrs Deren that there was no way that she should be involved in it, but if she did then he would be off the case.¹⁰²⁹

¹⁰²⁰ P. P. Clear, Statement of Information to RCPS, 3/10/95, RCPS Exhibit 2355C, p. 8.

¹⁰²¹ J. E. Bracey, RCT, 14/8/96, p. 30496.

¹⁰²² J. E. Bracey, RCT, 14/8/96, p. 30499.

¹⁰²³ J. E. Bracey, RCT, 14/8/96, pp. 30500-01 & 30517-18; Fluit denied using the expression 'fitted', R. M. Fluit, RCT, 15/8/89, p. 30599.

¹⁰²⁴ R. M. Fluit, RCT, 15/8/89, p. 30599.

¹⁰²⁵ J. E. Bracey, RCT, 14/8/96, p. 30502.

¹⁰²⁶ R. M. Fluit, RCT, 15/8/89, p. 30650.

¹⁰²⁷ J. E. Bracey, RCT, 14/8/96, p. 30504.

¹⁰²⁸ J. E. Bracey, RCT, 14/8/96, p. 30505.

¹⁰²⁹ J. E. Bracey, RCT, 14/8/96, p. 30517.

7.167 Mr Fluit denied that any such proposition was put to Bracey. The evidence given by Bracey was generally unpersuasive. He was unable to:¹⁰³⁰

- explain why he had not earlier reported to police the two 'corrupt' conversations which he had described;¹⁰³¹ or to
- assist the Royal Commission with the source¹⁰³² of serious allegations that he made to the ICAC in 1994 concerning another matter.

Preparation for Committal

7.168 A number of case conferences were held preparatory to the committal.¹⁰³³ Mr Ralston spent three days at the Mona Vale Police Station in mid-January 1989, interviewing the parents and children involved.¹⁰³⁴

7.169 He had not been briefed with:

- the tape of the discussion between the second parent and her daughter on 27 October 1988;
- the tape of the hypnosis session conducted by Johnson; or with
- the original notes of the interviews with any of the children.

7.170 When the matter was mentioned on 6 February 1989, an estimate was given that the committal would take eight weeks, would involve 22 victims and 47 charges and involve 70 witnesses.¹⁰³⁵ By this stage some of the children had been interviewed many times.

7.171 Due not only to the length of the matter but its complexity, Mr Ralston made a 'request for assistance' to the Deputy Solicitor for Public Prosecutions (Legal) on 7 February 1989.¹⁰³⁶

7.172 After a hearing date was obtained for 3 July 1989, he made a number of further requests for the assignment of a legal officer to assist in the conduct of the hearing. These requests were unsuccessful and he was left to prepare the matter alone,¹⁰³⁷ a task he was finding very difficult.¹⁰³⁸

7.173 In February 1989, a 'Workshop on Child Abuse' was held at Mona Vale which included a great deal of discussion about the Seabeach case. According to a complaint made to the Minister for FACS, a welfare worker present at the workshop encouraged the parents to:

- form an action group to 'support each other in having the defendants convicted';
- apply for compensation; and to
- lobby schools to introduce a curriculum in respect of sexual abuse.¹⁰³⁹

7.174 As a result of this meeting, an action group, Parents Against Child Abuse, was formed with the aim of pinpointing deficiencies and proposing solutions for the management of child sexual abuse.¹⁰⁴⁰

¹⁰³⁰ R. M. Fluit, RCT, 15/8/89, pp. 30652-53.

¹⁰³¹ J. E. Bracey, RCT, 14/8/96, pp. 30508-10.

¹⁰³² Nor did he supply the source of the information to the ICAC.

¹⁰³³ B. Rope, Statement of Information, October 1995, RCPS Exhibit 2337C/2, at Doc. 1406449-50; One such conference was on 5/1/89 at which it was discussed that FACS would co-ordinate the support for the parents and children who would be giving evidence.

¹⁰³⁴ R. C. Fluit, RCT, 12/8/96, pp. 30314-17.

¹⁰³⁵ R. Ralston, Statement of Information, 21/5/96, RCPS Exhibit 2373C, at Doc. 2152608.

¹⁰³⁶ *ibid.*

¹⁰³⁷ R. Ralston, RCT, 12/8/96, pp. 30321-22; R. Ralston, Statement of Information, 21/5/96, RCPS Exhibit 2373C.

¹⁰³⁸ R. Ralston, RCT, 12/8/96, p. 30324.

¹⁰³⁹ Letter to Ms V. Chadwick from JH, 9/5/89, RCPS Exhibit 3266C.

¹⁰⁴⁰ See B. Rope, Statement of Information, October 1995, Attachment L, Parents Against Child Abuse newsletter, RCPS Exhibit 2337C/2.

7.175 FACS wrote to the parents of children who had been identified as alleged victims, arranging a public meeting for 26 April. The purpose was to inform parents:

- of the support that FACS was able to offer;
- whether their children would be screened from the defendants;
- how they would be approached to attend court;
- whether they or their children could be compelled to give evidence; and
- why they had not heard from the ODPP since the interviews in January at Mona Vale Police Station.¹⁰⁴¹

7.176 FACS staff were at this time concerned that 'almost without exception' the parents were expressing anger towards the legal system, and felt that they were not able to enjoy the support to which they felt they were entitled.¹⁰⁴²

7.177 On 14 April, while discussing a case plan with FACS, Mr Ralston explained that:

- the defendants would each have Queens Counsel appearing for them;
- each child would be required for half a day at the court;
- there would be no screening available at the court; and that
- there was a possibility that some children would not be able to give evidence if they could not satisfy the magistrate of their competency under the Oaths Act.¹⁰⁴³

7.178 On 21 April 1989, on the advice of Mr Ralston, the scheduled public meeting was cancelled as there was concern that it might be seen as an attempt by FACS to influence the case.¹⁰⁴⁴

7.179 FACS saw the cancellation of the meeting as a 'loss of opportunity to perform a co-ordinating role'. It also saw the lack of notification at the time of the original complaints as a failure to allow FACS a role it should have had in co-ordinating support for the parents and the children at the beginning of the investigation.¹⁰⁴⁵

7.180 By the time the committal commenced on 3 July 1989 Mr Ralston still did not have any assistance. By 5 July 1989 it was clear that he had a very complex case on his hands, and would need to meet a preliminary inquiry to determine whether the children's evidence should be received at all. Accordingly he repeated his request for the assignment of a legal officer to assist.¹⁰⁴⁶

7.181 It was another five days before he received a response to the effect that there was a possibility of releasing a legal officer to assist him in the 'final weeks' of the committal. In the meantime he could have a clerk, although not a qualified lawyer, to help.¹⁰⁴⁷ Mr Ralston saw this offer as less than helpful and did not take it up. Instead, he accepted an offer from the Police Service to supply an officer to support him in court.¹⁰⁴⁸

¹⁰⁴¹ See B. Rope, Statement of Information, October 1995, RCPS Exhibit 2337C/2.

¹⁰⁴² See B. Rope, Statement of Information, October 1995, RCPS Exhibit 2337C/2.

¹⁰⁴³ Minutes of meeting between DPP, FACS and Police re Seabeach prosecution, 14/4/89, RCPS Exhibit 3181C/2.

¹⁰⁴⁴ Memo from FACS District Officer to Dee Why District Manager, 15/5/89, RCPS Exhibit 3181C/1, at Doc. 1160554.

¹⁰⁴⁵ *ibid.*, at Doc. 1160556.

¹⁰⁴⁶ Memo from R. C. Ralston to J. Favretto, 5/7/89, R. Ralston, Statement of Information, 21/5/96, RCPS Exhibit 2373C/2.

¹⁰⁴⁷ S. O'Connor, RCT, 7/8/96, p. 30065.

¹⁰⁴⁸ R. C. Ralston, RCT, 12/8/96, pp. 30329-30.

7.182 The requests by Mr Ralston were apparently not understood to be 'requests for help'. The Solicitor for Public Prosecutions said that:

- he understood that Ralston had advised that he did not require any assistance in court until evidence was called from the children;¹⁰⁴⁹ and that
- the only reason that help was eventually offered was to allay the fears of a parent who had complained to the Attorney General.¹⁰⁵⁰

This response seems quite inconsistent with the various memoranda forwarded by Ralston, which clearly set out the need for assistance and the reasons it was sought. The case was very complex, there was little by the way of precedent, and the ODPP should have ensured that it was sufficiently resourced.

7.183 Mr Ralston identified the problem of having the children accepted as competent witnesses as a significant one, but he was not really prepared to meet it. By virtue of restrictive requirements of the Oaths Act then in force, the court had to be satisfied, if the children were not competent to take the oath, that they were of sufficient intelligence to justify the reception of their evidence and that they understood the duty of speaking 'the truth' before the court.

7.184 By April 1989, only three parents of the 22 children who had been allegedly assaulted had indicated a firm willingness to have them give evidence.¹⁰⁵¹ Mr Ralston did not see it as appropriate to inform the court of that fact as he felt that, if some children gave evidence, the other parents may be more willing for their children to do so.¹⁰⁵²

7.185 Some of the children who were the subject of charges were referred to psychiatrists for counselling. Dr Suzette Booth, from the Child Protection Unit at RAHC, informed the Commission that when this happened the version of events given by two children grew to include the description of acts of a cultish and bizarre kind.¹⁰⁵³ Some of these allegations were alluded to by Mr Ralston at the committal hearing, for example, the allegation that one of the employees had participated in 'occult rituals' and had worn white robes while a child was abused.¹⁰⁵⁴

The Committal Proceedings

7.186 In the course of the preliminary hearing into the competency of the children to give evidence, the defendants called a witness Mr Ralph Underwager¹⁰⁵⁵ from the United States of America. It was his evidence, as a clinical psychologist with expertise in child sexual abuse cases, that:

- the methodology of the investigation had to be correct, otherwise false accusations could be produced;¹⁰⁵⁶
- the existence of intense publicity surrounding the allegations was likely to increase the level of parental anxiety with the consequence that anything in the child that had hitherto been accepted as normal might now be seen as potentially abnormal;¹⁰⁵⁷
- prior to the age of three and a half years, children cannot talk about past events without adult instruction or guidance, and when they begin to do so there is a naturally occurring admixture of fantasy and fiction;¹⁰⁵⁸

¹⁰⁴⁹ S. O'Connor, RCT, 7/8/96, p. 30065.

¹⁰⁵⁰ S. O'Connor, RCT, 7/8/96, p. 30066.

¹⁰⁵¹ Memo from FACS District Officer to Dee Why District Manager, 15/5/89, RCPS Exhibit 3181C/1, at Doc. 1160556.

¹⁰⁵² R. C. Ralston, RCT, 13/8/96, pp. 30392-93.

¹⁰⁵³ S. M. Booth, RCT, 3/9/96, pp. 31424-25; see also S. Booth, Statement of Information, 7/2/96, RCPS Exhibit 2390C/1, pp. 3-4.

¹⁰⁵⁴ Transcript of committal hearing re Seabeach, 3/7/89, RCPS Exhibit 2305/2.

¹⁰⁵⁵ Underwager gave evidence that he held a PhD from the University of Minnesota; he was currently Director of the Institute for Psychological Therapies in Minneapolis since 1974 and he was licensed as a Consultant Psychologist in Minnesota since 1974. He also provided particulars of his research and publications including a book entitled *The Real World of Child Interrogations* and a paper 'Investigation and Trial preparation in cases of child sexual abuse', RCPS Exhibit 2305/1, at Doc. 481481-84.

¹⁰⁵⁶ Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/1, p. 12.

- children may then incorporate this information into their 'memory' which then destroys their ability to produce an accurate recall;¹⁰⁵⁹
- reconstituted memories in children may result in them appearing to have a clean, sharp, and subjectively certain memory for events that never happened;¹⁰⁶⁰
- children aged from three to five years have a limited cognitive capacity and cannot think abstractly;¹⁰⁶¹
- research supports the proposition that children do not begin to consider abstract concepts such as duty, honour and truth until aged about 10 or 11 years;¹⁰⁶²
- the best method of obtaining a truthful statement from a child aged three to five years was to allow the child to produce a statement under 'free recall' - that is free from pressure, suggestion or leading questions;¹⁰⁶³
- the declaration in the Oaths Act to tell the truth at all times in the court would have no meaning to three to five year-olds;¹⁰⁶⁴
- in the Seabeach case it was likely that the children had been unwittingly taught a story, which grew with each telling and conformed more to the adults' interests;¹⁰⁶⁵ and that
- the tape of the discussions between the parent and the child over breakfast illustrated the purpose of the parent which was, unwittingly, highly suggestive and presented the child with forced choice questions.¹⁰⁶⁶

7.187 Mr Underwager gave similarly critical evidence about many of the interviews between the police and the children and between the parents and the children. At the end of his evidence the defence invited the prosecution to discontinue the proceedings.¹⁰⁶⁷

7.188 That invitation was not accepted, and the defendants then called Associate Professor Walker, the Associate Professor of Behavioural Sciences at the University of Sydney. She gave evidence that:

- children of four years of age cannot reason in an abstract way, and do not have a clear working concept of truth, or of right or wrong; and that
- pre-school children are particularly sensitive to social pressures and look for cues from adults as to the answers they want, as a result of which they are most vulnerable to leading questions.¹⁰⁶⁸

7.189 While there was no perfect way to obtain untainted evidence, she said that:

- it was desirable not to have a family interrogate or speak in front of the child;
- there should be a specialised unit established where the child can be taken for examination and interview;
- the person conducting the interview should have only a very general outline of the matter and not be provided with all the details;

¹⁰⁵⁷ Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/1.

¹⁰⁵⁸ *ibid.*

¹⁰⁵⁹ *ibid.*

¹⁰⁶⁰ *ibid.*

¹⁰⁶¹ *ibid.*

¹⁰⁶² *ibid.*

¹⁰⁶³ *ibid.*

¹⁰⁶⁴ *ibid.*

¹⁰⁶⁵ *ibid.*

¹⁰⁶⁶ *ibid.*

¹⁰⁶⁷ *ibid.*

- the child should not be interviewed and re-interviewed repeatedly, a procedure which she regarded as a 'coaching procedure';
- the interview process required a very competent, even handed, and fully recorded assessment session;
- the interview should be conducted by a paediatric psychiatrist, or by a clinical psychologist with specialised training in the sensitive, accurate and non-intrusive interviewing of small children; and that
- the process should commence as soon as there is a serious worry concerning the child, and before talk and stress within the family has an effect.¹⁰⁶⁹

7.190 From her analysis of the material supplied, she formed the opinion that:

- the investigation commenced with an adult preconception of the events which was fed to the children, so that they were not free to answer open-ended questions spontaneously thus contaminating the data gathered; and that
- the certainty of the investigators increased the fear and anger of the group, which accelerated the obtaining of the expected words and answers from the children, including the elements of witchcraft.¹⁰⁷⁰

7.191 In response the prosecution arranged, at short notice, to call Professor Kim Oates,¹⁰⁷¹ a paediatric specialist with expertise in child abuse cases, as a witness. He gave evidence that:

- it was difficult for children to provide information in free recall although they do retain good memory;¹⁰⁷²
- children are impressed by authoritative figures such as parents and police and if they have any input into the story then the child may learn it more readily;¹⁰⁷³
- if there was no memory, because there was no event, the process of repetition could be a learning process; and if there was real memory of an event, that memory might become obscured by repetition;¹⁰⁷⁴
- more research was needed into the ability of children of different ages to recall successfully events in which they were involved;¹⁰⁷⁵ and that
- there was good evidence that children from as young as six were reliable witnesses, but the data about younger children was not clear.¹⁰⁷⁶

7.192 The defendants then called a witness with expertise in child development, Ms Fay Pettit.¹⁰⁷⁷ She gave evidence that:

- pre-schoolers have a strong curiosity about sexual matters, and often play doctors and nurses;

¹⁰⁶⁸ *ibid.*

¹⁰⁶⁹ *ibid.*, at Doc. 481666.

¹⁰⁷⁰ *ibid.*, at Doc. 481676.

¹⁰⁷¹ At the time of giving evidence Professor Oates was the professor of paediatrics at the University of Sydney. He was the Head of the Child Protection Unit at the Children's Hospital, the President of the International Society for the Prevention of Child Abuse and Neglect and the Associate Editor of the Journal of Child Abuse and Neglect; Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/3.

¹⁰⁷² Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/1, at Doc. 842274.

¹⁰⁷³ *ibid.*, at Doc. 842286.

¹⁰⁷⁴ *ibid.*, at Doc. 842289.

¹⁰⁷⁵ *ibid.*, at Doc. 842290.

¹⁰⁷⁶ *ibid.*, at Doc. 842300.

¹⁰⁷⁷ Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/1, at Doc. 842317; She was a lecturer in Child Development at the Institute of Early Childhood in Sydney since 1976. Ms Fay Pettit obtained a Master of Arts in Developmental Psychology concentrating on an aspect of the comprehension of children aged between 3 and 8.

- their humour at that stage is concerned with sexual matters, and with toilet and taboo subjects which they enjoy discussing;
- the fear of harm is particularly strong in three to five year-olds, and their fantasies and play often involve 'needles' and 'doctors' equipment';¹⁰⁷⁸
- children between two and five are most open to suggestion, and are very conforming to parental suggestion;¹⁰⁷⁹
- the 'truth' was too abstract a concept for children between the ages of three and five;¹⁰⁸⁰ and that
- in her opinion, the questioning of the children in this matter had been suggestive of the answers.¹⁰⁸¹

7.193 On 10 August 1989, the magistrate ruled¹⁰⁸² that he would not allow any of the children to be called because he was not satisfied that the requirements under the Oaths Act had been met.

7.194 Following this ruling the DPP offered no further evidence and each of the defendants was discharged. Although a number of calls were later made for the filing of an ex officio indictment, the Director of Public Prosecutions declined to do so.¹⁰⁸³

Review of the Seabeach Case

7.195 As a result of Mr Colin Fisk's disclosures to IPSB,¹⁰⁸⁴ interest was drawn to the involvement of Mr Fluit in the Seabeach case, and particularly to the possibility that he had assisted the Derens in 'beating the charges'.¹⁰⁸⁵ An internal review was carried out at the request of the Minister for Police, into the adequacy of the police investigations.¹⁰⁸⁶

7.196 In the report to the Minister prepared by then Detective Sergeant Scott, on 24 July 1990 she advised that:

- there was no 'evidence to support a proposition that the police investigation into the alleged Seabeach Kindergarten child sexual abuse case was inadequate';¹⁰⁸⁷ and that
- she did not 'believe a Royal Commission will resolve this matter, nor do I accept the fact that all the alleged victims were sexually abused by the same person, if they were sexually abused at all'.¹⁰⁸⁸

7.197 It is apparent to the Commission that the investigation in this case was not adequate, a proposition with which Superintendent Scott in retrospect agreed, when called as a witness by the Royal Commission.¹⁰⁸⁹ The reasons for this state of affairs include the following:

- the lack of training in child sexual assault investigation of the investigators involved, from the officer in charge down;
- the use of very junior officers, without experience, in critical interviews;

¹⁰⁷⁸ Transcript of Police v Deren and Ors, 19/7/89, RCPS Exhibit 2305/1, at Doc. 842324.

¹⁰⁷⁹ *ibid*, at Doc. 842325.

¹⁰⁸⁰ *ibid*, at Doc. 842327.

¹⁰⁸¹ *ibid*, at Doc. 842343-44.

¹⁰⁸² *ibid*, at Doc. 842429-31.

¹⁰⁸³ NSW Attorney General, House folder note re Seabeach Kindergarten case, 13/9/89, RCPS Exhibit 2504C/65a.

¹⁰⁸⁴ C. J. Fisk, RCT, 1/8/96, p. 29733.

¹⁰⁸⁵ L. A. Scott, RCT, 6/8/96, p. 29935.

¹⁰⁸⁶ L. A. Scott, RCT, 6/8/96, p. 29937; L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

¹⁰⁸⁷ L. A. Scott, Report on Seabeach investigation, 24/7/90, RCPS Exhibit 2306C.

¹⁰⁸⁸ *ibid*.

¹⁰⁸⁹ L. A. Scott, RCT, 6/8/96, p. 30003.

- the unduly short period of surveillance, and the absence of any determined or extensive efforts to test the truth of the disclosures, or to examine whether there were other reasons for their emergence;
- the unsatisfactory identification procedures used;
- the absence of expert assistance from the CMU, and the failure of the police to utilise expert assistance when dealing with the children and their parents, before reaching a decision to place the matter before the court;
- the multiple interviews by police and the ODPP, which was only aggravated by the well meaning but inappropriate involvement of the parents in interviewing the children, and in passing on the information each acquired;
- the inappropriate interview techniques used, including the use of leading questions and the inadequate recording of those interviews;
- the interview of children in the company of one another, both by parents and police;
- the attempt to use hypnosis on a child aged under four years;
- the absence of critical attention to the significant discrepancies in the various versions given by the children;
- the preparation of statements that bore little relationship to the interviews on which they were ostensibly based;
- the manner in which counsellors were involved, followed by the 'disclosure' of progressively bizarre behaviour including elements of witchcraft;
- the failure of those involved in the prosecution process to focus sufficiently early on the problems of pursuing a case based solely on information provided by such young children;
- the sensational publicity that was attracted to the case in part generated by the release of the untrue assertion that video tapes of the sexual abuse of the children had been seized, which inevitably increased the anxiety of the parents and of the children;
- the lack of resources and assistance supplied at almost every stage of the proceedings to the police and to the solicitor from the ODPP who was entrusted with the committal;
- the failure to serve the defence with the various materials which revealed discrepancies and weakness in the prosecution case;
- the failure to develop a suitable case plan in conjunction with FACS, and with the ODPP, at a sufficiently early stage before the matter went out of control; and
- the failure to give sufficient support and information to the parents, which in part was attributed to the exclusion of FACS from participation in the early and critical phase of the investigation;

7.198 In the result, the Seabeach case was a debacle, which left a number of persons seriously traumatised, and questioning of the justice system.

7.199 The Commission found no credible evidence to suggest that Mr Fluit, or any other police officer, corruptly attempted to frustrate the investigation. Rather the prosecution was doomed almost from the outset by a series of investigative failures, and by the age of the children.

7.200 It is not now possible to determine whether or not there was any truth in the underlying allegations. The trail is too old, the evidence of the children is too contaminated, and there was nothing which the Commission could find to independently corroborate or disprove the matters raised.

NORTH SHORE KINDERGARTEN

Background

7.201 In July and August 1988 a number of children who had been attending a licensed¹⁰⁹⁰ North Shore Kindergarten (NSK)¹⁰⁹¹ made allegations against its male licensee/director (the director).¹⁰⁹²

7.202 The first complaint passed on to the Police Service was referred to the patrol detectives at Chatswood. After a second complaint was received the investigation was referred to the Child Mistreatment Unit (CMU).¹⁰⁹³

7.203 Detective Sergeant Pat Clear, now retired, had been appointed as the head of the CMU in June 1988. He had no specialist experience in child sexual abuse before taking up this position. His staff consisted of two constables, one a policewoman who had been there for two years and was 'burnt out', and another officer who was a pilot for the Police Air Wing.¹⁰⁹⁴ Neither had specific training in this area.¹⁰⁹⁵

7.204 Mr Clear conducted some research into the way inquiries of this kind should be conducted.¹⁰⁹⁶ The only officers available to assist him were the two officers mentioned earlier. He informed the Commission that he felt it was appropriate for FACS to interview the children and to refer the matter to him if an offence was indicated. His main concern was that there was a lack of corroboration for the complaints.¹⁰⁹⁷

7.205 The children who made the complaints were aged between four and 6.5 years. They had been 'interviewed' by their parents, by FACS officers, and by staff of the Royal Alexandra Hospital for Children (RAHC), before they were seen by police.

¹⁰⁹⁰ The kindergarten was a service under Part 3 of the *Children Care and Protection Act 1987* and required the issue of a licence under the Act to operate the service.

¹⁰⁹¹ The location of the kindergarten is the subject of a suppression order and thus will be referred to as NSK.

¹⁰⁹² Allegations were made both to FACS and to the Police Service during July, with FACS conducting the bulk of the initial investigation.

¹⁰⁹³ P. P. Clear, RCT, 12/8/96, p. 30254.

¹⁰⁹⁴ P. P. Clear, RCT, 12/8/96, p. 30252.

¹⁰⁹⁵ P. P. Clear, RCT, 12/8/96, p. 30252.

¹⁰⁹⁶ P. P. Clear, RCT, 12/8/96, p. 30256.

¹⁰⁹⁷ P. P. Clear, RCT, 12/8/96, p. 30256

7.206 The substance of the information collected by parents and FACS officers from 10 of the children between July and October 1988 was as follows:¹⁰⁹⁸

- child 1, a male aged 4.5 years, informed FACS officers that he had played doctors with the director, who 'sticks the needle in my bottom'. He said that a teacher who saw this 'smacked' the director saying he was 'very rude'.¹⁰⁹⁹ This child informed his mother that he saw the director's penis, it was 'stiff' and that he had put it under his chin and it 'got all wet'. There was some mention of the director 'cutting children', and of children not liking him as 'he was naughty'. Reference was also made to a 'bad secret';¹¹⁰⁰
- child 2, a male aged five years, informed his mother that he had seen the director's penis, and gave a description consistent with the director having masturbated near him. He reported similar matters to FACS, commenting upon the director's colourful underpants, and making reference to a 'bad secret'. This child reported to his mother, and to FACS officers, that the director's penis had a 'bone in it';
- child 3, a female aged six years, informed the FACS officers that she saw the director removing his pants, on a number of occasions at the kindergarten, and 'showing his snake'. She described the director pulling and squeezing it, and getting the children to 'shake his snake'. She reported to her mother that the director had 'shown himself to her and other children and put his snake in a boy's mouth'. She reported to RAHC that she did not like the director because he showed off his penis. She also made reference to the director and his 'snake' when speaking to the RAHC staff;¹¹⁰¹
- child 4, a female aged 4.5 years, informed FACS officers that she had a 'bad secret at pre-school' and that it involved 'private parts'. She said to staff at the RAHC that the director had shown his penis to her and a friend and asked them to touch it. She also made reference to being told that it was a secret and if she told anyone about it her parents would fall down a 'big hole';¹¹⁰²
- child 5, a boy aged five years, informed FACS officers of games that he had to play at pre-school which he did not like. He made reference to a 'bad secret' and to 'rude games', like showing bottoms, but said that he was not able to tell. He informed the RAHC staff of a doctors game where pants were removed;¹¹⁰³
- child 6, a boy aged four years, informed FACS officers that the director pulled his pants down and was rude;¹¹⁰⁴
- child 7, a female aged four years, informed FACS officers of the doctors games she played with the director, who had a 'needle'. She demonstrated the way in which the director placed the 'needle' into children's bottoms;¹¹⁰⁵
- child 8, a boy aged five years, informed FACS officers of 'rude games that he used to play at pre-school' which included 'pulling pants down and showing bottoms'. He said that he had seen the director's penis and that he does 'rude things'. He informed the RAHC staff that the director was not ever coming back to pre-school because he played rude games;¹¹⁰⁶

¹⁰⁹⁸ This information was summarised by Dr John Boots in his review of the FACS investigation into the matter, 17/1/89, RCPS Exhibit 2337C/2, at Doc. 1406463-83.

¹⁰⁹⁹ B. Rope, Statement of Information, 5/10/95, RCPS Exhibit 2337C/2, at Doc. 1406464.

¹¹⁰⁰ *ibid.*

¹¹⁰¹ *ibid.*, at Doc. 1406466.

¹¹⁰² *ibid.*, at Doc. 1406467.

¹¹⁰³ *ibid.*, at Doc. 1406468.

¹¹⁰⁴ *ibid.*, at Doc. 1406469.

¹¹⁰⁵ *ibid.*, at Doc. 1406470.

¹¹⁰⁶ *ibid.*, at Doc. 1406471.

- child 9, a boy aged four years, informed the FACS officers that he did not like the director, as he was a bad man, and 'weed on the floor'. He was instructed not to tell anyone because he, his parents and grandparents may be killed;¹¹⁰⁷ and
- child 10, a female aged six years, drew some pictures of the pre-school for the FACS officers but did not include the director. When asked about him, she drew him 'poohing down his leg' but then said 'I was only joking' and that he was 'really a nice man'.¹¹⁰⁸

7.207 Medical examinations were conducted at the RAHC from July 1988. They were reported as revealing no abnormality except, in one instance, where a male child's anus was noted to have an irregularity consistent with trauma, or sexual abuse, or possibly constipation.¹¹⁰⁹

7.208 As at 22 August 1988, five children who had made complaints and been interviewed by FACS, were receiving counselling. FACS advised Mr Clear that they were not yet ready to make statements to the police.¹¹¹⁰

7.209 The director of the pre-school, who was the subject of the complaints, was interviewed by police on 24 August 1988 in the presence of his solicitor but declined to say anything in respect of the allegations that were put to him.¹¹¹¹

7.210 By September 1988 a total of 56 children had been interviewed by FACS, of whom about 12 had given some 'indication' that 'something may have happened'.¹¹¹²

7.211 On 19 September 1988, a conference was convened which was attended by police and staff from FACS and the Health Department. It was agreed that:

- the role of the social worker, and medical staff at the RAHC would be to assess the emotional state, and the effect of abuse on the children, and to provide therapy; and that
- joint interviews with FACS and police should be conducted.

The police indicated they were not confident of criminal prosecution, due to the age of the children, and their regressed behaviour.¹¹¹³

7.212 Between 19 September 1988 and 6 October 1988, the police conducted interviews with seven children. In relation to six of them, they concluded that there was no disclosure of any sexual abuse. One child, a four year-old male did make an allegation that the director had exposed his penis. The parents of two children refused to allow any interview.¹¹¹⁴ The three remaining children had yet to be contacted.

7.213 As a consequence, Mr Clear reported to FACS on 6 October 1988:

After speaking with the officers of the Department of Family and Community Services and an examination of all resume and interviews with the children interviewed, I am satisfied that there are sufficient grounds for the Child Care Licence on issue (to the director) to be revoked under the provisions of Schedule 1 (Section 9) (1)(b) of the Children (Care and Protection) Act 1987.

In the majority of the interviews police had with the children, they were not forthcoming with the allegations that they had made to either their parents or welfare officers. There is a certain consistency in the versions given by the children when they were interviewed separately and in the presence of their parents.

¹¹⁰⁷ *ibid.*, at Doc. 1406472-3.

¹¹⁰⁸ *ibid.*

¹¹⁰⁹ Dr Schlebaum took issue with this last mentioned alternative, referring to a recent conference which had excluded constipation as a cause of such a physical sign. Conference on Physical Science in Sexual Abuse Cases (Melbourne) August 1988; B. Rope, Statement of Information, 5/10/95, RCPS Exhibit 2337C/2, at Doc. 1406455.

¹¹¹⁰ Letter to DPP from P. P. Clear, 2/1/90, RCPS Exhibit 3180C.

¹¹¹¹ P. P. Clear, Statement of Information, RCPS Exhibit 2336C/58.

¹¹¹² P. P. Clear, RCT, 12/8/96, p. 30258.

¹¹¹³ B. Rope, Excerpt from FACS conference summary, 5/10/95, RCPS Exhibit 2336C/38, at Doc. 1406484.

¹¹¹⁴ Letter from P. Clear to B. Burgess, 6/10/88, RCPS Exhibit 2336C/46.

The protection of the children from abuse of any kind is of paramount importance. I am concerned bearing in mind the strength of the evidence that (the director) should be permitted to continue to be involved in the care of children. I support any application which will prevent any abuse of these or any other children in the future.¹¹¹⁵

7.214 These children, and others, were reported by two consultant psychiatrists,¹¹¹⁶ to have a number of observed psychological, and physical symptoms, including behavioural changes. Both psychiatrists made their assessments from documents supplied to them by FACS.¹¹¹⁷

- in her review of the material in November 1988, Dr Schlebaum, expressed concern that many of the children had given detailed disclosures to FACS officers, and to other people, but not to police.¹¹¹⁸ She took the view that there was a need for a review of the police interviews;¹¹¹⁹ and
- Dr John Boots considered that there were very strong grounds to suggest that a number of the children had been exposed to physical, psychological and sexual abuse whilst attending the NSK.¹¹²⁰

7.215 In February 1989 the police sent the interviews and relevant documents to the ODPP for advice. The ODPP responded in May 1989 asking that the victims be interviewed by police and/or ODPP officers. Two families agreed to further interviews at the RAHC which were conducted by Detective Clear and a child protection worker. Neither of these children provided any further information upon which charges could be brought against any person.¹¹²¹

7.216 Mr Clear concluded in October 1989 that the matter could not be taken any further. Accordingly no criminal were charges laid. However, the licence of the NSK Director was revoked.

Concerns in relation to the Investigation

7.217 Mr Clear was very concerned about three matters:

- the lack of corroboration;
- the capacity of the children to give evidence; and
- the possibility that the children's evidence may have been contaminated by the numerous interviews by FACS, the RAHC unit and parents.¹¹²²

7.218 Although Mr Clear had formed the view that there was not enough evidence for a criminal prosecution, he noted in an Intelligence Report that he was left with a 'strong suspicion that the director had masturbated himself in the presence of the children and probably sexually assaulted some of them'.¹¹²³ It was this which led him to recommend revocation of the Director's licence.

7.219 The lack of prosecution caused understandable consternation amongst the parents, some of whom had difficulty in understanding the evidentiary requirements for a successful prosecution.¹¹²⁴

¹¹¹⁵ NSW Police Service correspondence re child mistreatment at NSK, 6/10/88, RCPS Exhibit 2328C/1, at Doc. 116085.

¹¹¹⁶ Dr A. Schlebaum on 28/11/88 & Dr J. Boots on 17/1/89.

¹¹¹⁷ See assessments by Dr Schlebaum and Dr Boots, Attachments to B. Rope, Statement of Information, 5/10/95, RCPS Exhibit 2337C/2.

¹¹¹⁸ B. Rope, Statement of Information, 5/10/95, RCPS Exhibit 2337C/2, Attachment M - Confidential Report by Anne Schlebaum, 28/11/88, Doc. 1406455.

¹¹¹⁹ *ibid*, Doc. 1406455.

¹¹²⁰ B. Rope, Statement of Information, 5/10/95, RCPS Exhibit 2337C/2, Attachment O - report by Dr John A Boots re Seabeach and analysis of children, Doc. 1406481.

¹¹²¹ Letter to DPP from P. P. Clear, 2/1/90, RCPS Exhibit 3180C. P. P. Clear, RCT, 12/8/96, p. 30259.

¹¹²² P. P. Clear, RCT, 12/8/96, p. 30256; Mr Clear had also warned FACS of the dangers of contamination by 'well-meaning adults', see letter to DPP from P. P. Clear, 2/1/90, RCPS Exhibit 3180C, p. 2.

¹¹²³ B. Chapman, Intelligence report re indecent assault at NSK, 20/10/89, RCPS Exhibit 2336C/59.

¹¹²⁴ P. P. Clear, RCT, 12/8/96, p. 30260.

7.220 This case, which attracted a somewhat more cautious approach than that taken in the Seabeach case, provides a further demonstration of the need for specific training in child sexual abuse, co-ordination of cross discipline input and mutual support. This lack of training and support left the investigating officers lacking confidence in what they were doing. Mr Clear's concern not to do the wrong thing seems to have led him to the view that he should let the FACS officers continue with the interviews. This was ultimately counter-productive, as he then became concerned about a possible contamination of the children's evidence, even though the case was one giving rise to very serious cause for suspicion.

Conclusion

7.221 Each of these cases demonstrate the necessity for:

- a centralised specialist agency which is aware of the resource requirements for large investigations so that a proper co-ordination of effort can occur as soon as practicable;
- a multi-disciplinary approach to the investigation which can facilitate the development of a case plan, to avoid contamination and establish clear lines of communication with parents to instil confidence in them;
- joint interviews of victims by police in conjunction with officers from the Department of Community Services, and the Department of Health as appropriate; and
- recording of children's reports of allegations at least by sound and preferably by video.

C. PARTIALITY

7.222 In the course of the Royal Commission, suggestions were made, from time to time, of the existence of a ring or conspiracy involving politicians, judges, lawyers, police and other persons of influence in the community, who were:

- either practising paedophiles; or
- complicit in the protection of such offenders.

7.223 Only on rare occasions were names or details of these persons mentioned in any public forum. Notwithstanding, the Commission considered it necessary to examine these cases to determine whether the persons concerned had been given favoured treatment by reason of their office, or had secured protection by corrupt means.

7.224 It is understandable that police, along with the remainder of the community, would have difficulty in accepting that members of the clergy, judiciary, or senior public service or persons holding similar office, would behave illegally, particularly when that illegality involves sexual misconduct with children.

7.225 For that reason it is perhaps not surprising that allegations in cases of this kind have been treated with disbelief, or dismissed once the person involved has been confronted and denied the allegation. In retrospect, with greater knowledge of the problem of paedophilia, and with an awareness that sexual abuse of children occurs at all levels of society, it can be seen that the instinctive reaction is inappropriate. It risks shielding the high profile offender from detection and prosecution, or leaving the Police Service open to claims of cover-up, even though no offence has in fact been committed.

7.226 The Commission has looked for the factors which contribute to inadequacies in this type of investigation. Those identified include:

- an inability to believe that the prominent person would engage in such conduct, in some cases conditioned by respect for, or close association with the institutions they represent (for example the church or justice system);
- a realisation that prominent persons and those holding sensitive office are vulnerable to baseless allegations at the hands of the mischievous, and the disgruntled or those with an interest to serve;
- a fear that the investigations may become public and irreparably but wrongly damage such person, and even cause them to take their lives;
- a fear of the personal consequences investigating such persons, and of punishment by those in authority, either within or outside the Service, for doing so;
- a lack of will and support within the Service for such investigations;
- a belief that those in authority will prefer to avoid scandal in order to protect the institutions involved;
- a lack of appropriate protocols within the relevant agencies for recording intelligence concerning such persons, in part driven by the fear of leaks; and
- a lack of communication between the relevant agencies in the dissemination of intelligence concerning prominent persons.

7.227 Notwithstanding these features, a balance needs to be struck, to ensure that these cases are properly and fairly investigated, and that unnecessary harm associated with the investigative process itself is limited. The Commission has sought to achieve that balance by conducting some hearings in camera, and by now reporting upon some of these investigations without identifying the individuals involved or defining the precise allegations, and also by the delivery of a separate report where the subject matter relates to matters at issue in current criminal proceedings. This course has been taken in the absence of any legitimate public interest in the disclosure of details of the private sexual lives of those involved where that was not within the terms of reference, the existence of parallel police investigations, and the need to avoid irreparable and unfair harm where the allegations were found to lack substance.

7.228 Consistently with the principles outlined earlier, where the Commission had any concrete allegation concerning a case of this kind which could be brought within its proper reach, it was pursued. Otherwise, the information received was disseminated to the Police Service, or other appropriate agency for intelligence purposes and/or investigation as they saw fit.

7.229 Where, after preliminary inquiries, including interviews or hearings conducted either publicly or in camera, (dependent on security or investigational considerations, or the risk of irretrievable and wholly unnecessary harm to reputation), it emerged that the allegations were obviously mala fide, or lacking any sensible or credible basis, there was no further investigation or dissemination of the information. The Commissioners, in this latter regard, consider themselves constrained by s. 30 of the *Royal Commission (Police Service) Act 1994*, not to divulge information other than as specified by sub-section (4) of that section. In particular, they are not satisfied that is in the public interest to disseminate information that is either lacking in credibility or is obviously the product of malice.

7.230 The greater proportion of the 'information' or allegations of conspiracy and wrongdoing of this kind hinted at in public, or the subject of notification to the Commission, was found to relate to the assumed homosexuality of the persons named, and to rest solely on inference from that fact that they were involved in paedophile type offences. As the Commission has pointed out, repeatedly, such a process of reasoning is unsound, and it is not one that it has been prepared to apply. For that reason, and since it has no business inquiring into homosexual conduct at all since 1984, or before that year unless it gave rise to corrupt protection or became the subject of extortion, at the hands of the police, the Commission has not considered it permissible to pursue 'information' or allegations of this genus.

7.231 In other cases, where there is a sufficient nexus to the terms of reference, such as in the case of former Justice David Yeldham (Mr Yeldham), the information or allegation was pursued as far as it could be taken.

7.232 In this section of the Report the Commission deals with the inquiries it undertook, concerning this category of alleged offender. Some of these matters may be dealt with briefly, others require more detailed examination.

INQUIRY 1

7.233 During the closing days of the Royal Commission it became apparent that the Honourable Franca Arena MLC, had in mind naming certain politicians and judges as paedophiles. Some information concerning some of these people had earlier been passed by her to the Police Service, in one case, in the form of a statutory declaration. She had not given any information concerning these matters to the Commission. It learned that the police were having difficulty in obtaining the assistance of the maker of the statutory declaration in relation to one of the politicians, and as a consequence it called him as a witness.

7.234 It emerged that the only evidence this witness could offer was that he had seen the politician he had named, late at night some time between 1977 and 1980, at an inner city club, in the company of two young boys whom he understood not to be relatives. It was his understanding that this had not been an isolated occasion, and that other staff suspected the politician to be taking young boys to the club, and using a room which was not booked up in his name. The informant was unable to confirm whether anything untoward had occurred in the room, and he did not suggest that the boys were in any way distressed.

7.235 The club in question no longer exists, and some of the other staff are now deceased. The Commission has made attempts, without success in the time available, to identify and interview other staff members, to see if there is any corroboration or opportunity for further investigation. Such material as it has collected in this regard has been passed to the CPEA.

7.236 The Commission did, however, call the politician's driver, and the manager of Parliamentary Security Services. Each denied any awareness of any involvement by the politician in paedophilic behaviour. The politician was also called as a witness and denied ever having taken any children to the club, either for lawful or unlawful purposes. He was unable to ascribe any reason for the club employee either being mistaken or fabricating an allegation against himself. Moreover, he denied all knowledge of any paedophile conspiracy or ring of judges, politicians or persons in high places. He knew nothing of the matters concerning Mr Yeldham until their disclosure in the public hearings. In those circumstances, the Commission can take this matter no further, other than to observe that so far as it is aware, no other intelligence exists to suggest that this politician has engaged in paedophile activities, or that he has been in receipt of police protection.

7.237 So far as the Commission is aware, the information provided by Mrs Arena to the CPEA in relation to the other persons she contemplated naming is being investigated by the CPEA. The observations made in paragraphs 7.230 and 7.231 apply so far as investigation by this Royal Commission was concerned. and any intelligence or information held by the Royal Commission in respect of those persons has been disseminated to the CPEA to assist in their inquiries.

7.238 The Royal Commission made inquiries of a cross-section of politicians and government officials, holding office over a considerable period, for any information they may have concerning possible paedophile activity by politicians and senior public officials including judges, or concerning the possible abuse of their office to interfere with police investigations. No cogent information came to hand as a result of these inquiries.

INQUIRY 2

7.239 Two witnesses, Mr Colin Fisk and KR5, have both in the past, and during the Royal Commission, supplied names of various persons within politics, the judiciary and the legal profession whom they suspected of paedophile activity. Such suspicions seem to be derived from rumour, or from assumptions they made as to their shared sexual orientation, or their attendance at Costellos (also known as Castelllos) night club. They were unsupported by any specific allegation or claim to direct knowledge that the persons named were in fact engaged in paedophile activity.

7.240 Any relevant information concerning any of these claims which the Commission received and assessed as capable of assisting the CPEA has been disseminated to it. None of that information relates to a time when any of those persons held public office, nor is there any suggestion of favoured treatment having been given to them. In these circumstances, the Royal Commission had no authority to carry out any further investigations into the allegations. The CPEA, however, has authority to do so.

INQUIRY 3

7.241 The Commission has looked afresh at allegations concerning a judicial officer provided to it by a person who will be referred to as 'A'. This material was initially provided by A to a law enforcement agency. The basic allegation, and the alleged failure of the NSW Police Service to investigate it, became the subject of complaints made by A to the Judicial Commission of NSW, the ICAC and the Ombudsman. It is not appropriate to give the allegations currency by detailing them. This report shows that they are not able to be substantiated.

7.242 These matters came to the notice of the Royal Commission following receipt of information from A. This led to a relatively lengthy inquiry, and to a hearing before Commissioner Urquhart during January 1997. The hearings were conducted in camera, consistent with the policy and practice of the Commission to follow that course where the allegation did not rest upon direct evidence and involved conduct of such a scandalous or serious kind that its ventilation in public might occasion irreparable and unfair harm to the person to whom it related, if it were later shown to be unfounded, or even malicious.

Initial Investigation into the Complaint

7.243 The initial recipient of the wide-ranging complaint, which referred to a number of persons and activities not all of which related to the judicial officer, was the Australian Federal Police (AFP). It concluded that the matters raised were not within its jurisdiction and accordingly passed the complaint to the NSW Police Service.

7.244 It needs to be noted that A had pursued cases (some successful but others unsuccessful) in the Court of which the judicial officer was a member. The allegations emerged at a time when A had been unsuccessful in some of these cases.

7.245 It needs also to be noted that any allegation of paedophilia involving the judicial officer, did not purport to come from A's direct knowledge, but from information provided by informants whom A made available to the police. The allegations were in fact sourced to a conversation at a dinner party, not attended by the judicial officer or by A, in which one or more guests had suggested that the judicial officer was engaged in paedophile activity. Although they had no greater credence than this, and would not have been admissible in criminal proceedings as remote hearsay, they were capable of providing a line of potential inquiry by way of interview of those involved in the conversation.

7.246 The judicial officer was never interviewed by the police about the allegations and had no knowledge of any police investigation. There can be no suggestion that the officer in any way influenced the investigation or sought preferential treatment.

7.247 Some six months after providing the information, A made an inquiry of the AFP as to progress. A was informed that the material had been passed on to the NSW Police Service.

7.248 On inquiry of a senior member of the Police Service, A was informed that it had no knowledge of any receipt of the material. A again contacted the AFP, which passed to the NSW Police Service a copy of a tape of A's interview of 1 December 1986, in which the information had initially been supplied.

7.249 Subsequently A claimed, in a discussion with the Chief Executive Officer (CEO) of the Judicial Commission, to be in possession of information disclosing paedophile activity by the judicial officer. The CEO made an inquiry of the NSW Police Service and was informed that the allegation was the subject of a police investigation.

7.250 As this 'disclosure' was not in the form of a statutory declaration and there was a current police investigation, the Judicial Commission did not carry out any investigation. It was never advised by the Service of the outcome of its investigations.

7.251 The Royal Commission conducted an inquiry into the adequacy of investigations that were conducted once the matters were raised by A. In doing so, it interviewed a number of persons and conducted hearings in private session. The outcome of the Commission's inquiry is reported in the paragraphs which follow.

7.252 After the tape was received by the Police Service, Commissioner Avery forwarded either it or a transcript of it, to the Commander of the State Investigative Group, Chief Superintendent Lauer, as he then was, under cover of a letter of 6 August 1987.

7.253 Notwithstanding this letter, Mr Avery informed the Commission that he had no recollection of A's allegations prior to 1997. He agreed that had he been informed of an investigation relating to the judicial officer, he would certainly have remembered it.

7.254 Former Detective Inspector Brian Rope, then with the Juvenile Services Bureau and Police Commissioner's adviser on child protection matters, informed this Commission that he had been asked to look at the matter. He interviewed A on 7 August 1987, and obtained some further details including the names of A's alleged informants. Three days later he forwarded a report to Mr Lauer in which he advised that A had disclosed the names of two male persons, who would be able to provide information to substantiate the claims that A had made to the AFP. Mr Rope did not name those informants in his report indicating that they would be provided by him 'when necessary'.

7.255 Mr Rope's report did not mention the judicial officer by name and only referred to 'information provided on a variety of matters'. He advised that bearing in mind the length of time since the original complaint, and the fact that A has not sought permission to reveal the names of the informants, he did not consider that they should be approached at that time. At this stage it appears that he had a transcript of the AFP interview, but not a copy of the tape. If correct, this would suggest that the first letter from the AFP had in fact been received by the Police Service, and that a file was then opened.

7.256 Mr Rope said in his evidence before the Royal Commission that he did not open a file but added papers to an existing file, which supports the view that the AFP material had been received in December 1986, and either misplaced or left unattended. He understood that the allegations were very sensitive and that he was to undertake a 'very confidential sort of inquiry'. Although he recommended no approach to the informants one matter that he did recommend was surveillance in relation to allegations A had made of drug dealing from a certain hotel.

7.257 He had a recollection of submitting another report in 1987 concerning this matter, but was not able to recall any details either of it, or of any follow up to his first report.

7.258 He next saw the file in July 1988, but was unable to say who gave it to him. On this occasion, he discovered that some inquiries had been carried out in relation to the drug 'intelligence', but that nothing had been done in relation to the informants named by A. He recalled that:

- Superintendent Cole wanted the investigation completed because it was getting long in the tooth; and that
- he was going on holidays in December 1988 and was under pressure to have it wrapped up by Christmas.

7.259 Mr Rope then interviewed A's principal informant, but not the second informant. After carrying out some other investigations he furnished a report in which he 'closed the book on the investigation'. This report reflected his view that there was no evidence of any criminal conduct by the judicial officer.

7.260 He believed that he placed this report on the file and either gave it to Inspector Cole or left it on Inspector Cole's desk. Rope said that was the end of his involvement in the matter until 1993, when he was approached by Superintendent Hadley, who was conducting an investigation at the request of the Ombudsman.

Complaints to the Ombudsman and the ICAC

7.261 In 1993, A complained to the Ombudsman and the ICAC that:

- the information which had been provided to the NSW Police Service had been lost; and that
- no proper investigation had been conducted into the allegations that had been made.

7.262 The ICAC liaised with the Ombudsman who caused an investigation into A's complaint to be carried out.

7.263 In April 1993 Superintendent Hadley, then Patrol Commander at Bankstown, was directed to conduct the inquiry. As part of his investigations, he received a report from Mr Rope in which the latter stated that:

- he had located and interviewed the informant who had spoken to A about the dinner party discussions concerning the judicial officer;

- the informant had confirmed his presence at the party, and provided the first name of the host, but had 'refused to disclose the surname or the whereabouts of the party except that it was in the Eastern suburbs';
- the informant had then terminated the interview; and that
- when he had located the informant some months later, he had refused to participate in a recorded interview, or sign any documents in connection with the inquiry, but had claimed that A had taken 'artistic licence' with the information received from him.

7.264 Substantially in reliance on this information, Mr Hadley reported, on 14 May 1993, that:

- there was insufficient evidence to sustain the complaint that the NSW Police Service had lost the transcript when it was originally supplied by the AFP;
- it was more probable than not that an investigation file had existed, but it was now missing; and
- although the file could not be located, it could be 'confidently asserted that the matters complained of by A were adequately investigated and that no evidence was found to substantiate A's complaints'.

7.265 It was his conclusion that A's complaints were 'unsupported by evidence and of no merit'. He added that 'in the absence of real evidence, there should be no further action in these matters'. As a result of this report there was in fact no further investigation by the Police Service in relation to A's allegations.

7.266 After further correspondence the Ombudsman notified A in March 1994 that the Ombudsman was 'unable to determine whether or not [the] allegations were properly investigated' and the complaint was accordingly 'deemed to be not sustained'. A was advised, incorrectly as events transpired, that the informant had been spoken to, but had not provided any information.

7.267 During the Royal Commission Inquiry, Mr Rope produced a notebook containing notes of a discussion with A's informant. These notes make it very clear that the informant:

- had not 'refused' (as had been claimed by Rope in his report to Superintendent Hadley) to provide the surname of the host or the whereabouts of the party;
- had in fact provided the full name and occupation of the host of the party and the address at which it was held; and
- had not terminated the interview but had gone on to recount the conversation concerning the judicial officer, which he remembered because it was so 'detailed and explicit'.

7.268 Mr Rope informed the Commission that further details had been provided by this informant, which were not contained in his notebook or in his report to Superintendent Hadley, namely that, *inter alia*, a solicitor who will be referred to as 'S' had been said (in the conversation) to be involved as an accessory in the alleged paedophile activity.

7.269 Mr Rope did not check whether the address provided by the informant matched that of the named host of the party, or whether that person existed. The Royal Commission made this check and found that the address matched, and that the named person had the same occupation as had been claimed.

7.270 Mr Rope agreed that he had not approached the solicitor or the named host. Nor had he sought to discover the identity of any of the guests, in order to determine whether there was any truth in the allegations concerning the judicial officer. He said that he was trying to get the informant to commit his version to paper, before he took the matter any further. Even if this was so, there was nothing to prevent him from reporting that fact to Hadley, rather than providing a report which conveyed the clear implication that he had been prevented from taking any further steps because of a lack of information.

7.271 Mr Rope also acknowledged that he had been provided by A with the name, telephone number and business details of the second person said to have knowledge of the judicial officer's alleged activities. In his report to Hadley, Rope had said that:

- he had used the services of a Special Branch officer, Sergeant Mervyn Cooper, to check on this potential informant;
- there was no information forthcoming in respect of his telephone number; and that
- as a consequence he was not interviewed.

7.272 Mr Cooper could not recall making any inquiry in relation to the telephone number for Rope, and said that any NSW police officer could have made that inquiry. He did not recall making any other inquiries for Rope.

7.273 The Royal Commission found that the telephone number, provided by A for the second informant, was indeed the telephone number for his business, and was connected at the relevant time.

7.274 Mr Rope admitted to the Royal Commission that he had misled Hadley but said that he did so inadvertently. Hadley said that he had never seen Rope's notebook before, and that its contents were inconsistent with the report which he had been given. He agreed that had he been provided with the information it contained, and been aware that it had not been followed up, he would have concluded, contrary to his earlier report, that the inquiry was inadequate.

7.275 Neither former Commissioners Avery or Lauer could remember anything about the allegation made against the judicial officer by A. Mr Cole, however, recalled the inquiry. He was concerned not to get involved in it, as he was trying to placate A in a multitude of matters raised by that person. He said that:

- he wanted to keep the investigation relating to the judicial officer completely separate;
- having been satisfied that Rope was doing the inquiry, he did not worry about it any further; and that
- he had no recollection whatsoever of receiving any file or report about the investigation.

7.276 Former Commissioner Lauer could not take the matter of the missing file any further other than to surmise that it may have been stolen by someone who had an inappropriate interest in it, or possibly caught up with other confidential material and inadvertently burnt.

7.277 Mr Rope informed the Royal Commission that:

- when he was asked to do the investigation, he felt that he was in a very difficult situation;
- he felt that A's attitude was to 'get' the judicial officer whichever way that A could;
- he took the view that what he had been told was hearsay of a very sensitive nature, which took him into an area in which he did not feel comfortable;
- he had little or no help;
- he felt the investigation had been 'off-loaded' on to him; and that
- at the time he was 'super sensitive' about false allegations being made in this area and he was adamant that he wanted something in writing before he pursued the matter further.

7.278 As a consequence, he acknowledged that he had failed to follow up the information provided or to make even fundamental checks concerning some aspects. He said that had the information concerned someone other than the judicial officer, he may well have followed it up more thoroughly.

7.279 He said that he took copies of some of the documents from the file and kept them in his office until he retired from the Police Service in May 1996. When asked why he had done this, he replied 'a lot of correspondence did go missing and it was one way of keeping track of what you were doing'.

7.280 When he retired he took the material home. He agreed that having sensitive material at his home relating to the investigation of allegations against a judicial officer, was a dangerous and insecure practice. His evidence did not explain the absence of the remainder of the file.

7.281 The Royal Commission did, however, interview each of the two informants whose names A had provided to Rope, including the informant who had brought to A's notice the conversation at the party. That informant initially informed the Commission that he could not remember much of the interview with Rope. When the material in the notebook was put to him, he accepted that it was a correct record, but said that it was a long time ago, and that the conversation had been conducted in a 'joking manner'. He described it as 'bitchy' and as 'gossip' and said that some of it was 'blown out of proportion'. He was unable to name any of the guests at the party, which he attended in a capacity other than as an invited guest. As a consequence, the Commission was unable to interview any of those persons.

7.282 The second informant, whose name was supplied to Mr Rope, and to whom knowledge of the judicial officer's alleged activity was attributed, was also interviewed after he was found by the Royal Commission. He said that he did not know the judicial officer personally and was unable to provide any material of assistance.

7.283 The solicitor, S, previously mentioned, was also found. He denied the suggestion which had allegedly been made, at the party, against him. He also denied having any personal association with the judicial officer, or knowledge of any unlawful activities on his part.

7.284 All available informants and persons connected with the investigation, including the additional persons named by A in a statutory declaration to the Royal Commission as possible witnesses, were interviewed. None of those witnesses provided any information which was supportive of unlawful activity on the part of the judicial officer, or which was suggestive of any corrupt arrangement for that officer's protection, or of any attempt to compromise the officer in the exercise of judicial functions. The judicial officer denied any such conduct and said that he had never been interviewed by police or by the Judicial Commission in relation to such allegations.

Conclusion

7.285 Although the hearings of the Commission concerning this matter were conducted before Commissioner Urquhart in camera, for the reasons already mentioned, it made every attempt to get to the truth of the matter. Necessarily, its path was more difficult, having regard to the greater opportunity which existed when the matter was first brought to police notice in 1986. The picture disclosed is that there were remarks most adverse to the judicial officer made in his absence on a social occasion. The person who heard and communicated the remarks to A, had no knowledge of their truth or otherwise. Indeed he later spoke of them in the context of being 'bitchy' or 'gossip'. Two other persons designated as being able to throw direct light on the matter stated that they did not personally know the judicial officer, or have any information of relevance concerning him.

7.286 The greater part of this information was uncovered by the investigations of the Royal Commission but could and should have been revealed by a proper police investigation, which, if timely, would have had the benefit of identifying and speaking to further persons. As the matter stands there cannot be any possible adverse inference against the judicial officer, to be derived from the information A provided to the AFP, the NSW Police Service, the ICAC, the Judicial Commission, or to the Royal Commission.

7.287 As to the question of the adequacy of the police investigation, it is the conclusion of the Royal Commission, in the circumstances outlined, that:

- the investigation entrusted to Mr Rope was not carried out adequately;
- the Service was misled;
- the NSW Ombudsman and, in consequence, the ICAC, were misled;
- the Judicial Commission was not properly informed of the outcome of the police investigations, even though the Service was aware of its interest in the matter;
- A was unfairly treated in that the information was not properly acted upon; and
- the investigation was unfair to the judicial officer in that the officer had not been afforded an impartial exhaustive and professional investigation.

7.288 The matter is complicated by the manner in which the file was managed, and its contents 'lost'. Whether or not some sinister feature underlines that event, the Commission is very troubled that Rope could have provided a report to Hadley that was clearly incorrect. The Commission finds it hard to accept that this was a result simply of inadvertence. It is more inclined to the view that it was as the result of Rope feeling that he was in a very difficult position, in which he lacked proper support or direction. This was almost certainly due in part to the undue deference paid to people in high places, and also due to the entirely inappropriate philosophy at the time that sensitive matters were better left undisturbed and unknown. In Rope's favour, and inconsistent with deliberate misconduct on his part, is the fact that he produced his notebook to the Royal Commission, when he could easily have destroyed or concealed it.

7.289 In the future, the Police Service must support officers who are investigating allegations against people in high office. Rather than having files disappear, or matters partially investigated out of a fear of repercussions, it is imperative that:

- professional and thorough investigations are conducted;
- a secure system of recording sensitive inquiries is established so that investigative finality can be achieved in an impartial and fair manner; and that
- transparency and accountability are vital to answer any suggestion of a cover up.

This particular investigation is a classic example of an unfair result for everyone concerned.

INQUIRY 4

7.290 This case involved a former sergeant of police. Although the evidence received by the Commission was confined to the manner in which the case was investigated and managed, and did not extend to the truth of the underlying facts, there is reason to conclude that it took an inappropriate course.

7.291 In summary, on 20 September 1990, a detective constable in Sydney received a complaint in relation to a sergeant who was staying at the home of the informant in a country town. It was alleged that:

- on 23 June 1990 the sergeant had massaged and indecently assaulted a 14 year-old boy in the bedroom they were sharing;
- the boy had left the room and complained to his parents, in whose room he spent the remainder of the night;¹¹²⁵ and that
- on the following day when confronted by the boy's father, the sergeant said that he was 'sorry' to hear that the boy was upset, and that he had not 'meant anything by it'.¹¹²⁶

7.292 The detective was informed that the parents of the boy did not want the local police to know about the matter but that they would be prepared to talk to an IPSB Officer. In passing the information on to Detective Sergeant (now Chief Superintendent) Lola Scott, the detective advised that the officer in question was rumoured to be an active paedophile, although he had no knowledge of any evidence to support this rumour'.¹¹²⁷

7.293 Detective Sergeant Scott travelled to the country location and took statements from the parents and the boy on 15 October 1990.¹¹²⁸

7.294 On 19 October 1990, the officer the subject of the complaint was given a direction to submit a comprehensive report in relation to it.¹¹²⁹ In response to this direction, the sergeant, although admitting to a conversation with the boy about sports injuries and massages, denied having attempted to incite him to commit any act of indecency.¹¹³⁰

7.295 The sergeant was interviewed, on the same day, by Detective Sergeant Scott. He admitted that he shared the room with the boy, and that he had not worn any clothes when he went to bed, but denied any indecent contact. He explained his discussion with the father on the basis that he had understood the boy to have been upset because of his suggestion that he cease playing football. He said that his apology was unrelated to any suggestion of a sexual assault.¹¹³¹

7.296 Detective Sergeant Scott recommended departmental rather than criminal charges. The DPP agreed with this recommendation.

¹¹²⁵ Solicitor's submission to DPP, 31/5/91, RCPS Exhibit 1693C; Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Statement by boy, 15/10/90, RCPS Exhibit 3136C.

¹¹²⁶ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Statement by boy's father, 15/10/90, RCPS Exhibit 3136C, at Doc. 455083.

¹¹²⁷ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; NSW Police Service, Report concerning complaint of abuse by a police officer, 20/9/90, RCPS Exhibit 3139C.

¹¹²⁸ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Statements by the boy, his mother and father, 15/10/90, RCPS Exhibit 3136C.

¹¹²⁹ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; NSW Police Service, Directive Memorandum, 19/10/90, RCPS Exhibit 3138C.

¹¹³⁰ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Sergeant's response to Directive Memorandum, RCPS Exhibit 3139C.

¹¹³¹ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Record of Interview of the sergeant, 19/10/90, RCPS Exhibit 3140C, at Doc. 455072 & 455076.

7.297 There had in fact been two earlier allegations of sexual misconduct made against the sergeant.¹¹³²

7.298 In 1976 there had been an allegation that he had indecently assaulted a 13 year-old girl, in the presence of her sister, and asked her to engage in similar conduct to that alleged by the 14 year-old boy in 1990.¹¹³³

7.299 The police file in relation to this incident recorded that:

- after the mother of the children had complained to the police the sergeant phoned her and allegedly said 'my job has been put on the line, what's this I hear about indecently assaulting (the child) in my boat';¹¹³⁴
- after this call the mother was extremely upset and chose not to pursue the matter; and that
- in view of the question mark over the suitability of the sergeant to be retained within the Service, it had been decided that he should revert to general uniform duty and be transferred to a different posting.¹¹³⁵

No further action was taken.

7.300 In 1988 a British tourist, then aged 24, complained to the police in another country town that, having been picked up hitchhiking, the driver of the car committed an act of indecency and invited him to join in. The tourist supplied details of the motor vehicle, which it was then ascertained was registered to the sergeant. He was interviewed on 8 March 1988, but denied the allegation.¹¹³⁶ As a result of an Internal Affairs investigation a recommendation was made that he be charged with misconduct. That recommendation was rejected on the ground that there was insufficient evidence to sustain a departmental charge. However, a recommendation was made that the sergeant be requested to seek an interview with Dr Raue of the Medical Branch for any 'personality problems' that he may be experiencing.¹¹³⁷

7.301 Chief Superintendent Scott was not sure whether she had any information concerning these earlier matters at the time of her recommendation to the DPP in relation to the 1990 complaint.¹¹³⁸ It appears that the DPP was not aware of this previous history.¹¹³⁹

7.302 She informed the Commission that even if she did have that knowledge she did not think she would have recommended criminal charges because of her concern for the boy.¹¹⁴⁰ Without in any way questioning the truth of that evidence, the Commission notes that whether criminal or disciplinary proceedings were commenced the boy was likely to be a necessary witness, that is unless it was expected that the sergeant would not contest a departmental charge.

7.303 A departmental charge was in due course preferred against the sergeant in respect of the 1990 allegations concerning the boy. On 19 February 1992, the date on which the matter was listed before the Police Tribunal, he tendered his resignation which was accepted.¹¹⁴¹ The charge was then dismissed.

¹¹³² Chronology of events and service history of the sergeant, RCPS Exhibit 1695; NSW Police Service, Case Note, 4/2/92, RCPS Exhibit 3141C. In a note dated 4/2/92 made of a discussion between Scott and the police psychologist it is reported that Scott 'informed me that there had been two other incidents of sexual misconduct in which he had been involved which had not been proceeded with'.

¹¹³³ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; NSW Police Service, Directive Memorandum, 11/2/76, RCPS Exhibit 3142C.

¹¹³⁴ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; NSW Police Service, Report concerning investigation of complaint, 2/3/76, RCPS Exhibit 3145C, at Doc. 1871228.

¹¹³⁵ *ibid*, at Doc. 1871236.

¹¹³⁶ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; Record of Interview of the sergeant, 8/3/88, RCPS Exhibit 3143C.

¹¹³⁷ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C; NSW Police Service, Report concerning action to be taken, 17/3/88, RCPS Exhibit 3144C.

¹¹³⁸ L. A. Scott, RCT, 16/4/96, pp. 23597-98.

¹¹³⁹ Previous matters are not mentioned in DPP advices on the matter - See DPP, Advice re criminal proceedings, RCPS Exhibit 1693C & DPP, Advice re criminal proceedings, 14/6/91, RCPS Exhibit 1694C.

¹¹⁴⁰ L. A. Scott, RCT, 16/4/96, p. 23598.

¹¹⁴¹ Chronology of events and service history of the sergeant, RCPS Exhibit 1695C.

7.304 Making full allowance for the desirability of avoiding undue trauma for the boy as a witness in a criminal trial, it is difficult to escape the view that the availability of disciplinary proceedings meant that the sergeant was dealt with more leniently than a citizen might have been in the same circumstances.

7.305 Again, despite the instinctive reaction that police are unlikely to personally engage in the sexual abuse of children, other cases where this has occurred including an officer who now holds rank as a Senior Sergeant, were discovered by the Royal Commission during its inquiries. The evidence collected in those cases has been disseminated to the Police Service. Prosecutions have been initiated, or are pending, and it is accordingly inappropriate for further details to be disclosed in this report.

7.306 The lesson for the future is that when such allegations arise concerning police then they should be pursued in precisely the same manner as might occur in the case of a suspected civilian offender. A disciplinary outcome will normally not be a suitable alternative. It certainly was not the preferable course in the present case, particularly in the light of the earlier history.

INQUIRY 5

7.307 It is necessary to set out, in some little detail, the history of the Royal Commission inquiry into various matters concerning the former Supreme Court Justice David Yeldham,¹¹⁴² deceased, as it has been suggested in some quarters that, but for parliamentary action, the matter would have been covered up by this Royal Commission.

7.308 That perception could not be further from the truth. The Royal Commission investigation was pursued very carefully and over a lengthy period in a way that was designed to maximise the likelihood of Mr Yeldham co-operating with it. This required the gathering of as much information as possible before his co-operation was invited. However, with the public exposure of the matter in the Legislative Council, and with the events which followed, the Royal Commission's investigation was effectively compromised.

Chronology of Royal Commission Investigation

7.309 In July 1995, the Royal Commission was advised by the Police Service that an informant had provided information relating to possible criminal conduct by a former judge.¹¹⁴³

7.310 That informant, CC16, was interviewed by the Royal Commission on 9 August 1995 on which occasion he alleged that:

- information had been given to him by a friend, CC13, that Mr Yeldham had been seen by CC13 on Wynyard Station, in difficulty over an allegation made by a youth that Mr Yeldham had made a sexual advance to him. Further that CC13 had assisted Mr Yeldham to be released from any further questioning by telling those questioning him that nothing had happened; and that
- CC13 had informed him that he still had some letters that he had received from Mr Yeldham.¹¹⁴⁴

7.311 A search warrant was executed on CC13's premises on 15 September 1995. No letters were found, nor was anything else found to support the matters allegedly raised in CC13's conversation. CC13 was interviewed and said that:

¹¹⁴² Because Mr Yeldham's name and circumstances have been so much in the public arena, there is no point in ascribing anonymity to him in this section of the report.

¹¹⁴³ NSW Police Service, Running Sheet information, 20/7/95, RCPS Exhibit 3161C.

- he was 20 to 25 years of age when he first met Mr Yeldham; and that
- he had no knowledge of any dealings between Mr Yeldham and the NSW Police Service.¹¹⁴⁵

7.312 Between late 1995 and early 1996, the Royal Commission inquiries continued in relation to Mr Yeldham, and the Police Service was required to produce all information it held concerning him.¹¹⁴⁶

7.313 In March 1996, in camera hearings were conducted in which, after initially denying any knowledge of Mr Yeldham being involved with the police, CC13 admitted that:

- he had met Mr Yeldham, who was then a barrister, in the 1960s on a train when he was 15 years old;¹¹⁴⁷
- he watched Mr Yeldham masturbating on the train, after which he was offered money by him;¹¹⁴⁸
- he met with Mr Yeldham on four or five occasions in his chambers and was paid for sexual encounters with him;¹¹⁴⁹ and that
- he had lied to CC16 about having any letters from Mr Yeldham.¹¹⁵⁰

7.314 CC16 was also examined on oath during this in camera session. Although he claimed to have had sexual relations with Mr Yeldham over a period dating back to a time when he was aged 18 years, his evidence was in many respects contradictory and unpersuasive. It was clear that he had picked up a good deal of gossip concerning Mr Yeldham from a group with which he associated, some of whom were habitués of the city beats. It was not clear whether the evidence he gave was based on this gossip, manufactured by him, or had an element of truth to it.

7.315 CC13 was, however, adjudged by his frankness, demeanour and personality to have been a credible witness, who had embroidered his relationship with Mr Yeldham to impress CC16, who was obviously keen to give the allegations a public airing.

7.316 In April 1996, CC13 attended Wynyard Station with Royal Commission investigators, and provided details of the observations he had made when he saw Mr Yeldham being questioned by police. This was in relation to an allegation made by a youth working on what he described as the news stand.

7.317 By April 1996, the Royal Commission had received some documents from the Police Service including an Intelligence Report confirming that an incident had in fact taken place involving Mr Yeldham at Wynyard Station on 18 October 1990. That report noted that a copy had been provided to Special Branch. It was apparent on its face that a discretion had been exercised not to pursue the matter because of conflicting stories; the complainant having reportedly said that Mr Yeldham had masturbated in his presence on the public stairway (leading up to York Street), and Mr Yeldham having denied the allegations.¹¹⁵¹

¹¹⁴⁴ RCPS, Record of Interview with CC16, RCPS Exhibit 3281C.

¹¹⁴⁵ CC13, excerpt from record of interview, 23/9/95, RCPS Exhibit 3135C, at Doc. 2020228-231.

¹¹⁴⁶ RCPS, Letter to NSW Police Service, 12/10/95, RCPS Exhibit 3282C.

¹¹⁴⁷ CC13, RCT (in camera), 29/3/97, p. 22946.

¹¹⁴⁸ CC13, RCT (in camera), 29/3/97, p. 22947.

¹¹⁴⁹ CC13, RCT (in camera), 29/3/97, p. 22948.

¹¹⁵⁰ CC13, RCT (in camera), 29/3/97, p. 22959.

¹¹⁵¹ Australian Criminal Intelligence Database (ACID) report regarding a complaint made by CC1, 18/10/90, RCPS Exhibit 2883B.

7.318 By this time, the Royal Commission had obtained the ICAC investigation file in respect of a separate incident at Central Railway Station on 12 December 1988. The conduct complained of related to the apprehension, and later release, of Mr Yeldham and an adult male found in compromising circumstances in the men's toilets. The complaint to ICAC had been made anonymously in late 1989, at a time when Mr Yeldham was on long service leave anticipating retirement at the end of January 1990.¹¹⁵² In June 1988 he formally advised the then Chief Judge at Common Law of his intention to resign the following year, although he been talking informally of doing so for some time before that.

7.319 Following receipt of further information in May 1996, the Royal Commission requested the Police Service to make further searches of all its holdings in relation to Mr Yeldham, as it seemed that more information should have been available.

7.320 During May 1996, investigations continued including interviews with a number of people one of whom was Sir Laurence Street, the former Chief Justice of NSW.¹¹⁵³ It was by this time known that it had been Mr Yeldham's habit, while a barrister and a judge, to travel by train from his home in the North Shore to and from work, via Wynyard Station. It was also known that various persons had seen him in this vicinity behaving in an unusual manner, although not in a way that could have been said to have been unlawful.

7.321 The further search of the police holdings produced the diary of the former Special Branch Commander with entries for 19 and 22 October 1990 relating to a 'former Supreme Court judge - suspect for acts of indecency' noting that the Commander had conferred with 'Webb/Maroney' about the matter.¹¹⁵⁴ The police notebooks and the intelligence report completed by the officers who attended Wynyard Station on 28 October 1990 were also produced.¹¹⁵⁵

7.322 The station staff at Wynyard were interviewed, and the records of a number of the Wynyard ramp outlets were examined, in an attempt to locate a youth who had been alleged to have complained about Mr Yeldham in 1988/1989. The State Rail Authority diaries and records were obtained and analysed, but no record was located in respect of this incident, or the 18 October 1990 incident.

7.323 In September 1996, Section 6 Notices were served on numerous police officers to provide information in relation to their knowledge of any investigations relating to Mr Yeldham. At this stage he had not been interviewed, as it was the intention of the Royal Commission to obtain all relevant information prior to interviewing him, and if the evidence was available to warrant it, to mount a covert operation in relation to him.

7.324 On 24 September 1996, one of the police officers, CC3, involved in the investigation at the Wynyard Railway Station in October 1990 delivered his Section 6 response.¹¹⁵⁶ From that response it appeared that the matter was much more complex than appeared on the face of the documents produced to the Royal Commission by the Police Service.

¹¹⁵² ICAC Complaints File, RCPS Exhibit 2855C.

¹¹⁵³ Sir Laurence Street, Statement to RCPS, 20/5/96, RCPS Exhibit 2859.

¹¹⁵⁴ Transcript of entries in 1990 diary of Superintendent Ryan, RCPS Exhibit 2831.

¹¹⁵⁵ CC2, Notebook entry, 18/10/96 and Intelligence Report, RCPS Exhibit 2852B; NSW Police Service, Intelligence Report, RCPS Exhibit 2850B.

¹¹⁵⁶ CC3, Statement of Information, 24/9/96, RCPS Exhibit 3054C/92B.

7.325 During the course of CC3's interview on 9 October, the first major breakthrough occurred.¹¹⁵⁷ CC3 said that the hand written notes and the intelligence report contained false information, in that:

- no mention was made of a third person, a youth under 18 years being involved on the stairway; and in that
- no mention was made of the fact that officers from Special Branch had attended the station and taken Mr Yeldham away.

7.326 The officer who had prepared the initial police report, CC2, was overseas at this time and could not be served with a Section 6 notice until 15 October 1996. He did not provide his response until 21 October 1996.¹¹⁵⁸

7.327 The Royal Commission gathered further information, by way of Section 6 responses, from the other officers involved in the various incidents then known, concerning Mr Yeldham. That process continued until 28 October. By this time the Royal Commission had found and interviewed the complainant in the 1990 Wynyard matter, and visited Wynyard Station to take photographic evidence of his version of events.

7.328 By 30 October 1996, it was apparent that if the information provided by CC3 on 9 October, and by the complainant was accurate, then a number of police officers had provided false accounts to the Royal Commission. Consideration was at that point being given to mounting a covert operation in relation to them to see whether:

- they were colluding together to conceal the true events; and whether
- there had been high level corruption to protect Mr Yeldham involving the Special Branch, senior police, the judiciary or the executive.

7.329 On the evening of 30 October 1996, the Royal Commission received confidential information that it was possible that Mrs Arena may name two people, in Parliament the following day, as being connected to the paedophile inquiry, one of whom may be Mr Yeldham. The Royal Commission decided to approach Mr Yeldham at this time rather than later as planned to see whether he would assist with its inquiries before any public exposure occurred.

7.330 On the morning of 31 October 1996, the Royal Commission requested an interview with Mr Yeldham to which he agreed.¹¹⁵⁹ He admitted to:

- being spoken to by the police on two occasions, in which he had been engaged in acts of public indecency, and on both of those occasions providing answers to the police which were false; and to
- being spoken to by Chief Justice Street in the early 1980s in respect of one such allegation which he had denied.

7.331 He indicated that he was willing to be further interviewed with the benefit of time to go through the documents.¹¹⁶⁰ The Royal Commission offered him the opportunity of specialist support and encouraged him to seek legal assistance.

7.332 On the afternoon of 31 October 1996, in Parliament, Mrs Arena named Mr Yeldham in the course of a speech in which she inferred that he had been given preferential treatment by the Royal Commission.¹¹⁶¹

¹¹⁵⁷ CC3 subsequently made a statutory declaration in relation to the false entries. CC3, Statutory Declaration, 6/11/96, RCPS Exhibit 2872C.

¹¹⁵⁸ CC2, Statement of Information, 21/10/96, RCPS Exhibit 2837C/2.

¹¹⁵⁹ D. A. Yeldham, Record of Interview, 31/10/96, RCPS Exhibit 2878AC.

¹¹⁶⁰ D. A. Yeldham, Record of Interview, 31/10/96, RCPS Exhibit 2878B.

¹¹⁶¹ NSW Parliament, *Hansard*, Legislative Council, 31/10/96, p. 5623.

7.333 On the morning of 4 November 1996 Mr Yeldham telephoned the Royal Commission and requested a meeting. An interview then took place during which Mr Yeldham:

- denied that he was a paedophile;
- admitted to sexual encounters over the years in public toilets with various persons, of whose ages he had made no inquiries;
- admitted to providing false information in 1988 and 1990 to the police to avoid arrest;
- admitted that he feared blackmail because of sexual encounters for which he had paid but said that it had never occurred;
- denied that he had misled Chief Justice Street¹¹⁶² in the early 1980s when confronted with an allegation that he had been stopped by police, since the incident mentioned by the Chief Justice was not one which he recalled;
- acknowledged that he had been less than frank with the Chief Justice concerning his sexual activities;
- said that he did not inform Chief Justice Gleeson¹¹⁶³ after he was spoken to by the police at Central Station in 1988; and
- said that his retirement had not been precipitated by his past conduct or fear of arrest.¹¹⁶⁴

7.334 That afternoon Mr Yeldham took his own life. In the light of that investigative chronology, the underlying facts are now examined in a little more detail.

Action by the Police Service

July 1980 - Wynyard Station

7.335 The first evidence the Royal Commission has of Mr Yeldham coming to the notice of the police is in 1980. On 30 July 1980, a police officer, CC12, was walking down the ramp at Wynyard railway station with a friend when he noticed Mr Yeldham standing at the door of the men's toilets. CC12's friend also recognised Mr Yeldham as he had earlier installed a telephone in the Judge's chambers. Mr Yeldham's conduct that night was adjudged to be suspicious and CC12 made a record of it in his police notebook.¹¹⁶⁵

7.336 On 31 July 1980, CC12 reported his observations to Inspector R Shepherd at the Crime Intelligence Unit and submitted a Crime Intelligence Report.¹¹⁶⁶ That report was not produced to the Royal Commission and apparently can no longer be found.

12 December 1988 - Central Railway Station

7.337 On the afternoon of 12 December 1988, Transit Police Officers CC6 and CC7 were patrolling the men's toilets on the electric rail concourse of Central Station. They observed two men come out of one of the cubicles and asked both to accompany them to the Transit Police office. One of these men was Mr Yeldham.¹¹⁶⁷ The two men were interviewed separately. Mr Yeldham identified himself as a judge, unbuttoned his shirt and showed the officer interviewing him a large scar (consistent with a surgical scar which Mr Yeldham admitted he had).

¹¹⁶² Sir Laurence Street was Chief Justice between 1974 and 1988.

¹¹⁶³ Who became Chief Justice in November 1988.

¹¹⁶⁴ D. A. Yeldham, Record of Interview, 4/11/96, RCPS Exhibit 2879B.

¹¹⁶⁵ CC12, Statutory Declaration, 29/11/96, RCPS Exhibit 2857C.

¹¹⁶⁶ *ibid.*

¹¹⁶⁷ CC6, RCT, 5/12/96, p. 34893.

7.338 He said that he was a sick man, that he had a meeting to attend and wanted to leave.¹¹⁶⁸ It was his explanation that he was vomiting in the cubicle and that the other man had come in to see whether he was all right. The other man gave a totally different version, suggesting that Mr Yeldham had followed him into the toilet cubicle, and not being sure what to do, he had allowed him to remain.¹¹⁶⁹

7.339 CC6 decided in the circumstances to let both men leave and then to speak to a more senior officer about the matter.¹¹⁷⁰

7.340 When CC6 spoke to Senior Sergeant Peters, he was instructed not to do anything for the moment as Peters would speak to 'his friends in College Street'.¹¹⁷¹ A few days later Mr Peters visited CC6 at his home. According to CC6, Peters said that the Police Service knew Mr Yeldham was 'a cat' and that he was 'on side - he wasn't one of these judges who didn't like police'.¹¹⁷² Peters added that he would look after the matter.

7.341 Mr Peters agreed that CC6 had approached him, but as he recalled the events, the concern was more related to the manner in which information should be recorded.¹¹⁷³ Peters said that he undoubtedly informed CC6 that the material was sensitive and 'page 1 stuff'.¹¹⁷⁴ He said that when he used the term 'on side' he did not mean it to refer to Mr Yeldham, but rather to the officer from whom he had sought advice. When interviewed by the ICAC, Mr Peters gave a different explanation, suggesting that he had used the expression in the football sense to mean that Mr Yeldham had acted within the law.¹¹⁷⁵

7.342 In the result neither Mr Yeldham nor the other male were charged with any offence. The intelligence report prepared by CC6 was kept in Mr Peters' safe until it was sought by the ICAC in late 1989.¹¹⁷⁶

7.343 After evidence had been called in December 1996 in respect of this matter, the ABC-TV 'Four Corners' program broadcast an interview with a person who claimed to have been present at Central Station on the day that Mr Yeldham was apprehended.¹¹⁷⁷ The ABC assisted that informant to come forward to the Royal Commission and he gave evidence in March 1997 under the code-name CC24. He informed the Royal Commission that:

- he observed Mr Yeldham use the telephone while he was in the Transit Police office;
- when he asked to see his identification he was shown a laminated card containing his name and a photograph; and that
- within 15 minutes or so, plain-clothes police arrived at the office, said that they would 'look after things' and took Mr Yeldham and the other person away.¹¹⁷⁸

1989 - Wynyard Station

7.343 The Station Master at Wynyard, CC5, recalled that in 1989 a youth who was working at one of the outlets¹¹⁷⁹ on Wynyard ramp complained to him that an adult male had made an advance to him in the men's toilets. After the man was pointed out to the Station Master he took him to his office.

¹¹⁶⁸ CC6, RCT, 5/12/96, p. 34896.

¹¹⁶⁹ CC6, RCT, 5/12/96, pp. 34908-9.

¹¹⁷⁰ CC6, RCT, 5/12/96, pp. 34896-97.

¹¹⁷¹ CC6, RCT, 5/12/96, pp. 34897-98.

¹¹⁷² CC6, RCT, 5/12/96, pp. 34900-01.

¹¹⁷³ P. T. Peters, RCT, 5/12/96, pp. 34947-49.

¹¹⁷⁴ P. T. Peters, RCT, 5/12/96, p. 34959.

¹¹⁷⁵ P. T. Peters, RCT, 5/12/96, p. 34962.

¹¹⁷⁶ P. T. Peters, RCT, 5/12/96, p. 34959.

¹¹⁷⁷ ABC-TV, 'Four Corners' videotape, 17/2/97, RCPS Exhibit 2916.

¹¹⁷⁸ CC24, RCT, 11/3/97, p. 36997.

¹¹⁷⁹ He believed it was the dry cleaners, see CC5, RCT, 4/12/96, p. 34758.

7.344 He recalled contacting the police but could not recollect what happened thereafter.¹¹⁸⁰ His recollection of this incident was assisted by the October 1990 incident, when he remembered that it involved the same man. There was no record of this incident in the documents provided to the Royal Commission by the State Rail Authority or by the Police Service.

18 October 1990 - Wynyard Station

7.345 CC1, then aged 19 years, informed the Commission that on the afternoon of 18 October 1990, he was approached by Mr Yeldham (who by this time had retired as a judge) in the men's toilet at Wynyard Station, and invited to have a sexual encounter in exchange for money. That invitation was declined. A short time later CC1 observed Mr Yeldham on the landing of the public stairway to the York Street exit from the station. He said Mr Yeldham was at that stage masturbating while speaking to a young male, whose age he estimated to be 16 years.¹¹⁸¹

7.346 CC1 reported the matter at the guard's office. He pointed out Mr Yeldham to station staff when he saw him running down the stairs towards the train platform. They took him to the guard's room.¹¹⁸²

7.347 Approximately 15 to 20 minutes later two police officers arrived. CC1 provided details to police and station staff in respect of the two incidents he had seen.¹¹⁸³

7.348 CC1 was informed by the station staff that Mr Yeldham had been 'caught before' and that apparently 'he was a judge or something'. The police informed CC1 that Mr Yeldham had denied the allegations. He was told that they may get in touch with him again. That did not occur.¹¹⁸⁴

7.349 The police who attended the station, CC2 and CC3, were both transit officers. An entry was made in the official notebook of CC2¹¹⁸⁵ purporting to record a statement taken from CC1. It also recorded a short interview with Mr Yeldham in which he denied any misconduct, and asserted that he was a married man with children.

7.350 An intelligence report was completed¹¹⁸⁶ that recorded the versions purported to have been given by CC1 and Mr Yeldham, and concluded:

As there were no corroborating witnesses, and both parties supplied differing versions no action was taken by police.

That intelligence report noted 'copy to Special Branch'.¹¹⁸⁷

7.351 According to CC2 and CC3 neither the notes nor the intelligence reports portrayed what had really happened at Wynyard. CC2 gave evidence that the original notes he took at Wynyard were contained in a diary and that he had 'panicked' in November 1996 and torn the relevant pages up and flushed them down the toilet.¹¹⁸⁸

7.352 CC2 gave evidence that:

- Special Branch officers arrived at Wynyard, one of whom said that he would let him know what he was to put in his notebook;

¹¹⁸⁰ CC5, RCT, 4/12/96, p. 34762.

¹¹⁸¹ CC1, Statutory Declaration, 29/10/96, RCPS Exhibit 2870C.

¹¹⁸² *ibid.*

¹¹⁸³ *ibid.*

¹¹⁸⁴ *ibid.*

¹¹⁸⁵ CC2, Notebook entry, 18/10/96 and Intelligence Report, RCPS Exhibit 2852B.

¹¹⁸⁶ *ibid.*

¹¹⁸⁷ *ibid.*

¹¹⁸⁸ CC2, RCT, 6/12/96, pp. 35110-11.

- he was then instructed to complete an occurrence pad, a P41 intelligence report and to 'write it off' as one person's word against another, to forget about the money, and the third person on the stairs, and to move the incident from the toilet to the stairs;¹¹⁸⁹
- he followed those instructions and made those false entries because he thought he would otherwise lose his job;¹¹⁹⁰ and that
- Mr Yeldham did not leave the office in the manner described in the official records (which suggested that he was allowed to leave by himself after being interviewed);¹¹⁹¹ rather, he was taken away by Special Branch officers who said they were going to have a talk to him and then take him home.¹¹⁹²

CC3 supported this account.¹¹⁹³

7.353 CC4, the immediate supervisor of CC2 and CC3, said that he was telephoned by the Station Master and advised of the incident.¹¹⁹⁴ CC4's recollection was that he must have been informed that the person involved was a retired judge, because a more senior transit officer Sergeant Seward then made a telephone call and instructed CC4 to send officers to see what was happening.¹¹⁹⁵

7.354 When CC4 was later phoned by CC2 and CC3 from Wynyard Station, he was informed that the retired judge was becoming upset with the police. He decided to contact the Duty Operations Inspector (DOI) at Police Headquarters.¹¹⁹⁶ The DOI instructed CC4 to have the police at the station investigate the matter, compile an occurrence pad entry which was to be given an 'A number', and then complete an information report which was to be sealed in an envelope for delivery to Special Branch.¹¹⁹⁷

7.355 CC4 was later advised by CC2 that Special Branch officers had arrived at Wynyard and informed him that they would take over the investigation.¹¹⁹⁸

7.356 CC4 admitted in his evidence that he and CC2 had met to plan what they would say to the Royal Commission, and that he had provided CC2 with a copy of his answer to the Royal Commission's Section 6 Notice so that CC2 would not slip up.¹¹⁹⁹ He admitted that he had instructed CC2 to complete the records so that the two incidents at the station were turned into one. He was to make no mention of the involvement of the young person or the offer of money.¹²⁰⁰

Special Branch Involvement

7.357 The Commander of Special Branch, Detective Superintendent Neville George Ireland, when called to give evidence in December 1996, said that:

- he regarded the involvement of Special Branch in a matter, involving a possible allegation of indecency on the part of a judge or former judge, to be absolutely outside the charter of Special Branch;¹²⁰¹ and that

¹¹⁸⁹ CC2, RCT, 3/12/96, p. 34743.

¹¹⁹⁰ CC2, RCT, 3/12/96, p. 34744.

¹¹⁹¹ CC2, RCT, 3/12/96, p. 34746.

¹¹⁹² CC2, RCT, 3/12/96, pp. 34746-47.

¹¹⁹³ CC3, RCT, 6/12/96, pp. 35052-53.

¹¹⁹⁴ CC4, RCT, 4/12/96, pp. 34814-15.

¹¹⁹⁵ CC4, RCT, 4/12/96, pp. 34814-15.

¹¹⁹⁶ CC4, RCT, 4/12/96, p. 34816.

¹¹⁹⁷ CC4, RCT, 4/12/96, p. 34817.

¹¹⁹⁸ CC4, RCT, 4/12/96, p. 34818.

¹¹⁹⁹ CC4, RCT, 4/12/96, p. 34819. A section 6 notice is a notice to produce a statement of information to the Commission, pursuant to s. 6 of the *Royal Commission (Police Service) Act 1994*.

¹²⁰⁰ CC4, RCT, 4/12/96, pp. 34825-26.

¹²⁰¹ N. G. Ireland, RCT, 3/12/96, p. 34689.

- he had known nothing about the October 1990 matter until he found the reference to it in the former Commander's diary, when assisting with a search of Special Branch records made at the request of the Royal Commission.¹²⁰²

7.358 All Special Branch officers serving in 1990 were served with Section 6 Notices. All denied any knowledge of the incident at Wynyard Railway Station or any involvement in it.¹²⁰³

7.359 The Commander of Special Branch in 1990 was Detective Superintendent Peter Michael Ryan who retired from the Service in December 1994. He agreed that acts of indecency by retired judges are not matters for Special Branch¹²⁰⁴ and said that he had no recollection of any such matter involving Mr Yeldham.¹²⁰⁵ However, his diary for 19 October 1990 recorded 're former Supreme Court Judge - suspect for acts of indecency; refer same to Acting Commissioner Cole by Allen - also leave message for Mr Cole re same'. He similarly informed the Royal Commission that he had no memory relating to the further entry in his diary, on 22 October 1990, 'confer Webb/Maroney re Senior Sergeant Allen info concerning retired Supreme Court Judge'.¹²⁰⁶

7.360 Assistant Commissioner Maroney acknowledged that, on 22 October 1990, in his capacity as Chief of Staff to the Commissioner, he was briefed by Mr Ryan concerning an alleged act of sexual impropriety involving Mr Yeldham and another person.¹²⁰⁷ It was his clear recollection that a briefing note was delivered but his search for it was unsuccessful.¹²⁰⁸ He had no recollection of briefing Mr Avery in relation to the matter.¹²⁰⁹

7.361 Mr Cole said that he had no recollection of any briefing in relation to the 1990 Wynyard matter,¹²¹⁰ notwithstanding the reference to him in Mr Ryan's note. He was, however, aware of the incident at Central Railway in December 1988, as it was he who wrote to ICAC in January 1990 forwarding documents relating to it. He similarly had no recollection whether he had briefed Commissioner Avery about the 1988 incident.¹²¹¹ He said that prior to this time he had been unaware of any information relating to Justice Yeldham.¹²¹²

7.362 Mr Avery, the Commissioner, was a member of the Operations Review Committee (ORC) of ICAC at the time of both the Central incident and the 1990 Wynyard incident. Although he attended the meeting in September 1990 when the Central incident was discussed, he had no recollection of that discussion, or of the meeting. He similarly had no recollection of anyone raising the 1990 Wynyard incident with him or of briefing Mr Lauer in relation to Mr Yeldham.¹²¹³ Mr Lauer informed the Commission that he had no knowledge whatsoever of any allegations against Mr Yeldham, or of any police involvement with him.¹²¹⁴

7.363 On 11 March 1997, a Special Branch officer whose name was then suppressed was recalled and admitted that his previous evidence to the Royal Commission had been untrue, and that Special Branch had in fact received a call in relation to the Wynyard incident from Sergeant Seward. He said that:

- Sergeant Seward informed him that Transit Police had gone to Wynyard in respect of the incident;

¹²⁰² N. G. Ireland, RCT, 3/12/96, p. 34692.

¹²⁰³ B. J. Gallagher, RCT, 9/12/96, p. 35275; J. W. Garvey, RCT, 9/12/96, p. 35271; M. W. King, RCT, 3/12/96, pp. 34701-02, Witness name suppressed, RCT, 11/3/97, p. 36988; B. M. Mohr, RCT, 3/12/96, p. 34711; C. Perakis, RCT, 11/3/97, pp. 36930-31; N. M. Pitt, RCT, 9/12/96, pp. 35162-67; M. J. Popple, RCT, 3/12/96, p. 34714; Witness name suppressed, RCT, 11/3/97, p. 37008.

¹²⁰⁴ P. M. Ryan, RCT, 3/12/96, p. 34716.

¹²⁰⁵ P. M. Ryan, RCT, 3/12/96, p. 34717.

¹²⁰⁶ P. M. Ryan, RCT, 3/12/96, p. 34719.

¹²⁰⁷ K. E. Maroney, Statement of Information, 18/11/96, RCPS Exhibit 2867C/2.

¹²⁰⁸ K. E. Maroney, RCT, 5/12/96, pp. 35009-10.

¹²⁰⁹ K. E. Maroney, RCT, 5/12/96, p. 35011.

¹²¹⁰ C. R. Cole, RCT, 5/12/96, p. 34988.

¹²¹¹ C. R. Cole, RCT, 5/12/96, p. 34985.

¹²¹² C. R. Cole, RCT, 5/12/96, p. 34986.

¹²¹³ J. K. Avery, RCT, 5/12/96, p. 34997.

- he received an update on the situation, in a subsequent telephone call from a Transit officer at Wynyard Station, which he accepted, inexplicably, in the name of Detective Sergeant Mohr;¹²¹⁵ and that
- he reported the substance of the call to Mr Ryan who sent two officers, whose names were suppressed, down to Wynyard to deal with the situation.¹²¹⁶

7.364 Mr Ryan and the two officers were recalled but denied that this occurred.

Rumours Concerning the Judge

7.365 In the late 1970s or early 1980s CC10, an ex-police officer who was then a junior counsel was informed, by a police prosecutor, that Mr Yeldham had been found by police in the Wynyard Railway Station in a compromising situation.¹²¹⁷ Subsequently CC10 related this account to some lawyers.¹²¹⁸

7.366 CC10's recollection is that:

- within a relatively short time he was contacted by the Associate to the then Chief Justice, Sir Laurence Street and asked to attend his chambers; and that
- when he complied with this request, he was asked if he could find out the detail of what was alleged to have occurred, whether there had been any charges and what was happening with the matter.¹²¹⁹

7.367 CC10 spoke to his source and was informed that nothing was coming of the matter.¹²²⁰ CC10 attended upon Sir Laurence and passed this information on to him.¹²²¹

7.368 Sir Laurence's recollection was that CC10 had called on him, of his own initiative, and had 'informed him that he had heard a rumour within the Police Force that he felt that he ought to pass on'. Sir Laurence accepted, in his evidence to the Royal Commission, that CC10's recollection of the circumstances in which the meeting occurred was likely to be more accurate.¹²²² However, if this was so, it meant that someone else had initially raised the matter with Sir Laurence. The rumour as recalled by Sir Laurence was that Mr Yeldham had exposed himself indecently on a suburban railway station.¹²²³ He said that CC10 contacted him, approximately a week or so after the meeting, and informed him that he had 'been unable to track the rumour down and accordingly could not verify it or cast any further light on it'.¹²²⁴

7.369 When Sir Laurence heard the rumour he was concerned on two grounds:

- first, as to whether there was any truth in it which might reflect directly on Mr Yeldham; and
- secondly, as to the harm that an unfounded rumour could do to the judicial institution.¹²²⁵

7.370 He took the view that he needed to do his utmost to track it down, and then be in a position either to present to Mr Yeldham any hard material that had come forward, or else to tell him of the rumour so that he would be 'on his guard' for any attack.¹²²⁶

¹²¹⁴ A. R. Lauer, Letter to RCPS, 14/11/96, RCPS Exhibit 3054C/98A.

¹²¹⁵ Witness name suppressed, RCT, 11/3/97, p. 37026.

¹²¹⁶ Witness name suppressed, RCT, 11/3/97, p. 37027.

¹²¹⁷ CC10, Statutory Declaration, 20/11/96, RCPS Exhibit 2858C.

¹²¹⁸ *ibid.*

¹²¹⁹ *ibid.*

¹²²⁰ *ibid.*

¹²²¹ *ibid.*

¹²²² L. W. Street, RCT, 10/12/96, p. 35302.

¹²²³ Sir Laurence Street, Statement to RCPS, 20/5/96, RCPS Exhibit 2859.

¹²²⁴ *ibid.*

¹²²⁵ L. W. Street, RCT, 10/12/96, p. 35313.

7.371 Sir Laurence's initial reaction was that the rumour would prove to be groundless and probably maliciously generated by a police officer whom Mr Yeldham had criticised from the Bench. However, in view of his concerns, he arranged to see Mr Yeldham after CC10 had reported back to him. It was his recollection that:

- he informed Mr Yeldham that there was a rumour circulating among police that he had been apprehended in an act of indecency on a suburban railway station, but that the rumour had been checked out and could not be carried any further;
- Mr Yeldham denied its truth;¹²²⁷
- it was quite likely that he discussed with him the possibility of the rumour having originated with a disgruntled police officer; and that
- they parted on the common assumption that the rumour was malicious and unfounded.¹²²⁸

7.372 Sir Laurence said that he was left with a clear impression that any suggestion of improper behaviour on Mr Yeldham's part was quite unfounded. He had no inkling at all, from his demeanour, or from what he said, that he had any sense of guilt, or any apprehension in relation to the matter.¹²²⁹

7.373 Sir Laurence did not caution Chief Justice Gleeson upon his retirement, of the rumour or of his discussion with Mr Yeldham. At the time that he gave his evidence in December 1996, he was confident that he had put it out of his mind once Mr Yeldham had denied it so convincingly.¹²³⁰ It was his recollection that he had not discussed it with anyone else between the time of his discussion with Mr Yeldham, and the time that the Royal Commission approached him in May 1996.¹²³¹

7.374 Sir Laurence said that it was an 'isolated instance and I repeat not a shadow of any similar rumour from any source at any stage'.¹²³² Had the police been in possession of information of this kind in respect of a judge, Sir Laurence would have expected the Police Commissioner or the Attorney General to contact him.¹²³³ No such contact had been made of which he was aware.

7.375 There were, however, some other senior officers within the justice system who were in receipt of similarly disturbing information concerning Mr Yeldham.

7.376 Mr Frank Walker, the Attorney General for NSW (between May 1976 and February 1983), gave evidence that some time about 1980, the Under Secretary of Justice, Mr Trevor Haines, informed him that the department had received a phone call from the mother of a young boy in respect of an incident in the Wynyard Railway Station toilets involving Mr Yeldham. Mr Walker was advised that the incident was of a scandalous nature, involving an indecent exposure. The mother's complaint was that the police would not investigate the matter.¹²³⁴

7.377 Mr Walker was very concerned about this complaint. It was his recollection that he asked Mr Haines to take it up with Sir Laurence,¹²³⁵ 'because I thought nothing was going to happen about it and I wanted some pressure brought'.¹²³⁶

¹²²⁶ L. W. Street, RCT, 10/12/96, p. 35314.

¹²²⁷ L. W. Street, RCT, 10/12/96, p. 35304.

¹²²⁸ Sir Laurence Street, Statement to RCPS, 20/5/96, RCPS Exhibit 2859.

¹²²⁹ L. W. Street, RCT, 10/12/96, p. 35305.

¹²³⁰ L. W. Street, RCT, 10/12/96, p. 35314.

¹²³¹ L. W. Street, RCT, 10/12/96, pp. 35314-15.

¹²³² L. W. Street, RCT, 10/12/96, p. 35315.

¹²³³ L. W. Street, RCT, 10/12/96, pp. 35317-18.

¹²³⁴ F. J. Walker, RCT, 12/3/97, p. 37076.

¹²³⁵ F. J. Walker, RCT, 12/3/97, p. 37076.

¹²³⁶ F. J. Walker, RCT, 12/3/97, p. 37078.

7.378 Notwithstanding this recollection, Mr Walker said that he raised the matter with Sir Laurence personally at one of their monthly meetings. His recollection was that he raised it 'very circumspectly',¹²³⁷ and simply asked what was happening about the incident. It was his evidence that the Chief Justice:

- indicated that there had been a discussion with Mr Yeldham; and
- assured him that this sort of thing would not happen again and 'that was it'.¹²³⁸

7.379 He had a 'vague recollection' of a suggestion being put to him that as a civil libertarian he would not want to be removing people from their job without evidence, particularly if the police were not prepared to investigate the matter.¹²³⁹ Mr Walker had a memory of 'being hoisted on his own petard'.¹²⁴⁰

7.380 Mr Haines' recollection was that the incident involved Mr Yeldham being stopped by police at Wynyard Station toilets in relation to an act of indecency. He recalled Mr Walker mentioning that he had had a conversation with the Chief Justice about the incident, but said that he was not himself instructed to discuss it with the Chief Justice and did not do so. He was not aware of any action regarding the allegation. As far as he was concerned it was a matter for the Chief Justice and the police to deal with.¹²⁴¹

7.381 When Mr Walker's evidence was read to Sir Laurence, when he was recalled as a witness in March 1997 it did not assist his recollection. He took issue with the suggestion that he had informed Mr Walker that Mr Yeldham's conduct would not occur again, since that implied an admission by Mr Yeldham which had simply not been made.¹²⁴²

7.382 Sir Laurence added that if he had known of the existence of a complaint by a mother in relation to her child, he would not have enlisted the aid of CC10 to research the rumour, nor would he have engaged with Mr Yeldham in speculation as to who might be spreading the rumour.¹²⁴³

7.383 He was certain that only one rumour had come to his notice. Had there been a second rumour, he would not have quite so readily accepted the judge's denial. It is possible that because the matter was raised discreetly and somewhat obliquely, that an assumption was made that the same incident was being raised. In the light of the evidence, and the differing recollections of Sir Laurence and Mr Walker, this can only be speculation. At the end of Sir Laurence's evidence in March 1997, his recollection remained that he had only heard of the one incident reported to him by CC10.¹²⁴⁴

7.384 The Royal Commission asked for the production of all files relating to Mr Yeldham in the possession of the Attorney General's Department. Although Mr Walker said that the matter was handled very discreetly, he would have expected a note of it to be made on the judge's file. The file provided contains no such note,¹²⁴⁵ and no record of this matter was found in any file of the Supreme Court or of the Attorney General's Department. As a result the complainant could not be identified by the Royal Commission. Neither he nor his mother made contact with it.

¹²³⁷ F. J. Walker, RCT, 12/3/97, p. 37080.

¹²³⁸ F. J. Walker, RCT, 12/3/97, p. 37080.

¹²³⁹ F. J. Walker, RCT, 12/3/97, p. 37080.

¹²⁴⁰ F. J. Walker, RCT, 12/3/97, p. 37080.

¹²⁴¹ F. J. Walker, RCT, 12/3/97, pp. 37082-83; T. W. Haines, Statutory Declaration, 10/3/97, RCPS Exhibit 5996AC.

¹²⁴² L. W. Street, RCT, 13/3/97, p. 37150.

¹²⁴³ L. W. Street, RCT, 13/3/97, p. 37151.

¹²⁴⁴ L. W. Street, RCT, 13/3/97, p. 37154.

¹²⁴⁵ Attorney General's Department, File of Mr Yeldham, RCPS Exhibit 3214C/1; Director-General, Attorney General's Department, Letter to RCPS, 10/3/97, RCPS Exhibit 3214C/2.

7.385 Mr Haines confirmed that, apart from his conversation with Mr Walker, he had been aware of allegations of sexual misconduct regarding Mr Yeldham. The specific allegation of which he heard was that Mr Yeldham had been picked up by police in the toilets at Wynyard Station for indecent exposure.¹²⁴⁶

7.386 From time to time Mr Haines heard of similar stories about Mr Yeldham but he was not sure whether they related to the same incident.¹²⁴⁷

7.387 Mr Sheahan served as Attorney General from November 1984 to November 1987. He informed the Commission that he had no knowledge of the matter mentioned by Mr Walker.¹²⁴⁸ He was 'at some stage' informed of a rumour that Mr Yeldham had been seen or found in compromising circumstances. The overtones did 'not necessarily' involve a minor.¹²⁴⁹ He assessed the information as 'third hand gossip', and did not do anything about it.

7.388 Mr Sheahan was instrumental in setting up the Judicial Commission in 1986. He said that had he received a specific complaint in relation to Mr Yeldham he would have referred it to the Commission.¹²⁵⁰

Decision to Retire

7.389 In June 1988 Mr Yeldham advised the then Chief Judge at Common Law, the Honourable Mr Justice Slattery, that it was his desire, as from 30 June 1989, to take his normal four weeks flexible vacation, followed by extended long service leave for such period as he had accrued. At the end of the entire period of leave it was his intention to resign from the court. He indicated that he had not formally advised the Chief Justice of his intention to retire although he did say 'I think he has probably ascertained my intentions from informal comments which I have made'.¹²⁵¹ This notification, in June 1988, was in response to a routine circular from Sir Laurence to all judges concerning requests for extended leave for 1989.

7.390 On 17 September 1988, the then Chief Judge at Common Law, Justice Lee, notified Sir Laurence that he had no objection to Mr Yeldham adopting the course proposed.¹²⁵² On 18 October 1988, Sir Laurence advised the then Attorney General Mr Dowd, of Mr Yeldham's intention, and placed it before the Attorney General with 'a recommendation that it receive favourable consideration'.¹²⁵³

7.391 On 29 March 1989, Mr Dowd advised that he had approved Mr Yeldham proceeding on six months extended leave from 31 July 1989, and retiring on 29 January 1990.¹²⁵⁴ On 29 May 1989, Mr Yeldham formally notified the Attorney General of his intentions with a request that the Executive Council accept his resignation as from 28 January 1990.¹²⁵⁵

¹²⁴⁶ T. W. Haines, Statutory Declaration, 10/3/97, RCPS Exhibit 5996AC.

¹²⁴⁷ *ibid.*

¹²⁴⁸ T. W. Sheahan, RCT, 12/3/97, p. 37101.

¹²⁴⁹ T. W. Sheahan, RCT, 12/3/97, p. 37102; T. Sheahan, Statutory Declaration, 17/2/97, RCPS Exhibit 2922.

¹²⁵⁰ T. W. Sheahan, RCT, 12/3/97, p. 37105.

¹²⁵¹ D. A. Yeldham, Memorandum to Mr Justice Slattery, 8/6/88, RCPS Exhibit 2875/1.

¹²⁵² J. Lee, Letter to Sir Laurence Street, 17/10/88, RCPS Exhibit 2875/1.

¹²⁵³ Sir Laurence Street, Letter to J. R. Dowd, 18/10/88, RCPS Exhibit 2875/2.

¹²⁵⁴ J. R. Dowd, Letter to Mr Justice Gleeson, 29/3/89, RCPS Exhibit 2875/2.

¹²⁵⁵ D. A. Yeldham, Letter to the Attorney General, 29/5/89, RCPS Exhibit, 2875/2.

Complaint to ICAC

7.392 On 15 November 1989 ICAC received an anonymous complaint in respect of the incident at Central.¹²⁵⁶

7.393 On 29 November 1989 the then Commissioner of ICAC, Mr Temby, spoke to Chief Justice Gleeson concerning the matter. The file note of the meeting made by Mr Temby on the following day is as follows:

1. I spoke to Gleeson CJ at his Chambers by prior appointment on Wednesday (yesterday) afternoon at 4.30 pm. He had not been told what I needed to see him about.
2. I gave brief details of the information we had without mentioning the name of the Judge. He asked if he could ask who it was, I said yes, and it was Yeldham J. He said the story had been around for years.
3. I said that surprised me, as the events in question had occurred more recently. He said the story had gone around the Bar three years ago, the conduct in question had occurred at a suburban railway station, away from the place of residence of the Judge. Yeldham J is a married man with children.
4. I said our interests had originally centred upon an alleged cover-up, but that appeared to lack substance and the suggestion now was that information had gone to Police Headquarters, and conceivably it could be used for some improper purpose. He was obviously keen to know more, but I was not keen to provide more information, and ultimately the matter was left on the basis that I having conveyed information to him, and he having agreed that the matter was one for the ICAC and not the Judicial Commission (which he did, in terms) nothing remained to be said.
5. He then raised the question of the general relationship between the Judicial Commission and the ICAC. We had an extended, but courteous, perhaps even academic, debate about the meaning of s. 11. In the end I think it can be said we agreed to differ.
6. He asked if arrangements were in place for information to be conveyed between the two Commissions. I said that so far as I was aware they were not functioning on a regular basis, but I thought the two Commission secretaries were in touch. I think that meeting should be held every three months, if that is not presently happening.¹²⁵⁷

7.394 The recollection of Chief Justice Gleeson is that:

- Mr Temby introduced the subject matter by observation to the effect that he was concerned that there was a judge of the court who may be susceptible to blackmail;¹²⁵⁸
- when told that the person in question was Justice Yeldham, he replied that, in one sense, he was relieved to hear that because Justice Yeldham was no longer sitting as a judge and his formal retirement was to take effect in a few weeks time after his pre-retirement leave concluded;¹²⁵⁹
- Mr Temby was very guarded about the detail of the incident but informed him that it had occurred in or around a public toilet at a railway station and some police were involved;¹²⁶⁰
- he made a remark that it may be that Mr Temby was in receipt of 'a stale piece of gossip' that he had heard 'several years' (rather than three years) ago when he was still at the Bar. Mr Temby informed him that the conduct he was investigating had occurred more recently;

¹²⁵⁶ ICAC Complaints File, RCPS Exhibit 2855C.

¹²⁵⁷ I. Temby, File Note, 30/11/89, RCPS Exhibit 3156.

¹²⁵⁸ Record of Interview with Chief Justice Gleeson, 25/7/97, RCPS Exhibit 3199, pp. 1-2.

¹²⁵⁹ *ibid*, p. 2.

¹²⁶⁰ *ibid*, p. 2.

- as Mr Temby had not practised as a member of the Sydney Bar, he provided him with some background information about Justice Yeldham, including the fact Justice Yeldham was a married man with a family, was reputedly a person of extremely conservative personal habits, held high office in the Presbyterian Church, and was generally regarded as a person extremely unlikely to have engaged in conduct of the kind that had been the subject of the earlier rumour, which so far as he was aware had never come to anything;¹²⁶¹
- he had no recollection of any particular area of disagreement with Mr Temby about s. 11;
- Mr Temby had inquired whether there had been any complaint to the Judicial Commission about the matter to which he replied that there had not.¹²⁶²

7.395 After this meeting, Mr Temby sought information as to the way in which the Police Service managed this type of information and as to the reason why the BCI had wanted to record it.¹²⁶³ In January 1990 Chief Superintendent Schloeffel, the IPSB Commander, produced the Criminal and General Information Form which had been found in the safe in the Commander's office at the Bureau of Criminal Intelligence.¹²⁶⁴ He advised that:

- it had been stored in the safe 'pending the introduction of a discreet index, accessible only to the Commander and his Staff Officer';
- it had never been in any of the Bureau's intelligence files; and that
- although the discreet index had still not been established, information of this kind was to be entered into the FAIRS database.¹²⁶⁵

7.396 By the end of January, interviews had been conducted by the ICAC with Peters and CC6, following which an assessment was made that there was no offence detected on 12 December 1988, and that ICAC's sole interest related to whether the matter had been properly recorded.¹²⁶⁶

7.397 In September 1990 the ORC of ICAC noted that:

this matter had not been taken up by the Judicial Commission because of the judge's retirement, but nonetheless the Chief Justice's knowledge of it could prove useful.

The matter was not further investigated by ICAC, and it did not gather the information which this Commission collected, in relation to the police investigation, or the curious intervention by plain-clothes police. Nor did it inform the Chief Justice that it had closed the file.

7.398 By reason of the refusal of the current ICAC Commissioner, Mr B. O'Keefe QC, to provide the file concerning this matter to the Joint ICAC Parliamentary Committee, concern has been expressed, in some quarters, that a deal was done whereby Mr Yeldham would not be investigated by the ICAC in exchange for his resignation.

¹²⁶¹ *ibid.*, pp. 3-4.

¹²⁶² *ibid.*, p. 4.

¹²⁶³ ICAC Complaints File, RCPS Exhibit 2855C.

¹²⁶⁴ *ibid.*, at Doc. 2610119.

¹²⁶⁵ *ibid.*

¹²⁶⁶ *ibid.*

7.399 As a result of this suggestion, the Royal Commission interviewed both the Chief Justice¹²⁶⁷ and Mr Temby. Both categorically rejected the notion that any such 'deal' was made. Individually they make the points that:

- Mr Yeldham's resignation had been offered and accepted months before Mr Temby met with the Chief Justice;¹²⁶⁸ and that
- some investigation was in fact conducted by ICAC, both after the meeting with Chief Justice Gleeson and after Mr Yeldham's retirement.¹²⁶⁹

7.400 It is one thing to suggest in hindsight that the investigation by the ICAC might have taken a different course and uncovered the additional material which this Commission found concerning Mr Yeldham. It is a very different matter to suggest or conclude from the matters outlined above that his resignation was procured corruptly. In this regard, it must also be remembered that, Mr Temby received and accepted the advice of the ICAC Operational Review Committee in September 1990 that the matter should not be further investigated.

7.401 Any suggestion of a corrupt agreement between Chief Justice Gleeson and Mr Temby is in the Royal Commission's view utterly spurious and without any factual foundation.

7.402 The Royal Commission did ask Mr Temby why Justice Yeldham was not interviewed. Mr Temby said in this regard:

The function of the Commission was to investigate corruption, not crime. Somebody from the ICAC could have gone to ask him whether the information which the police had concerning him had been used to sway him from the proper course of judicial duty. That would surely have been pointless. Had it been desired to find the answer to that question, a full Investigation using hearings and coercive powers would have been necessary. I did not and do not believe that was warranted.¹²⁷⁰

7.403 The Royal Commission is of the view that in hindsight, it would have been appropriate to interview Mr Yeldham to determine whether by reason of the conduct which had come to light, he had at any time been the subject of blackmail or of unlawful pressure to compromise his office. Additionally, in hindsight, the Commission takes the view that it would have been desirable to pursue the concerns which arose in relation to the keeping of records concerning sensitive information and inquiries. Had that occurred it may be that the problems which this Commission found in relation to Special Branch may have emerged earlier.

Subsequent Disclosure

7.404 After the public hearings of the Royal Commission had concluded, an article was published of an interview with the Honourable Franca Arena MLC, in which the following observation was attributed to her, in response to the question 'how could she have been so confident in naming Yeldham?':

Because I had a witness who came to see me. But the witness didn't want to be involved because it wasn't him, it was his brother. He had proof. He showed me photographs and stuff. The thing about paedophiles - it's amazing - but most of them like to be photographed. I know photographs can be doctored, but not the ones I saw.¹²⁷¹

¹²⁶⁷ Record of Interview with Chief Justice Gleeson, 25/7/97, RCPS Exhibit 3199.

¹²⁶⁸ *ibid*, p. 7.

¹²⁶⁹ I. D. Temby, Statutory Declaration, 4/8/97, RCPS Exhibit 3209.

¹²⁷⁰ *ibid*, p. 5.

¹²⁷¹ D. McIntosh, 'Inside Story', *Tempo, The Sun Herald*, 18/5/97, RCPS Exhibit 3257/1, pp. 4-6.

7.405 Notwithstanding a number of previous communications with Mrs Arena, this was the first indication that the Royal Commission or the ICAC had of the possible existence of any photographs of Mr Yeldham in compromising circumstances. As a result, the Commission asked her for:

- copies of the material (the 'photographs and stuff') to which reference had been made;
- the name of her informant;¹²⁷² and
- help in securing his assistance.

7.406 Mrs Arena subsequently advised the Royal Commission that:

- she did not 'have the photograph or any other material in her possession';
- she relied on her informant to identify the man in the photograph as Mr Yeldham;
- when initially shown the material in September 1996, she had advised the informant to go to the Royal Commission or the police;
- her informant had contacted her on a few odd occasions since September 1996 to offer support; but that
- she could not provide her informant's identity or any means of contacting him.¹²⁷³

7.407 The Royal Commission was unable to take this possible lead any further, as the informant has never made contact with it, and he remains unidentified.

Conclusion

7.408 In the result it can only be said that the various incidents, complaints and rumours circulating within legal and government circles concerning Mr Yeldham were very badly managed. Although the Commission was not able to identify the sources within those circles who have variously been reported by the media to have known of Mr Yeldham's activities, the evidence received, and some additional intelligence suggestive of very serious misconduct on his part, which the Commission was unable to corroborate, or to put to him in the witness box, add to the concern which arises.

7.409 It is unarguable that Mr Yeldham, on his own admission:

- engaged in unlawful activities in circumstances that were unsuitable for his office and left him at risk of blackmail;
- lied to police when apprehended, and took advantage of his office to discourage further investigation; and
- was less than frank when confronted by Street, CJ.

7.410 However, in the circumstances as they developed, and despite the earnest attempts by Royal Commission investigators to get to the truth, it is not possible to reach any firm conclusion as to whether any attempt was in fact made by any person, whether a police officer or otherwise, to blackmail him into a compromise of his official duties.

7.411 His professional reputation was one of integrity, high service to the community, dedication to his judicial work, and outspokenness in the face of humbug or unfairness. Although this reputation must now be regarded as flawed, by reason of the matters identified in this report, it no doubt served him well when the rumours surfaced.

¹²⁷² RCPS, Letters to F. Arena, 18/5/97, RCPS Exhibit 3257/2; 22/5/97, RCPS Exhibit 3257/4; and 30/5/97, RCPS Exhibit 3257/6.

¹²⁷³ F. Arena, Letters to RCPS, 20/5/97, RCPS Exhibit 3257/3; 26/5/97, RCPS Exhibit 3257/5; and 3/6/97, RCPS Exhibit 3257/7.

7.412 So far as Special Branch is concerned, it is similarly impossible to determine where the truth lies, save to record the certainty that the Royal Commission was not given a truthful account by at least some of the members of that branch who were called as witnesses. It is clear from such of the contemporary records as survive that Special Branch was involved at least in the October 1990 incident at Wynyard. It would be incomprehensible if most if not all of its members did not come to know of that incident, and it is a matter of considerable disquiet that those officers who attended it could not be identified. As was stated in the public hearings, these circumstances and the very involvement of the branch in an incident outside its charter, leave a potential shadow over it and over the truthfulness of every officer serving in it at the time, in relation to this matter.

7.413 Significant suspicion must also persist that the Special Branch became involved in the incident at Central Railway Station, that it was well aware of Mr Yeldham's problems, and that at some stage it kept documentation of them.

7.414 Equally, significant suspicion must persist as to the manner in which the incident was received and handled by the senior command to whose notice it was brought. It is simply inconceivable that it would not have been regarded as a matter of great concern, and as politically sensitive, particularly when within a few months ICAC was known to be investigating a similar incident when Mr Yeldham had still been serving as a judge.

7.415 If as now appears to be the case, there was shared suspicion concerning Mr Yeldham's activities, then it would have been highly desirable for an official inquiry either by the Police Service, the ICAC, or the Judicial Commission to have been initiated. Had there been a more frank and explicit exchange of information and an official investigation then it is more than likely that Mr Yeldham would have taken the course that he did with the Royal Commission, that is, to admit the truth of the matters that had come to notice.

7.416 For the future, this case demonstrates unequivocally:

- the danger of partial and incomplete investigation into allegations of the kind which here existed;
- the inappropriateness of the intrusion of any successor to Special Branch into such matters, and of its use, with or without official sanction, as an agency able to smother or sort out matters of potential embarrassment to public officials or to the government;
- the need for properly co-ordinated intelligence and for a dedicated unit to deal with those cases which might involve serial paedophile activity; and
- the need for a protocol of the kind which now exists between the Judicial Commission and the ICAC under which they share information of relevance, to ensure that such cases do not fall within the cracks.

INQUIRY 6

7.417 Mr Anthony Bevan was elected to the Wollongong City Council as an Alderman in 1962. He served on the Council until 1971 and was Mayor of Wollongong between 1965 and 1968. He died in 1991 but events surrounding him were the subject of public evidence in the Commission.

Bevan's Public Profile

7.418 After an accident in a light plane in which his 17 year-old flying companion died,¹²⁷⁴ Mr Bevan founded the Wollongong City Aerial Patrol in 1959 which initially provided shark watch patrols but later included rescue services, and maritime surveillance.¹²⁷⁵ The patrol had the support of the Surf Life Saving Association and was, in the latter years of Mr Bevan's involvement, funded by a number of councils in the Illawarra Region and by a petroleum company.¹²⁷⁶ The patrol office was housed in premises at Windang and the aircraft were kept at Albion Park.¹²⁷⁷

7.419 Mr Bevan also operated a travel agency and real estate business, and later moved into property development.¹²⁷⁸ In the 1980s, he worked from offices in Crown Street, Wollongong. He owned a farm at West Dapto and property at Warilla and Wollongong. He also owned a penthouse in the Creston Apartments in Wollongong. In 1972, he was awarded a personal Certificate of Merit and a gold police citizen badge from the then Commissioner of Police, Norman Allen.¹²⁷⁹

7.420 As this history suggests, he enjoyed a considerable reputation for community service and for his contribution to local politics and business. Although there was a very different and thoroughly evil side to him, he escaped police action before his death on 19 September 1991.¹²⁸⁰

Complaints to Police

7.421 From the mid-1970s there were 'numerous stories' circulating in relation to Mr Bevan and 'his activity with young boys'.¹²⁸¹ These stories came from a wide range of sources within the Wollongong Community,¹²⁸² and were not unnoticed by police.¹²⁸³

1979 Consorting Squad Entry

7.422 In 1979, police spoke to Bevan on premises then known as 'Castellos Bunk-house' in Kings Cross. He had a 13 year-old boy from Wollongong in his company and informed police that he was on the premises seeing the proprietor 'on business'.¹²⁸⁴ No action was taken other than to record this sighting on a consorting card.

¹²⁷⁴ 'Shark Patrol', *The Australian Women's Weekly*, 25/10/61, RCPS Exhibit 2255/10, at Doc. 876691.

¹²⁷⁵ 'Tony is still the surfers' guardian', *Illawarra Mercury*, 7/1/91, RCPS Exhibit 1825C/2; 'Shark Patrol', *The Australian Women's Weekly*, 25/10/61, RCPS Exhibit 2255/10, at Doc. 876691.

¹²⁷⁶ NSW Police Service, Documents re Bevan, 22/1/96, RCPS Exhibit 1825C.

¹²⁷⁷ W8, Record of Interview, 2/9/95, RCPS Exhibit 1875AC/3; W13, RCT, 9/5/96, pp. 24950-51.

¹²⁷⁸ *Illawarra Mercury*, 20/9/91, RCPS Exhibit 1835C; A. F. Bevan, financial documents, RCPS Exhibit 2255/7.

¹²⁷⁹ Letter from Police Commissioner, 29/3/72, RCPS Exhibit 2255/4.

¹²⁸⁰ A. F. Bevan, Death Certificate, 19/9/91, RCPS Exhibit 1825C/1, at Doc. 1693755.

¹²⁸¹ C. A. McCloughan, RCT, 27/5/96, p. 25938.

¹²⁸² C. A. McCloughan, RCT, 27/5/96, p. 25939.

¹²⁸³ B. A. Lawson, RCT, 27/5/96, p. 25944.

¹²⁸⁴ NSW Police Service, Consorting Card, 7/4/79, RCPS Exhibit 2252AC/8, at Doc. 2106983.

1982 Complaints

7.423 In August 1982, an 11 year-old State ward informed his then foster parents that, whilst he had been living with his previous foster parents, Bevan had sexually assaulted him.¹²⁸⁵ This boy was subsequently interviewed by Detective Sergeant Jones. That interview was conducted in the presence of two officers from the Department of Youth and Community Services (YACS),¹²⁸⁶ and in the course of it, the boy revealed that:

- he had been assaulted by Bevan on a number of occasions;¹²⁸⁷
- the last assault, which included anal penetration, had occurred at Warilla approximately six months prior to the interview;¹²⁸⁸ and that
- another boy aged 13 years, who he named, had been abused in a similar way.¹²⁸⁹

7.424 The 13 year-old was interviewed by Warilla Detectives on 30 August 1982, but 'denied' any sexual assaults had occurred.¹²⁹⁰ It was noted in the police report that this boy was 'known' to YACS, was a 'backward lad' and was still associating with Bevan.¹²⁹¹ The interview took place in the presence of his parents who were noted to be 'friendly with Bevan'.¹²⁹²

7.425 Detective Sergeant Jones informed the Commission he was certain that he was informed by the parents of the 11 year-old that Bevan took boys up to Sydney.¹²⁹³ He recalled getting agitated with them and asking whether they were not concerned about the boy spending weekends there with an older man. However, they continued to speak highly of Bevan.¹²⁹⁴

7.426 Mr Jones interviewed Mr Bevan on 7 September 1982. The police report notes that he denied any knowledge of the offence and that there was 'insufficient evidence to substantiate a charge'.¹²⁹⁵ Jones could not recall the occasion in detail but did not believe that a formal record of interview was conducted. The most he could remember Bevan saying was that he 'helped the under-privileged children', and was associating with them for their benefit.¹²⁹⁶

1983 Complaints

7.427 In December 1983, two brothers aged 10 and 12 years, and a boy aged 13 years, all of whom lived in Warilla, were spoken to by police. They made allegations of sexual assault by a named person in the area for whom they had been doing odd jobs. They alleged that this man had invited them to go to premises the following day to meet with his friend Tony Bevan.¹²⁹⁷

7.428 On 23 December 1983 the police report into this incident noted that Bevan was a 'well known homo and pederast'.¹²⁹⁸ No action was, however, taken.

¹²⁸⁵ NSW Police Service, Criminal and General Information Form, 7/9/82, RCPS Exhibit 1825C/2, at Doc. 1714967.

¹²⁸⁶ D. R. Jones, RCT, 15/5/96, p. 25307.

¹²⁸⁷ D. R. Jones, RCT, 15/5/96, p. 25307.

¹²⁸⁸ D. R. Jones, RCT, 15/5/96, p. 25307.

¹²⁸⁹ D. R. Jones, RCT, 15/5/96, p. 25308; NSW Police Service, Criminal and General Information Form, 7/9/82, RCPS Exhibit 1825C/2, at Doc. 1714967.

¹²⁹⁰ D. R. Jones, RCT, 15/5/96, pp. 25309-10.

¹²⁹¹ NSW Police Service, Criminal and General Information Form, 7/9/82, RCPS Exhibit 1825C/2, at Doc. 1714969.

¹²⁹² *ibid.*

¹²⁹³ D. R. Jones, RCT, 15/5/96, p. 25309.

¹²⁹⁴ D. R. Jones, RCT, 15/5/96, p. 25309.

¹²⁹⁵ NSW Police Service, Criminal and General Information Form, 7/9/82, RCPS Exhibit 1825C/2, at Doc. 1714969.

¹²⁹⁶ D. R. Jones, RCT, 15/5/96, p. 25311.

¹²⁹⁷ NSW Police Service, Criminal and General Information Form, 21/12/83, RCPS Exhibit 1825C/2, at Doc. 1714970.

¹²⁹⁸ *ibid.*, at Doc. 1714972.

1984 Complaint

7.429 In July 1984, Senior Constable, (now Inspector) Cynthia McCloughan, received information from a counsellor at a youth refuge in Wollongong¹²⁹⁹ to the effect that:

- a 16 year-old youth, resident at the refuge, had been picked up while hitchhiking, by a man in his forties in a Mercedes, named 'Tony',¹³⁰⁰ who had said that:
 - he was millionaire, and rented the entire floor of the CML Building in Crown Street, Wollongong;
 - he owned a farm at West Dapto, which was occupied by a partner who could give the youth a job;
 - he owned a house at Warilla which was presently empty and the youth could live there if he wished;¹³⁰¹
- the counsellor had been informed by another person that the partner and Bevan were 'bad news',¹³⁰² and that they 'got young males into their company with jobs and supplied them with drugs and then blackmailed them for sex'.¹³⁰³

7.430 Senior Constable McCloughan recorded this information in a Criminal and General Information Form, which she copied to Dapto Police and Warilla Police as the allegations related to conduct occurring in those areas.¹³⁰⁴

7.431 Ms McCloughan recalled that, at about the same time, she spoke to a juvenile at the Warilla Police Station, while he was waiting transport to a remand centre.¹³⁰⁵ She said that the following information was provided to her by this juvenile:

- he did not live at home;
- he had been working on a farm at West Dapto that was owned by Bevan;
- Bevan offered work on the farm to young people;
- Bevan had supplied him with drugs; and
- Bevan had had sexual intercourse with him at the farm against his will.¹³⁰⁶

7.432 She said that she encouraged the young person to make an 'official complaint' but he 'backed right off'.¹³⁰⁷ She accepted that these were very, serious allegations¹³⁰⁸ and believes that she had put in another intelligence report, particularly as this was first hand information.¹³⁰⁹ No such report was found. Mr McCloughan, however, recalled that she passed this information on to a number of other police, including detectives,¹³¹⁰ because of Bevan's high profile.

7.433 Notwithstanding the growing intelligence, no investigation plan was prepared in respect of Bevan or his associate. Both Jones and McCloughan expected that the information forms they had completed would be built up into a profile against Bevan by crime intelligence officers in Sydney.¹³¹¹

¹²⁹⁹ C. A. McCloughan, RCT, 27/5/96, p. 25934; NSW Police Service, Criminal and General Information Form, 11/7/84, RCPS Exhibit 1825C/2, at Doc. 1714976.

¹³⁰⁰ NSW Police Service, Criminal and General Information Form, 11/7/84, RCPS Exhibit 1825C/2, at Doc. 1714976.

¹³⁰¹ *ibid.*

¹³⁰² *ibid.*

¹³⁰³ *ibid.*

¹³⁰⁴ *ibid.*

¹³⁰⁵ C. A. McCloughan, RCT, 27/5/96, pp. 25936-37.

¹³⁰⁶ C. A. McCloughan, RCT, 27/5/96, pp. 25936-37.

¹³⁰⁷ C. A. McCloughan, RCT, 27/5/96, p. 25937.

¹³⁰⁸ C. A. McCloughan, RCT, 27/5/96, p. 25937.

¹³⁰⁹ C. A. McCloughan, RCT, 27/5/96, p. 25937.

¹³¹⁰ C. A. McCloughan, RCT, 27/5/96, p. 25937.

¹³¹¹ D. R. Jones, RCT, 15/5/96, p. 25312; C. A. McCloughan, RCT, 27/5/96, p. 25939.

1990 Information

7.434 In late 1990, an informant provided information to Detective Sergeant King in relation to Bevan. As a result of this information King, who at the time was a Detective Senior Constable at the Tactical Intelligence Section, prepared a report detailing the previous notifications as well as the new information. That new information included allegations that:

- a named sex offender had taken boys from Sydney to Bevan's penthouse in Wollongong where 'paedophile parties' were held. A fee of \$80 per session with each boy was charged;¹³¹²
- Bevan was involved with the Air Scouts, one of whom, a 13 year-old male Air Scout, had said that he had been sexually assaulted whilst staying with Bevan; and
- Bevan had taken a pornographic video of the last mentioned boy, who had been a willing participant to the sexual acts, but had objected to the video.¹³¹³

7.435 In his report, which was sent to the Commander of the State Investigative Group on 25 February 1991, King identified a number of adults linked with Bevan in suspected paedophile activities. Mr King informed the Royal Commission that in his opinion:

- there was *prima facie* evidence of an organised group of paedophiles operating in Wollongong and beyond,¹³¹⁴ which needed urgent attention;¹³¹⁵
- there were multiple lines of inquiry,¹³¹⁶ and
- Bevan's conduct should have been the subject of investigation with close consideration given to surveillance.¹³¹⁷

7.436 It is apparent that Detective King's report was passed to Detective Inspector Cox who was at that time the Commander of Task Force Disk.¹³¹⁸ Mr Cox subsequently informed King that the most recent informant would not assist. To King's knowledge, no investigation was thereafter conducted into any of the allegations concerning Bevan, nor so far as the records disclose, was he subsequently interviewed by police. Similarly, there was no police action in relation to associates named in the report.

Royal Commission Inquiries

7.437 The Royal Commission was assisted by a number of men who provided evidence of their involvement with Bevan when they were adolescents. From their evidence, and that of others, the following picture emerged in relation to him:

- he had a sexual attraction to adolescent boys in the age group of 12 to 16 years who were 'immature for their age', clean and tidy and somewhat educated;¹³¹⁹
- he befriended young boys who went to the air strip to watch aircraft. He had a number of mini-bikes at the airstrip which he allowed them to ride;¹³²⁰
- he met and befriended the boys' families, and showered the boys with gifts;¹³²¹

¹³¹² W. B. King, Report on Mr Bevan, 25/2/91, RCPS Exhibit 1825C/1, at Doc. 1693756.

¹³¹³ W. B. King, Report on Mr Bevan, 25/2/91, RCPS Exhibit 1825C/1, at Doc. 1693757.

¹³¹⁴ W. B. King, RCT, 27/5/96, p. 25917.

¹³¹⁵ W. B. King, RCT, 27/5/96, p. 25919.

¹³¹⁶ W. B. King, RCT, 27/5/96, p. 25926.

¹³¹⁷ W. B. King, RCT, 27/5/96, p. 25913.

¹³¹⁸ See Chapter 5 of this Volume.

¹³¹⁹ W13, RCT, 9/5/96, p. 24980; W26, RCT, 15/5/96, p. 25261.

¹³²⁰ W2, RCT, 13/5/96, pp. 25058-59.

¹³²¹ W5, RCT, 9/5/96, p. 25015.

- he used the boys with whom he had become friendly and had engaged in sexual activity, to recruit other boys usually younger than the recruiter;¹³²²
- the recruiting process included the recruiter having sex with the new boy, and thereafter they were introduced to Bevan for sex;¹³²³
- he supported the boys by giving them accommodation at the aerial patrol premises at Windang, or by providing them with rented premises;¹³²⁴
- he took photographs, films and videos of the boys when they were naked, or engaged in sexual activity with other boys;¹³²⁵
- he invited the boys to fly with him and sometimes allowed them to take the controls of the aircraft;¹³²⁶
- the recruited boys were paid an allowance and provided with cigarettes, food, and money in return for sexual activity with Bevan and/or other male adults to whom they were introduced by Bevan;¹³²⁷
- he referred to the younger boys as females, and used nicknames such as Miss Liverpool, Miss Revesby or Miss D, when introducing them to other adult males for sexual purposes;¹³²⁸
- he networked with people in Sydney and brought boys from Wollongong to Sydney regularly to provide sex to male adults in Sydney;¹³²⁹
- he referred to the group of boys and himself when travelling to Sydney as the 'royal party';¹³³⁰
- he charged a fee to his associates for an introduction to the boys in the royal party. This fee was referred to as the 'royal mail' which was paid in advance by cheque sent to a Wollongong post office box leased by Bevan.¹³³¹ The term the 'royal mail' was also used to describe the mail containing pornographic material that Bevan arranged to have sent from the United States of America and distributed among his network;¹³³²
- he used premises in the Kings Cross area to accommodate the 'royal party' and had a close association with the owner of the Motel Lodge in the Cross;¹³³³
- he was a regular patron of Costellos night club in Kings Cross, which initially was a gay bar but later became a known haunt for paedophiles under the ownership of John McLean;
- he tended to communicate by telex in a code in which his code-name was variously 'Hook', or 'Commander Hook' or 'Mother', and that of the motel lodge owner was 'Bagger';¹³³⁴
- W14, (the Bagger) assisted the Royal Commission with the interpretation of some of the telexes which were recovered by the Royal Commission:
 - a description of a boy as '9 out of 10' was a reference to his sexual performance or attractiveness;

¹³²² W13, RCT, 9/5/96 p. 24960.

¹³²³ W13, RCT, 9/5/96, pp. 24971-72.

¹³²⁴ W13, RCT, 9/5/96, pp. 24953-54 & 24964.

¹³²⁵ W13, RCT, 9/5/96, p. 24987; W2, RCT, 13/5/96, pp. 25061-62; W8, Record of Interview, 2/9/95, RCPS Exhibit 1875C/3.

¹³²⁶ W13, RCT, 9/5/96, p. 24951; W2, RCT, 13/5/96, pp. 25058-59.

¹³²⁷ W13, RCT, 9/5/96, p. 24959.

¹³²⁸ W13, RCT, 9/5/96, pp. 24962-63.

¹³²⁹ W13, RCT, 9/5/96, p. 24962.

¹³³⁰ W13, RCT, 9/5/96, p. 24962; A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³³¹ W13, RCT, 9/5/96, p. 24963.

¹³³² W14, RCT, 14/5/96, p. 25163.

¹³³³ W14, RCT, 14/5/96, pp. 25154-55.

¹³³⁴ W14, RCT, 14/5/96, pp. 25160-61; A. F. Bevan, telexes, RCPS Exhibit 1823B.

- a reference to a boy as '1/4' or '1/5' meant that the boy was 14 or 15 years of age;¹³³⁵
- 'fountain pen area' meant the El Alamein fountain area in Kings Cross;¹³³⁶ and
- 'upstairs around the corner' was a reference to the nightclub Costellos.¹³³⁷

7.438 Some examples of the communications between Bevan and W14 (Hook and Bagger) respectively are as follows:

Hi there bagger.

Have not had the pleasure of seeing your greying head for some weeks - but have been somewhat busy with you know what the Council etc.

Newsflash - have you struck a lass by the name of (named) who is always busy around fountain pen area always wearing seafood clobber but is not in pusses? Quite a girl and would rate 8/10.

We'll be seeing her tomorrow nite and have christened her the triantular. So will report further detail following this meeting - in fact we'll set up an appointment for initial interview for say Wednesday or Thursday.

Miss Stephanie is back but not TG's \$360 but I am told she intends to repay the whole or has it salted away awaiting to hand over to TG (elephants can fly too).

Maybe we'll see you tomorrow - saw (name) and (name) upstairs around the corner on Saturday.
Regards Hook.¹³³⁸

W14 explained that the person Bevan was describing was a particular person who was not in the navy¹³³⁹ but was accustomed to wearing a naval uniform.¹³⁴⁰ The reference to '8/10' was a reference to the rating of his sexual performance/attractiveness.¹³⁴¹

Hi there Bagger ... 21 February 1978.

Anticipate arrival Sydney around 7.30 pm and once again will have same lass staying at lodge for the night due to her flying activities tomorrow. This will somewhat cramp ones style insofar as taking any other lass to lodge for s. But Hook feel you should sight this one as it is def 9/10 ... Suggest around 9.45 at hut if this is convenient to you for about 15 mins.

Pls adv.

Regards.

Hook.¹³⁴²

W14 explained that 'lodge for s' meant sex with the person at his motel,¹³⁴³ and that the telex was suggesting that he should meet the particular boy, who Bevan had given a rating of 9 out of 10.¹³⁴⁴

Hi there bagger ... 25 Feb 1978.

News flash.. Miss Revesby Ga Ga is meeting Miss Stephanie tonite around 9.00 pm. Last night she phoned Hook requesting your tele number no doubt for appt.

In any event am coming to Sydney tonite with big D and Miss Walton so may see you somewhere say the hut around 11.00 pm.

Regards Hook.¹³⁴⁵

W14 explained that the reference to the hut was a reference to a restaurant at which he and Bevan might dine, or have a drink, when he brought the boys up from Wollongong.¹³⁴⁶

¹³³⁵ W14, RCT, 14/5/96, p. 25163; A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³³⁶ W14, RCT, 14/5/96, p. 25170.

¹³³⁷ W14, RCT, 14/5/96, p. 25172.

¹³³⁸ A. F. Bevan, telexes, RCPS Exhibit 1854AC.

¹³³⁹ 'In pusses' was code for the Navy; See W14, RCT, 14/5/96, p. 25170.

¹³⁴⁰ 'Seafood clobber' meant naval dress; See W14, RCT, 14/5/96, p. 25170.

¹³⁴¹ W14, RCT, 14/5/96, p. 25171.

¹³⁴² A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³⁴³ W14, RCT, 14/5/96, p. 25177.

¹³⁴⁴ W14, RCT, 14/5/96, pp. 25177-78.

¹³⁴⁵ A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³⁴⁶ W14, RCT, 14/5/96, p. 25156.

Hi there bagger..2 August 1978

1. The royal party will be in your region Friday evening from say 7.30 pm onwards;
2. Interest will probably centre around area opposite Crest;
3. Will only be accompanied by Miss D if she is of interest.
4. Will seek to find Miss Liverpool or for that matter anything that appears worthy of handling by royalty.
5. Have you received royal mail today for on-forwarding?

Fondest regards

Hook¹³⁴⁷

In response to this telex W14 sent the following telex:

Hi there Hook

It's 11.00 pm Thursday night and I've just received your telex to be more exact I've just read it.

Great to hear that the royal party are arriving at 7.30 pm Friday nite how about phoning me earlier in the afternoon. I saw Miss Liverpool tonight and anticipate her attendance opposite the Crest tomorrow night. It would be great to see Miss D if it is convenient. The royal mail came today and was passed on with an appropriate cheque at 2.30 pm this afternoon. Will anticipate your arrival tomorrow night.

Regards

The Bagger'.¹³⁴⁸

W14 explained that 'the royal mail' referred to some pornographic material supplied by Bevan for which he had sent him a cheque.¹³⁴⁹

Hi there bagger..21 August 1978

Thank you for allowing me to inspect the little ones from Randwick on Saturday. The blonde lass reported that she had been ripped off by some raving Q and was busily engaged in a plot to track down her customer. Hence she was uptight - but mother will put aside for another day.

The senior scout of the three was most interesting but she disappeared into the smog of cost'los. Miss Michael, I think?

How is Miss Gordon as I am told reliably she has a great handle

8 mm projector in sight and will adv detail later this week ...

We will see you in town Thursday night

Regards

Commander Hook¹³⁵⁰

W14 said this telex possibly related to some boys whom he had introduced to Bevan at Costellos.¹³⁵¹

..9.51 pm

Greetings Bagger time is now 9.52 pm and Hook is presently on cloud 9. A new discovery has him Tippy toeing through the tulips and she has just completed the latest round.. the little one having to be you know where fairly early otherwise being Cinderella.. she may turn.

School holidays my dear I wonder if we'll last the distance.

The scout mistress has even taken her annual hollys to coincide.. what a bitch.. and what some people will do..

Hook will be in your area Wednesday and will phone you either at Tension Towers or the Holy Shoppe - St Johns ???

Regards to all... Hook'

¹³⁴⁷ A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³⁴⁸ A. F. Bevan, telexes, RCPS Exhibit 1823B.

¹³⁴⁹ W14, RCT, 14/5/96, p. 25163.

¹³⁵⁰ A. F. Bevan, telexes, RCPS Exhibit 1823B.

W14 said in this telex Bevan was informing him of his delight in finding a new boy.¹³⁵² The reference to 'school holidays' and 'lasting the distance' was a reference to sexual activity with school boys and the exhaustion that might be experienced from that.¹³⁵³ He was not able to assist with the identity of the 'scout mistress', but 'Tension Towers' was a reference to W14's home, and the 'shoppe' was a retail store that W14 had opened.¹³⁵⁴

7.439 A good deal of evidence was received by the Royal Commission in relation to the premises Costellos previously mentioned. Located in Kellett Street, Kings Cross, it operated between 1970 and the early 1980s. In summary the evidence revealed that:

- it was opened as a gay club in the 1970s and operated an illegal bar without a licence;¹³⁵⁵
- in its early years it occupied the first floor of the building which included a bar and a disco dance area;¹³⁵⁶
- after a change of ownership in 1976 it expanded to the top floor of the building, where cubicles and sauna facilities were provided with an area for the watching of pornographic films;¹³⁵⁷
- in the latter years it was a place frequented by males who engaged in sexual activity with adolescent boys aged as young as 12¹³⁵⁸ in the cubicles;¹³⁵⁹
- the cubicles were promoted by the owner of Costellos, at that time the late John McLean;¹³⁶⁰
- the police telephoned when there was going to be a 'raid' on the premises and the lights in the club would flash on or off to alert staff to the impending raid;¹³⁶¹
- if young boys were on the premises and had not had time to exit through the back window they could be hidden;¹³⁶² and
- although consorting police and licensing police attended the premises, liquor was openly on sale, and many young boys could be found there, little occurred in the way of police action.¹³⁶³ Such police response as there was seems to have been confined to licensing breaches. The vice aspects, and particularly the paedophile activity, seems to have been totally ignored.

7.440 Material provided by witnesses and various informants to the Royal Commission, as to who attended these premises has been disseminated to the CPEA for further investigation.

¹³⁵¹ W14, RCT, 14/5/96, p. 25195.

¹³⁵² W14, RCT, 14/5/96, p. 25190.

¹³⁵³ W14, RCT, 14/5/96, p. 25191.

¹³⁵⁴ W14, RCT, 14/5/96, p. 25191.

¹³⁵⁵ P. Bergin, RCT, 19/8/96, p. 30816; KR35, RCT, 19/8/96, p. 30821.

¹³⁵⁶ KR35, RCT, 19/8/96, p. 30821.

¹³⁵⁷ KR35, RCT, 19/8/96, p. 30822.

¹³⁵⁸ KR35, RCT, 19/8/96, p. 30825.

¹³⁵⁹ KR35, RCT, 19/8/96, p. 30826.

¹³⁶⁰ KR35, RCT, 19/8/96, p. 30825.

¹³⁶¹ W26, RCT, 15/5/96, p. 25299.

¹³⁶² KR35, RCT, 19/8/96, pp. 30837-38.

¹³⁶³ KR35, RCT, 19/8/96, pp. 30833-52.

7.441 Mr Bevan had a practice of taping his telephone conversations by means of a suction cup device, of the kind then on sale in electronic stores, which could be affixed to the handpiece.¹³⁶⁴ The tapes of the conversations were kept within his office and after his death were divided between the beneficiary of his estate and a former colleague.¹³⁶⁵ Copies of some of those tape recordings were provided to the *Illawarra Mercury*, which in March 1995 published extracts from them.¹³⁶⁶ The article was an expose of the extensive paedophile activity, both within NSW and overseas, disclosed on the tapes.

Conclusion

7.442 Despite the wealth of intelligence available, and the relative ease with which the Royal Commission was able to locate witnesses and physical evidence which identified a number of suspected paedophiles associated with Bevan and a large number of boys who were victims of his group, there was never any attempt by the Police Service to maintain a proactive operation in relation to him or his associates.

7.443 Four circumstances can be identified as leading to this unsatisfactory situation:

- the absence of knowledge on the part of local Patrol Commanders of the information reports, and of the activities of this group;¹³⁶⁷
- the absence of any effective co-ordination and analysis of the intelligence supplied;¹³⁶⁸
- the lack of resources, police at local level being hard pressed to meet routine demands, and not having surveillance available;¹³⁶⁹ and
- the lack of a specialised paedophile unit which could have responded to the intelligence and mounted the kind of investigation of which the CPEA is now capable.

7.444 It is clear that had surveillance been committed to Bevan during the 1980s, or any expert investigation made, he and a very significant circle of paedophile offenders would have been detected and placed before the courts. There simply was a lack of expertise on the part of the police in relation to paedophile activity and offenders, and too ready an acceptance of the proposition that because of Bevan's high profile and reputation, he was above suspicion. This case is in fact an excellent illustration of the propensity of highly placed offenders to target homeless and troubled children under the guise of benefactors, and of the need for police to maintain an open mind and not be overwhelmed by their reputation or office.

¹³⁶⁴ W8, Record of Interview, 28/4/95, RCPS Exhibit 1875C.

¹³⁶⁵ W8, Record of Interview, 28/4/95, RCPS Exhibit 1875C/1.

¹³⁶⁶ 'Former Mayor ran child sex ring', *Illawarra Mercury*, 9/3/95, RCPS Exhibit 1835.

¹³⁶⁷ B. Lawson, RCT, 27/5/96, pp. 25946 & 23980.

¹³⁶⁸ B. Lawson, RCT, 27/5/96, p. 25946.

¹³⁶⁹ B. Lawson, RCT, 27/5/96, p. 25945; D. R. Jones, RCT, 15/5/96, pp. 25311-12 & 25317.

7.445 In the result:

- many of these offenders, several of whom are now dead, escaped detection and went unpunished, and others of whom have only recently been placed before the Courts; and
- a substantial circle of young men were left rejected, traumatised, and denied the protection that should have been supplied.

7.446 This case, above all others, demonstrates the need for a permanent, dedicated and highly professional police unit which can detect the tell-tale signs of organised paedophilia, which in retrospect were so obvious, and which has the capacity to receive and analyse intelligence and to mount sophisticated covert operations against paedophile networks.

7.447 Although there was no evidence to suggest that Mr Bevan and his associates engaged in any corrupt relationship with police, they received de facto protection by reason of the failure of the Service to effectively respond to the intelligence available. There is, however, firm ground for the conclusion of protection corruptly procured through Kings Cross Police.

7.448 In the course of the investigations concerning Bevan and his associates, the Commission undertook:

- some preliminary inquiries into allegations of which it was aware, concerning another high profile figure in the Illawarra Region; and
- made some inquiries and called some evidence in relation to allegations concerning possible paedophile activity at a holiday resort in the same region.

7.449 In neither case was it able to identify any material suggestive of police protection or corruption in relation to these cases. The information and intelligence it collected in each case has been passed to the CPEA. One person (allegedly) involved has been charged and is awaiting trial. It is inappropriate in either case to venture into any further details in this Report.

INQUIRY 7

7.450 The Royal Commission examined a number of investigations into allegations made against members of the clergy. This aspect of its inquiries is dealt with in more detail elsewhere in this Report.¹³⁷⁰ It is, however, appropriate to record, at this stage, that the police investigations in each case had all the hallmarks of undue deference to the Church, and were less than thorough or impartial. Some of the aspects of the evidence which lead to that conclusion include:

- the conduct of police officers in encouraging victims to resort to counselling rather than pursuing the matter by way of prosecution;¹³⁷¹
- the emphasis police placed on the trauma involved in giving evidence, when discussing these matters with the victims and their families;¹³⁷²
- the circumstance that one officer underlined to the complainant his own religious beliefs, and the fact that he was a functionary within the relevant church, when receiving his complaint, a circumstance hardly likely to generate confidence in the complainant;¹³⁷³
- the apparent reluctance of police to believe that a member of the clergy or a priest would conduct himself in the way alleged;

¹³⁷⁰ eg. The case involving Brother Evans dec'd and Father Comensoli. Volume V, Chapter 11 of this Report.

¹³⁷¹ P. A. Issanchon, RCT, 16/8/96, p. 30721.

¹³⁷² P. Gallagher, RCT, 16/8/96, p. 30761.

¹³⁷³ P. A. Issanchon, RCT, 16/8/96, pp. 30726-27.

- the acceptance of the proposition, sometimes advanced by the religious institution concerned, that it would be better for the priest or member of the clergy to be moved and to receive counselling and help to prevent repetition than to be prosecuted; and
- the failure to use intelligence, or to mount any covert inquiry, or to search for other possible victims.

7.451 So far as the major churches and religious organisations are concerned, it has now been generally accepted that:

- there has been deep-seated ignorance on their part about the extent and significance of child sexual abuse by their members;¹³⁷⁴
- they have adopted indefensible and entirely inappropriate policies to protect those members who were alleged to be perpetrators of sexual abuse, on the ground that the conduct amounted to moral failure which was best managed by reprimand, transfer and counselling;¹³⁷⁵
- undue priority was given to protection of the reputation of the church as an institution, and of the clergy as individuals, over the rights of the children who were abused;
- insufficient attention was given to the circumstances in which clergy live and come into contact with children, to the personal stresses placed on them, or to the repetitive nature of paedophile activity;
- many priests, particularly older ones, who were aware of the allegations could neither accept or understand them and effectively wished them away;¹³⁷⁶
- such protocols as existed for dealing with the problem were woefully deficient, and did not provide any sufficient or safe avenue of complaint; and that
- by virtue of the power, influence and respect attaching to the clergy, many children were too fearful or ashamed to complain.

7.452 As is explained later in this Report, there has been a new realisation of these problems within the Church and religious organisations, and the community generally, arising out of the revelations of the Royal Commission, media exposés and recent prosecutions in each State and Territory.

7.453 The fact is that there has been a long, sad and extensive history of child sexual abuse by members of the clergy and by those associated with the churches, schools, homes and the like conducted by religious associations. As a result of the impenetrability of these organisations and their lack of support for children in their care, and the failure of the police to effectively investigate those cases, arising out of deference, ignorance and a reluctance to challenge persons seemingly in positions of respect:

- a very considerable amount of criminal conduct of the most serious kind has been left undetected and unpunished; and
- enormous harm has been done to generations of children.

¹³⁷⁴ B. Lucas, RCT, 18/4/96, pp. 23796-97.

¹³⁷⁵ J. McDonald, RCT, 18/4/96, p. 23889.

¹³⁷⁶ Witness name suppressed, RCT, 16/4/95, pp. 23684-85.

CHAPTER 8

DEPARTMENT OF COMMUNITY SERVICES

8.1 In its inquiries relating to paragraph (d2) of its terms of reference - whether the procedures of or the relationships between the Police Service and other public authorities have adversely affected the prosecution of paedophiles or pederasts - the Royal Commission focused on those government departments and agencies which:

- have some responsibility for children and/or a role in caring for them; and which
- in discharging those responsibilities, interact with other government departments or agencies and the Police Service.

8.2 The procedures of the Police Service, Department of Community Services (DCS), Department of School Education (DSE) and NSW Health Department were of central interest by reason of their key roles in relation to the supervision of children, and in the investigation of allegations of child sexual assault.¹³⁷⁷ The Commission found that by reason of inadequacies in their procedures, and lack of co-operation or joint focus, paedophiles have very often been protected from investigation and prosecution.

8.3 A particular problem which DCS was found to have shared with the other agencies concerns the inadequacy of investigations into its staff following allegations of child sexual assault against them. The Commission found that each agency generally entertained:

- a disbelieving and disparaging attitude towards complainants, particularly those in vulnerable positions;
- a disinclination to accept that any of its officers would engage in wrongful conduct;
- a concern as to the possible scandal arising from the police or an external agency being brought in to investigate the matter;
- a belief that it was better to 'fix' the problem from within; and on occasions
- a readiness to penalise an officer or employee who reported possible misconduct by a fellow worker.

8.4 This problem was magnified in each of the agencies by the absence of effective monitoring and screening processes in respect of staff whose work placed them in close proximity with children. Without such processes it is not possible for any organisation to make an informed assessment of those officers who may pose an unacceptable risk to children, or to respond to complaints.¹³⁷⁸ This is a matter of considerable importance, because of the nature of the paedophile and the risk that he will gravitate into work which provides opportunities to meet and deal with children in a supervisory role.

8.5 Any screening system which is put in place accordingly needs to be stringent and to have the capacity for continuous monitoring, and follow-up where any allegation of sexual abuse emerges.

¹³⁷⁷ The Office of the Director of Public Prosecution's (ODPP) role in the prosecution of child sexual assault cases as well as that of the justice system are dealt with in Volume V, Chapter 15 of this Report.

¹³⁷⁸ *M v M* (1988)166 CLR 69.

8.6 The deficiencies identified in the key agencies examined stem from similar causes:

- turf protection;
- lack of appropriately qualified and trained staff;
- lack of resources;
- lack of knowledge or commitment to the problem; and
- in the case of DCS, lack of priority given to child protection work.

8.7 There has also been a cultural problem in the conflicting roles of the Police Service in investigating and seeking to prosecute paedophiles, and of DCS for whom the first priority is to ensure the best interests of the child. The cultures of each should be able to accommodate the main aim: the protection of the child. That is not achieved alone by trying to convert families from dysfunctional to functional units. Nor does it depend alone upon successfully prosecuting paedophiles, and removing them from circulation, or subjecting them to close supervision while on probation or parole. Each needs to be addressed but in co-operation rather than in competition.

8.8 There has been significant progress in moving those cultures closer. This has been achieved through the JIT implementation program earlier mentioned,¹³⁷⁹ and through the release of the new interagency guidelines.

8.9 In this chapter, the particular problems observed in relation to the DCS are noted, and some recommendations for reform are made. In subsequent chapters, a similar review is made of the other departments, and proposals are developed for a co-ordinated overall system which might better secure the protection of children from sexual abuse.

A. DEPARTMENT OF COMMUNITY SERVICES PROCEDURES

8.10 The Department of Community Services (DCS) was previously known as the Department of Family and Community Service (FACS). Earlier, it was the Department of Youth and Community Services (YACS).¹³⁸⁰ DCS is the principal agency responsible for protecting children from sexual, emotional and physical abuse and neglect. The legislation requires mandatory notifications of suspected child abuse to be made to DCS¹³⁸¹ and it has the responsibility of referring matters to the Police Service.

ORGANISATION AND STRUCTURE FOR CHILD CARE SERVICES

8.11 Since 1983 DCS services in relation to child sexual abuse matters have been delivered through a variety of structures, with name changes occurring almost annually:

- in 1984 services were delivered through an Operations Directorate and with a Family and Children's Services Policy Unit;¹³⁸²
- in 1987 the Policy Unit changed its name to Community and Children's Services;¹³⁸³
- in 1988 services were delivered through the Casework Services Branch which was established within the Operations Directorate;¹³⁸⁴

¹³⁷⁹ See Chapter 6 of this Volume.

¹³⁸⁰ The Department of Youth and Community Services (YACS) became the Department of Family and Community Services (FACS) in 1988 and the Department of Community Services (DCS) in 1991; the change in name from YACS to FACS was said to reflect the emphasis on providing support for the 'family unit' and the most recent change to DCS to reflect 'linking families, individuals and communities'. FACS, *Annual Report 1987-88*, RCPS Exhibit 3063/4, p. 1; DCS, *Annual Report 1990-1991*, RCPS Exhibit 3063/8, p. 1.

¹³⁸¹ *Children (Care and Protection) Act 1987*, s. 22.

¹³⁸² YACS, *Annual Report 1984-5*, RCPS Exhibit 3063/1, p. 7.

¹³⁸³ YACS, *Annual Report 1986-87*, RCPS Exhibit 3063/3, p. 8.

- in 1989 the name of that branch was changed to the Casework Standards and Evaluation Branch and a Protection of Children Program was established for which the Branch had responsibility;¹³⁸⁵
- in 1991 the program was renamed the Child Protection Program;¹³⁸⁶
- in 1992 the Care and Protection Directorate was established with responsibility for the Care and Protection Program and the Child Protection sub-program;¹³⁸⁷
- in 1995 a Protection and Family Branch was established within the Care and Protection Directorate with responsibility for the Care and Protection Program and the Child Protection sub-program; and¹³⁸⁸
- in 1996 the Care and Protection Directorate was changed to the Child and Family Services Directorate with a Protection and Support Branch operating the Child and Family Services Program which has within it the Child and Family Support Child Protection Program.¹³⁸⁹

8.12 The rationale for this continual reorganisation is not clear, but it bears a marked similarity to the serious management deficiency identified in the case of the Police Service, namely the endless development of plans, and changes in structure, which appear sensible on paper but in the end achieve nothing.

8.13 Throughout these structural and organisational changes, child protection services have been provided on the ground by DCS officers, known as District Officers, in the department's 87 Community Centres throughout the State. These officers, together with managers and assistant managers, are responsible for assessing whether information received warrants classification as a 'notification' for further action, and are also responsible for implementing action to remove any risks to the child's well-being and safety.¹³⁹⁰

8.14 The level of DCS funding has fluctuated significantly during the period since 1983, and its capacity to deliver the full range of services committed to it, with limited resources, has been the subject of regular comment in its annual reports.¹³⁹¹ DCS has been described as operating in a 'turbulent environment', with a range of clients that is extremely broad, presenting the department with numerous demands.¹³⁹² The Commission does not disagree with this assessment.

INTAKE AND ASSESSMENT

8.15 Notifications to DCS in all categories of child abuse increased by 62% in the period 1991 to 1995. Notifications of alleged sexual abuse increased by 31% over the same period although this was accompanied by a decrease in the number of substantiated cases.¹³⁹³

¹³⁸⁴ FACS, *Annual Report 1988-1989*, RCPS Exhibit 3063/6, pp. 10 & 14.

¹³⁸⁵ FACS, *Annual Report 1989/90*, RCPS Exhibit 3063/7 pp. 13 & 104-8.

¹³⁸⁶ DCS, *Annual Report 1990-1991*, RCPS Exhibit 3063/8, pp. 11-14.

¹³⁸⁷ DCS, *Annual Report 1992-1993*, RCPS Exhibit 3063/11, pp. 8-9 & 68.

¹³⁸⁸ DCS, *Annual Report 1994/95*, RCPS Exhibit 3063/14, pp. 6-7 & 10.

¹³⁸⁹ DCS, *Annual Report 1995-1996*, RCPS Exhibit 3063/16, pp. 4-5 & 8.

¹³⁹⁰ DCS, Ageing and Disability Department (ADD) & Department of Juvenile Justice (DJJ), Joint submission to RCPS, August 1996, RCPS Exhibit 2540, p. 3.

¹³⁹¹ YACS, *Annual Report 1984-5*, RCPS Exhibit 3063/1, p. ii. In 1984/85 the Government's decision to increase the number of people employed by the department was described as the 'first increase in many years' and 'only went part of the way towards rectifying the department's inadequate level of staffing'; FACS, *Annual Report 1988-1989*, RCPS Exhibit 3063/6, p. 11. In 1988/89 the department claimed that it had experienced severe management problems 'brought about some years ago by the former Government in not funding all departmental positions'; DCS, *Annual Report 1990-1991*, RCPS Exhibit 3063/8, pp. 2 & 3. In 1990/91 the department reported it was bound by a difficult financial environment and was experiencing challenging times; DCS, *Annual Report 1990-1991*, RCPS Exhibit 3063/9, pp. 2-4. In 1991/92 the department reported a major reshuffle as it adjusted to the realities of major change when staff were faced with uncertainty and anxieties; DCS, *Annual Report 1991-1992*, RCPS Exhibit 3063/9, pp. 2-4.

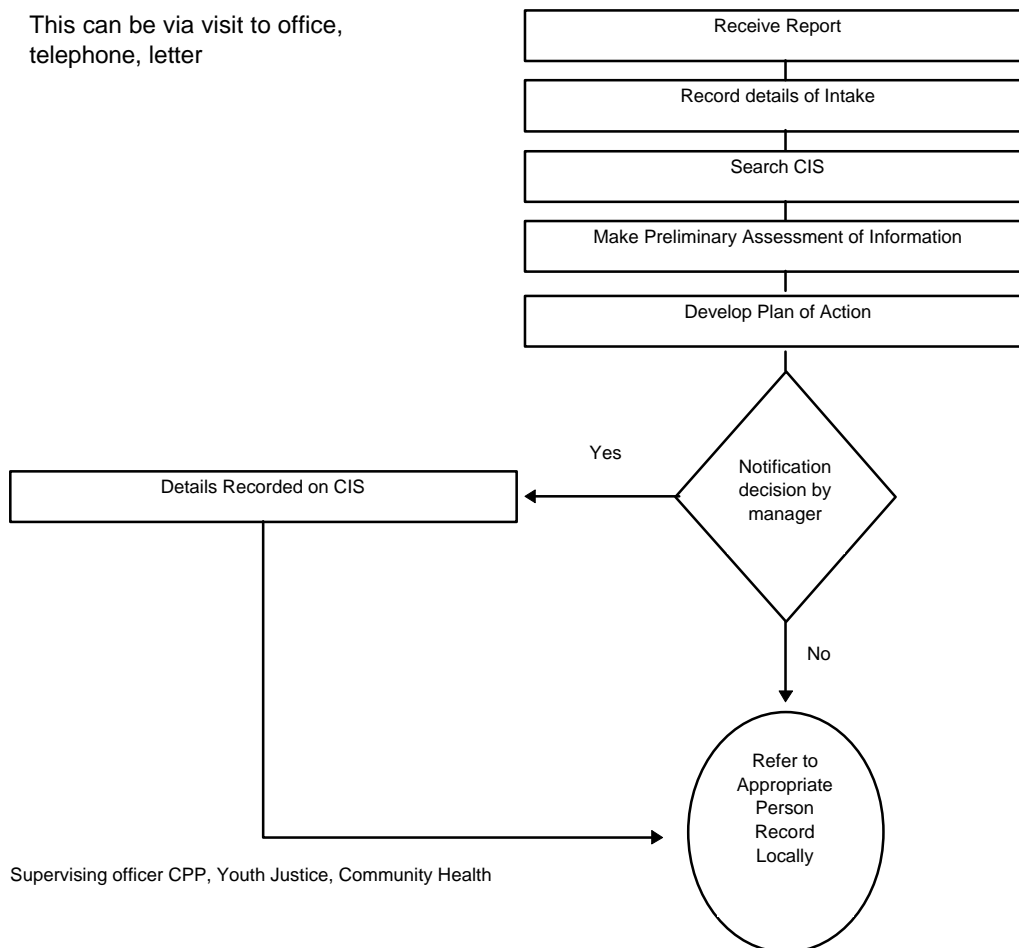
¹³⁹² Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. i.

¹³⁹³ Chart Produced by Information & Planning Group Child and Family Services Directorate, DCS, Data Source Client Information System, 28/5/96, RCPS Exhibit 1943. A notification is 'substantiated' or confirmed on the discretion of the Area Manager, after initial investigation has occurred: A. Ford, RCT, 4/7/96, p. 28200.

| YEAR | NUMBER OF NOTIFICATIONS | SEXUAL ABUSE | | % TOTAL NOTIFICATIONS SUBSTANTIATED | | % SEXUAL NOTIFICATIONS SUBSTANTIATED | |
|--|-------------------------|--------------|-----|-------------------------------------|-----|--------------------------------------|-----|
| 1990/91 | 20,654 | 5,258 | 25% | 11,705 | 57% | 2,997 | 57% |
| 1991/92 | 23,759 | 5,893 | 25% | 12,830 | 54% | 3,178 | 54% |
| 1992/93 | 26,735 | 7,084 | 27% | 14,563 | 54% | 3,886 | 55% |
| 1993/94 | 32,238 | 7,090 | 22% | 15,128 | 47% | 3,302 | 47% |
| 1994/95 | 33,448 | 6,908 | 21% | 14,164 | 42% | 2,955 | 43% |
| (62% increase between 1990/91 and 1994/95) | | | | | | | |

8.16 The intake system during the period of interest to the Royal Commission is outlined in the following flow chart:¹³⁹⁴

Intake/Reporting Flow Chart



8.17 Although DCS prepared an 'Interim' Child and Family Services Practice Manual as a 'working document' in July 1996¹³⁹⁵ it is currently preparing a Child and Family Services (CFS) Policy Manual to outline the current intake procedure.¹³⁹⁶

¹³⁹⁴ DCS, Intake/Reporting Flowchart, *Working Together to Protect Children: Community Services Procedure*, October 1994, RCPS Exhibit 5997C, p. 16.

¹³⁹⁵ DCS, Interim Child and Family Services Practice Manual: Working Document, July 1996 in DCS, ADD and DJJ, Joint submission to RCPS, August 1996, Exhibit 2540C, Appendix D.

¹³⁹⁶ DCS, Child and Family Services Policy Manual: Working with Children & Families (draft), 2/7/97, RCPS Exhibit 3202C. See chart, Case Management: Phase One - Intake Action by Intake Staff, Appendix P10.

8.18 The Intake Officer performs a critical role in this process. Considerable training and skill are needed in the collection of information required for the necessary assessment, made in conjunction with the manager, whether the matter goes further by way of investigation, or initiation of care proceedings in the Children's Court,¹³⁹⁷ or is closed.

8.19 If a decision is made to investigate a matter, the information is entered on the Client Information System (CIS). The CIS software is family/child centred and does not allow a search for previous notifications in respect of any particular offender, unless the victim had been previously abused by the same person.¹³⁹⁸ This deficiency, although highlighted in the Royal Commission hearings,¹³⁹⁹ has still not been rectified. It is recommended that this matter be attended to urgently.

8.20 Once a decision for investigation was made, it was formerly given an urgency rating of one, to be dealt with immediately; two, requiring action within 48 hours; and three, within five working days or more.¹⁴⁰⁰ That rating system was abandoned in 1996 and the department then moved to a system which was 'less routine' in categorisation and gave more response flexibility.¹⁴⁰¹ The plan of action during the period examined by the Royal Commission is shown in the following flow chart:¹⁴⁰²

¹³⁹⁷ D. L. Semple, RCT, 28/5/96, p. 26076. Care proceedings can be initiated in the Children's Court by DCS for orders pursuant to s. 72 of the *Children (Care and Protection) Act 1987*. The Court can make an order:

- placing the child under the supervision of an officer, s. 72 (c)(i) of the *Children (Care and Protection) Act 1987* ;
- placing the child in the custody of a 'suitable person' willing to have custody of the child, s. 72(C)(ii) of the *Children (Care and Protection Act) 1987* ; or
- declaring the child a ward of the State, s. 72 (c)(iii) of the *Children (Care and Protection) Act 1987* .

¹³⁹⁸ Witness name suppressed, RCT, 21/8/96, pp. 31084, 31101 & 31115.

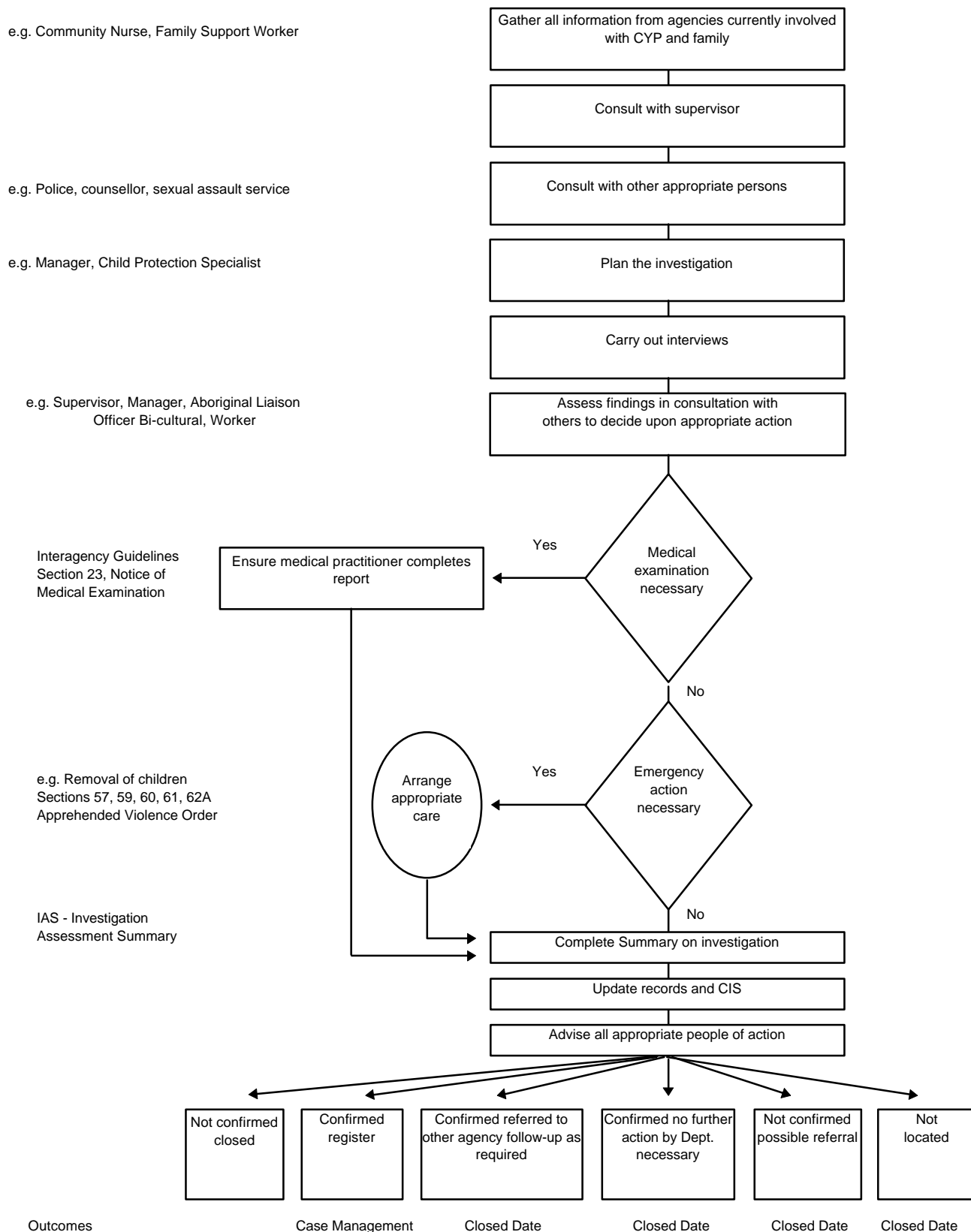
¹³⁹⁹ Witness name suppressed, RCT, 21/8/96, pp. 31114-15.

¹⁴⁰⁰ M8, RCT, 26/2/97, p. 36312; D. L. Semple, RCT, 28/5/96, p. 26081.

¹⁴⁰¹ D. L. Semple, RCT, 28/5/96, p. 26081. This process resulted in an impasse between the Public Service Association and the department which was settled by the Community Services Commission 'brokering' an agreement. R. West, RCT, 4/9/96, pp. 31476-77.

¹⁴⁰² DCS, Investigation Flowchart, *Working Together to Protect Children: Community Services Procedures*, October 1994, RCPS Exhibit 5997C, p. 24.

Investigation Flow Chart



8.21 Although this plan made provision for a consultative multi-disciplinary approach, it was largely respected in the breach, mainly as a result of resource problems and lack of supervision. At the end of the investigation process many cases were closed for reasons which were related to the lack of resources rather than to the merits of the notification. Notations on files examined by the Commission regularly recorded that closure occurred because of 'lack of information', 'shortage of staff',¹⁴⁰³ or 'excessive workload'.¹⁴⁰⁴

8.22 The Draft CFS Manual provides for post-intake management as shown in the Appendix to this Report.¹⁴⁰⁵ It specifies that case closure is to occur when case plan goals are achieved. Appropriately it is emphasised that closure must be 'a considered casework option based on an assessment of safety, risk and well-being that provides the best outcome for the child'.¹⁴⁰⁶

8.23 Manuals and guidelines alone will not achieve that objective. There must be appropriate supervision and management of these cases to avoid the problems of the past in which officers closed cases because of lack of information, excessive workloads or shortage of staff.

B. REVIEWS OF CHILD PROTECTION PROCEDURES

8.24 Since 1984 there have been many reviews undertaken in relation to the policies and effectiveness of the various agencies involved in the field of child protection, and particularly in relation to DCS. An examination of these reviews is instructive insofar as they detected similar problems which have largely gone unaddressed. The imperative for more effective management and direction, and for greater co-ordination of service, is obvious.

CHILD SEXUAL ASSAULT TASK FORCE - 1984-1985

8.25 In 1984 a Task Force was established to investigate and make recommendations relating to the policies and procedures of the several services responsible for dealing with child sexual assault. That Task Force reported in March 1985 and recommended that:¹⁴⁰⁷

- a NSW Child Sexual Assault Council¹⁴⁰⁸ and Regional Councils be established to co-ordinate an integrated response to child sexual assault, and in particular to:
 - co-ordinate and monitor the implementation of the NSW Child Sexual Assault Program in all relevant government departments, authorities and non-government agencies;
 - publish information relevant to child sexual assault victims and their families;
 - ensure that the needs of migrant, Aboriginal, physically and developmentally disabled children within the relevant government departments are met;¹⁴⁰⁹
 - provide pre-budget advice in respect of the Child Sexual Assault Program; and
 - report annually to the Minister for Youth and Community Services;
- YACS review its case conferencing procedures, and improve and standardise its operations throughout the State;¹⁴¹⁰

¹⁴⁰³ D. L. Semple, RCT, 5/9/96, pp. 31632-33.

¹⁴⁰⁴ D. L. Semple, RCT, 4/9/96, pp. 31535-36.

¹⁴⁰⁵ DCS, Child and family services policy manual, working with children & families (draft), 2/7/97, RCPS Exhibit 3202C. See charts, Case Management: Phase Two - Field Action by Field Staff, and Case Management: Phase Three - Ongoing Action by Field Staff, Appendix P10.

¹⁴⁰⁶ DCS, Child & family services policy manual, working with children & families (draft), 2/7/97, RCPS Exhibit 3202C, Chapter 9, p. 28.

¹⁴⁰⁷ *Report of the NSW Child Sexual Assault Task Force to the Hon Neville Wran QC, MP Premier of NSW*, NSW Government Printer, 1985, RCPS Exhibit 1501. The terms of reference, composition and full recommendations of the Task Force are Appendix P11 to this Report.

¹⁴⁰⁸ The Child Protection Council was established without Regional Councils.

¹⁴⁰⁹ *Report of the NSW Child Sexual Assault Task Force to the Hon Neville Wran QC, MP Premier of NSW*, NSW Government Printer, 1985, RCPS Exhibit 1501, recommendation 8, p. 3.

¹⁴¹⁰ *ibid*, recommendation 8d, p. 6.

- a minimum standard for child protection workers within YACS be adopted based on eligibility for membership of the Australian Association of Social Workers or the Australian Psychological Society with a minimum of two years' work experience;¹⁴¹¹
- every community welfare office have at least one child protection worker;¹⁴¹²
- a child protection community program officer be based in every region;¹⁴¹³
- support be given for workers through limiting of caseloads, access to on-going supervision, case consultation and training, and time out for counselling and crisis work;¹⁴¹⁴
- a range of measures be introduced to widen the placement options including alternatives to institutionalisation for sexually abused children along with procedures for the protection of children in care from further abuse;¹⁴¹⁵
- where possible joint interviewing be adopted in the investigation of child sexual assault allegations;¹⁴¹⁶
- a 24 hour State-wide crisis line be established with the expansion of the existing Child Protection and Family Crisis Service;¹⁴¹⁷ and that
- the mandatory notification obligation previously confined to medical practitioners be extended to a wider range of workers.

8.26 Although many field staff were in favour of an extension of mandatory reporting, DCS opposed it on the grounds that:

- its effectiveness had not been established; and
- it was considered to be unenforceable.¹⁴¹⁸

8.27 A more direct problem was the effect that such a change would have on DCS resources. It had to be anticipated that, with a widening of categories of mandatory reporters, the number of notifications would increase. This would necessitate at the very least:

- training staff to receive and deal with the notifications; and
- ensuring that there were enough properly trained child protection specialist workers to deal with them.

8.28 However, in 1987, when the categories were widened¹⁴¹⁹ DCS, rather than expanding its services, contracted them with a major reorganisation. The specialist child protection worker was abandoned for the generalist approach.¹⁴²⁰

¹⁴¹¹ *ibid*, recommendation 15, p. 9.

¹⁴¹² *ibid*, recommendation 15c, p. 9.

¹⁴¹³ *ibid*, recommendation 15d, p. 9.

¹⁴¹⁴ *ibid*, recommendation 16, pp. 9-10.

¹⁴¹⁵ *ibid*, recommendation 17, p. 10.

¹⁴¹⁶ *ibid*, recommendation 19, p. 11.

¹⁴¹⁷ *ibid*, recommendation 22, p. 12.

¹⁴¹⁸ *ibid*, p. 154.

¹⁴¹⁹ Child Welfare Regulations 1940, cl. 74(1) effective from 19/7/87; and Children (Care and Protection - General) Regulation 1988, effective from 1/1/88.

¹⁴²⁰ FACS, *Annual Report 1988-1989*, RCPS Exhibit 3063/6, p. 17.

8.29 During the period under inquiry the stance of DCS on whether a child should be removed from the family also changed. Initially, it took a more interventionist approach. As a result of the report of a judicial inquiry into child abuse in Cleveland, England,¹⁴²¹ that stance was modified. In 1988 DCS announced the issue of new instructions to emphasise the role of the family, and to ensure that unnecessary departmental intervention did not occur.¹⁴²²

8.30 This change in approach was, patchy in its implementation. Some DCS officers continued to hold the view that the child should be removed from the home in which the alleged perpetrator resided, whilst others took the view that the child should remain in the home with counselling for the family.¹⁴²³

CHILD PROTECTION COUNCIL REVIEW - 1991

8.31 In 1991, the Child Protection Council, a body established as a result of the recommendations of the NSW Child Sexual Assault Task Force,¹⁴²⁴ reported that:¹⁴²⁵

- the importance of child protection continued to be discounted;
- not nearly enough money and effort had been spent on the prevention of child abuse;
- after a number of restructures of DCS, the Police Service and Health, child protection programs were in a critical state;
- a further reorganisation in DCS had isolated families, and had led to a cutting of services through the closure of offices, and a dramatic reduction of child specialist staff;
- many experienced workers, particularly child protection workers, had left DCS because:
 - they felt their work was not considered important;
 - there was no career path for child protection specialists; and
 - the lack of support and resources meant that few children could be offered the help they required;
- many in the categories of mandated reporters did not notify for various reasons including the fact that:
 - serious allegations were not always accepted as notifications by DCS officers;
 - some cases were prematurely closed; or
 - children were placed in foster care, or returned to abusive families where the cycle of abuse continued;
- abuse was not uncommon in foster care placements;
- basic child protection training for new workers was not equipping them adequately for the volume and complexity of the work they were being required to perform;
- there was a lack of commitment in some government departments dealing directly or indirectly with child protection;

¹⁴²¹ On 9/7/87 the Secretary of State for Social Services ordered a statutory inquiry under s. 94 of the *National Health Service Act 1977* (UK) and s. 76 of the *Child Care Act 1980* (UK) to look into the arrangements for dealing with cases of child abuse in Cleveland from 1/1/87. Lord Justice Elizabeth Butler-Sloss reported on a matter in which a large number of children had been removed, inappropriately it was found, from their parent's custody on the basis of a controversial anal reflex test conducted by local paediatricians. *Report of the Inquiry into Child Abuse in Cleveland*, HMSO, London, 1988, RCPS Exhibit 3051/34.

¹⁴²² FACS, *Annual Report 1988-1989*, RCPS Exhibit 3063/6, p. 13.

¹⁴²³ J. R. Heslop, RCT, 28/5/96, p. 26014.

¹⁴²⁴ A. Ford, RCT, 29/5/96, p. 26149.

¹⁴²⁵ NSW Child Protection Council (CPC), 'The State of Child Protection in NSW in 1991', *Annual Reports 1988-1991*, RCPS Exhibit 3071/3, pp. 7-13.

- further cutting of resources from child protection programs was not acceptable; and that
- it should not be necessary to start from the beginning every time there was a new government.¹⁴²⁶

USHER REVIEW - 1992

8.32 In August 1991 the then Minister for Health and Community Services, the Honourable J. P. Hannaford MLC, announced that there was to be a review of services to State wards and children in care.

8.33 The review committee, chaired by Father John Usher, reported in January 1992¹⁴²⁷ that:

- problems abounded in terms of standards, continuity of care, accountability, consistency in policy, procedure and service quality;
- cases were too readily identified as complex; and
- misleading and inadequate labelling occurred in order to get access to services.¹⁴²⁸

8.34 It recommended that:

- DCS should not continue to operate as a major substitute care¹⁴²⁹ service provider, because such activity by a government agency seriously compromised its assessment, contracting, review and monitoring roles in relation to the provision of services for children in need of substitute care; and that
- after a period of three years all services for children in need of substitute care should be contracted to non-government agencies.¹⁴³⁰

8.35 By 1996 the recommendations of the Usher review had been abandoned, the Government having decided that DCS would maintain a service delivery role in substitute care, although with some changes. As a result, DCS:

- closed its large residential centres;
- established 15 community based residential services to replace the closed institutions; and
- commenced a strategy to review the case plans of children in departmental care.¹⁴³¹

8.36 A study¹⁴³² funded by DCS and completed in January 1996 concluded that:

- the low estimate of around 0.2% to 0.3% from DCS figures, on the incidence of abuse of children in care by their foster parents, was a gross under-estimate;¹⁴³³
- the children who made allegations of abuse had difficulty in gaining access to, and being 'heard' by their District Officers,¹⁴³⁴ and held fears of not being listened to along with fear of the consequences of speaking out;¹⁴³⁵
- the extent of abuse in care revealed by the study was 'disturbing';¹⁴³⁶ and that

¹⁴²⁶ CPC, 'The State of Child Protection in NSW in 1991', *Annual Reports 1988-1991*, RCPS Exhibit 3071/3, pp. 7-13.

¹⁴²⁷ DCS, *A Report to the Minister for Health & Community Services, the Hon. John P. Hannaford, MLC from the Committee established to review Substitute Care Services in NSW* (Usher Report), Sydney, 1992, RCPS Exhibit 3150.

¹⁴²⁸ Usher Report, January 1992, RCPS Exhibit 3150, p. 4.

¹⁴²⁹ Care is a term used for care out of the child's natural home.

¹⁴³⁰ For a full list of recommendations, see Usher Report, January 1992, RCPS Exhibit 3150, reproduced in Volume VI, Appendix P12.

¹⁴³¹ DCS, *Strategic Directions for Substitute Care Program*, March 1996, RCPS Exhibit 3203.

¹⁴³² J. Cashmore & M. Paxman, *Report: Wards Leaving Care, A Longitudinal Study*, DCS, January 1996, RCPS Exhibit 3096.

¹⁴³³ *ibid*, p. 53.

¹⁴³⁴ *ibid*, p. 57.

¹⁴³⁵ *ibid*, p. 58.

- the majority of cases occurred in foster placements, reflecting the relative isolation of children in such placements and highlighting the need for careful selection, thorough training and appropriate monitoring of foster carers.¹⁴³⁷

DCS REVIEW - 1994

8.37 In November 1994, arising in part out of the high re-notification rate,¹⁴³⁸ an internal review was undertaken of the intake process to determine:

- the extent to which intake information was actually classified as a notification;
- whether the information at intake was adequate to assess the need to call in other services, for example the Family Court, and adolescent mediation;
- the extent of variation in the classification of intake information between divisions; and
- the major factors influencing decision-making.¹⁴³⁹

8.38 The review assessed 253 cases¹⁴⁴⁰ selected from throughout the State. Its findings were of very serious concern and reflect a similar pattern to that uncovered by Royal Commission inquiries:

- in 60.5% of the notifications in the study, the families were visited once or not at all;¹⁴⁴¹
- there was a lack of appropriate consideration given to the balance between the risks to the child and intrusion into the family - the focus was on the child in isolation from the family;¹⁴⁴²
- the intake system was adversely affected by high staff turnover, inappropriate ratios of experienced District Officers to new District Officers and lack of professional supervision;¹⁴⁴³
- it was a common practice to allocate junior and inexperienced staff to the job of receiving notifications;¹⁴⁴⁴
- in 16% of the cases classified as notifications, that was an inappropriate classification, as the problem was more to do with family functioning, poverty, social disadvantages and family lifestyles than abuse;¹⁴⁴⁵
- there were multiple deficiencies in the recording of information, casework and management decisions;¹⁴⁴⁶ and
- there was a lack of adequate definition of child abuse and neglect in the department's policy and procedures documents.¹⁴⁴⁷

8.39 In 1996, in response to this review, DCS:

- developed plans for putting more experienced officers into the Intake Area; and
- produced a new Intake Form,¹⁴⁴⁸ which required a more in-depth analysis.

¹⁴³⁶ *ibid.*, p. 195.

¹⁴³⁷ *ibid.*, p. 195.

¹⁴³⁸ DCS estimated the State average for renotifications at 48.1%, with levels as high as 58.12%. See J. Shier, Care and Protection Branch, DCS, Briefing Note: Child Protection Practice Issues, RCPS Exhibit 5916C, at Doc. 2637145-46.

¹⁴³⁹ DCS, *Review of Intake to the Child Protection Program Report*, June 1996, RCPS Exhibit 5916C.

¹⁴⁴⁰ DCS, *Review of Intake to the Child Protection: Summary of Report, 1995*, RCPS Exhibit 5916C, at Doc. 2637327.

¹⁴⁴¹ DCS, *Review of Intake to the Child Protection Program (draft)*, RCPS Exhibit 5916C, p. 48, at Doc. 2637391.

¹⁴⁴² *ibid.*, at Doc. 2637391.

¹⁴⁴³ DCS, *Review of Intake to the Child Protection Program: Summary of Report, 1995*, RCPS Exhibit 5916C, at Doc. 2637333.

¹⁴⁴⁴ *ibid.*, at Doc. 2637329.

¹⁴⁴⁵ *ibid.*

¹⁴⁴⁶ DCS, *Review of Intake to the Child Protection Program, Summary of Report*, RCPS Exhibit 5924, at Doc. 2637329 and *Review of Intake to the Child Protection Program (draft)*, RCPS Exhibit 5916C, p. 43, at Doc. 2637386.

¹⁴⁴⁷ DCS, *Review of Intake to the Child Protection Program (draft)*, RCPS Exhibit 5916C, at Doc. 2637349.

¹⁴⁴⁸ DCS, *Intake Assessment Form*, RCPS Exhibit 2539.

8.40 Mr Semple, the former DCS Director-General, agreed that DCS officers had so much 'on their plates' that they had enormous difficulty attending to necessary cases.¹⁴⁴⁹ He said that the department was 'screening out' only 10% of its cases, whereas the national average of cases screened out was about 25%.¹⁴⁵⁰ It was an approach that spread the limited resources too thinly, with consequent deficiencies in the investigation and management of deserving cases.¹⁴⁵¹

CEDAR COTTAGE REVIEW - 1995

8.41 Cedar Cottage, the NSW Pre-Trial Diversion of Offenders Programme,¹⁴⁵² conducted a review in 1995 of the management by DCS, of confirmed child sexual offences, with focus upon an assessment:

- whether relevant information about the program was provided by the agencies involved;
- of the manner in which decisions were reached; and
- of the outcomes for identified children.¹⁴⁵³

8.42 The study was to relate to two nominated DCS Community Service Centres, but for various reasons, including an apparent lack of co-operation by one of these centres,¹⁴⁵⁴ it was eventually excluded.

8.43 Although the findings of the Cedar Cottage report are limited by the small population and single centre surveyed, they are consistent with DCS' own review of the intake process so far as they suggested that:

- the decision-making processes, including reasons for the decision, were rarely documented;
- significant information was not given to the Police Service by DCS, even when matters were referred by it;
- DCS did not contact the Service to find out what had happened with the matter once it was referred, nor did the Service notify DCS of the outcome of the investigation; and
- DCS did not routinely keep statistics of the numbers, or sources, of referral which relate to children in these situations.¹⁴⁵⁵

FURTHER DCS REVIEW 1993-1995

8.44 A research study into re-notifications¹⁴⁵⁶ of abuse was conducted by DCS between 1993-95.¹⁴⁵⁷

8.45 The purpose of the study was to identify the extent to which the Child Protection Program affected the rate at which children were re-notified to DCS.¹⁴⁵⁸ This study showed that:

- the program as a whole encouraged re-notification;
- casework practice was impeding the specific needs of the client group;¹⁴⁵⁹

¹⁴⁴⁹ D. L. Semple, RCT, 5/9/96, pp. 31640-41.

¹⁴⁵⁰ Victoria screened out 50% of its cases. D. L. Semple, RCT, 28/5/96, p. 26066.

¹⁴⁵¹ D. L. Semple, RCT, 28/5/96, p. 26068.

¹⁴⁵² Cedar Cottage, NSW Pre-Trial Diversion of Offenders Programme, Management of Confirmed Child Sexual Assault where the offender is parent, step-parent or de facto partner of child victim(s), May 1996, RCPS Exhibit 1956/3.

¹⁴⁵³ *ibid.*, p. 2.

¹⁴⁵⁴ *ibid.*

¹⁴⁵⁵ *ibid.*, p. 8.

¹⁴⁵⁶ Re-notification was defined as a child aged 0-16 years notified more than once, in accordance with *Children (Care and Protection) Act 1987*, s. 22. See J. Lyons, Preventing Renotification of Child Abuse and Neglect, PhD Thesis University of Sydney, 1996, RCPS Exhibit 2529C/89, p.2. Ms Lyons completed this research while an employee of DCS.

¹⁴⁵⁷ J. Lyons, Preventing Renotification of Child Abuse and Neglect, PhD Thesis University of Sydney, 1996, RCPS Exhibit 2529C/89, p. ii.

¹⁴⁵⁸ *ibid.*, p. 3.

- 76.6% of information gathered at intake was unsatisfactory;¹⁴⁶⁰
- there was a lack of clarity about individual casework and casework supervision;¹⁴⁶¹
- of the 46 District Officers in the area studied, who took part in the case management discussions, only five held tertiary qualifications of any kind.¹⁴⁶²

8.46 The report:

- supported the setting up of an intake system that could respond appropriately to the notifier;
- emphasised the need to have experienced and trained staff assessing intake information; and
- suggested a consistent evaluation to be co-ordinated at State level.¹⁴⁶³

CHILD PROTECTION COUNCIL SYSTEMS ABUSE REPORT - 1994

8.47 In February 1994 in response to a request from the then Minister for Community Services, the CPC reported on 'harm done to children in the context of policies or programmes that are designed to provide care and protection' (systems abuse).¹⁴⁶⁴

8.48 The report identified problems in the system which are generally applicable to DCS, noting that:

- there was a lack of resources and a distribution of the available resources which was not equitable or sensible;¹⁴⁶⁵
- when staff are under constant pressure they do not have time for forward planning or pre-work review, leading to a vicious circle in which the lack of planning leads to less effective work which in turn makes planning even more difficult;¹⁴⁶⁶
- DCS staff do not have enough time to select and train foster carers;¹⁴⁶⁷ and that
- the pressure on resources meant there was little time for staff to review their activities, and learn from their mistakes or identify early warning signs in difficult cases.¹⁴⁶⁸

8.49 The report noted that a 'particularly large number of problems' concerning DCS had been identified in consultations and submissions.¹⁴⁶⁹ It recognised that although the department was inadequately resourced it was not a 'new problem' nor was it unique to Australia.¹⁴⁷⁰ The impact that inadequate resources had on DCS capacity to deliver services was noted:

- cutbacks to clerical support meant that District Officers had more administrative work and less time for field work;¹⁴⁷¹
- the reduction in time available for officers to keep complete entries on the Client Information System (CIS) rendered it an unreliable source;¹⁴⁷²

¹⁴⁵⁹ ibid.

¹⁴⁶⁰ ibid, p. 5.

¹⁴⁶¹ ibid, p. 6.

¹⁴⁶² ibid, p. 7.

¹⁴⁶³ ibid, p. 8.

¹⁴⁶⁴ J. Cashmore, R. Dolby & D. Brennan, *Systems Abuse: Problems and Solutions*, CPC, February 1994, RCPS Exhibit 2356/1 and 2356/2. The Executive Summary of this report can be found in Volume VI, Appendix P14.

¹⁴⁶⁵ ibid, p. 37.

¹⁴⁶⁶ ibid, p. 38.

¹⁴⁶⁷ ibid. This is exemplified in Case Study 3 at para. 8.152.

¹⁴⁶⁸ ibid.

¹⁴⁶⁹ ibid, p. 39.

¹⁴⁷⁰ ibid. The Report of the Advisory Board on Child Abuse and Neglect (1990) in USA argued that the situation in the US system had gone beyond crisis management and become catastrophic.

- the lack of proper resources resulted in DCS either pushing cases through the system too quickly, or screening out cases which warranted attention;¹⁴⁷³
- the lack of resources led to low job satisfaction, burn-out, and staff turnover/transfer making it very difficult for a professional service to be delivered in which parents and children have the time required to develop trust in DCS staff.¹⁴⁷⁴

8.50 Although the report found instances of very positive policy statements it was not necessarily carried into practice. The gaps between practice and policy particularly affected case planning, permanency and support for foster carers.¹⁴⁷⁵

STRATEGIC DIRECTIONS IN THE CHILD PROTECTION PROGRAM - 1995

8.51 Between 1988 and 1995, DCS lost considerable expertise and resources.¹⁴⁷⁶ Concurrently, there had been:

- a very large growth in the Commonwealth/State tied grants, as a consequence of which the child protection budgets had suffered; and
- a massive increase in the demand for services in child protection.¹⁴⁷⁷

This combination of circumstances placed it in a critical situation.

8.52 It was recognised that the number of restructures in the past also had a destabilising effect and that repetitive change called for a considerable degree of organisational resilience.¹⁴⁷⁸

8.53 In October 1995, the DCS Care and Protection Directorate issued a draft document for comment entitled 'Strategic Directions in the Child Protection Program' (the Strategic Directions document).¹⁴⁷⁹ It noted that:

- between 1990/91 and 1993/94 child protection investigations in NSW increased by 56%;¹⁴⁸⁰
- DCS resources were being used up in following investigation protocols which did not necessarily fit the 'client's' needs, leaving little left over for any action other than investigation;¹⁴⁸¹ and that
- recent examination of unallocated cases at a Community Services Centre (CSC) demonstrated problems in supervision, practice and intake methodology.¹⁴⁸²

8.54 The Strategic Directions document cautioned that the 'child protection system cannot continue to use all its resources to investigate and, in so doing, fail to address the underlying problems which result in re-notification'. It promoted an approach which viewed 'child protection work as being child centred with a broad family focus', pointing out that the child's best interests could rarely be separated from those of their families.¹⁴⁸³

¹⁴⁷¹ *ibid.*, p. 40.

¹⁴⁷² *ibid.*

¹⁴⁷³ *ibid.*

¹⁴⁷⁴ *ibid.*, pp. 41-42.

¹⁴⁷⁵ *ibid.*, p. 42.

¹⁴⁷⁶ D. L. Semple, RCT, 28/5/96, p. 26093.

¹⁴⁷⁷ 62% increase in notifications over the period 1991-95; See Information and Planning Group, DCS, table of notifications for the years 1990-95, 28/5/96, RCPS Exhibit 1943.

¹⁴⁷⁸ DCS, *Annual Report 1994/95*, RCPS Exhibit 3063/14, p. 1.

¹⁴⁷⁹ DCS, *Strategic Directions in Child Protection (draft)*, October 1995, RCPS Exhibit 3054C/78.

¹⁴⁸⁰ *ibid.*, p. 9.

¹⁴⁸¹ *ibid.*, p. 10.

¹⁴⁸² *ibid.*

¹⁴⁸³ *ibid.*, p. 15.

8.55 This document was promoted as a commencement of the task of producing an integrated program framework aimed at protecting children from abuse and neglect.¹⁴⁸⁴ The Community Services Commissioner, however, described the document as very broad, setting general principles and directions, without the detail required to judge whether it represents a realistic policy.¹⁴⁸⁵ The Royal Commission does not disagree with that assessment. A more detailed document was produced in August 1996.¹⁴⁸⁶

8.56 The Child Advocate for NSW reported some concerns about the Strategic Directions document in his 1995 Annual Report, particularly in relation to the shift of focus to the family:

We are talking here about families in which abuse has occurred, and has been proven. We are all in favour of the whole family being the client of the DCS and I always thought that it was, but the child is the one at great risk. The family should get all the help it needs but the child must be secure.¹⁴⁸⁷

8.57 There is ample evidence that for many years DCS has been grappling with achieving an appropriate focus and direction in the delivery of its services to children. The confusion that has been caused by changing structures, and renaming child protection programs has not given its staff continuity of a career path, has detracted from their capacity to deliver a professional and competent service and has led to loss of professionals of calibre.

COMMUNITY SERVICES COMMISSION REVIEW - 1995-1996

8.58 The Community Services Commission was established in 1994 with a mission of changing the culture, quality and reputation of DCS in all facets of its operations.¹⁴⁸⁸ After two years of observing DCS in operation it has reported that the system is 'failing many of our most vulnerable children and, in far too many cases, actually exposing them to further abuse within the very system that is supposed to care for and protect them'.¹⁴⁸⁹

8.59 Among its duties the Community Services Commission receives and investigates complaints that service providers¹⁴⁹⁰ have acted 'unreasonably'.¹⁴⁹¹ It may also, on application or on its own initiative, review the situation of a child in care and report to the Minister on such aspects of the welfare, status, progress and circumstances of the child as it thinks appropriate.¹⁴⁹² The Commissioner has power to inspect files and records kept in DCS offices in respect of any child whose circumstances are being reviewed but does not have a general power to require answers to questions.¹⁴⁹³ He does have power to enter premises on which the functions of a service provider are exercised, either with the consent of the occupier, or under the authority of a search warrant.¹⁴⁹⁴ Whilst on those premises the Commissioner 'may ask any person on the premises to answer questions, or to produce records' relating to the service delivery.¹⁴⁹⁵

¹⁴⁸⁴ *ibid*, p. 5.

¹⁴⁸⁵ R. B. West, RCT, 2/9/96, p. 31354.

¹⁴⁸⁶ It emphasised some important processes including individualised case planning in which it promoted, as had in the past been promoted but not uniformly implemented, multi-agency case planning. DCS, *Standards for Substitute Care Services - A Work in Progress Document*, August 1996, RCPS Exhibit 3097, p. 17.

¹⁴⁸⁷ F. Grunseit, Notes on the DCS Policy Paper outlining new directions for the delivery of CPS in the field, 30/6/95, RCPS Exhibit 2144/1, at Doc. 2275545.

¹⁴⁸⁸ It is constituted pursuant to the *Community Services (Complaints, Appeals and Monitoring) Act 1993* quoted in Community Services Commission, Submission to RCPS, 12/8/96, RCPS Exhibit 2515, p. 3.

¹⁴⁸⁹ Community Services Commission, Submission to RCPS, 12/8/96, RCPS Exhibit 2515, p. 5.

¹⁴⁹⁰ A 'service provider' means the DCS; a person or organisation funded or authorised by the Minister to provide a service; the Home Care Service or person funded by Home Care Service; or a person or organisation covered by an arrangement and agreement between the Minister and a State or Commonwealth Minister. See s. 3 of the *Community Services (Complaints, Appeals and Monitoring) Act 1993*.

¹⁴⁹¹ The complaint jurisdiction appears to include the manner in which the service was provided, refused, withdrawn and/or varied. *Community Services (Complaints, Appeals and Monitoring) Act 1993*, s. 12.

¹⁴⁹² *Community Services (Complaints, Appeals and Monitoring) Act 1993*, s. 11.

¹⁴⁹³ *Community Services (Complaints, Appeals and Monitoring) Act 1993*, s. 11(4).

¹⁴⁹⁴ *Community Services (Complaints, Appeals and Monitoring) Act 1993*, s. 84(4).

¹⁴⁹⁵ *Community Services (Complaints, Appeals and Monitoring) Act 1993*, ss. 84(1) & (2).

8.60 The Community Services Commission's role with children accordingly includes:

- dealing with complaints from children or involving children who are receiving or eligible to receive community services;
- carrying out reviews of individual children in residential or foster care;
- co-ordinating a community visitor's program in which visitors appointed under the Act visit services and are able to confer with children privately;
- advising the Minister about service delivery issues and systemic problems;
- educating service providers on the handling of consumer complaints; and
- informing children about their right to make complaints and supporting and encouraging advocacy services for children.¹⁴⁹⁶

8.61 The highest proportion of complaints finalised in 1995/96 by the Community Services Commission in fact concerned children.¹⁴⁹⁷ Of the 398 complaints finalised, 118 related to child protection matters of which 68% were found by the Community Services Commission to have been inappropriately or inadequately handled.

8.62 In its submission to the Royal Commission the Community Services Commission cautioned that quite radical changes were required if the system was adequately to respond to the needs of vulnerable children including their protection from abuse.¹⁴⁹⁸ It submitted that:

- there is no single solution to the problem and that it calls for a range of strategies that are comprehensive and complementary;
- restructuring departments, developing new policies and issuing new guidelines will by themselves achieve limited change and not get to the heart of the problem;
- a range of initiatives is necessary to achieve appropriate change in which the key elements are:
 - the development of mechanisms to provide advocacy for vulnerable children;
 - opening up to external scrutiny and increasing the accountability of services and decision makers involved in the lives of children and their families; and
 - providing services that are child focused, co-ordinated, flexible and responsive to need.¹⁴⁹⁹

8.63 The Royal Commission is in agreement with these submissions. Specific options to achieve better service delivery and accountability are dealt with later in this Report.

ASSESSMENT BY THE FORMER DIRECTOR-GENERAL - 1996

8.64 The Director-General, Mr Semple, informed the Commission in May 1996 of his belief that:

- DCS had achieved 'substantial increases in resources';
- he was getting the system back into order with an appropriate level of expertise, following the creation of some senior positions; and that

¹⁴⁹⁶ Community Services Commission, Submission to RCPS, 12/8/96, RCPS Exhibit 2515, p. 4; *Community Services (Complaints, Appeals and Monitoring) Act 1993*, s. 83(1).

¹⁴⁹⁷ Community Services Commission, Submission to RCPS, 12/8/96, RCPS Exhibit 2515, p. 5.

¹⁴⁹⁸ *ibid.*, p. 6.

¹⁴⁹⁹ *ibid.*

- there was now a capacity to be more responsive to demands than there had been in the past'.¹⁵⁰⁰

8.65 However, in September 1996, when he returned to give evidence, he informed the Commission that DCS was 'in crisis', and that the resourcing for the investigation and management of child sexual abuse matters was 'highly inadequate'.¹⁵⁰¹ While it was his view that the department was recovering from a worse situation, he acknowledged that:

- he would not pretend it to be in the position that he would wish, or that the community had a right to expect; and that
- the system gave absolutely no guarantee of providing the level of care he would feel comfortable with until more resources were provided.¹⁵⁰²

8.66 Mr Semple said that:

- DCS was under-funded;
- there were deficiencies in the handling of child sexual abuse cases which alarmed him;¹⁵⁰³ and that
- the position might be exacerbated if the JITs were to be introduced across the State.

8.67 In anticipation of an endorsement for the introduction of JITs, an analysis of resource needs had been made, which concluded that DCS 'would require an additional 60 specialist positions at an assessed cost of \$3.6 million per annum, including on costs'.¹⁵⁰⁴ Prior to this assessment, 96 District Officer positions had been approved in 1996, and 80 specialist positions had been approved over the previous three years.¹⁵⁰⁵ DCS, however, had not been able to attract applicants with the appropriate skills and willingness to fill these positions.¹⁵⁰⁶

8.68 On the morning of the second day of Mr Semple's evidence in September 1996, the Minister, Mr Dyer, stated publicly that:

- he believed the department had adequate resources;
- 60 additional specialist child protection officers had been appointed;
- there was currently a campaign for the recruitment of an extra 96 officers across the State;
- he was not confident that Mr Semple was keeping him appropriately informed; and that
- he intended to review Mr Semple's performance.¹⁵⁰⁷

8.69 When Mr Semple gave his evidence later that morning, he pointed out that the 60 placements to which Mr Dyer had referred were not the 'additional 60 specialist positions at an assessed cost of 3.6 million per annum' to which the department's submission had referred.¹⁵⁰⁸ On the following day, Mr Semple was advised that he would be relieved of his position as the Minister no longer had confidence in him.¹⁵⁰⁹

¹⁵⁰⁰ D. L. Semple, RCT, 28/5/96, p. 26093.

¹⁵⁰¹ D. L. Semple, RCT, 4/9/96, pp. 31540-41.

¹⁵⁰² D. L. Semple, RCT, 4/9/96, p. 31541.

¹⁵⁰³ D. L. Semple, RCT, 4/9/96, p. 31564.

¹⁵⁰⁴ DCS, Ageing and Disability Department (ADD) and Department of Juvenile Justice (DJJ), Joint submission to RCPS, August 1996, RCPS Exhibit 2540, p. 16.

¹⁵⁰⁵ D. L. Semple, RCT, 4/9/96, p. 31570.

¹⁵⁰⁶ D. L. Semple, RCT, 4/9/96, p. 31530; F. Grunseit, RCT, 19/2/97, p. 35917; H. M. Bauer, RCT, 7/3/97, p. 36889.

¹⁵⁰⁷ Transcript of interview of Ron Dyer by Jenny Brockie, Radio 2BL, 5/9/96, RCPS Exhibit 3051/7.

¹⁵⁰⁸ DCS, ADD & DJJ, Joint submission to RCPS, August 1996, RCPS Exhibit 2540.

¹⁵⁰⁹ 'Sacked: public servant who went to ICAC', *Sydney Morning Herald*, 6/9/96, p. 1; and 'Cabinet approves Semple's removal', *Sydney Morning Herald*, 11/9/96, p. 7. Cabinet approved the decision on 10/9/96.

8.70 The Royal Commission was greatly assisted by the very candid evidence from Mr Semple. Although the evidence gathered to that time pointed overwhelmingly to the conclusion that the handling of cases by DCS was quite inadequate, and it appeared in many respects to be in crisis, none of the 'official' departmental reports made any such unequivocal admission.¹⁵¹⁰

8.71 The clear impression to be gained was that it had remained substantially in denial for many years, and was unwilling to fully admit or redress its deficiencies, despite the considerable work, research and analysis carried out over the years.¹⁵¹¹ It was troubling that the department remained under-resourced and under-staffed, and that important recommendations made by the 1985 Task Force, particularly those calling for interagency co-operation and the joint interviewing of victims, still had not been implemented by 1996.¹⁵¹²

COUNCIL ON THE COST OF GOVERNMENT REVIEW - 1996

8.72 Since September 1996, there has been yet a further review of DCS this time by the Council on the Cost of Government.¹⁵¹³ Its aim was to provide advice on the ways that DCS could better utilise its 'human and financial resources to provide services to the community'.¹⁵¹⁴ Its terms of reference were to examine and report upon:

- the current roles and responsibilities of senior management within DCS;
- the reporting and accountability relationships established within DCS, with particular reference to the design and operation of management information systems; and upon
- the processes of policy formulation, resource allocation and program management.¹⁵¹⁵

8.73 Each of these matters impacts upon the way in which DCS delivers child protection services, along with the many other services within its portfolio. The findings of this review supplement and confirm many of the earlier reviews. It reported that:

- DCS does not have an endorsed strategic corporate framework. The emphasis in planning has been on individual program areas or responsibilities, with the result that planning has been fragmented;
- priority setting by the senior executive has been unclear, and as a group they have not always been involved in determining priorities;
- crisis and complaints have shaped departmental directions, at the expense of a planned and thoughtful approach to systemic issues;
- monitoring, review and research functions are ad hoc;
- no one in the senior executive is unambiguously accountable for service delivery, and its quality;
- DCS has accountability relationships with many external agencies, but the senior executive has not taken sufficient responsibility for managing these external relationships;
- the senior executive has not defined the extent to which consistent performance between areas is necessary or desirable; therefore it has been difficult to hold area managers or Assistant Directors-General accountable for performance;

¹⁵¹⁰ YACS, FACS and DCS, Annual Reports for the years 1985 to 1996.

¹⁵¹¹ See list in Volume VI, Appendix P7 of this Report.

¹⁵¹² *NSW Child Sexual Assault Task Force, Report to Hon. Neville Wran QC MP, Premier of NSW*, March 1985, RCPS Exhibit 1501.

¹⁵¹³ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079.

¹⁵¹⁴ *ibid.*, p. 1.

¹⁵¹⁵ *ibid.*

- there is no management information system that provides key performance information to the senior managers and, therefore, they are not able to monitor or manage service delivery effectively;
- there is insufficient consideration of the needs of a culturally diverse client group in policy formulation and program management, particularly those of an Aboriginal and Torres Strait Islander or non-English-speaking background;
- the department has put considerable effort into consultation, with variable returns for policy formulation and program management;
- there have been many program initiatives and reforms occurring simultaneously; however, implementation strategies have been variable and the time and resources needed for change were often underestimated or assumed to be resource neutral; and that
- the basis for resource allocation and budget management decisions are not clear, although resource allocation to areas was becoming more transparent.¹⁵¹⁶

8.74 From these findings, which are supported by Royal Commission inquiries, the need for change is manifest.

8.75 In considering what changes needed to be made the Council's report proposed three options aimed at improving DCS arrangements for service delivery:¹⁵¹⁷

- reorganisation of the functional structure,¹⁵¹⁸ to integrate central office responsibility for child and family service delivery and disability service delivery under separate operational directors. The Council reported that this option would enhance management of 'cross program policy issues' and prevent 'broad policy development being crowded out by operational issues';¹⁵¹⁹
- revision of the program structure,¹⁵²⁰ to separate child and family services and disability services to the greatest extent possible. The Council reported that this option would allow the integration of operational concerns into policy making and to retain a focus for each program area in the senior executive;¹⁵²¹
- revision of the purchaser/provider structure,¹⁵²² to separate the funder/purchaser role (which DCS retains only in the child and family services area) from the provider role (which DCS delivers in both child and family services and in the disability area). The Council reported that this option would make a single senior executive responsible for service delivery.¹⁵²³

8.76 In relation to this last option the Council noted that DCS not only directly provides child and family services but also funds services of this kind delivered by non-government organisations.¹⁵²⁴ The Council echoed the concern of the Usher Report¹⁵²⁵ that such an arrangement 'could give rise to a potential conflict of interest' in the area of substitute care, as area officers would be both funding alternative service providers, as well as delivering service.¹⁵²⁶

¹⁵¹⁶ *ibid.*, p. ii.

¹⁵¹⁷ *ibid.*, pp. 67-68.

¹⁵¹⁸ See Volume VI, Appendix P13 of this Report.

¹⁵¹⁹ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 67.

¹⁵²⁰ See Volume VI, Appendix P13 of this Report.

¹⁵²¹ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 67.

¹⁵²² See Volume VI, Appendix P13 of this Report.

¹⁵²³ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 68.

¹⁵²⁴ 32% of DCS' expenditure (\$225 million) in 1995/96 was allocated to child and family services provided by non-government organisations. *ibid.*, p. 5.

¹⁵²⁵ Usher Report, January 1992, RCPS Exhibit 3150, p. 4.

¹⁵²⁶ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 89.

8.77 The Royal Commission is of the view that this potential conflict becomes even more acute when a DCS officer is assessing the level of care being provided to a child in DCS care, or is required to investigate allegations of child sexual assault by officers working within its own facilities or within facilities it funds. This matter is the subject of further discussion in this chapter.

CONCLUSION

8.78 The neglect and under-funding of DCS, compounded by the management problems identified by the Council on the Cost of Government point overwhelmingly to the need for a new approach which ensures:

- a specific focus on the protection of children which caters both for investigation and support; and
- the availability of experienced and well-trained staff with a commitment to multi-disciplinary delivery of service.

8.79 Later in this chapter the Commission considers the possible options for reform, and develops the recommendations which it sees as appropriate to achieve these objectives. However, before reaching that point, some further problems and case studies illustrating the difficulties DCS has faced, require mention.

C. DCS RELATIONSHIP WITH OTHER AGENCIES

8.80 The Royal Commission received a considerable volume of information and evidence in relation to specific matters in which DCS had been involved. That evidence came from public officials from other agencies, and from members of the community who had either themselves been the subject of abuse, or had children who had suffered that fate. It became apparent that some of these matters were more appropriate for criminal investigation by the Police Service, or for investigation by the Community Services Commission. With the consent of the informants, the information gathered in those cases was disseminated to those agencies and by reason of ongoing investigations it is not appropriate for further mention to be made in this Report.

8.81 Evidence of dissatisfaction with DCS came from a range of sources, however, and some of those may be noted.

THE NEW SOUTH WALES POLICE SERVICE

8.82 In summary, the Police Service informed the Commission that:

- DCS had so many notifications that if the child was aged 16 years or above, the Service could forget about any help;¹⁵²⁷
- the relationship between DCS and the Service dwindled away when the focus of DCS changed in the late 1980s from child sexual assault to child abuse. There was a time when there were regular meetings and discussions of issues but over time that ceased;¹⁵²⁸ and that
- it was common for DCS to hold important information concerning particular cases that the Police Service did not have.¹⁵²⁹

¹⁵²⁷ A. L. Godfrey, RCT, 12/4/96, p. 23415.

¹⁵²⁸ B. A. Lawson, RCT, 27/5/96, pp. 25948-49.

¹⁵²⁹ J. R. Heslop, RCT, 27/5/96, p. 25991.

THE FORMER CHILD ADVOCATE FOR NEW SOUTH WALES

8.83 Dr Ferry Grunseit, the Child Advocate appointed for a three year period from 1994,¹⁵³⁰ said that economic rationalism had permeated DCS philosophy¹⁵³¹ and that there was poor morale within DCS related to:

- the low value placed on the work of District Officers;
- the lack of training, qualification, and supervision of staff;
- a defective middle management that could not support the staff; and
- continuing concern about making a mistake.¹⁵³²

THE CROWN PROSECUTORS

8.84 There was dissatisfaction about the failure of DCS staff to properly 'brief' them, in particular in withholding interviews between victims and DCS workers.¹⁵³³

THE CHILDREN'S COURT

8.85 The former Chief Magistrate of the Children's Court said that:

- the magistrates put their complaints and concerns to DCS, at meeting after meeting, without change;
- economic rationalisation was the catchcry of the department and service after service was closed down. As a consequence, too many children were being made wards of the State, when with support they could have stayed with their parents;
- not enough work was done by DCS to work with the other agencies;¹⁵³⁴ and that
- the workload of District Officers was beyond ordinary human capacity.¹⁵³⁵

REFUGES

8.86 Mr Lawrence Matthews, who is co-ordinator of a youth refuge known as Caretakers Cottage, and has worked in the child protection field for 18 years, informed the Commission of his concerns, which he had communicated to the Minister, about the increasing number of children aged under 16 years, many of whom were wards or in the care of the Director-General, 'who are clearly at risk and for whom the department has little or nothing to offer'.¹⁵³⁶

8.87 He highlighted two cases as examples of the experience in 'scores of other cases in recent months':¹⁵³⁷

¹⁵³⁰ The 'deletion' of the position of Child Advocate was recommended in September 1996 by the Standing Committee on Social Issues, *Inquiry into Children's Advocacy*, Report No. 10, RCPS Exhibit 3054C, pp. 173-74. This has since been replaced by the Office of Children and Young People which is dealt with in Chapters 17 & 20.

¹⁵³¹ F. Grunseit, *NSW Child Advocate Annual Report 1995*, 5/12/95, RCPS Exhibit 2144/1, p. 2.

¹⁵³² F. Grunseit, RCT, 19/2/97, p. 35916.

¹⁵³³ P. V. Conlon, RCT, 24/4/95, p. 24172.

¹⁵³⁴ B. Holborrow, RCT, 3/9/96, pp. 31451-52.

¹⁵³⁵ B. Holborrow, RCT, 3/9/96, p. 31454.

¹⁵³⁶ L. C. Matthews, Letter to Minister for DCS, 8/9/95 and reply, 10/9/95, RCPS Exhibit 2125C.

¹⁵³⁷ *ibid.*

- example one concerned a male State ward aged 15 years, who had been the subject of approximately 20 placements in the previous 12 months, and who was received at Caretakers Cottage in July 1995, when it became apparent that he was engaging in prostitution and using heroin. Mr Matthews tried to negotiate a placement for the boy at Ormond.¹⁵³⁸ This was not possible as it had 'problems' with his heroin use. Whilst DCS, Ormond and Mr Matthews were negotiating the boy ran off to a squat in Kings Cross, where he continued to use heroin and work as a prostitute;¹⁵³⁹
- example two concerned another 15 year-old male, 'in the care of the Director-General', who had run away from home and had been moving from refuges to hotel rooms for some months. He had been linked up to family support through the Kings Cross Adolescent Unit but that had broken down because of his drug use and he had gone to a squat. He had been recently apprehended by a District Officer and a police officer pursuant to s. 60 of the *Children (Care and Protection) Act 1987*. Those officers tried to secure a bed for him at Ormond. He was rejected because 'he would be a negative influence on the home dynamics'. He returned to the squat and to drug abuse.¹⁵⁴⁰

OTHERS

8.88 Together, these reports present a fairly dismal impression of the performance of DCS in caring for children, an impression which was only heightened by the considerable volume of complaints received by the Commission from confidential sources and from parents. Where children cannot be accommodated, or otherwise supported, they inevitably drift into life on the streets, or into detention centres where sexual abuse, and substance abuse, become ever present factors of life.

8.89 In broad summary, the submissions from the community highlighted problems in the following areas:

- an inability to liaise well with schools;¹⁵⁴¹
- low morale, and high turnover of staff resulting in a loss of experience with the consequence that other professionals stop notifying because the situation is not investigated or not handled well;¹⁵⁴²
- an uncertainty as to the way in which the Police Service and DCS will react to a notification as co-ordination appears to be ad hoc;¹⁵⁴³
- inconsistency in the way allegations of criminal behaviour are handled and delay in calling in police;¹⁵⁴⁴
- institutional neglect for and indifference to State wards;¹⁵⁴⁵
- the inability of the DCS Child Protection and Family Crisis Team to deal with problems in outer suburbs;¹⁵⁴⁶
- little or no face-to-face contact between victims and DCS officers with consequent feelings of isolation and neglect;¹⁵⁴⁷
- lack of clarity in cases involving allegations of sexual abuse by minors as to whether these young people should be regarded as 'children at risk' or as perpetrators;¹⁵⁴⁸

¹⁵³⁸ Ormond is a substitute care facility managed by the DCS. D. L. Semple, RCT, 4/9/96, p. 31672.

¹⁵³⁹ L. C. Matthews, Letter to Minister for DCS, 8/9/95 and reply, 10/9/95, RCPS Exhibit 2125C.

¹⁵⁴⁰ *ibid.*

¹⁵⁴¹ T. Re, Submission to RCPS, 1/8/96, RCPS Exhibit 2529/78.

¹⁵⁴² Lewis, Fry, Barry, Beagley, Bunfield, Submission to RCPS, 5/8/96, RCPS Exhibit 2529/87.

¹⁵⁴³ KU Children's Services, Submission to RCPS, RCPS Exhibit 2529/114.

¹⁵⁴⁴ Intellectual Disability Rights Service, Submission to RCPS, 8/8/96, RCPS Exhibit 2529/1.

¹⁵⁴⁵ J. Murray, Submission to RCPS, 16/7/96, RCPS Exhibit 2529/28.

¹⁵⁴⁶ The New Children's Hospital, Submission to RCPS, 20/7/96, RCPS Exhibit 2529/47.

- a low rate of follow-up after notification of abuse;¹⁵⁴⁹ and
- an insufficiency of residential facilities and support for runaways and street kids.¹⁵⁵⁰

8.90 The lack of interagency co-operation is not, however, entirely the fault of DCS. As is noted elsewhere,¹⁵⁵¹ there has been long-standing concern in relation to the establishment of suitable interagency guidelines to regulate the manner in which the various agencies should work together. In 1991, the Child Protection Council prepared a set of guidelines to achieve this. Attempts to secure their review and implementation were frustrated by a lack of co-operation on the part of some agencies, as became apparent in hearings of the Royal Commission. In July 1996, the matter was brought to a head by the Premier when he required the various Chief Executive Officers involved to bring about a resolution of this problem. New guidelines were eventually settled in late 1996, and publicly released in February 1997. They serve to:

- define the respective roles that DCS and other agencies have; and to
- regularise matters of disclosure and co-operation.

The role of DCS and of the other agencies should now be enhanced and facilitated by their existence, but it is of concern that it required the public embarrassment of a Royal Commission to achieve such a fundamental and obvious platform.

D. JOINT INVESTIGATION TEAMS (JITs)

THE PILOTS

8.91 The attitude of DCS towards Joint Investigation teams (JITs) has been mixed. The DCS officers working at the two pilot JITs were enthusiastic but management was reluctant to embrace its continuation and expansion. Once again money was a factor.

8.92 When Mr Semple gave his evidence in May 1996, he informed the Commission that the continued funding of the JITs was not catered for in the budget for the following financial year.¹⁵⁵²

8.93 Complicating factors at this time were the circumstances that the Child Protection Council's assessment of the JIT model was incomplete; while the Ministers for Police, Community Services and Health had yet to respond to the Working Together Working Party Report,¹⁵⁵³ which had examined the model in detail.

8.94 Mr Semple was in those circumstances, somewhat cautious in his own response. In summary:

- he thought that there were a number of positive aspects to the model but saw a 'fundamental flaw' in not involving the NSW Health Department;
- he emphasised the need to ensure that the JIT did not become isolated, and for that purpose he suggested that it should be linked back to other child support services;¹⁵⁵⁴ and
- he favoured co-location in a more comprehensive way than the pilot JITs had achieved.¹⁵⁵⁵

¹⁵⁴⁷ Submission to RCPS, RCPS Exhibit 2529C/90.

¹⁵⁴⁸ Sydney Rape Crisis Centre, Submission to RCPS, 15/8/96, RCPS Exhibit 2529/132.

¹⁵⁴⁹ R. K. Oates, NAPCAN, Every Child is a Special Child: Child Protection Information Kit, RCPS Exhibit 2363.

¹⁵⁵⁰ Barnardos Australia, Submission to RCPS, 9/8/96, RCPS Exhibit 2529/124, p. 6; L. Matthews, Caretakers Cottage, Letter to the Minister for DCS, 8/9/95 and reply, 10/9/95, RCPS Exhibit 2125C; L. Matthews, Caretakers Cottage, Letter to RCPS, 21/6/96, RCPS Exhibit 3175C; St Vinnies for Youth, Submission to RCPS, 9/8/96, RCPS Exhibit 2529/118.

¹⁵⁵¹ See Chapter 2 of this Volume.

¹⁵⁵² D. L. Semple, RCT, 28/5/96, p. 26085.

¹⁵⁵³ CPC, *Report of the Working Together Working Party on Joint Responses to Child Abuse and Neglect*, May 1996, RCPS Exhibit 3054C/12.

¹⁵⁵⁴ D. L. Semple, RCT, 28/5/96, pp. 26088-89.

¹⁵⁵⁵ D. L. Semple, RCT, 28/5/96, p. 26090.

8.95 When Mr Semple returned to complete his evidence in September 1996, he explained that no further resources had been allocated although the matter was then subject to Cabinet approval. As a consequence there was no implementation plan in place. He favoured the model trialed for the metropolitan area, subject to funding being made available. He wished to replicate this model in rural areas, as closely as possible, depending upon the dispersion of population. He was concerned not to weaken the services that he had been attempting to build up in relation to other child protection and family work.¹⁵⁵⁶

IMPLEMENTATION

8.96 On 14 October 1996, the Government endorsed 'the Joint Investigation Team Project as the preferred model for investigating serious child abuse throughout New South Wales'. It approved:

- the establishment of eight JITS in metropolitan areas (six in Sydney, one in Newcastle and one in Wollongong);
- the establishment of a maximum of two additional JITS in rural areas where there was a demonstrated evidence that demand warrants them; and
- the appointment of 24 additional DCS and police staff to provide a joint (but not co-located) specialist response in rural areas.¹⁵⁵⁷

Progress in securing implementation of this decision was, however, exceedingly slow and not free from difficulty.

8.97 When Ms Helen Bauer, the new Director-General of DCS, gave evidence on 7 March 1997, she informed the Commission that:

- at that stage there had not been any agreement by DCS as to the JIT model or their locations;
- it had not been possible to recruit the additional DCS officers required; and that
- there was a significant difficulty in finding appropriately qualified officers to fill the posts in the required locations.¹⁵⁵⁸

8.98 Notwithstanding this difficulty, and the history earlier recounted, Ms Bauer had yet to reach a concluded view as to the adequacy of the department's staffing resources, or whether staff with the appropriate skills for front-line child protection work were available but occupied on other duties. She said that she could not yet accept that the department needed 'more people resources'.¹⁵⁵⁹

8.99 The Commission understands that a re-allocation of existing resources can, in certain circumstances, produce a more efficient and effective delivery of service but when a department cannot reach the target employment numbers that it has been attempting to reach for over twelve months, the irresistible conclusion is that it has a very significant problem.

8.100 The Commission is satisfied that this inability to recruit suitable staff has serious consequences for the effective investigation and management of child sexual abuse cases, and for the care and protection of children. If the department cannot attract appropriate staff, and now has to allocate its experienced staff to the JIT units, then its overall capacity to respond to child protection problems will be further depleted. Alternatively, inexperienced officers will be allocated to the JITS or to the important intake work, with obvious consequences for the quality of the service provided.

¹⁵⁵⁶ D. L. Semple, RCT, 4/9/96, p. 31527.

¹⁵⁵⁷ R. Wilkins, Director-General, The Cabinet Office, Letter to Commissioner Wood, 23/10/96, RCPS Exhibit 3076.

¹⁵⁵⁸ H. M. Bauer, RCT, 7/3/97, pp. 36888-89.

¹⁵⁵⁹ H. M. Bauer, RCT, 7/3/97, p. 36890. In May the NSW Treasury, *Budget Summary 1997-1998* announced the 'enhanced rural child protection services with an additional \$300,000 per annum for additional casework specialists in Western NSW', RCPS Exhibit 3077, p. 16.

8.101 On 13 March 1997 Commissioner Wood expressed concern about Ms Bauer's evidence¹⁵⁶⁰ in that the matter appeared to have been left up in the air, with very little occurring in the way of planning towards a solution. He suggested that resolution of DCS's role in the area of child sexual assault or child abuse should be a first priority. DCS was invited to assist the Royal Commission with a further submission, particularly dealing with the JIT concept.¹⁵⁶¹

8.102 In response, DCS provided a submission on 23 April 1997,¹⁵⁶² in which it advised that:

- it will refer all notifications involving alleged criminality for joint investigation by the Police Service and DCS; and where appropriate will do so in collaboration with NSW Health;¹⁵⁶³
- the new procedures were to be documented, to provide for the following:¹⁵⁶⁴
 - information was to be received at the local Community Service Centre (CSC);
 - a decision would be made at CSC level to refer the matter to a JIT, based on any allegation of abuse amounting to criminality;
 - the team leaders of the JIT would develop an assessment and investigation plan and allocate the case with consideration being given to the needs of the child, family and the skills of the investigating officers;
 - the JIT officers would interview the child and others to clarify the allegations, assess the level of risk and safety, and pursue other assessments as required, for example, medical assessment;
 - the JIT officers would prepare a case plan to address the remaining needs of the child and family;
 - an assessment would be made as to whether protective intervention, including the presentation of criminal charges (police) and/or a care application (DCS) was warranted;
 - after completion of the initial investigation and assessment the DCS/JIT officers would be responsible for the conduct of any proceedings in the Children's Court matter, while the police/JIT officers would have the responsibility for pursuing any criminal matter;
 - if care and support services were considered appropriate the matter would be referred by the JIT to the CSC for management and co-ordination of the appropriate support services;
- the Minister for Community Services and the Minister for Police had agreed to the location of the first four JITs at Westmead, Burwood, Penrith and Liverpool;
- a JIT Implementation Group had been formed, oversighted by The Cabinet Office; and that
- the first four metropolitan JITs would be operating by the end of July 1997, while the remaining JITs in metropolitan areas and the specialist rural positions would be in place by November 1997.¹⁵⁶⁵

¹⁵⁶⁰ Ms Bauer's evidence was given before Commissioner Urquhart on 7/3/97. Royal Commissioner Wood noted that Ms Bauer had only been in the job a very short time and that he was not being critical of her. Commissioner J. R. T. Wood, RCT, 13/3/97, p. 37146.

¹⁵⁶¹ Commissioner J. R. T. Wood, RCT, 13/3/97, p. 37146.

¹⁵⁶² H. M. Bauer, Director-General DCS, Submission to RCPS, 23/4/97, RCPS Exhibit 3151.

¹⁵⁶³ *ibid.*, p.3.

¹⁵⁶⁴ *ibid.*

¹⁵⁶⁵ *ibid.*, pp. 3 & 5.

8.103 The JIT memorandum of understanding¹⁵⁶⁶ between the Commissioner of Police and Directors-General of Health and DCS has been signed, the JIT Policies and Procedures Manual¹⁵⁶⁷ has been prepared and the first four JITs have commenced operation at Liverpool, Penrith, Ashfield and at Parramatta instead of Westmead.¹⁵⁶⁸ The Commission strongly supports this development, as part of the comprehensive policing/DCS response to child sexual abuse, which it has been encouraging during the hearings. It appropriately supplements the critical intelligence gathering and specialist paedophile investigation role of the CPEA.

CONCLUSION

8.104 DCS has approached the problem of child sexual abuse investigation from many angles - specialist, generalist, localised, centralised - but without the necessary build up of resources, the support of staff or the offer of satisfying career paths. Concurrent crises in the Police Service and DCS have compounded the problem. The changes that are now, not before time, being implemented appear to be both sensible and welcome, and offer a comprehensive coverage, in conjunction with the work of the CPEA in relation to serial offenders and serious criminal paedophile activity. With the additional structural changes recommended in this Report, they need to be given a serious chance to work with bipartisan political support. As the Child Protection Council suggested in 1991, it should not be necessary to start all over again, every time there is a new Government. Nor should it be necessary for change to be driven by a Royal Commission.

E. ROYAL COMMISSION INQUIRIES

8.105 In addition to the inquiries, submissions and evidence outlined earlier, the Commission has assembled several typical case studies (from many others) which demonstrate the need for the change now achieved.

8.106 These case studies evidence the historical failures of DCS, concerning:

- the lack of co-ordination with other agencies;
- the failure to follow up cases where children were clearly at risk;
- the premature closure of files for inappropriate reasons;
- the use of inappropriate interviewing practices;
- the lack of proper supervision of staff; and
- the bias in favour of staff when allegations of sexual misconduct were made against them.

CASE STUDY 1

8.107 This case study concerns a Rural Youth Centre (RYC) funded by a grant under the DCS Community Services grants program.¹⁵⁶⁹ It was a centre for 'the younger age group with a bias towards the underprivileged group', that operated a drop-in facility, provided transport to isolated areas, and aimed to community awareness of youth issues.¹⁵⁷⁰

¹⁵⁶⁶ Each agency involved their legal, finance and human resource personnel in the preparation of the Memoranda. R. Wilkins, Director-General the Cabinet Office, Letter to RCPS, 30/6/97, RCPS Exhibit 3152C.

¹⁵⁶⁷ The Manual was developed by a JIT Implementation Team which reported to an interdepartmental committee chaired by the Director of the Office of Children and Young People. Each of the Departments and police undertook internal consultation; DCS formed a Reference Group of field staff and management from metropolitan and rural areas to provide advice, and Health sought input from a sexual assault service representative, senior policy adviser on physical abuse and neglect and relevant detail were checked by medical practitioners. R. Wilkins, Director-General the Cabinet Office, Letter to RCPS, 20/6/97, RCPS Exhibit 3152C.

¹⁵⁶⁸ It was not possible to find appropriate/affordable premises at Westmead.

¹⁵⁶⁹ Documents regarding Youth Centre, RCPS Exhibit 2470C.

¹⁵⁷⁰ *ibid.*

8.108 In late 1986 or early 1987 a DCS District Officer (the DO) received an allegation of child sexual assault by DC11,¹⁵⁷¹ a youth worker employed by the RYC. Specifically, it was alleged that he had sexually interfered with a child that he had driven home.¹⁵⁷²

8.109 When the child was interviewed he did not disclose any 'abuse' by DC11.¹⁵⁷³ DC11 denied any inappropriate behaviour although he acknowledged that it was his practice to drive children home after the RYC closed at night.¹⁵⁷⁴ He was cautioned against that practice and the file was closed.¹⁵⁷⁵

8.110 The DCS area manager was not advised of the allegations, apparently as a result of the inexperience of the DO and the local manager.¹⁵⁷⁶

8.111 The DO received further information, from time to time, from local police which 'inferred' that DC11 was interfering with children.¹⁵⁷⁷ No particular child or incident was identified. The DO did not take any further action other than to decide that he would keep a 'watchful eye' over the centre.¹⁵⁷⁸

8.112 In 1990 DC11 left the RYC to take up a position at a Juvenile Justice Institution, where he would again be working with vulnerable children.¹⁵⁷⁹ The DO provided a reference for him, in which he said:

I have often had contact with [DC11] as he has advocated for the abused child and provided support and counselling for troubled families. I have admired [DC11's] ability to relate to young people, building positive and trusting relationships. No matter what the child's age or cultural background, all appear comfortable and willing to confide in him. This is truly a gift seen in few people.¹⁵⁸⁰

8.113 DC11 later resumed employment at the RYC.¹⁵⁸¹

8.114 By 1993 the DO had become a manager at the CSC. He learned that DC11 was again the subject of suspicion.¹⁵⁸² On this occasion there were two eyewitnesses to activity strongly suggestive of DC11 engaging in sexual activity with a boy during a youth camp.

8.115 When the boy was interviewed, he admitted that he had slept in a tent with DC11, but denied any sexual assault. No interview was held with DC11 notwithstanding the existence of eyewitnesses.¹⁵⁸³ The file was closed.¹⁵⁸⁴

8.116 On 4 November 1993, a community worker from the local council asked DCS to take action in respect of DC11 and the RYC, as she had credible information to the effect that he was behaving inappropriately with youths at the Centre.¹⁵⁸⁵ The DO advised that:

- nothing could be done without a complainant, and a specific incident to investigate;¹⁵⁸⁶ and that
- the DCS might find itself with an allegation of harassment if it kept investigating rumours¹⁵⁸⁷ in relation to DC11.

¹⁵⁷¹ Name suppressed, Statement of Information, 20/6/96, RCPS Exhibit 2447C/2.

¹⁵⁷² *ibid*; Witness name suppressed, RCT, 21/8/96, p. 31112.

¹⁵⁷³ Name suppressed, Statement of Information, 20/6/96, RCPS Exhibit 2447C/2; Witness name suppressed, RCT, 21/8/96, pp. 31112-13.

¹⁵⁷⁴ Name suppressed, Statement of Information, 20/6/96, RCPS Exhibit 2447C/2.

¹⁵⁷⁵ *ibid*.

¹⁵⁷⁶ Witness name suppressed, RCT, 21/8/96, p. 31112.

¹⁵⁷⁷ Name suppressed, Statement of Information, 20/6/96, RCPS Exhibit 2447C/2; Witness name suppressed, RCT, 21/8/96, pp. 31116-17.

¹⁵⁷⁸ Witness name suppressed, RCT, 21/8/96, p. 31118.

¹⁵⁷⁹ Witness name suppressed, RCT, 22/8/96, p. 31209.

¹⁵⁸⁰ DCS, Reference for DC11 signed by DO, RCPS Exhibit 2473C.

¹⁵⁸¹ Witness name suppressed, RCT, 22/8/96, p. 31212.

¹⁵⁸² Name suppressed, Statement of Information, 20/6/96, RCPS Exhibit 2447C/2.

¹⁵⁸³ *ibid*.

¹⁵⁸⁴ *ibid*.

¹⁵⁸⁵ Witness name suppressed, RCT, 22/8/96, p. 31225.

¹⁵⁸⁶ Witness name suppressed, RCT, 22/8/96, p. 31226.

¹⁵⁸⁷ Witness name suppressed, RCT, 22/8/96, pp. 31226-27.

8.117 On 11 July 1994, a local detective sergeant wrote to the honorary solicitor for the RYC, confirming that a complaint had been made by a 23 year-old local resident (DC18) to the effect that:

- DC11 had sexually assaulted him in 1984 when they had gone to Queensland together during the school holidays;
- DC18 and another young man, who had also been sexually assaulted by DC11, had reported the incidents to DC10, a board member of the RYC; and that
- DC10 had said that he would investigate their complaints, but they had heard nothing more of the matter.

8.118 On 12 July 1994 the DO was informed that DC10 had investigated the matter which was 'not substantiated',¹⁵⁸⁸ but had not been reported to police or to DCS.

8.119 Had DC10 reported the complaints, they would have been treated as a notification and placed on the CIS,¹⁵⁸⁹ rather than left to an internal RYC unrecorded 'investigation', that is, assuming there was any investigation at all.

8.120 When the DO learned of this development, the letter was sent to the area manager to be followed up with the Community Program Officer (CPO).¹⁵⁹⁰ Soon after DC11 went on 'sick leave'¹⁵⁹¹ and did not return.

8.121 The DO did not make contact with the police to inform them of the allegations he had earlier received. When he was asked why he had held that information back, he said 'we were looking at a situation that was unsubstantiated ... I just did not think of it or consider it'.¹⁵⁹²

8.122 On 14 July, 1994 when DC11 was on 'sick leave', DC10 as president of the RYC provided him with a reference on RYC letterhead verifying that DC11 was:

Employed by the [RYC] for almost 5 years as a youth worker and as of 14 July 1994 resigned from this position due to personal stress-related illness.

After explaining that DC11 had been on sick leave for some time and that the RYC had decided his position could not be kept open indefinitely, the letter concluded:

The position [DC11] held was at times a very responsible and stressful one and we wish not to add to [DC11's] medical condition.¹⁵⁹³

8.123 In September 1994, the DO received from the Police Service a copy of a letter written by the general manager of the local council.¹⁵⁹⁴ That letter:

- listed the names of 12 'suspected victims' of sexual assault associated with the RYC; and
- informed the police that the names had become known to the council's community worker through local community service workers and members of the public.

8.124 On 23 September 1994, a District Officer (DO2) in an adjoining CSC received a further notification in relation to DC11, from police. On this occasion the allegation included DC10 in the sexual abuse of a named youth (other than the informant). It was said that some of the sexual assaults had occurred up to ten years ago, and that there were other boys alleging that the same conduct was occurring.¹⁵⁹⁵

¹⁵⁸⁸ Witness name suppressed, RCT, 22/8/96, p. 31207.

¹⁵⁸⁹ Witness name suppressed, RCT, 22/8/96, p. 31208.

¹⁵⁹⁰ Witness name suppressed, RCT, 22/8/96, p. 31213.

¹⁵⁹¹ Witness name suppressed, RCT, 22/8/96, p. 31205.

¹⁵⁹² Witness name suppressed, RCT, 22/8/96, pp. 31214-15.

¹⁵⁹³ Reference provided to DC11 on RYC letterhead, 24/7/94, RCPS Exhibit 3153C.

¹⁵⁹⁴ Letter from local council, 20/9/94, RCPS Exhibit 2472C; Witness name suppressed, RCT, 22/8/96, p. 31222.

¹⁵⁹⁵ Name suppressed, Statement of Information, 19/6/96, RCPS Exhibit 2475C/2.

8.125 DO2 reported the matter to his manager. An assessment was made that the matter was 'difficult' because the information had been provided from sources other than the alleged victim. A direct approach to the youth was considered, but it was decided that he was 'street wise', reluctant to communicate with authority, and would undoubtedly 'clam up'.¹⁵⁹⁶

8.126 The file was closed on 29 September 1994, six days after it was opened without any investigation whatsoever.¹⁵⁹⁷ DO2 informed the Royal Commission that, at the time of this notification, he was not aware of the letter from the local council in which the 12 'suspected victims' had been named.¹⁵⁹⁸

8.127 This chronology demonstrates beyond question that DCS had information available to it which should have given serious cause for concern about the operation of the RYC, and the continued association of DC11 and DC10 with it, to the point where action should have been taken. The reluctance of DCS staff to investigate fellow workers, or workers at facilities funded by it, and the need for a common intelligence database are also highlighted.

8.128 The information gathered by the Royal Commission has been disseminated to the CPEA for further investigation. In the future, matters of this kind must be handled in a joint and co-operative fashion with each agency supporting the other.

CASE STUDY 2

8.129 This case study concerns a man aged about 21 (J5), who first came to notice in 1990, because of his relationship with a boy (J6), aged 11 years of age.

8.130 On 15 March 1990, J5 telephoned the local DCS office and informed the intake officer that:

- he was a friend of J6, whose parents had recently had an argument during which his father had threatened his mother and he had been kicked;
- J6 had spent a number of nights at J5's place, was unwilling to go home; and that
- he felt him to be suffering from depression as a result of his home circumstances.¹⁵⁹⁹

8.131 On 2 April 1990, J5 attended the DCS office and reported that:

- he lived in close proximity to J6 and was an acquaintance of his parents and sibling;
- he felt that the incident he had reported to DCS was a 'one off' situation;
- J6 had requested to stay overnight with him on a couple of occasions following domestic arguments between his parents; and that
- he had encouraged J6 to go home, had contacted his parents to discuss the situation, and had informed J6's mother that he was going to discuss the matter with 'welfare'.¹⁶⁰⁰

8.132 On the same day the DCS officer advised J5 to encourage J6 to return home, and to contact his parents when he was staying out overnight.¹⁶⁰¹

8.133 On 3 April 1990, a DCS case plan was approved to visit the family in respect of the notification (of physical abuse).¹⁶⁰²

¹⁵⁹⁶ *ibid.*

¹⁵⁹⁷ *ibid.*

¹⁵⁹⁸ *ibid.*

¹⁵⁹⁹ DCS, Child Protection File regarding J6, Investigative interview summary, 19/3/90, RCPS Exhibit 5901C, at Doc. 2096921.

¹⁶⁰⁰ DCS, Child Protection File regarding J6, Report form dated 2/4/90, RCPS Exhibit 5901C, at Doc. 2096919-20.

¹⁶⁰¹ *ibid.*

8.134 On 12 June 1990, phone contact was made with J6's mother. The file noted that she was satisfied that the matter reported concerning her husband was a 'one off' incident; but had added that:

- J6 was causing trouble in the home as a result of his relationship with J5; and that
- she and her husband had some concerns over the relationship.

8.135 The DCS officer offered the referral service for adolescents to J6's mother if it should be needed.¹⁶⁰³ The file, however, noted that there would be no further intervention as the 'child [was] not at further risk'. It was marked 'confirmed, closed'.¹⁶⁰⁴

8.136 A month later, J5 attended the DCS office and disclosed that oral intercourse had been taking place between him and J6.¹⁶⁰⁵ The DCS officer took him to the police station to be interviewed. The parents of J6 were informed.

8.137 On 8 March 1991, J5 pleaded guilty before the District Court to two charges of indecency and two charges of homosexual intercourse with a boy aged 12 years.¹⁶⁰⁶ He was ordered to perform 300 hours of community service and placed on a good behaviour bond for three years, subject to a condition that he submit to all orders from the Probation and Parole Service especially in regard to any 'medical attention'.¹⁶⁰⁷

8.138 In 28 September 1994, the father (J1) of another child (J3) in the area, notified DCS that:

- for some months now his son then aged 13 years, had rarely been home, and was staying overnight and weekends at J5's home;
- he was aware that something similar had happened to another boy in the area about two years ago; and that
- he was worried that his son was being sexually abused.¹⁶⁰⁸

8.139 J1 said that he intended to apply for an Apprehended Violence Order (AVO) to keep J5 away from his son, but the DCS officer advised him against this, as it may cause the boy to abscond.¹⁶⁰⁹

8.140 After this contact, the DCS officer contacted police who informed him on a confidential basis, that J5 was 'someone to be concerned about'.¹⁶¹⁰

8.141 On 11 October 1994, DCS made a home visit. The file recorded:

there are no specific allegations of abuse. Parents have concern for their son which is probably warranted given [J5's] prior history, however, [J3] firmly believes he is not at risk.¹⁶¹¹

A recommendation was made that the matter be 'filed'.¹⁶¹²

¹⁶⁰² DCS, Child Protection File regarding J6, Report form dated 12/6/90, RCPS Exhibit 5901C, at Doc. 2096915-16.

¹⁶⁰³ DCS, Child Protection File regarding J6, Investigative interview summary, 12/6/90, RCPS Exhibit 5901C, at Doc. 2096918.

¹⁶⁰⁴ DCS, Child Protection File regarding J6, Report form, 12/6/90, RCPS Exhibit 5901C, at Doc. 2096915.

¹⁶⁰⁵ DCS, Child Protection File regarding J6, notes of conversation with J5, RCPS Exhibit 5901C, at Doc. 2096911.

¹⁶⁰⁶ ODPP, File regarding J5, 8/3/91, RCPS Exhibit 5913C.

¹⁶⁰⁷ *ibid.*, at Doc. 2656851.

¹⁶⁰⁸ DCS, Child Protection File regarding J3, Intake Form, 28/9/94, RCPS Exhibit 5902C, at Doc. 2096878.

¹⁶⁰⁹ DCS, Child Protection File regarding J3, RCPS Exhibit 5902C, at Doc. 2096874.

¹⁶¹⁰ *ibid.*, at Doc. 2096876.

¹⁶¹¹ DCS, Child Protection File regarding J3, Report Form, RCPS Exhibit 5902C, at Doc. 2096872.

¹⁶¹² *ibid.*

8.142 On 25 October 1994, J1 notified DCS that his son had left home and that he wanted to file a Care Application in the Children's Court. The DCS officer prepared a report which was not supportive, as she did not consider that there had been an irretrievable breakdown in the relationship. Upon learning of this, the application was withdrawn by the parents.¹⁶¹³

8.143 On 1 November 1994, the DCS officer referred the matter to the Family Therapy Team, but otherwise recommended that the 'file be closed' again.¹⁶¹⁴

8.144 On 7 December 1994, the file was reviewed and a note was made recording:

I am concerned for J3, if it is true that he is associating/friend of a sex offender; because if he is not a victim as yet it is highly likely/probable he will be assaulted.¹⁶¹⁵

8.145 A joint DCS/police home visit was attempted but they were unable to find either J5 or the boy. After this attempt, the DCS officer informed the parents that they could not force their son to return home.¹⁶¹⁶

8.146 However, J1 and his wife made further contact with DCS seeking their assistance. They also notified the Police Service that their son had disappeared. He was placed on the missing persons list.¹⁶¹⁷

8.147 Between December 1994 and July 1995 J3's parents conducted a media campaign to find their son, and travelled much of the State in a personal search for him. On 10 July 1995, he was found by police in a country town some 300 kilometres away, in the back of a van sleeping with J5. Both were naked. Some unlicensed firearms were also found in the vehicle. J5 was taken to the police station and the boy was taken to the local Community Services Centre, from which he absconded. In his absence, J5 was allowed to leave the area, without being charged.

8.148 On 9 January 1995, the District Officer recommended that the case be closed again, and filed locally for future reference. It was noted that the boy was vulnerable and needed to be supported, and would remain on the missing persons list for the time being. The file was noted 'not confirmed, not located and closed' at that time.¹⁶¹⁸

8.149 The parents resumed their own inquiries within NSW and interstate. Finally in 1996, the boy was found in J5's company in another State and returned to his parents.¹⁶¹⁹ J5 is currently being prosecuted in another State.

8.150 This case demonstrates a singular lack of initiative on the part of DCS in supporting the parents in their concerns for the boy, and a lack of any concentrated or co-ordinated investigation into a man who had shown himself to be a paedophile. Had a Care Application been supported, and an order obtained under Section 72, in late 1994 it may well be that the ordeal which the parents underwent, and the abuse of the boy, could have been avoided.

8.151 A closer liaison and sharing of information between the Police Service and DCS might also have overcome these problems.

¹⁶¹³ DCS, Child Protection File regarding J3, Court Report, RCPS Exhibit 5902C, at Doc. 2096860.

¹⁶¹⁴ DCS, Child Protection File regarding J3, RCPS Exhibit 5902C, at Doc. 2096856.

¹⁶¹⁵ DCS, Child Protection File regarding J3, Child Protection Specialist's Review, 7/12/94, RCPS Exhibit 5902C, at Doc. 2096849.

¹⁶¹⁶ DCS, Child Protection File regarding J3, RCPS Exhibit 5902C, at Doc. 2096842.

¹⁶¹⁷ *ibid*, at Doc. 2096783.

¹⁶¹⁸ DCS, Child Protection File regarding J3, Investigation Summary, RCPS Exhibit 5902C, at Doc. 2096773.

¹⁶¹⁹ J2, RCT, 25/2/97, p. 36256.

CASE STUDY 3

8.152 This case study relates to a young girl (DCS5) aged 12 years, who in August 1993 complained to her school counsellor that she had been sexually abused by her father from the age of 5 or 6 years.¹⁶²⁰

8.153 She lived in a rural area in NSW, and was sighted on the morning after this complaint getting into the car of an adult (DCS4) who was a friend of the family.¹⁶²¹ He was aged 51 years, and lived alone on an isolated property.

8.154 DCS4 made an application for an AVO against the girl's father to prevent him from going near her. He also made an application to DCS to have her stay with him. He was interviewed by DCS officers and disclosed that he had been married on four occasions. The DCS officer apparently accepted his explanation that he had been 'unlucky in love', and assessed him as genuine and well-intentioned in his desire to care for DCS5.¹⁶²²

8.155 On 13 September 1993, DCS5's mother informed a DCS officer that the girl was 'at risk' with DCS4 and requested that she have no contact with him. Two days later the DCS officer noted that access by DCS4 to her should be minimum and supervised by DCS.¹⁶²³ This officer was concerned to limit DCS4's access to DCS5, however, after returning from leave, she was informed that she should no longer be involved with the file, as a complaint had been made against her by DCS4.

8.156 No check was made with the former wives in respect of DCS4's role as a husband or parent. The Commission has, however, become aware of a considerable amount of information suggesting that he had behaved in an exceedingly violent manner in these relationships, and had been involved in bizarre sexual activities both with his partners and with other children, which on some occasions had also involved a male friend. It is clear that this information would have been available had the wives been spoken to, and that it would have automatically excluded any possibility of the child being placed into the custody of DCS4.¹⁶²⁴

8.157 When the care application came before the Children's Court, DCS did not oppose the girl being placed in the custody of DCS4.¹⁶²⁵ A staff psychologist submitted a report to the court in which he expressed the opinion that the placement could be safely made.¹⁶²⁶ An order was accordingly made on 19 October 1993.¹⁶²⁷

8.158 DCS4 undertook to attend foster parent training and sexual assault counselling as required by DCS. He also agreed to supervision by DCS and to access by the girl's natural family.¹⁶²⁸

8.159 On 14 December 1993, in an adjoining rural area, an unidentified male adult went to the Community Services Centre with 'very real concerns' about the placement. He alleged that the relationship was overtly physical,¹⁶²⁹ and that there were many other people in the area with similar concerns, although none were game to do anything, as DCS4 was a very powerful person, with aggressive friends. He added that DCS4 had a 'reputation for being fond of young girls' and had now been 'given one on a platter'. Notwithstanding this report, no observations, home visit or interviews were conducted.

¹⁶²⁰ DCS, Child at Risk file regarding DCS5, Notification Intake Summary, 24/8/93, RCPS Exhibit 5957C, at Doc. 2664410-11.

¹⁶²¹ *ibid*, at Doc. 2664410.

¹⁶²² DCS, Child at Risk file regarding DCS5, Psychological Report, 6/10/93, RCPS Exhibit 5957C, at Doc. 2664309.

¹⁶²³ DCS, Child at Risk file regarding DCS5, Case Conference Minutes, 15/9/93 and Case Notes, 13/9/93, RCPS Exhibit 5957C, at Doc. 2665333 & 2664348.

¹⁶²⁴ Papers referred to RCPS by the DPP in relation to a matter arising from the prosecution of DCS4, RCPS Exhibit 3154C.

¹⁶²⁵ DCS, Child at Risk file regarding DCS5, Minute of Care Order and Undertakings of DCS4, 19/10/93, RCPS Exhibit 5957C, at Doc. 2664261-62.

¹⁶²⁶ DCS, Child at Risk file regarding DCS5, Psychological Report, 6/10/93, RCPS Exhibit 5957C, at Doc. 2664285.

¹⁶²⁷ DCS, Child at Risk file regarding DCS5, Minute of Care Order, 19/10/93, RCPS Exhibit 5957C, at Doc. 2664262.

¹⁶²⁸ DCS, Child at Risk file regarding DCS5, Undertakings of DCS4, 19/10/93, RCPS Exhibit 5957C, at Doc. 2664261.

¹⁶²⁹ DCS, Child at Risk file regarding DCS5, Community Centre Initial Contact Form, 14/12/93, RCPS Exhibit 5957C, at Doc. 2664231-32.

8.160 On 16 February 1994, another notification was made to the Community Services Centre, to the effect that a number of people had noticed that DCS4 and DCS5 were behaving in a sexually explicit way in public,¹⁶³⁰ and that they had been seen coming from a river naked. DCS again did nothing.

8.161 On 2 March 1994, a police officer notified the Community Services Centre that the person who had made the last notification had also reported his concerns to police.¹⁶³¹ The police were informed that there was a video camera set up in the lounge room and that when the house had been visited by the complainant, he had observed inappropriate behaviour between DCS4 and DCS5, including fondling.

8.162 On 24 June 1994, the police notification was entered on the intake summary. An urgent follow-up on the referral of DCS4 for counselling was planned, along with a home visit during school holidays.¹⁶³² The girl was aged about 13 years at this stage.

8.163 Although there was a meeting with DCS4 on 12 July 1994, he was not interviewed in relation to the matters which had been reported.¹⁶³³

8.164 On 7 September 1994, the girl telephoned the Community Services Centre and informed the District Officer that she did not want to go back to DCS4's home as she had been beaten by him.¹⁶³⁴

8.165 She was brought into the Community Services Centre where she presented with bruising on her legs and arms. She reported that DCS4 had hit her with a belt and had also hit her on the side of her head and her ear. Medical examination confirmed the presence of bruising consistent with her allegations.¹⁶³⁵

8.166 DCS notified DCS4 that Section 60 proceedings would be commenced, to remove the girl from his custody. He admitted that he was totally at fault and that the physical abuse 'had occurred'.

8.167 In subsequent interviews with DCS, and with the ODPP, the girl disclosed that there had been continuous sexual abuse by DCS4, commencing three days after she was placed in his custody by the Children's Court.¹⁶³⁶ Much of the abuse she described was of a deviant nature, and some had allegedly been videotaped. Its description accorded with the experiences reported by the former wives of DCS4. DCS4 and his male friend have since been charged with various counts of sexual assault, and await trial. In these circumstances it is inappropriate to venture further into the evidence.

8.168 This case is one in which there were clear pointers to a problem which, if checked out with previous family members, almost certainly would have been disclosed. The placing of a 13 year-old girl with a 51 year-old man, who had been married four times and lived on an isolated property, notwithstanding his genuine presentation, and without a full background check, borders on the incomprehensible. Had there been appropriate home visits and observations made or any investigation conducted into the suitability of DCS4 to take on the care of a child, the eight months of abuse that the girl says she suffered, in an approved placement after having been abused by her father at home, would have been avoided.

8.169 A joint approach with appropriate case conferencing, in a multi-disciplinary setting, with the capacity for regular reporting to the Children's Court, would create a better and safer system for children who are sexually abused, or at risk of being sexually abused.

¹⁶³⁰ DCS, Child at Risk file regarding DCS5, Memo, RCPS Exhibit 5957C, at Doc. 2664222.

¹⁶³¹ DCS, Child at Risk file regarding DCS5, Community Centre Initial Contact Form, 2/3/94, RCPS Exhibit 5957C, at Doc. 2664221.

¹⁶³² DCS, Child at Risk file regarding DCS5, Notification Intake Summary, 24/6/94, RCPS Exhibit 5957C, at Doc. 2664186.

¹⁶³³ DCS, Child at Risk file regarding DCS5, Report Form, 12/7/94, RCPS Exhibit 5957C, at Doc. 2664179.

¹⁶³⁴ DCS, Child at Risk file regarding DCS5, Report Form, 7/9/93, RCPS Exhibit 5957C, at Doc. 2664167.

¹⁶³⁵ DCS, Child at Risk file regarding DCS5, RCPS Exhibit 5957C, at Doc. 2664166-74.

¹⁶³⁶ *ibid*, at Doc. 2664127.

CASE STUDY 4

8.170 On 31 March 1996, as a result of a police investigation into allegations of paedophilia involving a number of male adults, it was learned that a boy aged 14 years was living with one of the targets. The police requested DCS assistance in removing the boy from that situation.¹⁶³⁷ When the boy was interviewed by DCS workers, he did not make any disclosure of sexual abuse by the alleged paedophile. However, electronic surveillance of a conversation, that evening, intercepted a statement by the suspect that if the boy was medically examined there may be some evidence of sexual assault.¹⁶³⁸

8.171 As a result of this information, DCS took the boy to the Sydney Children's Hospital where he was medically examined. While there, he disclosed to DCS workers that he had engaged in masturbation and anal intercourse with the suspect,¹⁶³⁹ and had travelled overseas and interstate with him.¹⁶⁴⁰ The boy was returned to his mother's home.

8.172 Other information was acquired by DCS, including the following:

- the boy was living with his mother, in two bedroom accommodation, with five siblings and a 16 year-old State ward who shared the same room;¹⁶⁴¹
- the 16 year-old State ward had a history of sexual abuse;
- the mother lived with a de facto, who it was alleged was a violent person, and had been raised by the suspect;¹⁶⁴²
- the boy had been wearing a wedding ring, and had \$2,500 in a bank account provided by the suspect;¹⁶⁴³ and
- the boy had been spending every weekend with the suspect for the previous three years.¹⁶⁴⁴

8.173 The file was forwarded from the CSC in the area in which the suspect lived to the CSC in the area where the child was then resident with his mother. A recommendation was made that care proceedings should be commenced¹⁶⁴⁵ on the basis that:

- the boy could not be controlled within his family setting; and that
- the suspect had access to him.¹⁶⁴⁶

8.174 A review was made of the file by the CSC to which it was transferred which recorded that:

- the boy's mother was having difficulty believing that the abuse had occurred; and that
- the suspect was meeting all his expenses, including overseas and interstate trips, dining out, expensive weekend activities and purchases of expensive clothing.¹⁶⁴⁷

In all respects it presents as a classic case of the committed paedophile targeting a disadvantaged family, and using the opportunity to engage in sexual abuse.

¹⁶³⁷ DCS Child Protection File, Briefing Note, 2/4/96, RCPS Exhibit 3155C, at Doc. 2736250-52.

¹⁶³⁸ *ibid.*, at Doc. 2736253.

¹⁶³⁹ DCS Child Protection File, Interview with child, 1/4/96, RCPS Exhibit 3155C, at Doc. 2736197-99.

¹⁶⁴⁰ DCS Child Protection File, Interview with child, 1/4/96 and File Review, 2/9/96, RCPS Exhibit 3155C, at Doc. 2736204 and 2736130.

¹⁶⁴¹ DCS Child Protection File, Sydney Children's Hospital Medical Report, 8/5/96, RCPS Exhibit 3155C, at Doc. 2736100

¹⁶⁴² DCS Child Protection File, File Review, 2/9/96 and Report 12/4/96, RCPS Exhibit 3155C, at Doc. 2736072 and 2736186

¹⁶⁴³ DCS Child Protection File, Report, 12/4/96, RCPS Exhibit 3155C, at Doc. 2736185.

¹⁶⁴⁴ *ibid.*, at Doc. 2736182.

¹⁶⁴⁵ *ibid.*, at Doc. 2736185.

¹⁶⁴⁶ DCS Child Protection File, File Review, 2/9/96 and Report 12/4/96, RCPS Exhibit 3155C, at Doc. 2736072 and 2736186-87.

¹⁶⁴⁷ DCS, Child Protection File, RCPS Exhibit 3155C, at Doc. 2736071.

8.175 It was also apparent from this review that the child's mother had previously contacted DCS seeking counselling for the child, and for the 'family', which had not been provided.¹⁶⁴⁸ The review concluded that there should be 'immediate action', noting that 'we should be aware that considerable criticism may be levelled for the delay', and questions asked as to 'why we have not acted previously'.¹⁶⁴⁹ Such an assessment could hardly be faulted.

8.176 Notwithstanding this review, and the real concerns in respect of this boy, no Care Application was sought, nor was counselling provided for the family. Perhaps not surprisingly, after a time, the allegations against the suspect were withdrawn, and nothing further was done in respect of the matter. The file was apparently 'closed'.¹⁶⁵⁰ There was no prosecution and no covert ongoing police operation. This matter has been referred to the Community Services Commission.

8.177 Yet again this case study discloses a less than thorough or committed investigation by either DCS or police. With greater co-operation and expertise, of the kind now provided by the CPEA and JITS, it is to be hoped that:

- a classic case involving a fixated paedophile would have been identified; and that
- a very different outcome would be achieved.

CASE STUDY 5

8.178 In 1994, C1 (an 18 year-old female) made a complaint to the Police Service of alleged long-term physical and sexual abuse by her father.¹⁶⁵¹ The local Community Service Centre was notified. Due to the seriousness of the alleged conduct, the DCS officer made notifications in respect of the other children within the family, C2 (a 13 year-old female), C3 (an 11 year-old female) and C4 (15 year-old male).¹⁶⁵²

8.179 C2 was interviewed by an experienced District Officer in the presence of a social worker, and a temporary District Officer. As a result of disclosures by C2 together with the information provided by C1, the three children were taken into DCS care.¹⁶⁵³ Subsequent to C2 being placed in the care of her maternal aunt and uncle, her cousins (one a 14 year-old male and one a 12 year-old female) also disclosed they had been sexually abused by the person the subject of the complaint.¹⁶⁵⁴ Each was referred to police and statements were taken from them.¹⁶⁵⁵

8.180 C2's mother, father and grandmother were charged with a number of sexual assault offences. At committal stage the mother and grandmother were discharged and the father was committed for trial on one charge only, which was later no billed.

8.181 The magistrate, in his judgment, commented upon the manner in which C2 had been interviewed by the DCS officer:

Regrettably she was interviewed inappropriately. Not only were leading questions asked, but she was subjected to pressure and persuasion. The appeal to [C2's] loyalty to [C1] to induce her to make revelations about her parents was misguided. [C2] at the time was in a most vulnerable position¹⁶⁵⁶

¹⁶⁴⁸ DCS, File Review, 2/9/96, Child Protection File, RCPS Exhibit 3155C, at Doc. 2736072.

¹⁶⁴⁹ *ibid*, at Doc. 2736073

¹⁶⁵⁰ DCS, Report by Assistant Manager to Area Manager, 30/8/96, Child Protection File, RCPS Exhibit 3155C, at Doc. 2736081

¹⁶⁵¹ Statement by DCS District Officer, 11/5/94, ODPP File, RCPS Exhibit 2544C/3, at Doc. 2268377.

¹⁶⁵² *ibid*, at Doc. 2268378.

¹⁶⁵³ Pursuant to Section 60 of the *Children Care and Protection Act 1987*; Statement by DCS District Officer, 11/5/94, ODPP File, RCPS Exhibit 2544C/3, at Doc. 2268378.

¹⁶⁵⁴ Statement of male cousin, 19/5/94, ODPP File 1, RCPS Exhibit 3082C, at Doc. 2734593-96.

¹⁶⁵⁵ Statements of male and female cousins, ODPP File 1, RCPS Exhibit 3082C, at Doc. 2734589-600.

¹⁶⁵⁶ District Court Criminal Registry, Magistrate's judgment, 21/6/96, RCPS Exhibit 2544C/1, p. 25.

8.182 The Royal Commission has had access to the interviews with the children. Some examples of the questions asked, or comments made, which would support the magistrate's assessment, include the following:

DCS officer: You have to tell us what the secret with [C1] was and what's mum and dad's involvement in that.

Child: I don't know what you're talking about.

DCS officer: That's fine if you don't. But the police are taking the information seriously. They and we believe that there are things that kids shouldn't be asked to do or see. The more you tell us the more it strengthens [C1's] position. If we hear things from one person its always good to hear it from another.¹⁶⁵⁷

and

DCS officer: It must be very very frightening. He has probably made you feel very scared. Has he made you very scared about talking about it or not doing as he wanted? [C1] has said the threats about the pets? Has that happened to you? Was that happening before [C1] moved away?¹⁶⁵⁸

and

- 'it must have really upset you at the time';¹⁶⁵⁹
- 'it is not fair is it';¹⁶⁶⁰
- 'was it so awful that you don't want to talk about it';¹⁶⁶¹
- 'that must have been very horrible';¹⁶⁶²
- 'are there a lot of things that go on that you can't even think about because they're too yucky'.¹⁶⁶³

8.183 The guidelines on the investigation and management of child sexual assault cases set out general principles that should be applied when interviewing a child witness.¹⁶⁶⁴ The guidelines stress that while it is important to support the child, the interviewer should retain neutrality and objectivity. Under no circumstances should children be informed of other children's complaints or involvement.¹⁶⁶⁵ In this case those guidelines were not followed, leaving it open to the defendant to submit that contamination had occurred. The true facts cannot now be determined in relation to this case. It was effectively ended by inexperienced management and questioning by DCS officers, again reinforcing the need for the JITs and CPEA approach.

CASE STUDY 6

8.184 In December 1986, a 15 year-old girl disclosed to her school counsellor that her parents were fighting and that her father had made sexual advances towards her. The school notified DCS and the girl was interviewed the following day by a District Officer. In the interview she alleged that a number of sexual acts had been committed by her father from the time that she was six or seven, and were continuing to the present time, including an incident involving oral sex when she was about 10 years old.¹⁶⁶⁶

¹⁶⁵⁷ Statement of DCS Assistant Manager, 27/3/95, ODPP File, RCPS Exhibit 2544C/2, p. 17.

¹⁶⁵⁸ *ibid.*, p. 15.

¹⁶⁵⁹ *ibid.*, p. 9.

¹⁶⁶⁰ *ibid.*, p. 10.

¹⁶⁶¹ *ibid.*

¹⁶⁶² *ibid.*, p. 14.

¹⁶⁶³ *ibid.*, p. 15.

¹⁶⁶⁴ NSW Attorney General's Department, *Guidelines for the Investigation and Management of Child Sexual Assault Cases*, NSW Government Printing Service, 1991, RCPS Exhibit 3081, pp. 13-18.

¹⁶⁶⁵ *ibid.*, p. 26.

¹⁶⁶⁶ DCS Interview between child at risk and DCS District Officer, File 24, RCPS Exhibit 3083C/23, at Doc. 2388646-49.

8.185 Notwithstanding the girl's disclosure, and the existence of a category for oral sex, the Child Protection Assessment form listed the most severe type of abuse as 'inappropriate fondling'.¹⁶⁶⁷ The file is silent as to whether the father was interviewed, whether any medical examination was conducted, or notification made to the police.¹⁶⁶⁸

8.186 Despite an initial assessment that the child's risk level was high, and that she feared being left alone with her father,¹⁶⁶⁹ a decision was made to leave the matter to the school counsellor to conduct further interviews. A week after the initial notification, the file notes: 'leave the situation until school resumes next year and follow it up then'.¹⁶⁷⁰

8.187 The District Officer acknowledged that, after the initial interview, the girl was reluctant to give details as she was concerned about the consequences for the rest of the family.¹⁶⁷¹ Three months later the District Officer closed the file because the school counsellor had reported that there had been 'no further incidents'.¹⁶⁷²

8.188 While recognising that it is always appropriate to take into account the wishes of the child, she was in this case 15 years of age, the complaint was one of long-term abuse, and the girl was clearly at risk. Again, joint assessment by DCS and police, and the development of an appropriate case plan, would have been far preferable to leaving the matter uninvestigated and unaddressed in the hope that the problem might not reoccur.

CASE STUDY 7

8.189 This case study concerns a young girl, M3, who was sexually abused by two of her brothers, over many years.

8.190 Prior to 1984, DCS became aware of allegations from a school counsellor to this effect concerning the elder brother whose abuse had begun when M3 was eight years of age. In 1984, when she was fifteen, M3 made a complaint that the younger of her two brothers had also been sexually abusing her, in his case commencing when she was 12.

8.191 No report was made to Police by DCS, notwithstanding the fact that M3's father, a police officer, had informed DCS workers that his younger son also a serving police officer, had admitted to him that he had committed the assaults.¹⁶⁷³ As a result no-one interviewed or charged the son. DCS was informed by the father that the younger son was receiving counselling from a priest.¹⁶⁷⁴

8.192 DCS placed M3 with a foster parent pursuant to an agreement with the family. The father became agitated with DCS at the length of time the child was in foster care, to the point where DCS threatened to obtain a court order should he oppose the continued placement of the child.¹⁶⁷⁵

8.193 Although DCS officers recognised the importance of notifying the Police of sexual assaults, M3 had stated quite categorically that she did not want to make a complaint. The DCS officers considered that this presented them with a dilemma,¹⁶⁷⁶ although neither as a matter of law or otherwise was the girl in a position to determine what their response should be.

¹⁶⁶⁷ DCS, Child Protection Assessment, File 24, RCPS Exhibit 3083C/23, at Doc. 2388642.

¹⁶⁶⁸ DCS, Report by DCS District Officer, File 24, RCPS Exhibit 3083C/23, at Doc. 2388645.

¹⁶⁶⁹ *ibid.*

¹⁶⁷⁰ DCS, File note made by Regional District Officer, File 24, RCPS Exhibit 3083C/23, at Doc. 2388655.

¹⁶⁷¹ DCS, Interview with child at risk and findings of initial allegations, File 24, RCPS Exhibit 3083C/23, at Doc. 2388648-49.

¹⁶⁷² DCS, File note made by Regional District Officer, File 24, RCPS Exhibit 3083C/23, at Doc. 2388654.

¹⁶⁷³ DCS, Child Protection File of M3, RCPS Exhibit 5920C, at Doc. 2618903.

¹⁶⁷⁴ *ibid.*

¹⁶⁷⁵ *ibid.*

¹⁶⁷⁶ M8, RCT, 26/2/1997, p. 36356.

8.194 As it happened, the younger son went on to work as a police officer in the child protection area without ever disclosing his misconduct, and without ever being interviewed or assessed in relation to it. As one DCS officer, who was involved in the matter, conceded, DCS could have notified the Police Service of the information with the caveat that the victim did not want to make any formal complaint. At the least, the Service could have been armed with relevant information to ensure (preferably) that it either did not employ the officer at all, or alternatively kept him away from the investigation of child sexual assault matters,¹⁶⁷⁷ for which he must be considered entirely unsuitable.

8.195 As the Royal Commission discovered, a number of complaints were subsequently made by the parents of children who had allegedly been sexually abused, that the officer in question had handled their matters inappropriately. Had the information known to DCS been passed to the Police Service, the investigations into these complaints, which were in the main unsustainable, may have produced a very different outcome.

8.196 As a result of the Royal Commission's investigations, the Service was notified of this matter, and the officer has now been removed from child protection work, and an investigation initiated.

8.197 A joint and co-ordinated approach would have avoided some of the problems experienced in this case; for instance:

- the father would not have had the same capacity to put pressure on DCS had there been a Police presence in the team as there is in a JIT;
- the Police Service would have received the information at the same time as DCS and the dilemma whether to notify them would have been removed;
- the child's wishes not to pursue the matter could have been accommodated, but with a proper and informed assessment of the issues involved; and
- the Police Service could have dealt with the employment issue at the relevant time, rather than thirteen years later.

ADDITIONAL FILES

8.198 Other files reviewed by the Royal Commission include many cases where it is apparent that:

- the cases were 'closed' because of lack of resources;¹⁶⁷⁸
- there was failure to notify the NSW Police Service of serious allegations of child sexual assault;¹⁶⁷⁹
- the children involved had not been interviewed, nor had proper medical examinations been arranged;¹⁶⁸⁰ and that
- the files were often in such a state that it was difficult to determine what had been done, a circumstance which might seriously affect their use for any subsequent notification.¹⁶⁸¹

¹⁶⁷⁷ M8, RCT, 26/2/1997, pp. 36358-59.

¹⁶⁷⁸ D. L. Semple, RCT, 5/9/96, p. 31632.

¹⁶⁷⁹ DCS, File 3, RCPS Exhibit 3083C/2; File 4, RCPS Exhibit 3083C/3; File 5, RCPS Exhibit 3083C/4, Doc; File 13, RCPS Exhibit 3083C/12; File 14, RCPS Exhibit 3083C/13; File 20, RCPS Exhibit 3083C/19.

¹⁶⁸⁰ DCS, File 8, RCPS Exhibit 3083C/7; File 25, RCPS Exhibit 3083C/24; File 32, RCPS Exhibit 3083C/31.

¹⁶⁸¹ DCS, File 23 RCPS Exhibit 3083C/22; File 25, RCPS Exhibit 3083C/24; File 28, RCPS Exhibit 3083C/27.

CONCLUSION

8.199 The conclusion to be drawn from these cases is that an originally traumatised child has been further traumatised by the system. In addition paedophiles have escaped proper investigation and/or prosecution. No amount of further research or review will rectify problems of this kind. What is required is a commitment by Government to fund a proper system, with appropriately trained staff, and with a high priority being placed on professional investigation and effective prosecution of child sexual assault matters.

8.200 A co-ordinated approach between departments must occur. The establishment of the CPEA and the JITs with clear guidelines, and the production of the interagency guidelines during 1997, give cause for some optimism in this regard. The departure of this Royal Commission, however, should not be followed by a return to complacency or to turf protection wars,¹⁶⁸² nor to any dilution of the present Police Service capacity to target paedophiles and child abusers. A mechanism is needed to monitor the system, and the performance of the key players, in a similar fashion to that which brought about the interagency guidelines and the implementation of the JIT program. This is addressed later in the report.

F. ALLEGATIONS AGAINST DCS EMPLOYEES

8.201 In 1996, DCS supplied the Royal Commission with a series of files, in respect of officers against whom allegations of child sexual assault had been made. Some of these files¹⁶⁸³ were in a similar condition of disorder to other files seen by the Royal Commission, in that it was very difficult to discern what action may have been taken, and when. However, it was clear that, in a number of the cases, employees were permitted to leave the department, in exchange for an agreement that disciplinary proceedings would be dropped.¹⁶⁸⁴ Police action did not follow in these cases.

¹⁶⁸² The Director-General of DCS admits that she has seen examples of 'turf protection', that is, situations where a department inappropriately attempts to retain control of functions that might otherwise become the responsibility of another department. H. M. Bauer, RCT, 7/3/97, p. 36885. F. Grunseit, NSW Child Advocate, states that 'turf protection' is a complex problem, caused by the different approaches and philosophies of the departments involved. '...the whole police system is regarded with suspicion by welfare and the whole welfare is regarded with some suspicion by the police system. I mean - and the health system regards them all with suspicion because they're different philosophies, and doctors still do think largely - or many still think that this is not a medical problem, but it's a social problem and so on'; F. Grunseit, RCT, 19/2/97, p. 35904. See also, K. G. Boston, RCT, 18/2/97, pp. 35872-4; M. A. Reid, RCT, 6/3/97, pp. 36767-9; J. M. Hennessy, RCT, 26/2/97, pp. 36423-5.

¹⁶⁸³ See DCS, Profile of files sent to RCPS, RCPS Exhibit 3080C.

¹⁶⁸⁴ eg. Following an investigation into allegations that a DCS employee was involved in an improper sexual relationship with one of the residents of the unit which he managed, the Assistant Regional Director stated 'In view of (Employee 1's) resignation it is recommended that no further action be taken in this case. If, however, he attempts to withdraw his resignation, in view of the information gathered in the statements ... it is strongly recommended that appropriate action follow to terminate the services of the employee. See DCS, Industrial Relations File of Employee 1, RCPS Exhibit 3163C/1, at Doc. 2687630. Another DCS employee, the subject of child sexual abuse allegations, agreed to resign from DCS on the condition that disciplinary charges were withdrawn, all monies withheld as a result of his suspension were repaid, a statement of service was provided, and all papers relating to criminal and disciplinary charges were removed from his files. The file indicates that DCS agreed to these requests. See DCS, Industrial Relations File of Employee 2, RCPS Exhibit 3163C/3, at Doc. 2409533-35. A third case involves an employee who was accused of improper sexual behaviour towards a State ward (Employee 3 had also applied to foster the child in question) and breaches of the code of conduct. The Director-General agreed to recommendations that Employee 3's resignation be accepted and his file marked 'not to be re-employed'. See DCS, Industrial Relations File of Employee 3, RCPS Exhibit 3163C/5, at Doc. 2409231. However, the personnel file provided to RCPS by DCS does not contain this endorsement, and the Notice of Resignation has a comment by the Officer-in-Charge which states that Employee 3 'is leaving to go into business'. DCS, 'P' File of Employee 3, RCPS Exhibit 3163C/6, at Doc. 2743531.

8.202 Such a process can allow an officer to leave with an apparent unblemished record, when the reality is that he or she presents an unacceptable risk to children. This problem is not isolated to DCS and it has been highlighted in other government departments, and in non-government organisations, particularly churches and private schools.¹⁶⁸⁵

8.203 The problems identified in relation to the Department of School Education,¹⁶⁸⁶ where teachers who were the subject of allegations of sexual misconduct with students received certificates of service without mention of these matters, was also replicated in DCS. Officers, who were the subject of allegations of sexual misconduct with children under their care, were permitted to resign, for reasons cited as 'personal',¹⁶⁸⁷ or 'going into business',¹⁶⁸⁸ or 'health'.¹⁶⁸⁹ In Case Study 1, DC11 an employee of an agency funded by DCS, was provided with a very positive reference by a DCS officer, and a reference, by a superior from the funded agency, which referred to a medical problem as his reason for departure, at times when it was known that serious allegations had been made in relation to him which had not been appropriately investigated.

CASE STUDY 8

8.204 DZ, a single man living alone, worked with DCS as a child welfare officer from 1968 until 1990. He was the subject of a series of complaints between 1983 and 1989, which alleged that he had allowed a 14 year-old female client of the department, a 15 year-old female client, and a 14 year-old male client at separate times, to stay alone with him, in his home overnight;¹⁶⁹⁰ and that he had taken adolescent clients of the department to the 'drive-in'.¹⁶⁹¹

8.205 DZ was interviewed by superior officers during 1984. One officer noted that DZ's 'own personal needs are being more substantially met by his involvement with young people than the professional ability to meet their needs for their own sake'.¹⁶⁹² Another officer noted that he should be taken off the type of work that he was doing with the adolescents, and that although he seemed to have a 'genuine concern ... his involvement is quite unreal'.¹⁶⁹³ Yet another report noted his acknowledgment that he had acted 'unwisely' and had become far too involved. On DZ's undertaking to change the telephone number which he had provided to the children, the matter was 'regarded as closed' without any further action.¹⁶⁹⁴

8.206 The complaints to this point had been confined to possibly inappropriate or unprofessional conduct, going beyond the boundaries of an acceptable relationship with DCS clients. However, in May 1984, the Public Service Board of NSW received an anonymous letter suggesting that DZ's activity be looked at very closely. It alleged that he had been showing signs of aggression and violence towards the complainant's daughter, and was having a sexual relationship with another girl aged 14 years who had received money from him.¹⁶⁹⁵

8.207 The Public Service Board referred the letter immediately to the Director-General. On 17 December 1984, it requested advice from DCS as to whether the complaint had been investigated. On 18 February 1985, in absence of a response, the Board wrote again to the Director-General. The copy of that letter on the DCS file bears a note that the 'papers' could not be located, but that it needed 'follow-up'.¹⁶⁹⁶

¹⁶⁸⁵ See Chapter 10 of this Volume and Volume V, Chapter 11.

¹⁶⁸⁶ See Chapter 10 of this Volume.

¹⁶⁸⁷ DCS, Cessation of Duty Notice, 'P' File of Employee 4, RCPS Exhibit 3163C/7, at Doc. 2743557.

¹⁶⁸⁸ DCS, Notice of Resignation, 'P' File of Employee 3, RCPS Exhibit 3163C/6, at Doc. 2743531.

¹⁶⁸⁹ DCS, Cessation of Duty Notice, 'P' File of Employee 1, RCPS Exhibit 3163C/2, at Doc. 2743538.

¹⁶⁹⁰ DCS, Conduct and Services Report, 'P' File of DZ, 13/3/84, RCPS Exhibit 3091C/1, at Doc. 2730789-91.

¹⁶⁹¹ DCS, Report regarding 14 year-old male client, 'P' File of DZ, 26/1/84, RCPS Exhibit 3091C/1, at Doc. 2730785.

¹⁶⁹² DCS, Conduct and Services Report, 'P' File of DZ, 13/3/84, RCPS Exhibit 3091C/1, at Doc. 2730790.

¹⁶⁹³ DCS, 'P' File of DZ, 30/3/84, RCPS Exhibit 3091C/1, at Doc. 2730794.

¹⁶⁹⁴ DCS, 'P' File of DZ, 3/4/84, RCPS Exhibit 3091C/1, at Doc. 2730795.

¹⁶⁹⁵ Letter from 'Concerned Father', 2/5/84, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730796.

¹⁶⁹⁶ Annotation on letter from Public Service Board to DCS, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730799.

8.208 On 13 May 1985, the Director-General advised the Public Service Board that the anonymous complaint had been 'investigated', and that whilst DZ 'may have acted unprofessionally, the allegations contained in the anonymous complaint appear to be without substance. Accordingly the department does not propose to take the matter any further at this time'.¹⁶⁹⁷

8.209 In providing this advice, the Director-General had relied on a report from the district office which concluded that 'in view of the amount of time that has elapsed since the receipt of the original complaint, and the positive steps that have been taken to ensure that this situation is not repeated, it is recommended that no further action be taken at this time'.¹⁶⁹⁸ It is not clear whether any investigations were made at all in relation to the fresh complaint. No record of any interview with the girl or with DZ concerning this matter appears on the file.¹⁶⁹⁹ DZ claimed he was suffering from stress and was offered alternative employment in September 1985, but at his request was allowed to remain on field duties.¹⁷⁰⁰

8.210 In July 1988, a further allegation was received that DZ had cuddled and kissed a 14 year-old female client, and had provided her with his private telephone number.¹⁷⁰¹ When interviewed about this, he denied that he had attempted to cuddle or kiss the client. Rather, he said, he had put his arm around her as a 'protective gesture' due to the presence of some 'tough looking male youths'.¹⁷⁰² He admitted that he had to lean close to her, but said that it was to whisper encouragement to her. He also promoted a theory that the allegation had been motivated by the 14 year-old girl's desire to be supervised by another male DCS officer.

8.211 Although the manager discussed with DZ the 'dangers' of that type of physical contact, it was recorded that he had denied the allegations and that there was 'no corroborating evidence'. It was concluded that the matter should be referred for 'notation' without 'any further action'.¹⁷⁰³

8.212 Six months later, a further allegation was made, this time by a 13 year-old female client, that DZ had taken her to his home, and offered her \$50.00 to sleep with him.¹⁷⁰⁴ Arising out of this allegation, a charge for a breach of discipline was preferred. It was found proved and an order was made that DZ's salary be reduced.¹⁷⁰⁵ DZ then appealed to GREAT. In November 1989, the department formed the view, on advice, that the disciplinary action had been flawed, in that DZ had been inappropriately interviewed and had not been given the opportunity to be heard, either on the finding of breach or on penalty. By agreement, the finding and penalty were set aside.¹⁷⁰⁶

8.213 DZ indicated that he would accept a placement at a regional office, for a period of time, to enable him to pursue a medical discharge. After a series of interviews, and medical assessments, DZ was approved for medical retirement in September 1990.¹⁷⁰⁷

8.214 In response to the notification of his medical discharge, DZ wrote to DCS advising that that procedure had been grossly prejudicial and unfair, and asking that all record of the matter now be removed from his file. He added:

I hope to eventually be able to give some time either voluntary or part-time to some of the many agencies where I am known and respected. I would therefore appreciate your writing me an "official" reference to assist me in the future.¹⁷⁰⁸

¹⁶⁹⁷ DCS, Letter to Public Service Board, 13/5/85, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730803.

¹⁶⁹⁸ DCS, Report from District Office regarding anonymous complaint, 29/4/85, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730805.

¹⁶⁹⁹ DCS, 'P' File of DZ, RCPS Exhibit 3091C/1.

¹⁷⁰⁰ DCS, Report by District Manager regarding DZ's sick leave, 4/9/95, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730806.

¹⁷⁰¹ DCS, Report regarding 14 year-old female client, 22/7/88, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730808.

¹⁷⁰² DCS, Report by DZ, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730809.

¹⁷⁰³ DCS, Annotation to Report by DZ, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730810.

¹⁷⁰⁴ DCS, Report by DZ, 18/1/88, Industrial Relations File of DZ, RCPS Exhibit 3091C/2, at Doc. 2409524-26.

¹⁷⁰⁵ DZ was found to have committed a breach of discipline within the meaning of the *Public Sector Management Act 1988*, s. 66(f). DCS, Notice of Decision or Determination, 24/7/89, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730837. Punishment was by way of salary reduction, as per the provisions of the *Public Sector Management Act 1988*, s. 75 (2)(d).

¹⁷⁰⁶ Crown Solicitor, Advice regarding DZ and DCS, 28/10/89, Industrial Relations File of DZ, RCPS Exhibit 3091C/2, at Doc. 24091413-19.

¹⁷⁰⁷ DCS, Report of Acting Regional Director, 24/9/90, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730868-69.

¹⁷⁰⁸ DZ, Letter to Acting Regional Director, DCS, 12/11/90, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730871-73.

8.215 In response to this letter, the regional director wrote to DZ informing him that all the papers relating to the disciplinary action had been removed from his personal file and destroyed. In relation to the request for a reference, he was advised that it was against policy for personal references to be given on departmental letterhead but in lieu he was provided with a certificate of service¹⁷⁰⁹ which noted 'reason for cessation: medical retirement'.¹⁷¹⁰

8.216 In addition to this certificate, the regional director suggested that DZ approach his previous supervisor for a personal reference but DZ did not do so.¹⁷¹¹

8.217 Irrespective of the ultimate truth of the complaints made in relation to DZ, this case study gives real cause for concern as to:

- the depth and appropriateness of the various investigations made;
- the apparent ineptitude of the relevant officers in the attempted disciplinary action which saw it fail, on legal grounds;
- the manner in which the case was ultimately resolved, in a way that might allow the officer to continue to work with children, without any record on his file; and
- the absence of any reference by DCS to police of this case even though it involved potentially serious allegations, so that it was not until 1995 that the Police Service became aware of any allegation concerning D2 (when one of the girls made a complaint directly to it).¹⁷¹²

CASE STUDY 9

8.218 The Royal Commission called evidence in relation to a DCS employee, T7, who had been employed by it as a clerk with access to sensitive child protection files.¹⁷¹³ He was a regular traveller to the Philippines and Thailand where he made a practice of photographing naked boys. He offered these photographs for sale. His sale material, and letters to clients, included statements that he could supply 'darlings 13 and 14 years'.¹⁷¹⁴ He denied that the photographs were actually of boys of this age, as he was 'dressing down' older boys to accommodate the wishes of clients.¹⁷¹⁵ He acknowledged that he had grossed thousands of dollars from this business¹⁷¹⁶ but claimed that it had never occurred to him that some of his clients might be active paedophiles.¹⁷¹⁷ Disturbingly, police had become aware of his activities during Operation Colo, but had not warned DCS that he presented a potential problem.

8.219 T7 admitted to the Royal Commission that he had removed a photograph of a State ward from one of the child protection files¹⁷¹⁸ and had then sought out and photographed that client naked shortly after his eighteenth birthday.¹⁷¹⁹

¹⁷⁰⁹ DCS, Letter from Regional Director to DZ, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730875.

¹⁷¹⁰ DCS, Certificate of Service, 14/12/90, 'P' File of DZ, RCPS Exhibit 3091C/1, at Doc. 2730877.

¹⁷¹¹ RCPS, Record of Interview with DZ, 3/7/97, RCPS Exhibit 3091C/3, pp. 37-42.

¹⁷¹² The complaint was made on 18/9/95. No charges have been brought against DZ on the grounds that there was no corroboration for the girl's version of events and DZ had denied the allegation. NSW Police Service, Event Report, 28/12/95, RCPS Exhibit 3092C, at Doc. 2730972-73.

¹⁷¹³ T7, RCT, 25/3/96, pp. 22402-03.

¹⁷¹⁴ T7, RCT, 25/3/96, pp. 22407-08.

¹⁷¹⁵ T7, RCT, 25/3/96, p. 22408.

¹⁷¹⁶ T7, RCT, 25/3/96, p. 22438.

¹⁷¹⁷ T7, RCT, 25/3/96, pp. 22440-41.

¹⁷¹⁸ T7, RCT, 25/3/96, pp. 22449-50; Photograph of State ward, RCPS Exhibit 1590C.

¹⁷¹⁹ T7, RCT, 25/3/96, pp. 22454-61.

8.220 The former State ward complained to DCS when T7 refused to hand over the photographs to him. A disciplinary interview was held with T7, who denied the allegations. After the interview a decision was made not to proceed with any disciplinary action. He requested that all documents relating to the matter be removed from his file.¹⁷²⁰ He was thereafter allowed to remain in his employment with a transfer to another location.¹⁷²¹ In his evidence to the Royal Commission, T7 agreed that he lied in the DCS interview, and had untruthfully suggested that the former State ward was the liar rather than himself.¹⁷²²

8.221 Yet again, this case demonstrates the problem with internal inquiries, a matter which is understandable when it is appreciated that DCS staff are not suitably trained or qualified to conduct inquiries requiring policing or specialist investigative skills and powers.

G. TRAINING AND SUPERVISION

8.222 Concern persists as to the lack of appropriate support through training and supervision of DCS officers. District Officers may be in the field for up to 12 months before they receive anything beyond their entry training,¹⁷²³ yet during that time they are expected to deal with complex allegations of sexual assault.

8.223 The CPC Systems Abuse Report in 1994 revealed that District Officers were very conscious of their need for training, particularly in relation to:

- investigations involving very young children;
- problems of witness contamination; and
- their own performance as witnesses.¹⁷²⁴

8.224 The community has now paid for numerous reports which underline the need for proper training but it still does not happen. Money has been spent on projects to develop a better system, for example the ICARE pilot program,¹⁷²⁵ but the DCS officers (and police) involved received little training, and some of those who did receive training specifically for it did not go on to participate in the program.¹⁷²⁶ The lack of appropriate support¹⁷²⁷ for DCS officers working in child protection also continues.

8.225 On 10 July 1997, DCS officers imposed work bans to 'draw attention to their low morale, high stress levels and inadequate funding'.¹⁷²⁸ The Public Service Association (PSA) issued a press release which claimed there had been a dramatic increase in notifications during this Royal Commission yet suggested that no effective system had been implemented to manage the 'enormous workload'. It claimed with:

escalating notifications and the formulation of new policies there are now further expectations placed on staff who are already unable to cope. Low employee morale and high staff turnover continue to wrack the Department.¹⁷²⁹

It went on to suggest that field workers were on 'the verge of collapse'.

¹⁷²⁰ Letters regarding removal of documents from T7's file, RCPS Exhibit 1591C; T7, RCT, 25/3/96, pp. 22469-70.

¹⁷²¹ T7, RCT, 25/3/96, p. 22467. T7 is no longer employed with DCS; NSW Police Service, Operational Briefing Note, 2/5/97, RCPS Exhibit 3207C.

¹⁷²² T7, RCT, 25/3/96, pp. 22460-62.

¹⁷²³ J. Cashmore, R. Dolby & D. Brennan, *Systems Abuse: Problems and Solutions*, CPC, February 1994, RCPS Exhibit 2356/2, p. 51.

¹⁷²⁴ *ibid.*

¹⁷²⁵ See Chapter 6 of this Volume.

¹⁷²⁶ ICARE, Interviewing Children and Recording Evidence Pilot Program, *Evaluation Report to the ICARE Working Party*, March 1993, RCPS Exhibit 3165, p. 4. See Volume V, Chapter 13 of this Report.

¹⁷²⁷ Training, supervision and manageable case loads.

¹⁷²⁸ 'Crisis workers strike as morale hits rock bottom', *Sydney Morning Herald*, 11/7/97, p. 3, RCPS Exhibit 3104.

¹⁷²⁹ Public Service Association, Community Services Centres closed (Thursday 10/7/97), Media Release, RCPS Exhibit 3162.

8.226 It has been a difficult time for DCS staff. There have been three Directors-General¹⁷³⁰ in the last ten months and since February 1997, when Ms Bauer was appointed, there have been further changes in structure¹⁷³¹ and in senior management. There has been an endorsement and implementation of the joint investigation of child sexual assault cases, and the introduction of new interagency guidelines, all of which have to be assimilated and carried into practice.

8.227 Although this change affects other agencies, it is perhaps most intense in DCS, not least because of the difficulties in operating in what appears to the Royal Commission to be a dysfunctional environment, whilst trying to treat dysfunctional families in which child sexual abuse is occurring.

8.228 If the system is to be converted into one which is tolerably efficient and professional, it is essential to recognise that without training of the professional front-line staff further trauma will be occasioned to abused children and staff morale will remain at a low ebb. The nature of child sexual assault cases is such that staff are working in an environment of emotional trauma and stress. When an officer is not trained, or supported with appropriate supervision, and has more cases than he or she can physically handle, the strain must be almost intolerable.

8.229 The Commission is of the view that the combination of case overload and lack of training is a significant factor in DCS's lack of ability to attract additional staff to the positions that have been allocated. This must be urgently addressed and the several reports underlining the importance of training and supervision listened to, rather than ignored.

8.230 Although it may be expensive to provide proper training, it is far more expensive to the community for a government organisation to become dysfunctional, with a consequent cost of failed prosecutions and systems abuse to children and families who are involved in the process.

8.231 The New Zealand system of training its police and equivalent DCS officers in the New Zealand Children and Young Persons Service (NZCYPS) is an enlightening example. Apart from providing practical guidelines¹⁷³² two multi-disciplinary courses are conducted, comprising:

- the Child Abuse Interviewers Course;¹⁷³³ and
- the Child Abuse Investigation Course.¹⁷³⁴

The courses include lectures from a variety of professionals in health, legal, social work, and police disciplines, with role play sessions so essential for gaining confidence and appropriate guidance.

8.232 The Commission sees merit, additionally, in the establishment of a mentor system so that more experienced and trained staff can work in tandem with new staff or staff newly assigned, for example, to child protection work. The mentor system should be set up in consultation with the Children's Commission and monitored closely.

8.233 The current Director-General, Ms Bauer, in her submission of 23 April 1997 informed the Royal Commission that 'random compliance audits' were to be instituted, the first to occur in May 1997, to assist the senior executive to manage training in child protection work in a proper manner.¹⁷³⁵

¹⁷³⁰ Mr D. Semple until September 1996; Mr Sherlock from September 1996 to February 1997 (as Acting Director-General); and Ms H. M. Bauer from February 1997.

¹⁷³¹ In line with the Functional Structure. See Volume VI, Appendix P13.

¹⁷³² W. H. M. Burgering, Reacting to a 'Discovered' Social Problem through Organisational Adaption: Case Studies of Child Sexual Abuse Investigation of Seven New Zealand Police Districts', 1994 PhD Thesis University of Auckland, RCPS Exhibit 3051/1, at Doc. 2490376-439.

¹⁷³³ New Zealand Police, Child Abuse Interviewer's Course, RCPS Exhibit 3191/1. The course topics include: sexual offences, other offences, the videotape regulations, what is child abuse, family dynamics surrounding abuse, communicating with children and child development, dealing with adverse reaction to the child interview, child development, physical training, the Judicial system, being a witness, mock court, interview children with special needs, stress management, sex offenders, statement taking and the evidential interview, medical examination, and interviewing children of other cultures.

¹⁷³⁴ New Zealand Police, Child Abuse Investigation Course, RCPS Exhibit 3191/2. The course topics include: the joint approach, current law and regulation, basic child interviews, physical abuse, medical examination, communication skills, dealing with victims, the offer, paedophilia/child pornography, ethnic perspective, stress/staff welfare.

¹⁷³⁵ H. M. Bauer, Director-General DCS, Submission to RCPS, 23/4/97, RCPS Exhibit 3151, p. 10.

The Commission has no concern with internal audits of this kind so long as their purpose is to improve performance and not punish staff for errors attributable to system deficiencies, or to lack of preparation for the job.

8.234 Ms Bauer advised the Royal Commission that some work had occurred in this area since 1 January 1997. The range of formal courses, said to be 'building upon initial training', includes:

- a course entitled 'child sexual assault', although only one District Officer and one assistant manager have been given such training in the last six months;¹⁷³⁶
- for JIT staff, a two week program followed by one week on-site orientation; and
- a training package on Joint Investigation Interviewing which was piloted in June 1997.

8.235 The Commission considers it appropriate that:

- the Centre for Child Protection of the Children's Commission¹⁷³⁷ which it proposes, be funded so that it can assist all agencies with planning and implementing entry and ongoing staff training, in the management of child sexual assault cases;
- the DCS develop an appropriate resource library in consultation with the Children's Commission;
- all DCS staff be trained in child sexual assault matters including abuse preventative matters in a multi-disciplinary setting along the lines of the New Zealand model;¹⁷³⁸
- the DCS implement a mandatory continuing Child Protection Education (CPE) program for all of its child protection workers, in consultation with the Children's Commission, such program to be based on a minimum number of CPE points per year to be achieved by attendance at appropriate courses; and that
- the CPE program be reviewed annually in consultation with the Children's Commission.

8.236 Another problem, which needs to be addressed in training, as identified in the reviews and inquiries outlined earlier, has been the lack of standard or proper practice in record-keeping. It is imperative that careful and accurate records are kept and that a follow-up system is introduced, particularly having regard to the need for the exchange of information with the other agencies involved and its use for disciplinary or court proceedings.

8.237 The Commission considers it important that:

- guidelines be prepared in consultation with Health, the Police Service, and the Children's Commission, to standardise record keeping in this area;
- all DCS staff be trained in record keeping; and that
- DCS institute a system for audit and monitoring of its files to ensure that they are properly kept and suitably followed up.

¹⁷³⁶ DCS, Child and Family Services (Other) Training Courses (1 Jan 97 - 26 Jun 97), RCPS Exhibit 3192, at Doc. 2569936.

¹⁷³⁷ The structure of which is detailed in Volume V, Chapter 20 of this Report.

¹⁷³⁸ See Volume V, Chapter 15 of this Report. The Royal Commission is recommending the videotaping of children's evidence in stages with audiotaping of all interviews. Staff must be acclimatised to the use of the tape as a natural part of their professional duties.

H. SCREENING AND MONITORING

8.238 Deficiencies have been identified in the screening and monitoring processes adopted by DCS in relation to its own officers, potential foster parents and workers in funded facilities.

8.239 These deficiencies have gone unchecked for a variety of reasons but now need to be addressed. A recent joint report of the Auditor General and the Commissioner for Community Services¹⁷³⁹ highlighted the deficiencies in the monitoring procedures and in the training of staff working in those facilities. Although this audit dealt with matters outside the focus of this Royal Commission¹⁷⁴⁰ its findings were similar.

8.240 It must be recognised that a career with DCS, fostering, voluntary work with children and youth work are all attractive options to a paedophile as they enable access to children in a justified setting. It is extremely important that careful screening is carried out at the time a person seeks entry into this field of activity. At the same time it needs to be understood that as there is no typical profile for a paedophile, nor any reliable screening process based on psychological testing or interview (since no paedophile is likely to disclose his deviant behaviour), there can be no certainty of identifying a potential offender at this point. Moreover, the committed paedophile is prepared to overcome most barriers to achieve his ends. It follows that there needs to be a system for monitoring and recording all complaints against employees, as well as the provision of appropriate advice to a prospective employee, and staff education, to discourage the recruitment and continued service of any paedophile.

8.241 A precedent exists in relation to the gaming industry, where, by law, prospective employees are required to provide a good deal of personal information to the Casino Control Authority, and consent to background checks, before receiving the licence required for casino employment.¹⁷⁴¹ The disclosure requirement there involved is more intrusive than that required in the present context. However, the Commission considers that there should be provision for some pre-employment vetting of applicants for DCS employment.

8.242 It would be desirable for the DCS to:

- require the following minimum information, and consents, from applicants for positions:
 - personal details including details of any allegations that have been made against the applicant involving improper or inappropriate sexual conduct towards or with children;
 - full employment history;
 - details of education qualifications and training;
 - history when not employed;
 - details of recreational interests;
 - references including one from the applicant's current supervisor or manager;
 - a declaration of good character and confirmation of the truth of the contents of the application, together with a consent for a criminal history check, if the applicant is recommended for the position;

¹⁷³⁹ The Audit Office of NSW and Community Services Commission (CSC), *Performance Audit Report: Large Residential Centres for People with a Disability in NSW*, June 1997, RCPS Exhibit 3193/1.

¹⁷⁴⁰ The brief was to find out whether the policies and procedures of the large residential centres adequately protected the human and legal rights, safety and dignity of residents. See The Audit Office and CSC, *Performance Audit Report: Large Residential Centres for People with a Disability in NSW*, June 1997, RCPS Exhibit 3193/1, p. ii.

¹⁷⁴¹ *Casino Control Act 1992*, especially ss. 43-49 and 157.

- inform applicants that DCS is likely to seek information from previous employers, and to make an assessment as to whether the applicant is a suitable person to work with children;¹⁷⁴² and to
- inform applicants that the spent conviction provisions of the *Criminal Records Act 1991*;¹⁷⁴³ do not apply to convictions for sexual offences and that the department intends to communicate with the Children's Commission concerning the applicant before offering any employment.

8.243 Once the department has made appropriate inquiries of previous employers and made a criminal records check, the application should then be referred to the Employment Information Centre of the proposed Children's Commission, before the position is offered, in accordance with the procedures outlined in Volume V, Chapter 20 of this Report.

8.244 In the case of foster carers, or other persons in whose care children might be placed, it would be appropriate for DCS to be required to make similar checks, and to report to the Children's Court, before any order was made passing a child into the care or custody of such a person.

I. DISCIPLINARY INQUIRIES BY DCS

EXISTING DISCIPLINARY STRUCTURE

8.245 The *Public Sector Management Act 1988* governs the disciplinary process in respect of DCS employees. The Act defines a breach of discipline¹⁷⁴⁴ as including 'misconduct' and 'disgraceful or improper conduct'.¹⁷⁴⁵ There is no definition of misconduct or disgraceful or improper conduct, however any involvement by a DCS officer in the sexual abuse of a child, or in inappropriate sexual conduct with or towards a child would certainly fall within these categories.¹⁷⁴⁶

8.246 If it appears to the departmental head¹⁷⁴⁷ that the officer has committed a breach of discipline he or she may be charged. If that occurs, the Director-General (the DG) must institute a preliminary inquiry into the matter.¹⁷⁴⁸ A preliminary inquiry can also occur without a charge.

8.247 No formal hearing is conducted at the preliminary inquiry stage but the officer must be given the opportunity to make written or oral representations concerning the matter under inquiry.¹⁷⁴⁹ At the conclusion of the preliminary inquiry a report is prepared with recommendations as to whether the charge should be dismissed, or no charge made (as the case requires), or the inquiry should proceed and the officer be dealt with for breach of discipline.¹⁷⁵⁰

8.248 If the matter proceeds to a disciplinary inquiry, the officer must be notified in writing of the charge and particulars, and be provided with a copy of the preliminary report. The officer is then called upon to deny or admit the truth of the alleged breach of discipline, and given the opportunity to show cause, in writing, why he or she should not be punished for the breach.¹⁷⁵¹

¹⁷⁴² CSC, *Who Cares? protecting people in residential care: report on the recruitment, screening and appointment practices of the Department of Community Services, the Department of Juvenile Justice and Non-Government Services funded or approved through the Department of Community Services, the Department of Juvenile Justice and the Ageing and Disability Department*, Community Services Commission, Surry Hills, 1996, RCPS Exhibit 3194, pp. 45 & 53.

¹⁷⁴³ *ibid*, p. 45.

¹⁷⁴⁴ *Public Sector Management Act 1988*, ss. 65a & 66.

¹⁷⁴⁵ *Public Sector Management Act 1988*, s. 66b.

¹⁷⁴⁶ *Allinson v General Medical Council*, [1984] 1 QB 750; *Qidwai v Brown*, [1984] 1 NSWLR 100.

¹⁷⁴⁷ Or senior officer in the branch or section in which the DCS officer works.

¹⁷⁴⁸ *Public Sector Management (General) Regulation 1988*, cl. 20(1). The Department Head may institute a preliminary inquiry irrespective of whether the officer has been charged.

¹⁷⁴⁹ *Public Sector Management (General) Regulation 1988*, cl. 22(3) & 22(4).

¹⁷⁵⁰ *Public Sector Management (General) Regulation 1988*, cl. 23(3).

¹⁷⁵¹ *Public Sector Management (General) Regulation 1988*, cl. 24.

8.249 In determining whether an officer has committed a breach of discipline the DG may only take into account matters disclosed in the interview with the officer, the report of any preliminary inquiry or other inquiry instituted by the DG as a result of any interview with the officer, and any reply made by the officer to the charge.¹⁷⁵² However, the DG may take into consideration any matter of which a court is entitled to take judicial notice.¹⁷⁵³

8.250 If the DG finds that the officer has committed a breach of discipline, then the sanctions available include a caution, a reprimand, a fine, a reduction in salary or demotion to a lower position, or a combination thereof.¹⁷⁵⁴ Alternatively the DG may decide to dismiss the officer from the Public Service, direct the officer to resign, or allow resignation within a specified period.¹⁷⁵⁵

8.251 The officer can appeal to the Government and Related Employees Tribunal (GREAT)¹⁷⁵⁶ against the DG's decisions and from GREAT to the Supreme Court, but in the latter instance only on a question of law.¹⁷⁵⁷ An appeal against dismissal or threatened dismissal also lies to the Industrial Relations Commission (IRC).

Recording of Complaint

8.252 If the charge is substantiated, then the record may be kept and the employee's file endorsed accordingly. However, if the officer is found not to have committed a breach of discipline, the charge or alleged breach of discipline must not be recorded in any record maintained in relation to the officer by or for the department.¹⁷⁵⁸

8.253 This last mentioned requirement,¹⁷⁵⁹ was the subject of evidence,¹⁷⁶⁰ highlighting the problems which emerge where there is a later complaint made against the employee.

8.254 In the absence of any record of the earlier complaint, which may not have been established for many reasons other than its untruth, it is possible that identical patterns of conduct will be unknown and overlooked.

8.255 The existence of previous similar allegations, particularly if made by unrelated parties, may be of considerable importance in an employment setting where the employer has the responsibility to protect children from the risk of physical and sexual abuse.

8.256 The Commission is of the view that, provided the information about the outcome of the investigation is accurately recorded, and the employee has the opportunity to add his or her own statement, then it should be retained in full, although as part of a separate file.

8.257 Some other practical problems emerged in relation to internal investigations into complaints against DCS staff. They include the circumstances that:

- it is known that all departmental documents can be examined by the officer under inquiry,¹⁷⁶¹ which may dissuade other staff from reporting a matter affecting a colleague, particularly one in a more senior position;

¹⁷⁵² Public Sector Management (General) Regulation 1988, cl. 24(6).

¹⁷⁵³ Public Sector Management (General) Regulation 1988, cl. 24(7).

¹⁷⁵⁴ *Public Sector Management Act 1988*, s. 75(1). A reduction in salary or demotion is not applicable to a senior executive officer.

¹⁷⁵⁵ *Public Sector Management Act 1988*, s. 75(1)(d).

¹⁷⁵⁶ *Public Sector Management Act 1988*, ss. 75(5) & 75(6); *Government and Related Employees Tribunal Act 1980*, ss. 23-25.

¹⁷⁵⁷ *Government and Related Employees Appeal Tribunal Act 1980*, s. 54.

¹⁷⁵⁸ Public Sector Management (General) Regulation 1988, cl. 28.

¹⁷⁵⁹ Public Service Handbook, para. 16.6.9, states that 'Where a staff member is found *not* to have committed a breach of discipline, the charge and any associated records must not remain on the personal file or any other file and no other record is to be maintained concerning the charge. The charge and all associated records are to be destroyed'. Department of Industrial Relations, Employment, Training and Further Education, *Personnel Handbook - Part 1: Public Service of New South Wales*, Public Employment Office, RCPS Exhibit 3101.

¹⁷⁶⁰ K. J. Buttrum, RCT, 28/5/96, p. 26119. Letter from Premiers Department to Royal Commission, RCPS Exhibit 3263C.

¹⁷⁶¹ Public Sector Management (General) Regulation 1988, cl. 26(2).

- as with all internal complaints procedures, despite the *Protected Disclosures Act 1994* there is a natural reluctance to report a colleague, knowing that it may bring about the end of that person's career;
- DCS officers lack the investigative skills or powers needed to pursue complaints of sexual misconduct with or towards a child, not all of which may have led to a full police investigation; and that
- internal investigations can leave complainants and the community with an impression that they lacked impartiality.

8.258 In the light of these problems, and the need to ensure the protection of DCS clients, most of whom are already the victims of abuse, and hence particularly vulnerable, the Royal Commission considers that:

- all information relating to the investigation of an allegation against a DCS officer, where it involves possible sexual or physical abuse concerning a child, should be recorded and kept on a file in a secure place within the department. The DCS officer against whom the allegations are made should be informed of the allegation, unless there is cogent reason for deferring that notification¹⁷⁶² (such as an ongoing police or preliminary departmental investigation which might be compromised);
- the Public Sector Management (General) Regulation 28 should be amended to permit the retention of information concerning allegations of child sexual abuse, and any consequent investigation into those allegations, whether or not a charge is brought and substantiated;
- the DCS officer concerned should be entitled to have a statement in response to the matter placed on the file; and
- guidelines should be prepared in respect of access to and subsequent use of those files by the DCS, the Children's Commission, the Police Service, and any other permitted agency.

SUGGESTED MODIFICATION OF EXISTING DISCIPLINARY & DISMISSAL PROCEDURES

8.259 In considering measures to overcome the problems inherent in DCS investigating its own staff, the Royal Commission examined the processes adopted by other government departments and agencies, including those applicable to the Police Service, and to employers within the Department of School Education¹⁷⁶³ and Health.¹⁷⁶⁴

8.260 In the disciplinary setting, all other government departments, except NSW Health, investigate their own staff when allegations of sexual misconduct with or towards a child are made. Allegations against health workers are, however, investigated by the Health Care Complaints Commission (HCCC), an independent body constituted under the *Health Care Complaints Act 1993*.¹⁷⁶⁵

8.261 The HCCC model for the investigation and disciplinary prosecution of cases of alleged professional misconduct and unsatisfactory conduct has many advantages, including the impartiality it guarantees, but much of its effectiveness depends upon the registration of health workers.

8.262 The Commission is persuaded that, in the circumstances of the very diverse group involved in the care and supervision of children, the appropriate course is to establish a system under which:

¹⁷⁶² See paras. 8.262 - 8.263. This may involve questions of whether an investigation involving surveillance may be necessary.

¹⁷⁶³ These are governed by the *Teaching Services Act 1980* and the *Industrial Relations Act 1996* and are dealt with in Chapter 10 of this Volume.

¹⁷⁶⁴ These are governed by both the *Public Sector Management Act 1988* and the *Health Care Complaints Act 1993*.

¹⁷⁶⁵ See Chapter 9 of this Volume.

- allegations against a DCS employee of improper sexual conduct with or towards a child should be investigated by the Ombudsman followed by a report to the Director-General and the Children's Commissioner;
- based on this report, the Director-General should determine whether to initiate disciplinary proceedings, in accordance with the existing arrangements, that is, pursuant to the Public Sector Management Act; and
- the Children's Commission should have authority, either based upon the Ombudsman's report, or upon its own investigations, to issue a certificate stating that the employee in question poses an unacceptable risk to be employed in the care or supervision of children (as detailed in the final chapter of this Report).

8.263 The procedures the Commission favours would accordingly contain the following key elements:

- any complaint of such kind made by a DCS officer, or member of the public concerning a DCS employee, would be immediately notified to the Children's Commission and the Ombudsman, and also to the NSW Police Service if it involved possible criminal conduct;
- subject to liaison with the Police Service (and according any necessary priority to the police investigation) the Ombudsman would conduct the investigation pursuant to the powers conferred under its Act, and would formally report to the Director-General and Children's Commission upon completion of that investigation;
- the Ombudsman would keep the Director-General and the Children's Commission informed of the progress of the investigation;
- the Children's Commissioner would have power to monitor the investigation and to require DCS or any other employee to supply documents, and to answer questions concerning the matter;
- the Children's Commissioner would have power either during, or at the close of an investigation conducted by the Ombudsman, or at any other time, to call upon the DCS officer to show cause why a certificate should not be issued that such officer is an unacceptable risk to be employed in the care or supervision of children, and to issue a certificate accordingly after giving the officer the opportunity to be heard;
- answers given by a DCS officer in response to an exercise of the Children's Commissioner's coercive powers would not be capable of use in criminal proceedings but would be capable of use in disciplinary proceedings;
- if the Children's Commissioner certifies that the DCS officer is an unacceptable risk, notification of that certification would be given to the DCS officer, and to the Director-General, and also to the Ombudsman if it is conducting an investigation;
- the DCS officer would have a right of appeal in respect of any certificate issued by the Children's Commissioner that he or she is an unacceptable risk; and also a right to apply, subsequently, for cancellation of the certificate, from the refusal of which a similar right of appeal would lie.

8.264 The Commission considers that appropriately the avenue of appeal in relation to unacceptable risk certifications should be to the Administrative Decisions Tribunal, however if this were not to meet with favour, the appeal could lie to the Industrial Relations Commission.

8.265 The details of these proposals, which the Commission considers should also apply to the other departments, agencies and persons identified elsewhere in this Report, are set out more fully in the final chapter of this Report. They would call for:

- amendment of the *Ombudsman Act 1974* (in particular s. 12 and Schedule 1) to remove any uncertainty as to whether power exists under that Act for the Ombudsman to investigate allegations of possible misconduct concerning individual employees as an adjunct to possible disciplinary proceedings;
- enactment of legislation to create and suitably empower the Children's Commission and Commissioner, so that such office could fulfil functions outlined above and the further functions discussed in the final chapter of this Report; as well as
- consequential amendment of the *Public Sector Management Act 1988*, and the regulations made thereunder.

J. A SEPARATE DEPARTMENT FOR CHILDREN?

8.266 Although the various government agencies involved in the care and protection of children have promoted the concept of interagency co-operation in dealing with child sexual assault matters, the past track record has been poor. Pockets of co-operation¹⁷⁶⁶ exist but the Royal Commission could not find consistent and professional interagency co-operation in this area. This has affected the delivery of service in a very adverse way and has undoubtedly permitted paedophiles to continue their activities unchecked.

8.267 Two recent initiatives may overcome the problem:

- the development of the revised interagency guidelines; and
- the establishment in April 1997 of the Office of Children and Young People (OCYP) with responsibility to:
 - facilitate the co-ordination and forward planning of government policy, as it relates to children and young people;
 - provide specialist policy advice to the Premier on issues concerning children and young people;
 - act as a point of contact for organisations representative of children and young people;
 - gather, and exchange information relevant to the development of coordinated policies of government responsive to the needs of children and young people; and to
 - provide a secretariat function to the Premier's advisory bodies concerned with children and young people.¹⁷⁶⁷

8.268 The Director of the OCYP reports to the Director-General of The Cabinet Office through the Deputy Director-General.¹⁷⁶⁸

8.269 The intervention of the Premier and The Cabinet Office in convening the meetings which led to the production of the new interagency guidelines was very effective, and evidences the potential value of an office such as the OCYP. However, by itself it will not overcome the problems of DCS, nor does the Commission see it as having the capacity, authority or independence needed for effective oversight of the care and protection system for children.

¹⁷⁶⁶ eg. The Hunter Valley Area CSC Plan, RCPS Exhibit 2529C/161.

¹⁷⁶⁷ The Cabinet Office, Corporate Document: Office of Children and Young People - role statement, RCPS Exhibit 3124, at Doc. 2737559-60.

¹⁷⁶⁸ *ibid*, at Doc. 2737560.

DCS - A MULTI-FUNCTION DEPARTMENT

8.270 The clashes of culture between the police and DCS referred to earlier in this chapter are not unique to NSW. In the late 1980s when the joint response to child abuse was devised in the United Kingdom both the police and the social workers were extremely defensive.¹⁷⁶⁹ Not without some pain, compromise and re-adjustment, the conflict and barriers have dispersed and it is reported that the joint teams are working effectively for the same outcomes:

- the protection of the child; and
- when appropriate the prosecution of the offender.¹⁷⁷⁰

8.271 This is the outcome needed for NSW, but there are many obstacles still in the way.

8.272 Notwithstanding the very positive statements made by the new Director-General about plans for changing the DCS, the Royal Commission is concerned to note that each of the Directors-General since 1990 has presented positive plans for change yet little has occurred.

8.273 It is not insignificant that the Commission was assisted by a number of confidential informants with direct experience either working for, or in conjunction with, DCS who provided consistent accounts concerning:

- the restraints which have existed on discussing problems;
- the absence of any mechanism for the lodging of complaints without fear of retribution;¹⁷⁷¹
- the existence of a closed and defensive system;
- the lack of support through appropriate training and supervision; and
- the lack of appropriate mechanisms to share information within the department.

8.274 It is of concern to the Royal Commission that there should be fear engendered in people who are trying to improve the system, or concern as to the existence of a coterie of inner managers whose interest in the past has been to suppress all criticism and innovation. An open environment in which internal informants are protected according to law,¹⁷⁷² and in which staff are encouraged to discuss problems and to make suggestions for improvement is essential. The Draft Corporate Plan has a section inviting DCS staff to 'have your say about us',¹⁷⁷³ which is an appropriate approach so long as it is genuinely respected.

SEPARATION OF FUNCTIONS ?

8.275 The DCS portfolio is very diverse, and in some areas, conflicts can arise in terms of objective, priorities and consumer interests. The services it provides in relation to children include:

- the approval of child care services;¹⁷⁷⁴
- the licensing of residential child care centres;¹⁷⁷⁵
- the receipt of all notifications of suspected child neglect and child abuse;¹⁷⁷⁶

¹⁷⁶⁹ Victoria Parliament Crime Prevention Committee, *Combating Child Sexual Assault: An Integrated Model: First Report upon the Inquiry into Sexual Offences Against Children and Adults*, Government Printer, Melbourne, 1995, RCPS Exhibit 1757, p. 130.

¹⁷⁷⁰ *ibid.*, p. 133.

¹⁷⁷¹ See also 'Care is Best Practice for the Disabled', *Sydney Morning Herald*, 23/9/95.

¹⁷⁷² *The Protected Disclosures Act 1994*. An Act to provide protection for public officials disclosing corrupt conduct, maladministration and waste in the public sector; and for related purposes. (Assented to 12/12/94.)

¹⁷⁷³ DCS, Corporate Plan 1997-1998 (draft), 17/6/97, RCPS Exhibit 3148C, p. 8.

¹⁷⁷⁴ *Children (Care and Protection) Act 1987*, Part 3.

¹⁷⁷⁵ *Children (Care and Protection) Act 1987*, Part 3, division 2.

- home visits to families;¹⁷⁷⁷
- care proceedings;¹⁷⁷⁸
- foster approvals;¹⁷⁷⁹
- adoptions;¹⁷⁸⁰
- the operation of care facilities;¹⁷⁸¹ and
- the funding and supervision of government and non-government facilities providing care.¹⁷⁸²

Each needs to be addressed, but not at the expense of the remaining services for families, the aged and disadvantaged persons.

8.276 The Commission recognises that in its review of the performance of DCS, it has ventured into some matters of structure, management and the like, that have an impact on matters other than the protection of children. This has been unavoidable, because child protection work is performed subject to the same management regime as that applicable to the remaining brief of DCS. As foreshadowed, regard needs to be paid to those other activities and responsibilities. It would be inappropriate, for example, if the Commission were to recommend a structure or strategies that diverted all resources to the management or investigation of child sexual abuse, and left the remaining functions or duties neglected.

8.277 The Commission recognises the breadth of the role of DCS, its limited resources, the enormous physical and emotional burden placed upon its staff, and the potential conflicts which arise from its multi-function responsibilities.

8.278 It also recognises that within its terms of reference it has no brief to consider a restructure or dismantling of DCS as an organisation, let alone the capacity or expertise to embark upon such a task.

8.279 A much wider inquiry, calling upon experts and witnesses with specific knowledge in relation to DCS functions other than those concerned with the protection of children at risk of sexual abuse, would be required for such a review. Additionally, there would need to be an informed study of its organisational and management structure, its financial operations and its overall efficiency, as well as a comparative study of the benefits and disadvantages in the delivery of those services elsewhere, before any considered advice could be given or recommendations made in that regard.

8.280 Within these limitations, the Commission has given consideration to the question whether it should recommend examination by the government of the establishment of a separate Department for Children. Three options present themselves for consideration:

- Option 1 - the removal of all child protection work from DCS and the creation of an independent Child Protection Agency;
- Option 2 - the creation of a Child Protection Agency within the infrastructure of NSW Health and the transfer of relevant DCS functions to it; and
- Option 3 - the creation of a separate Children's Division within DCS to guarantee a separate commitment to child protection work, and an enhanced capacity to deal with it.

¹⁷⁷⁶ *Children (Care and Protection) Act 1987*, s. 22.

¹⁷⁷⁷ DCS, Review of Intake to the Child Protection Program (draft), RCPS Exhibit 5916C, at Doc. 2637390.

¹⁷⁷⁸ *Children (Care and Protection) Act 1987*, Part 5.

¹⁷⁷⁹ *Children (Care and Protection) Act 1987*, Part 3, divisions 3 & 4.

¹⁷⁸⁰ NSW Department of Community Services, Ageing & Disability Department and Department of Juvenile Justice, Joint submission to RCPS, RCPS Exhibit 2540, pp. 2-3; *Adoption of Children Act 1965*.

¹⁷⁸¹ DCS, *Annual Report 1995-1996*, pp. 15-16.

¹⁷⁸² D. L. Semple, RCT, 28/5/96, p. 26055; DCS, Chart 'Continuum of Community Services Programs', RCPS Exhibit 3147.

Option 1

8.281 DCS previously funded and provided ageing and disability services. The conflict between these two functions was recognised, and in 1995 led to the establishment of a separate department, The Ageing and Disability Department (ADD), with 'responsibility for strategic policy, planning, funding, monitoring and evaluation in ageing and disability'.¹⁷⁸³ DCS retained the function of providing services to the aged and disabled but in accordance with policy direction set, and funding allocated, by ADD.

8.282 The same conflict applies in the case of DCS child and family services, in that funding and the provision of substitute care services have not been separated or quarantined, either within DCS or through the creation of a separate body.

8.283 The position is further complicated in relation to sexually abused children and their families, by reason of their need for a range of services across a number of government departments including at least DCS, Health, the Police Service, DSE and Housing.

8.284 It has long been apparent that the current arrangements create problems of 'discontinuity, duplication and inefficient and ineffective service delivery'.¹⁷⁸⁴ Apart from the conflict already identified the 'system is haphazard',¹⁷⁸⁵ and problems arise because there are:

- different agencies delivering similar or complementary services to children and their families whose complex needs might better be addressed by a co-ordinated solution; and
- quarantined budgets for separate agencies responsible to achieve the same outcomes.¹⁷⁸⁶

8.285 It has been suggested that these factors impede early intervention and create difficulties in promoting positive and co-ordinated reform,¹⁷⁸⁷ to the point where a separate department should be created to focus only on children, leaving substitute care service with DCS from which the new department would purchase services for children in need.

8.286 A separate Department for Children could have the following advantages:

- it would permit the establishment of a specialist department, with its own budget, which could be tailored to cater for the special interests of children in matters of health, housing, education, drug rehabilitation, protection from sexual/physical assault, emotional abuse, neglect, and the like, thereby rationalising the services available;
- it would help remove any conflict arising from having the same agency funding and supervising substitute care, and also making decisions whether a child should be placed in care;
- it would provide a capacity to focus on the interests of the child alone, without a need to adjust for any competing responsibilities to other members of the family or to other aspects of the DCS portfolio;
- it would reduce the risk of children falling through the cracks of the various agencies involved;¹⁷⁸⁸

¹⁷⁸³ ADD, *Annual Report 1995-1996*, p. 5.

¹⁷⁸⁴ NSW Health Department, Policy Division Paper, Organisation of Health and Community Service Delivery in NSW, RCPS Exhibit 3090C, at Doc. 2673814; see also Dr M. Ryan, Submission to RCPS, 9/7/96, RCPS Exhibit 2529/22.

¹⁷⁸⁵ Dr D. Mulcahy, Submission to RCPS, 17/7/96, RCPS Exhibit 2514.

¹⁷⁸⁶ NSW Health Department, Policy Division Paper, Organisation of Health and Community Service Delivery in NSW, RCPS Exhibit 3090C, at Doc. 2673814.

¹⁷⁸⁷ *ibid.*, at Doc. 2673814-15.

¹⁷⁸⁸ Dr M. Ryan, Submission to RCPS, 9/7/96, RCPS Exhibit 2529/22.

- it would assist in the assembly of intelligence and research, and have an ability to act as an advocate in respect of children's issues; and
- it might assist in attracting professionals of calibre.

8.287 The Community Services Commission, however, submitted that a new Children's Department would not solve the fundamental problems that have been identified within DCS, or overcome the conflicts of interest which can arise.¹⁷⁸⁹

8.288 The establishment of a separate and self-contained department, leaving the substitute care service with DCS, risks isolating the consideration central to the child's development, and in most welfare cases the source of the child's problems - the family unit. It has been recognised that child protection work is ambiguous work, involving the rights and needs of children and parents alike.¹⁷⁹⁰ It cannot be managed in isolation of the family within which most children live, or without the capacity to tap into the broader social security resources, State and Commonwealth, which are normally delivered on a family basis.

8.289 These extend to housing, health care, monetary benefits, refuge and emergency care, and the like which if provided to a child, and denied to the rest of the family, will only be likely to cause greater social problems than those cured.

8.290 Two other obvious obstacles exist:

- first, this option is not necessarily well suited to a State with the demography of New South Wales; and
- secondly, associated with the first point, it is likely to be costly because of the need for an extensive administrative and physical infrastructure, and for a variety of centres to meet local needs.¹⁷⁹¹

8.291 There is a risk that the problems of the past may simply be repeated within a new structure. A new smaller department, although more manageable, risks marginalisation and difficulties in establishing links to other services¹⁷⁹² and in obtaining services from other departments which already suffer from the jealousies of turf protection. The Royal Commission cannot be confident that such a new structure would be 'accepted' into the system and this could only have a detrimental outcome for children.

8.292 In addition, very little has been carried out by way of research to show that a separate department would be an appropriate cure for the currently ailing system. Such research as is available tends against such a conclusion.¹⁷⁹³ This option is accordingly not preferred by the Royal Commission.

8.293 It is not advanced as the preferred approach at this stage. Some other possible precedents may, however, be mentioned, in case consideration is ultimately given to this option or to a variation of it, which would see the creation of individual co-located units concentrating on abused or neglected children.

8.294 One variant would see the creation of specialist children centres strategically located within the Sydney metropolitan region, and selected country locations, at which workers with expertise in policing,

¹⁷⁸⁹ CSC, Submission to RCPS, 12/8/96, RCPS Exhibit 2515, pp. 18-19.

¹⁷⁹⁰ E. Hutchison, P. Dattalo & M. Rodwell, 'Reorganising Child Protective Services, Protecting Children and Providing Family Support', *Child and Youth Services Review*, vol. 16, no. 5/6, 1994, p. 332.

¹⁷⁹¹ The Advocacy Centers in the US are heavily dependent on local funding and private donations, a situation which could not easily be replicated in this country.

¹⁷⁹² H. M. Bauer, Director-General DCS, Submission to RCPS, 23/4/97, RCPS Exhibit 3151, p. 8.

¹⁷⁹³ Hutchison, Dattalo & Rodwell, 1994, op cit, pp. 319-38.

health, social work, counselling, housing and the like would be co-located, or at least able to work together. Several models of this kind exist in the United States, under a variety of titles, although generically they answer best to the title of Children's Advocacy Centres.

8.295 One such model,¹⁷⁹⁴ is that conducted in Orange County, where within a single facility supported by the Orangewood Children's Foundation, a Child Abuse Services Team (CAST) provides an investigative, crisis intervention and therapy facility for children. Specialist interview, and sexual and physical assault medical investigations using current technology such as video colposcopy, are provided, along with crisis housing, some limited educational/recreational facilities for children admitted to the centre, ongoing counselling/therapy and court preparation/support.

8.296 A multi-disciplinary team approach is adopted to provide the most beneficial outcome for the child and for law enforcement, in which child protection, social workers and health professionals work in tandem with Police and the District Attorney. Case management plans are developed to deal with matters such as protective care arrangements, therapy and family support. Training in child protection/assault issues is provided for all disciplines involved with children.

8.297 The private division of the Foundation provides several programs including:

- an emancipation program, to provide funding for further education and living expenses of residents;
- peer counselling by former residents/users of the service;
- respite care for parents in dysfunctional settings where children are at risk; and
- an On My Own program - teaching basic living skills for exiting residents to make their way into private accommodation and employment, which teaches life skills, financial management, and so on.

8.298 A not dissimilar model exists in Dallas, in the Children's Advocate Program, which brings together the activities of the participating agencies, which include the Police, the Children's Medical Center, the District Attorney, the Child Protection Services (CPS) and the Department of Paediatrics of the University of Texas South West Medical Center, under an interagency partnership agreement and joint guidelines. Within the Advocacy Centre are co-located the Dallas Police (Child Exploitation Unit and Child Abuse Unit) and Child Protection Services staff.

8.299 Joint investigations are conducted, counselling and therapy are provided, and case management plans are prepared in consultation with each agency represented in the Advocacy Centre. Court preparation and support are provided along with individual and family therapy, school consultation and similar services. Medical examinations take place off site at the Children's Hospital involving specialists who work in conjunction with the Centre. The Centre also provides a special child death review team and counselling for children who may have witnessed or been affected by violent crimes. Specialist training and community education are also provided. Child advocates based in the Centre co-ordinate and pursue referrals for any additional services the child may need and liaise with their families. They also track each case from commencement to closure.

8.300 The salaries of police, medical staff and CPS workers are provided by their own agencies, but those of counsellors and administrators are provided by the Centre, which is largely dependent on private funding. The Centre is governed by a board comprising representatives of the five partners and other highly placed members of the community ensuring its high profile and reputation.

¹⁷⁹⁴ Broadly duplicated elsewhere in the United States, although there are local differences, eg. San Diego and Tucson.

8.301 A somewhat different, and less centrally co-ordinated model can be seen in the Violence Intervention Program conducted by the Los Angeles County in conjunction with the University of Southern California Medical Center, which provides a co-ordinated although not co-located service for sexual and physical assault, domestic violence, and vulnerable children. It is a medically based program providing multi-disciplinary intervention in each of these cases, involving social work, legal and mental health professionals, and co-ordinating a suitable response with community resources for follow-up and safe housing.

8.302 So far as children are concerned the Centre provides assessments for all forms of child abuse and neglect, including medical evaluation and follow-up, and the provision of evidence in court. Effectively, it operates as a triage centre, setting in train the most appropriate follow-up or management of the individual case, to deal with any law enforcement aspect, as well as health and social welfare issues. Specialist training and expert advice for other jurisdictions are also provided.

Option 2

8.303 The suggested advantage of this option is that it would integrate the respective activities of DCS and Health, in investigating possible abuse, and in treating its aftermath. Greater accountability might follow and the risk of children falling through the gaps might be reduced.

8.304 There is force in the submission that investigation, supervision, treatment, prevention and community education could be better co-ordinated if the DCS and Health functions were combined. However, the conflicts of funding and providing services previously mentioned would continue unless the funding and monitoring role was left with DCS.

8.305 This option would need an in-depth analysis by experts beyond the capacity of this Commission, having regard to the broader issues involved, before any recommendation or decision was made to combine all or part of the DCS and Health portfolios into one Ministry, similar to the way in which such services are delivered in Victoria by the Department of Human Services.

Option 3

8.306 Taking into account the considerations and recommendations earlier outlined, the structure later recommended for a concerted interagency approach, and the establishment of a Children's Commission, Option 3 is the one that the Commission presently favours.

8.307 It would involve:

- the creation within DCS of a separate Children's Division to deal with child protection issues, staffed by specialists in that field;
- the development of a mission statement for that Division, and the preparation of an implementation plan for its establishment, in which suitable staffing and resource levels are established;
- the guarantee to that Division of a specific share of the DCS budget, sufficient to ensure that it can meet its commitment to children;
- the establishment of effective and workable interagency relationships;
- the provision of specific training for its staff in child protection, particularly in the management and investigation of child sexual assault cases, and in the integration of DCS services with those provided by Health, Education, Housing, Juvenile Justice and the police;
- the development of service standards, and a code of conduct for District Officers and child/substitute care workers;

- the assignment of specialist officers to work with the Joint Investigation teams and the continued refinement and development of the JIT program;
- the development of a more appropriate intake system; and
- the adoption of strict screening processes as outlined above for child protection workers and those approved for foster care.

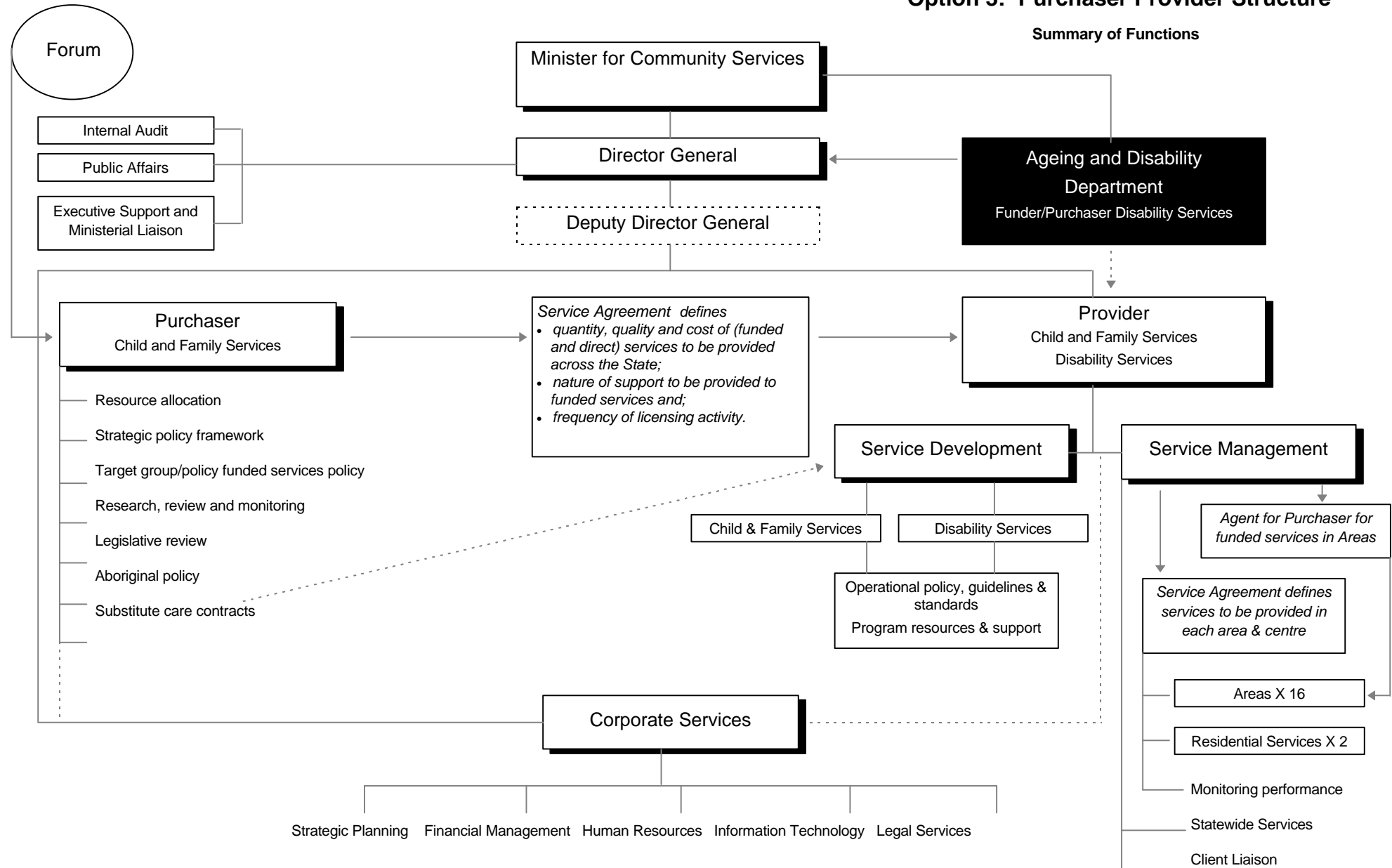
This option is consistent with the Option 3 identified by the Council On the Cost of Government, referred to in its report, as the purchaser/provider structure.

8.308 Any reservations in relation to a lack of transparency or monitoring of the performance of a Child Protection Agency or a DCS Division would be met by the creation of the proposed Children's Commission¹⁷⁹⁵ and by the role performed by the OCYP.

8.309 It is understood that the DCS would be able to accommodate such a model, without undue difficulty. The functions under such a structure, and the management structure, might be as shown in the following two diagrams:

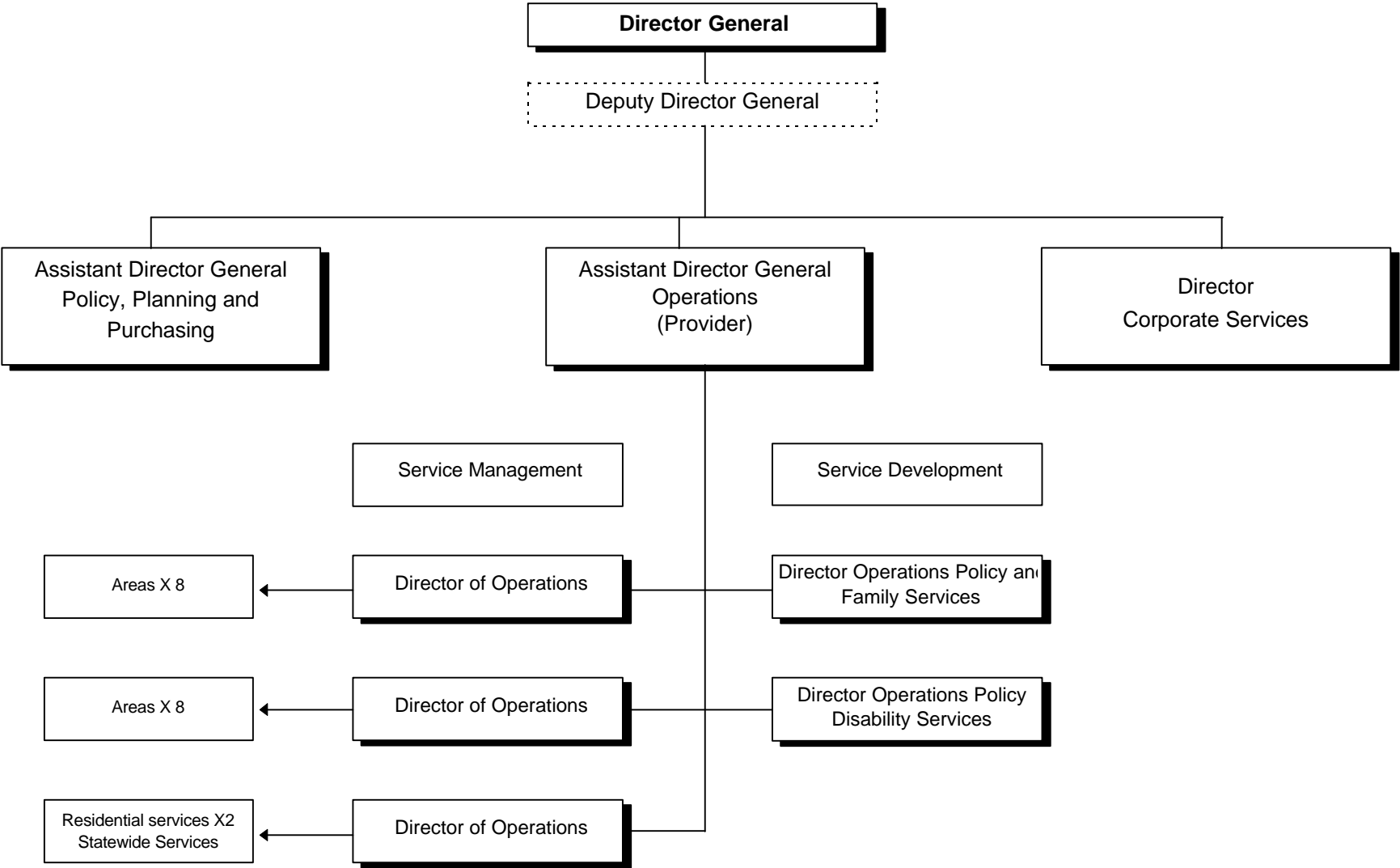
¹⁷⁹⁵ See Volume V, Chapter 20 of this Report.

Option 3: Purchaser Provider Structure



Option 3: Purchaser Provider Structure

Structure of the Senior Executive



ASSOCIATED CONSIDERATIONS

Division of Function

8.310 As occurred in 1995 when a decision was made to create the ADD, the government may conclude that a similar split should occur in relation to child and family services. The Council on the Cost of Government was satisfied that option 3, would permit that to occur.¹⁷⁹⁶

The Intake Process

8.311 The evidence before the Royal Commission demonstrates beyond doubt that the intake process has been in need of urgent reform to make it more effective, to eliminate variations between different centres, and to prevent matters being inappropriately treated as notifications of abuse.

8.312 The problem of case overload has been linked to the intake system and the way in which it has been driven by a 'notification' mentality. This has been engendered in part by the language of the *Children (Care and Protection) Act 1987*¹⁷⁹⁷ but also by the department's choice in categorising so much of its business as 'notifications'. The system is ill-equipped to deliver an efficient, professional service whilst ever it is driven by this mentality.

8.313 In suggesting the preferred option the Royal Commission has given consideration to the establishment of a centralised intake system, separate from DCS, to which all referrals of child abuse notifications would be made. This is a similar approach to that adopted in South Australia. The possible advantages of such a system are:

- consistency of response;
- expertise;
- the ability to monitor practice and responses to notifications;
- elimination of the possibility that the response would be driven by local resources, or personal relationships; and
- ease of accessibility through a central phone number.¹⁷⁹⁸

8.314 The possible disadvantages of such a system include:

- the remoteness of those involved in the intake from local knowledge of the family and the capacity of local facilities to provide adjunct services;
- delay in the transfer of the information from the central office to local offices;
- the need to develop skills at the local area; and
- possible resistance within the department by staff unhappy with taking direction from a remote central body.¹⁷⁹⁹

8.315 It is accepted, by all involved, that there is a need for skilled and experienced intake and assessment of information, to ensure appropriate follow-up. At this stage, however, there is not any definitive research or clear evaluation to show that such a centralised system would be transferable to NSW.

¹⁷⁹⁶ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 85.

¹⁷⁹⁷ *Children (Care and Protection) Act 1987*, s.22 refers to a requirement to 'notify'.

¹⁷⁹⁸ J. Cashmore, Comments on Centralised Intake System, RCPS Exhibit 3195C.

¹⁷⁹⁹ *ibid.*

8.316 The Commission is concerned not to put in another layer of bureaucracy, which might exacerbate, rather than alleviate, the present problems, or give rise to conflicts between officers in the field and those involved in the centralised process. In the present circumstances, without a proper assessment of the South Australian system which only commenced on 28 April 1997,¹⁸⁰⁰ the Commission considers that it would be preferable for the existing system to be improved through:

- standardisation of the intake system across the State;
- training at local Community Services Centres in accordance with guidelines designed to ensure an effective response to all notifications; and
- proper follow up of notifications accepted for further action.

The Commission would not discourage further study of the centralised approach and it would be appropriate for DCS and the Children's Commission to monitor the South Australian system to assess whether it would be appropriate to adopt it (in part or in whole).

Information Systems

8.317 DCS has a wide range of information systems including the CIS, the financial system for recording payments and the personnel system.¹⁸⁰¹ It has also possessed a wide range of ad hoc systems which have been found to be inadequate and insufficient to keep management properly informed about the department's day-to-day activities.¹⁸⁰²

8.318 Although the Client Information System has been in place for some years it does not provide an offender-specific search capacity.

8.319 The Commission has been informed that there are approximately 33,000 notifications per year, of which approximately 13,000 related to alleged child sexual abuse. It is imperative that the information management systems, in particular the CIS, be overhauled to permit prompt assessment whether other allegations have been made in relation to a notified suspect offender.

8.320 To assist with the reform process it is recommended that:

- each CSC have an intake team, to receive information relating to child sexual abuse, physical abuse, emotional abuse and neglect;
- the CIS and other information management systems in place be overhauled to enable appropriate searches and cross referencing to occur;
- the intake team be staffed by experienced and mature staff with suitable training and appropriate supervision;
- information received be recorded in a standard protocol, for assessment and reference to the appropriate JIT or other agency, according to the needs of the case; and that
- all agencies be required to report back to the intake team on completion of the investigation for record completion.

¹⁸⁰⁰ From advice from Dr Cashmore as to her understanding of the position in South Australia. *ibid.*

¹⁸⁰¹ Council on the Cost of Government, *Review of Aspects of the Management of the NSW Department of Community Services*, Sydney, February 1997, RCPS Exhibit 3079, p. 36.

¹⁸⁰² *ibid.*

Corporate Plan

8.321 The DCS is in the process of settling a new corporate plan, the current draft of which provides, in relation to child protection:

The Department accepts and promotes its role as the agency which is charged by law with responsibility for the care and protection of children.

8.322 In order to make sure that children are protected and well cared for the draft calls upon the department to:

- develop and implement a strategy for improving casework practice in child and family services;
- develop a system of screening staff, volunteers and carers working with children in services, provided, funded or licensed by the department, to protect all children from potential harm;
- develop a mechanism for training staff, volunteers and carers working with children in services, provided, funded or licensed by the department, so that they know what to do if they suspect a child needs protection;
- ensure all child abuse cases involving possible criminality will be responded to jointly with the police; and to
- introduce processes which focus on meeting the needs of children and their families or other support networks and to tailor services to suit their individual circumstances.

8.323 The Commission supports these broad statements of principle, but as outlined earlier, its release alone is not enough. The objectives stated will need to be translated into action, and supported by suitable guidelines and practices so that staff understand what is expected of them.

A CHILDREN 'S COMMISSION

8.324 The Commission is of the view that there has been such a serious failure in the protection of children from sexual abuse, together with other forms of abuse and neglect, that a single Children's Commission should be created with the capacities and powers outlined in the final chapter of this Report. It should report to Parliament annually, and be oversighted by a joint parliamentary council. Its existence with the role and authority proposed would encourage greater transparency and more accountability in DCS and the other departments and agencies working with children.

K. LEGISLATIVE REVIEW

8.325 During Child Protection Week 1994, the Premier and the Minister for Community Services announced that the DCS would undertake a review of *the Community Welfare Act 1987* and the *Children (Care and Protection) Act 1987*.

8.326 That review is chaired by Associate Professor Patrick Parkinson with Dr Judy Cashmore as Deputy Chairperson. The day-to-day management of the review is in the hands of a project team staffed by DCS officers.¹⁸⁰³

¹⁸⁰³ DCS, Legislation Review Unit, *Review of the Children (Care and Protection) Act 1987, Law and Policy in Child Protection: A Summary of Key Issues*, RCPS Exhibit 5932/1, p. 5.

8.327 The three year review which is soon to be completed has:

- consulted widely with the community;
- produced discussion papers on child protection, child services and children's employment;¹⁸⁰⁴
- received submissions from a wide range of organisations, departments and individuals; and
- held public meetings in approximately 20 venues State-wide.

8.328 This lengthy review process will have a significant impact on the delivery of child protection services in this State in the future. Without wishing to pre-empt its conclusions, the inquiries of this Commission would support legislative intervention to:

- require interagency co-operation in the delivery of child protection services;
- extend mandatory notification obligations to full-time, part-time and casual employees of all government departments and agencies, and government funded or licensed non-government agencies working with children, as well as volunteers and all other groups or organisations, which have a responsibility for care or supervision of children;
- reform and expand the mandatory notification system to make it clearer and more responsive to needs;
- establish and empower the Children's Commission to fulfil the role proposed in the final chapter of this Report;
- restructure the Children's Court's process to:
 - entertain care applications from parents and/or guardians notwithstanding that a position of irretrievable breakdown has not been reached;
 - bind parents and carers as well as children to orders;
 - permit care and protection and associated orders to be made in relation to adolescent abusers of children as well as to children who are victims of such abuse;
 - access alternative dispute resolution mechanisms; and to
 - give standing to the Children's Commissioner to apply to the Children's Court for review of foster and substitute care arrangements; and
- require government departments and agencies to use their best endeavours to provide services to children in care including prompt provision of psychological services, housing and the like.

¹⁸⁰⁴ DCS, Legislation Review Unit, *Review of the Children (Care and Protection) Act 1987. Discussion Paper 1: Law and Policy in Child Protection*, RCPS Exhibit 5932/1; *Review of the Children (Care and Protection) Act 1987. Discussion Paper 2: Children's Services: A Legal Framework and Review of the Children (Care and Protection) Act 1987. Discussion Paper 3: Protecting Children in Employment: A Legal Framework*, RCPS Exhibit 5932/2.

RECOMMENDATIONS

The Commission recommends the following:

- ◆ Creation of a separate Children's Division to deal with all child protection issues (para. 8.307).
- ◆ Development of a mission statement for that Division and the preparation of an implementation plan for its establishment, in which suitable staffing and resource levels are established (para. 8.307).
- ◆ Guarantee to that Division of a specific share of the DCS budget, sufficient to ensure that it can meet its commitment to children (para. 8.307).
- ◆ Development of service standards and a code of conduct for District Officers and child protection specialists (para. 8.307).
- ◆ Establishment of liaison with the universities and other relevant training institutes to enhance the recruitment of staff (para. 8.307).
- ◆ Recruitment of further staff to work as specialist officers with the Joint Investigation Teams (para. 8.307).
- ◆ Expansion of the initial training of all DCS officers working in the child protection area in conjunction with the Centre for Child Protection within the Children's Commission (para. 8.307).
- ◆ Establishment of a mentor system to ensure that more experienced and trained staff work in conjunction with new staff for an appropriate period (para. 8.232).
- ◆ Implementation of a mandatory continuing Child Protection Education program for all child protection workers in consultation with the Children's Commission, such program to be based on a minimum number of CPE points per year to be achieved by attendance at appropriate courses (para. 8.235).
- ◆ Establishment of close liaison with the Children's Commission in respect of the development of training modules and the establishment of a resource library (para. 8.235).
- ◆ Introduction of a system of peer review in respect of case management with regular case meetings in respect of the work being carried out by child protection workers.
- ◆ Implementation of a system of promotion that would allow field workers to stay within the area of face to face work but retain the capacity for career development.
- ◆ Convening of conferences in conjunction with the Children's Commission to enhance the relationship between managers, District Officers/child protection workers.
- ◆ Standardisation of the intake system across the State (para. 8.316).
- ◆ Introduction of training at local Community Service Centres in accordance with guidelines designed to ensure an effective response to all notifications (para. 8.316).
- ◆ Establishment within each Community Service Centre of an intake team to receive information relating to child sexual abuse, physical abuse, emotional abuse and neglect (para. 8.320).

- ◆ Staffing of intake teams with experienced and trained officers, subject to appropriate supervision (para. 8.320).
- ◆ Recording of information received in a standard protocol for assessment and reference to the appropriate JIT or other agency according to the needs of the case (para. 8.320).
- ◆ Requirement that all agencies report back to the intake team on completion of the investigation for record completion (para. 8.320).
- ◆ Monitoring, in conjunction with the Children's Commission, of the South Australian centralised intake system with a view to adopting it should it appear appropriate for NSW (para. 8.316).
- ◆ Overhaul of the Client Information System and other information management systems to enable the appropriate searches and cross referencing to occur (para. 8.319).
- ◆ Preparation of guidelines in consultation with NSW Health, the Police Service and the Children's Commission to standardise record keeping (para. 8.237).
- ◆ Training of all DCS staff in standardised record keeping (para. 8.237).
- ◆ Institution of a system for audit and monitoring of all files to ensure that they are properly kept and suitably followed up (para. 8.237).
- ◆ Adoption of the system of pre-employment checking outlined in this chapter to be developed in conjunction with the establishment of the Children's Commission (para. 8.242).
- ◆ Implementation of the system outlined in this chapter whereby certificates of unacceptable risk might be made by the Children's Commissioner in relation to DCS workers, subject to suitable appeal rights (para. 8.263).
- ◆ Empowerment of the Office of the Ombudsman to conduct investigations in respect of allegations of sexual misconduct with or towards a child made against any DCS employee as outlined in this chapter (paras. 8.262 - 8.265).

- ◆ Amendment of the Public Sector Management (General) Regulation clause 28 to permit the retention of information concerning allegations of sexual misconduct with or towards a child and any consequent investigation, whether or not a charge is brought and substantiated, and to allow the DCS officer concerned to have a statement in response to the matter placed on the file (para. 8.258).
- ◆ Preparation of guidelines in respect of access to and subsequent use of the files by the DCS, the Children's Commission, the Police Service and other permitted agencies (para. 8.258).
- ◆ Provision of statutory protection for the communication bona fide between all agencies and the Children's Commission of information, relevant to the suitability of employees and volunteers, to obtain or to continue in DCS employment or to occupy positions involving the care or protection of children (para. 8.258).
- ◆ Statutory recognition of interagency co-operation in the delivery of child protection services (para. 8.328).
- ◆ Extension of mandatory notification obligations to full-time, part-time and casual employees of all government departments and agencies, and government funded or licensed non-government agencies working with children, as well as volunteers and all other groups or organisations, which have a responsibility for care or supervision of children as further developed in Volume V, Chapter 18 of this Report (para. 8.328).
- ◆ Recognition of the Children's Commission to fulfil the general oversight role proposed in Volume V, Chapter 20 of this Report (para. 8.328).
- ◆ Expansion of the jurisdiction of the Children's Court to:
 - hear care applications from parents and/or guardians in which a position of irretrievable breakdown has not been reached;
 - bind parents and carers as well as children to orders;
 - permit care and protection and associated orders to be made in relation to adolescent abusers of children as well as to children who are victims of such abuse;
 - give standing to the Children's Commissioner to apply to the Children's Court for review of foster and substitute care arrangements (para. 8.328).
- ◆ Requirement of government departments and agencies to use their best endeavours to provide services to children in care including prompt provision of psychological services, housing and the like (para. 8.328).

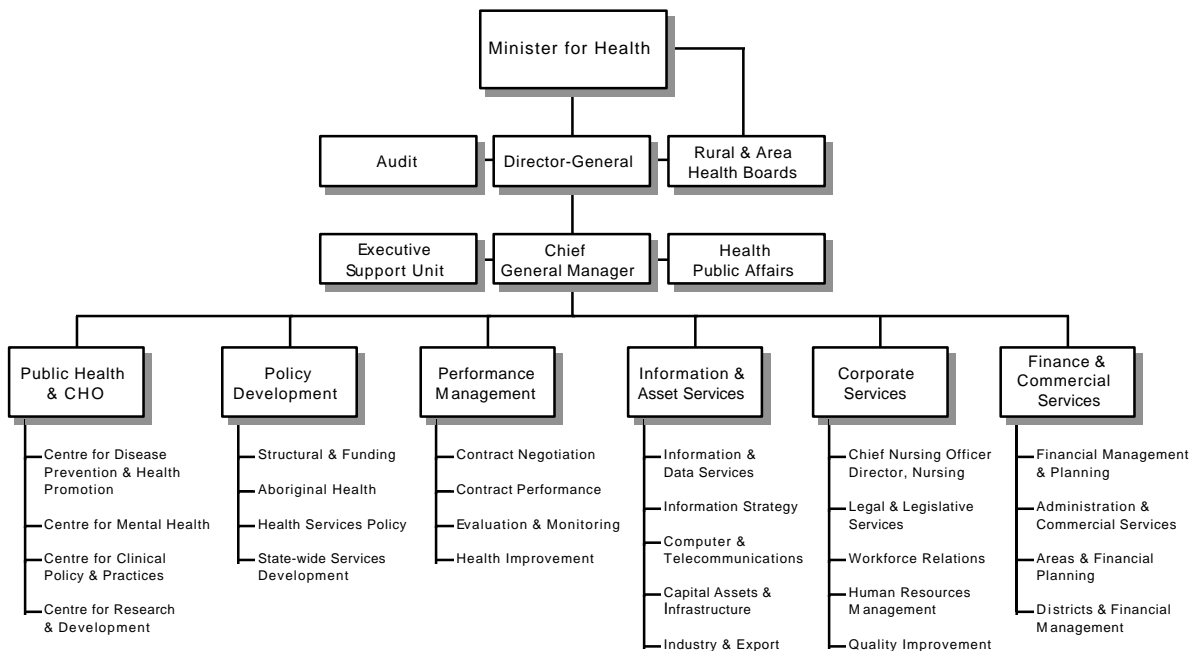
CHAPTER 9

NSW DEPARTMENT OF HEALTH

A. THE ROLE OF HEALTH

STRUCTURE

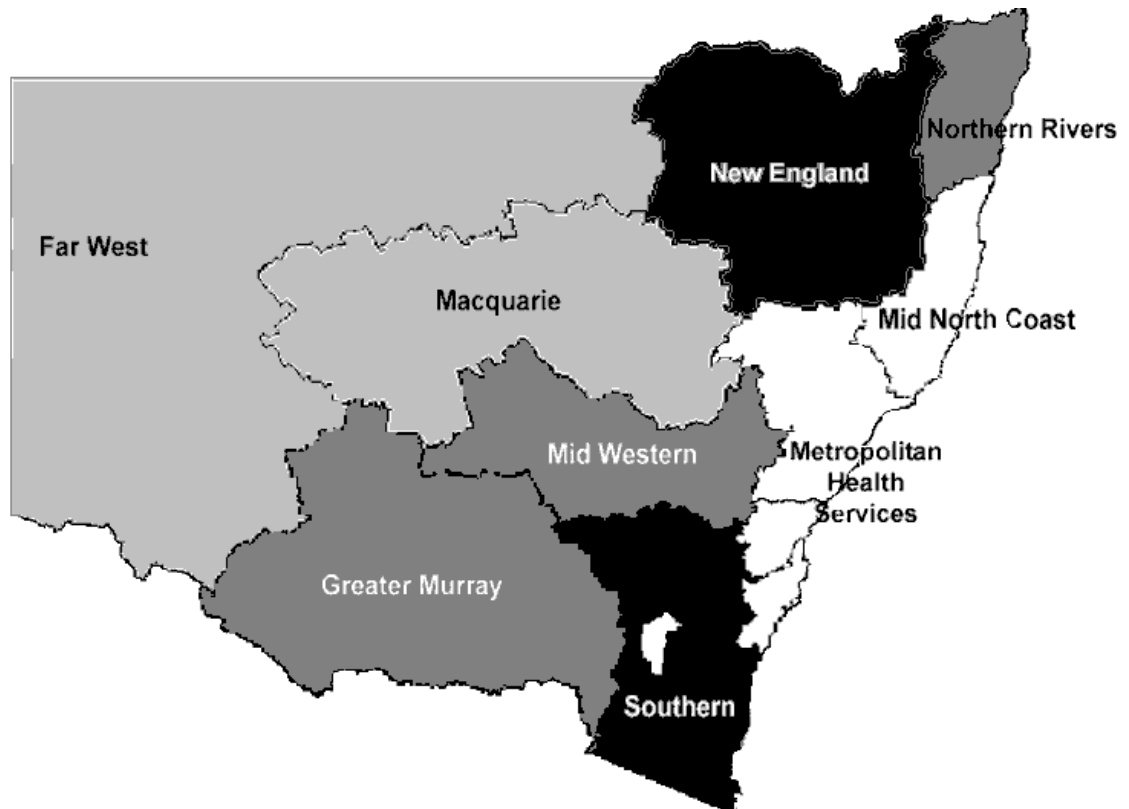
9.1 The NSW Department of Health (the Department) is established under the *Health Administration Act 1982* and has primary responsibility for policy development and oversight of the NSW Health System. The structure of the Department is as follows:¹⁸⁰⁵



9.2 The NSW Health System includes services provided through 17 Metropolitan and Rural Health Services (the Areas) which are statutory authorities established under the *Area Health Services Act 1986* and the *Public Hospitals Act 1929*. They have legislative responsibility for the day-to-day management of services in their respective areas. The Department and the Health System when mentioned in this chapter are collectively referred to as 'Health'.

9.3 Since 1986, when Area Health Boards were first established in Sydney, Newcastle and Wollongong (replacing a large number of individual hospital boards) there have been a number of structural changes in the delivery of health services. As presently structured, there are eight Rural Health Services and nine Metropolitan Health Services, each of which is responsible for the public hospitals (240 in all) and the community health centres or services within their geographical jurisdiction shown below:

¹⁸⁰⁵ NSW Health Department, 1995/96 Annual Report .



9.4 A variety of professional groups, contractors and volunteers work within Health to deliver and assist in delivering health services. For the purposes of this chapter 'health employers' refers to the Department, and the Metropolitan and Rural Health Services and any service or facility within their control. 'Health worker' refers to all staff who work within those services or facilities and includes medical practitioners, nurses, social workers, psychologists and all voluntary staff.

SERVICES TO VICTIMS

9.5 Health has an integral role in the response to child sexual assault cases. It provides:

- forensic clinical examination;
- counselling and support of children and their families; and
- court preparation and support.¹⁸⁰⁶

The counselling and court preparation services are provided through 46 Child Sexual Assault Services (CSA Services) based in hospitals and community health centres throughout the State. The CSA Services are staffed by trained psychologists and counsellors. The provenance of these Services was in response to the 1977 Task Force Report 'Care of Victims of Sexual Assault'.¹⁸⁰⁷ They were developed further in response to the Report of the 1985 Sexual Assault Task Force.¹⁸⁰⁸

¹⁸⁰⁶ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 2; and see Volume V, Chapter 15 of this Report.

¹⁸⁰⁷ NSW Police Service, Policy & Procedural Guidelines for Sexual Assault, Circular No. 84/235, 16/8/84, RCPS Exhibit 3222.

¹⁸⁰⁸ *Report of the NSW Child Sexual Assault Task Force to the Hon Neville Wran QC, MP Premier of NSW*, NSW Government Printer, Sydney, 1985, RCPS Exhibit 1501.

9.6 The forensic clinical examination services are provided by staff specialist paediatricians in the larger teaching hospitals:

- the New Children's Hospital at Westmead;
- the Sydney Children's Hospital at Randwick; and
- the John Hunter Hospital at Newcastle.

At other hospitals in smaller communities, visiting private paediatricians, or other employed medical staff provide this service. In some locations, depending upon the facilities and the nature of the case, the service is provided by medical practitioners other than paediatricians.¹⁸⁰⁹

9.7 There is a Child Protection Unit (CPU) at each of the teaching hospitals at Westmead, Randwick and Newcastle. They provide facilities for the interview of children in a non-threatening environment. At Westmead, one way glass allows other people to observe the interview, and to assist or suggest questions which might be asked of the child for forensic and evidentiary purposes. An audio and video capacity exists, but this has not yet been used because funding has not been made available for staff training.¹⁸¹⁰

9.8 When a criminal prosecution is contemplated, the results of the clinical examination are included within a medical report signed by the attending medical practitioner. That report may:

- form the basis for the criminal investigation of the matter;
- be used by DCS for decisions concerning the child including the initiation of care proceedings; and/or
- become evidence in the Criminal Court, Children's Court, or Family Court.

9.9 Health clearly has an important role in the early intervention and prevention of child abuse. Although child sexual assault services have developed separately from services for other forms of abuse (physical and emotional abuse and neglect) there is an overlap.¹⁸¹¹ Some children who are sexually abused also suffer from these other forms of abuse. It is necessary for Health to be able to provide appropriate health services to meet all of the needs of these children.

9.10 Children who suffer from abuse, other than sexual abuse, receive counselling either through the CPUs at the major teaching hospitals, or the specialist counselling services based in community health centres. The medical examinations for all abuse cases (whether physical or sexual) are conducted at the hospitals.

9.11 One matter of very serious concern to the Royal Commission was the submission of Health, that its capacity to respond to abuse, other than sexual abuse, has been compromised, because its resources do not match the increasing demand on its services.¹⁸¹² It suggested that additional resources were needed to provide an appropriate response.¹⁸¹³

9.12 The Commission is conscious of the fact that budgets are finite and that departments are expected to perform within budget. The 1997-98 budget¹⁸¹⁴ increased the allocation to Health by \$226 million, but it is not clear to the Commission whether this increase will translate into any increased funding for services for abused children. Unless that does occur, remedial action is essential, as physical abuse is a serious problem and, in the absence of early intervention, often leads on to sexual abuse.

¹⁸⁰⁹ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 12.

¹⁸¹⁰ J. A. Boots, RCT, 20/2/97, p. 36063.

¹⁸¹¹ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 9.

¹⁸¹² *ibid*, p. 10.

¹⁸¹³ *ibid*, p. 11.

¹⁸¹⁴ NSW Treasury, 'Promoting Health', *NSW Social Justice Budget Statement 1997-98*, RCPS Exhibit 3077, p. 3.

9.13 The Commission recognises that the health worker's role is therapeutic in nature, and that the perspective from which health workers respond to child sexual abuse cases is not identical with that of the Police Service or even DCS. This perspective has at times not been properly understood or accommodated by other agencies, and there has been a tendency to look to health workers as investigators rather than as therapists.

9.14 The attention of the Commission was drawn to two CPUs where this has been occurring. Although the staff in these units have recognised that investigatory activities are not their role, the Commission has been informed that they are performing these functions 'because of concerns for the needs of these children'.¹⁸¹⁵ This may be counterproductive because:

- health workers may become partial and compromised if they are seen to be involved in the investigation process;
- health workers are not trained in investigative techniques and their interviews may contaminate the evidence and prejudice any criminal prosecution; and
- resources needed for other services may be diverted if staff time is taken up with work which goes beyond forensic clinical examination.¹⁸¹⁶

SERVICES TO OFFENDERS

9.15 Health has made a decision to concentrate the resources it has on the provision of services to victims of abuse, thus limiting its capacity to provide 'offender services'. This is so notwithstanding the recognition that effective management and treatment of child sex offenders is a necessary strategy in the prevention of child abuse.¹⁸¹⁷

9.16 Health manages the Pre-Trial Diversion of Offenders Programme which it currently funds in the amount of \$368,800 per annum. It has also recently commenced to fund the Adolescent Sex Offender Program based at Wyong. It is committed to providing \$54,700 per annum over the next three years to that program.¹⁸¹⁸

9.17 Rehabilitation of paedophile offenders will not occur simply through their incarceration. The Royal Commission is of the view that there needs to be a commitment by Health to become involved in providing rehabilitation services in this area. To leave these people (some of whom do want to control their behaviour) in the community, with limited pockets of assistance, does little to protect children from abuse. It is part and parcel of the protection system and must be funded and provided in a co-ordinated way.¹⁸¹⁹

9.18 Health has already recognised the significance of intervention in the context of adolescent offenders, and proposes to monitor this area.¹⁸²⁰ Although it encourages the further development of service delivery models in conjunction with the Department of Juvenile Justice (DJJ),¹⁸²¹ the Commission additionally considers that Health should, in conjunction with the Department of Corrective Services, develop a strategy for the community-based treatment of adult offenders following their release from prison, and also of voluntary patients who seek behavioural modification although not brought within the justice system.

¹⁸¹⁵ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 13.

¹⁸¹⁶ *ibid.*

¹⁸¹⁷ *ibid.*, p. 26.

¹⁸¹⁸ *ibid.*, p. 27.

¹⁸¹⁹ See Volume V, Chapter 19 of this Report; and see J. Wyn Owen, RCT, 5/9/96, p. 31679.

¹⁸²⁰ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 27.

¹⁸²¹ *ibid.*, p. 28.

B. POLICIES AND PROCEDURES - SEXUAL ASSAULT SERVICES

9.19 When the Royal Commission commenced its public hearings into the Paedophile Inquiry, the relevant policies and procedures of Health were contained in the following documents:

- NSW Health Sexual Assault Services and Procedures Manual 1988;
- NSW Health and Sexual Assault Service Standard Manual 1991;
- Circular 85/89 'Notification of Children at Risk; Revised police and procedural instructions',¹⁸²² and
- Circular 93/39 'Notification of Suspected Child Abuse';

9.20 Following release by the ICAC of an interim report on its investigation into alleged police protection of paedophiles,¹⁸²³ in September 1994, the then Attorney General requested each government department, including Health, to review its guidelines on the management of child sexual abuse matters.

9.21 When the then Director-General, Mr John Wyn Owen, gave evidence to the Royal Commission, on 10 July 1996, he acknowledged that Health had not participated in any interagency discussion on the topic of child sexual abuse. This he attributed to 'self satisfaction', as Health saw its own guidelines as effective.¹⁸²⁴ He said that the Department was reviewing its sexual assault services policy and procedure manual, but he was not able to give a date for completion of that process.¹⁸²⁵

9.22 Various Areas had developed localised practice in this respect, a circumstance which Mr Owen recognised as having the potential of creating 'utter confusion'.¹⁸²⁶ In this the Royal Commission saw a variation of turf protection. Rather than the interdepartmental or interagency jealousy elsewhere identified, the Commission was informed that jealousy also existed between various hospitals and Area Health Services. Mr Owen said that the Areas and hospitals had a 'strong sense of ownership' of their policies and procedures, which made it difficult to have 'universally' established policies adopted.¹⁸²⁷ It was tolerated at this level because there were disputes about the best form of treatment.¹⁸²⁸

9.23 The Royal Commission rejects that explanation as a satisfactory reason for a lack of co-ordination in Health policy or practice in respect of child sexual abuse, not the least for the reason that Mr Owen raised, that the Department should ensure 'universal' access to services across the State.¹⁸²⁹ There are core principles which should be uniform, and if within particular Areas there are special local needs or differences, they can be catered for by supplementary provisions.¹⁸³⁰ There should, however, never be within the one Department individual and possibly contradictory practices, otherwise confusion is bound to reign.

9.24 It was apparent from his evidence that Mr Owen had experienced considerable difficulty in reaching any understanding, despite the assistance of his staff, concerning the current state of planning, priorities and standard of services provided by Health in this area.¹⁸³¹ The Commission was not surprised that this should have been the case as it similarly had experienced the gravest difficulty in trying to fathom many of the policy and procedure documents produced. They appeared to have been caught up in a great deal of bureaucratic inflexibility, and provided anything but a clear and consistent statement for the guidance of workers in the field.

¹⁸²² J. Wyn Owen, Submission to RCPS, 4/9/96, RCPS Exhibit 2541/2.

¹⁸²³ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516.

¹⁸²⁴ J. Wyn Owen, RCT, 10/7/96, p. 28521.

¹⁸²⁵ J. Wyn Owen, RCT, 10/7/96, pp. 28509-10.

¹⁸²⁶ J. Wyn Owen, RCT, 10/7/96, p. 28512.

¹⁸²⁷ J. Wyn Owen, RCT, 10/7/96, p. 28512.

¹⁸²⁸ J. Wyn Owen, RCT, 10/7/96, p. 28512.

¹⁸²⁹ J. Wyn Owen, RCT, 10/7/96, p. 28512.

¹⁸³⁰ J. Wyn Owen, RCT, 10/7/96, pp. 28512-13.

¹⁸³¹ J. Wyn Owen, RCT, 10/7/96, p. 28515.

9.25 One document, however, the John Hunter Hospital (Newcastle) Child Protection Protocol (including physical abuse, neglect, emotional abuse, at-risk child, sexual abuse) revised as at 29 June 1994, stood out from all others.¹⁸³² This protocol sets out the role of the hospital in relation to such cases. It is worth repeating:

A supportive attitude to the parents and child should be maintained throughout the management of suspected cases of child abuse and neglect. It is not the role of hospital staff to determine or investigate who abused the child - this is a responsibility of DCS, and where they are involved, the police. Our role is to protect the child from further abuse whilst in hospital (including psychological abuse) and to carefully document medical findings and observations of the child's behaviour and interactions with other patients, staff and family members.¹⁸³³

9.26 This protocol presented clear and succinct advice to staff as to what was expected from them, and as to the support mechanisms available to the child and family outside the hospital.¹⁸³⁴

9.27 In particular, it gave explanations, and where appropriate, details¹⁸³⁵ concerning:

- the existence of the Child Protection Team of paediatricians and social workers within the hospital, its composition and after hours contact;
- the existence of the community-based Hunter Area Sexual Assault Service and the services it offers;
- practical guidance concerning circumstances where child abuse 'should' be suspected;
- the obligation of all staff (by Ministerial direction) to notify DCS of suspected cases of child abuse;
- the procedures to be followed (with reference to a flow chart) for:
 - cases of sexual assault presented at the Primary and Emergency Care Ward - giving the telephone number as the 'crisis number' for the Sexual Assault Service;
 - cases referred from DCS;
 - cases first suspected by the medical staff - with details for DCS contact in and out of hours;
 - cases where suspicions arise following admission; and
 - cases where suspicions arise in respect of children visiting the hospital.

9.28 This protocol was significant not the least because:

- it had been in place for two years by the time Mr Owen gave his evidence; and
- it provides a firm foundation for the development of integrated guidelines for child sexual abuse and also PANOC (physical abuse and neglect of children) issues.¹⁸³⁶

9.29 Mr Owen acknowledged that:

- there were deficiencies in current policy and practices;¹⁸³⁷ and that
- there had been insufficient co-ordination between the relevant agencies on interagency guidelines.¹⁸³⁸

¹⁸³² John Hunter Hospital, Child Protection Protocol, 29/6/94, RCPS Exhibit 2179, at Doc. 2177476.

¹⁸³³ *ibid*, p. 2.

¹⁸³⁴ *ibid*.

¹⁸³⁵ *ibid*, pp. 2-3.

¹⁸³⁶ J. Wyn Owen, RCT, 10/7/96, pp. 28533-34.

¹⁸³⁷ J. Wyn Owen, RCT, 10/7/96, pp. 28516-17.

¹⁸³⁸ J. Wyn Owen, RCT, 10/7/96, pp. 28520-21.

9.30 By the time Mr Owen returned to the Royal Commission in September 1996, Health had commenced the preparation of a comprehensive Child Protection and Care Policy, incorporating the management of child sexual abuse, physical and emotional abuse and neglect.¹⁸³⁹ It was clearly taking a much more positive approach towards identifying its role, within a more co-ordinated system for the delivery of services to abused children.

9.31 There is no doubt that excellent medical care and supportive counselling have been delivered, for many abused children, by dedicated and professional health workers. However, under a system which involves the criminal trial process, and at times the need to pursue care proceedings, involving both police and DCS respectively, it is imperative that interagency co-ordination and trust be achieved. That cannot exist unless each agency has a clear and consistent protocol for its own area of responsibility, that fits in with those of the other agencies, without conflict and without leaving any gaps.

9.32 Mr Owen tendered his resignation as Director-General in January 1997, and he was replaced in that position by Mr Michael Reid who gave evidence on 6 March 1997. By this time the policy and procedures documents had been redrafted. They included:

- a new policy statement, *Caring for Health*;¹⁸⁴⁰
- a new manual, for front line professionals, on how to recognise and notify complaints, *Recognising and Notifying Child Abuse and Neglect*;¹⁸⁴¹ and
- a revised procedure manual, *Child Sexual Assault Procedure Manual*.¹⁸⁴²

9.33 The policy statement, *Caring for Health*, sets the context, and describes Health's policy for the protection of children from sexual abuse, physical abuse, emotional abuse and neglect. It defines the role it is to perform, and gives a framework for responding. The manual, *Recognising and Notifying Child Abuse and Neglect*, defines the roles of the agencies involved in child protection, describes how to recognise child abuse and neglect, and outlines the responsibilities for reporting such cases.¹⁸⁴³ The *Child Sexual Assault Procedure Manual* sets out the procedures which apply to Child Sexual Assault Services.¹⁸⁴⁴ Each of these documents was developed in consultation with child protection practitioners in NSW, and drafted to incorporate the terms of the new Interagency Guidelines which came into effect on 1 July 1997.¹⁸⁴⁵

9.34 By the completion of the public hearings in 1997, the Commission was satisfied that Health had made concerted efforts to improve its approach to the problem of child abuse in all its forms, not only so far as it related to co-ordinating a uniform State-wide approach, but also in pursuing interagency co-operation and co-ordination.

¹⁸³⁹ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 9.

¹⁸⁴⁰ NSW Health Department, *Caring for Health: Protecting children and young people from physical abuse, sexual abuse, emotional abuse and neglect*, policy and background paper, November 1996, RCPS Exhibit 5984/2, Annexure 3.

¹⁸⁴¹ NSW Health, *Recognising and notifying child abuse and neglect: procedures for front line health professionals in: community health, adult, child and adolescent mental health, emergency departments, paediatric wards, maternity units, dental services and child care services*, November 1996, RCPS Exhibit 5984/2, Annexure 4.

¹⁸⁴² NSW Health, *Child sexual assault procedure manual*, November 1996, RCPS Exhibit 5984/2, Annexure 5.

¹⁸⁴³ NSW Health, *Recognising and notifying child abuse and neglect: procedures for front line health professionals in: community health, adult, child and adolescent mental health, emergency departments, paediatric wards, maternity units, dental services and child care services*, November 1996, RCPS Exhibit 5984/2, Annexure 4.

¹⁸⁴⁴ NSW Health, *Child sexual assault procedure manual*, November 1996, RCPS Exhibit 5984/2, Annexure 5.

¹⁸⁴⁵ The Interagency Guidelines are attached as Appendix P.19 to this Report.

9.35 At the time of completion of this Final Report, some documents are still in draft form awaiting further discussion, but it is understood that their public release is imminent. It is appreciated by the Commission that in a system as large as Health, with approximately 100,000 employees,¹⁸⁴⁶ and many diverse groups, changes in procedure on a State-wide basis can take time. Notwithstanding the time taken, the progress has been encouraging, and it can be said that the deficiencies in protocols or guidelines identified during the hearing, are no longer of concern.

C. COMPLAINTS AGAINST HEALTH EMPLOYEES - SCREENING AND MONITORING

DEVELOPMENT OF PROTOCOLS - COMPLAINT MANAGEMENT AND EMPLOYEE SCREENING

9.36 The procedures adopted by Health in relation to complaints against its employees, and in relation to their screening and monitoring, have had a somewhat chequered history.

9.37 In January 1984, a Complaints Unit was established within the Department to provide a centralised avenue for the resolution of complaints about health services in NSW. It was established administratively, and was the focus of all complaints received by the Department and the Minister's Office concerning public and private hospitals, nursing homes, and psychiatric institutions and their staff.¹⁸⁴⁷ In the early years of its operation, complaints about private practitioners working on sessional or other arrangements with those facilities, could also be investigated by the Complaints Unit with the consent of the Director-General.

9.38 In February 1987, at the request of the Complaints Unit,¹⁸⁴⁸ the Policy Analyst (Sexual Assault) within the Women's Health Unit drafted a document entitled 'Draft Guidelines for Management of Allegations of Assault by a Health Service Employee'.¹⁸⁴⁹

9.39 This document noted that:

- the Department, and the Area Health Services, needed to address the conflict of interest between their role as the employer of the alleged offender, and their duty of care to the client, in dealing with these matters; and that
- the Department needed (by reason of a 1985 Cabinet decision) to implement Recommendations 17 and 18 of the 1985 Child Sexual Assault Task Force, in developing guidelines for the management of child sexual assault allegations occurring in residential homes under its supervision or control.¹⁸⁵⁰

9.40 The absence of guidelines in this area was a significant omission in that health services were delivered, in a residential setting, in:

- group homes and hostels for children with a developmental disability;
- residential units for emotionally disturbed children; and
- hospital-based residences for children with a developmental disability.¹⁸⁵¹

9.41 Notwithstanding the conflict which had been recognised, the draft guidelines provided for retention of the Complaints Unit as the agency tasked with investigating allegations of abuse made against Health employees.¹⁸⁵²

¹⁸⁴⁶ M. A. Reid, RCT, 6/3/97, p. 36782.

¹⁸⁴⁷ Health Care Complaints Act Review Committee, Review of Health Care Complaints Act 1993, Issues paper, June 1997, RCPS Exhibit 3223, p. 5.

¹⁸⁴⁸ The Complaints Unit was later given independent statutory status as the Health Care Complaints Commission (HCCC), *ibid.*, p. 3.

¹⁸⁴⁹ NSW Health Department, Women's Health Unit, Draft guidelines for management of allegations of assault by health service employee, 23/2/87, RCPS Exhibit 2179, at Doc. 2177324-39.

¹⁸⁵⁰ *ibid.*, at Doc. 2177325-28.

¹⁸⁵¹ *ibid.*, at Doc. 2177328.

¹⁸⁵² *ibid.*, at Doc. 2177330.

9.42 The draft guidelines suggested that all applicants for employment with Health (and all existing staff) should be advised that:

- there was an obligation to notify YACS, (as DCS then was), where reasonable grounds to suspect child abuse existed;
- any allegation of child abuse against staff would be investigated by the Complaints Unit, and staff members would be 'relocated' (or suspended where relocation was not possible) for the duration of the investigation; and that
- references must be supplied in support of job applications.

It also recommended that contact be made with previous employers, to verify any reference supplied, and to confirm the reason for termination of the previous employment.¹⁸⁵³

9.43 This document went no further than its draft form, until it was resuscitated seven years later in December 1994 by the Women's Health Unit in the wake of the ICAC interim report,¹⁸⁵⁴ by which time the former Complaints Unit had been replaced by the Health Care Complaints Commission (HCCC). In January 1995, the Department's Organisational Development Branch suggested the formation of a working party to develop guidelines but no further action was taken in response to this suggestion.¹⁸⁵⁵

9.44 In August 1995, the Child Protection Council wrote to Health seeking information concerning its role in the management of child abuse cases. As a result of this approach the Women's Health Unit and the Child and Family Team revised the 1987 draft, *inter alia*, by extending it to physical and emotional abuse, but confining it to management of allegations of child abuse by health employees.¹⁸⁵⁶

9.45 The history of what happened to this draft is instructive.¹⁸⁵⁷

- it was circulated to the Department's Workforce Services section for feedback on the role of the Health Care Complaints Commission, and any impact it might have on employee rights;
- in March 1996, discussions were held with the Department's Employee Relations section and the Privacy Committee, relating to police and criminal records checks;
- in April 1996, the Centre for Mental Health was consulted; and then
- the draft was sent to Legal Branch, the General Manager, Policy Development Division, and to the Director-General, for approval.

9.46 Approximately nine months from its 1995 redraft, and nine years and three months after the first draft was produced by the Women's Health Unit, the guidelines were issued on 10 May 1996, as Circular 96/27 entitled 'Guidelines for the Management of Allegations of Sexual Assault, Physical or Emotional Abuse of a Child by a NSW Health Employee'.¹⁸⁵⁸ This circular also outlined revised recruitment procedures.

¹⁸⁵³ NSW Health, Action to be taken by hospital or health service Chief Executive Officer, RCPS Exhibit 2179, at Doc. 2177336.

¹⁸⁵⁴ ICAC, *Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sydney, September 1994, RCPS Exhibit 1516.

¹⁸⁵⁵ NSW Health Department, Guidelines for the management of allegations of sexual assault, physical or emotional abuse of a child by a NSW Health employee, Briefing note on the development of Circular 96/27, RCPS Exhibit 2179, at Doc. 2177244.

¹⁸⁵⁶ *ibid.*

¹⁸⁵⁷ *ibid.*, at Doc. 2177244-45.

¹⁸⁵⁸ NSW Health Department, Guidelines for the management of allegations of sexual assault, physical or emotional abuse of a child by a NSW Health employee, circular issued 10/5/96, RCPS Exhibit 1953.

9.47 In relation to complaints against employees, the Circular required the Chief Executive Officer (CEO) or delegate to:

- immediately notify the allegation to DCS;
- notify the police only if the child's life was in danger;
- ensure that the staff member was relocated to a position where no contact with children could occur; and to
- immediately report the allegation to the HCCC.¹⁸⁵⁹

Initiation of disciplinary action in relation to the alleged offender was designated as the responsibility of the CEO, but it was envisaged that the HCCC could also make recommendations for action.

9.48 On the topic of recruitment the circular specified that:

- all applicants were to be specifically requested, as part of the recruitment process, to disclose any criminal convictions relating to any sexual offence at any time or any convictions for violent offences involving children in the last 10 years;
- failure to provide such information, when requested, was very likely to be considered a dismissible offence; and that
- all persons to whom a position was offered involving the provision of services to children in the health care system, were to have a criminal record check conducted and to be advised of this process at interview.

9.49 Additionally all job applicants (and current staff) were to be informed:

- of the seriousness with which the Department viewed child abuse matters;
- of their responsibilities to notify both the CEO and DCS of suspected child abuse cases; and that
- allegations of child abuse against staff could result in relocation or suspension (with pay) while the matter was investigated.

9.50 In September 1996, a decision was made to separate the recruitment section of the circular from the section dealing with complaints against employees. A further 'preliminary draft' document 'Procedures for Recruitment and Employment of Staff - Vetting and Management of Allegations of Improper Conduct'¹⁸⁶⁰ was circulated to the Areas for comment. It was planned that this document would replace the recruitment section of Circular 96/27.

9.51 By January 1997 the comments of the Areas had been incorporated into the Recruitment and Employment draft, whose coverage was extended to all 'current employees, persons from universities, colleges etc., undertaking placements in health services, persons engaged in any capacity through non-government organisations and volunteers'.¹⁸⁶¹

¹⁸⁵⁹ *ibid.*, at Doc. 2021311.

¹⁸⁶⁰ NSW Health Department, Procedures for recruitment and employment of staff and other persons: Vetting and management of allegations and improper conduct, RCPS Exhibit 5984/2, Annexure 1.

¹⁸⁶¹ *ibid.*

9.52 The draft by this time was a much expanded document dealing with many matters not touched upon in Circular 96/27 including:

- reference checking;
- privacy considerations;
- procedures in relation to criminal records checks;
- factors to be considered in relation to disclosed offences;
- pending charges; and
- confidentiality.

9.53 The Royal Commission was advised on 7 August 1997¹⁸⁶² that the circular 'Procedures for Recruitment and Employment of Staff and Other Persons - Vetting and Management of Allegations and Improper Conduct' had been finalised as Circular 97/80. It is understood that this circular has now been distributed throughout Health.¹⁸⁶³

9.54 Additionally a further circular was prepared in September 1996 entitled 'Critical Incident Reporting Procedures 96/69', in which incidents involving assaults on and/or abuse of patients including children and other at risk patients, were included as critical incidents which were to be notified immediately to Human Resource Management.

9.55 In January 1997, Health informed the Royal Commission that it was in the preliminary stages of developing a 'Critical Incident Manual' which would incorporate the existing policies and procedures relating to child abuse.¹⁸⁶⁴ That process continues as this Report is finalised.

9.56 Mr Reid gave evidence that, by March 1997 Health had 'checked' about 18,700 new employees over the previous months, was moving progressively to check people who were transferring between health systems, and intended then to move on to the remainder of the work force, including contractors and volunteers.¹⁸⁶⁵

9.57 Health, as Mr Reid acknowledged,¹⁸⁶⁶ has had some notable inquiries in relation to child sexual abuse,¹⁸⁶⁷ particularly in relation to children with developmental difficulties. The recent steps for checking employees are commendable, as are the procedures for the management of allegations of abuse.

¹⁸⁶² Director Legal, Department of Health, Facsimile to RCPS, 7/9/97, RCPS Exhibit 3255.

¹⁸⁶³ Director Legal, Department of Health, Facsimile to RCPS, 7/9/97, including Circular 97/80 'Procedures for Recruitment and Employment of Staff and Other Persons: Vetting and Management of Allegations and Improper Conduct', RCPS Exhibit 3255.

¹⁸⁶⁴ NSW Health Department, Statement of Information, January 1997, RCPS Exhibit 5984/2, p. 1.

¹⁸⁶⁵ M. A. Reid, RCT, 6/3/97, p. 36786.

¹⁸⁶⁶ M. A. Reid, RCT, 6/3/97, p. 36783.

¹⁸⁶⁷ eg. in relation to the Arndell Children's Unit.

A CASE STUDY

9.58 One matter which came to notice of the Royal Commission demonstrates that vetting confined to prior criminal conviction is not of itself enough. This case concerned a social worker, HE1, who was originally employed by the Department of Child Welfare and Social Welfare (Child Welfare), and was later employed by Health.

9.59 When employed by Child Welfare, he also provided remedial reading classes for children at his home. In very brief summary:

- in 1969/70 HE1 was Assistant Scout Master in a Scouting group in the Sydney area. He agreed to resign from the movement as a result of an allegation that he had fondled a boy in a tent whilst on a Scouting excursion. In discussions with the Area Commissioner he also undertook not to reapply for membership of the Scouts;
- in 1971 whilst HE1 was working for Child Welfare, a number of allegations of improper sexual conduct with children were made;¹⁸⁶⁸
- HE1 resigned from Child Welfare as a result of these allegations;¹⁸⁶⁹
- within a couple of weeks of his resignation HE1, while negotiating with Child Welfare in relation to a bond, informed it that he was working in a home for children;
- HE1 left his new employment as a result of an anonymous complaint of improper sexual conduct on his part with a child;¹⁸⁷⁰
- HE1 then provided home tutoring services through a school coaching agency but was dismissed from that position as a result of further allegations of sexual misconduct with pupils;¹⁸⁷¹
- HE1 was charged with offences involving the sexual abuse of a child in 1975, but the proceedings were dismissed because of difficulties in the identification evidence;¹⁸⁷²
- in 1976, an application was made by him in the Children's Court for the care of a boy, H1, to whom he had been providing professional services and who had been living with him, as the result of problems at his own home. That application was refused following a YACS report that the placement was 'not in the lad's best interests';¹⁸⁷³
- in 1983, HE1 obtained a very senior hospital position, but within three years, a number of young boys aged six to 12 years, made allegations of sexual abuse against him. He was charged with numerous counts of indecent assault and attempted homosexual intercourse, but was discharged as the magistrate was not satisfied that a jury properly instructed would convict him;¹⁸⁷⁴
- HE1 reapplied for the hospital position from which he had earlier resigned, but shortly afterwards withdrew the application in exchange for a reference which said that he was 'a good worker and left the employ of the hospital of his own accord';¹⁸⁷⁵

¹⁸⁶⁸ DCS, 'P' file of HE1, RCPS Exhibit 3288C/1, at Doc. 2746075-79.

¹⁸⁶⁹ RCPS Record of Interview with HE1, 1/8/97, RCPS Exhibit 3292C, p. 69.

¹⁸⁷⁰ *ibid.*, p. 77.

¹⁸⁷¹ *ibid.*, pp. 11-14 & 30.

¹⁸⁷² NSW Police Service, Results of computer searches re HE1, RCPS Exhibit 3289C, at Doc. 2744381-82; RCPS, Record of Interview with HE1, 1/8/97, RCPS Exhibit 3292C, pp. 25-26 & 113-15.

¹⁸⁷³ Children's Court file of H1, 24/11/76, RCPS Exhibit 2416C/146, at Doc. 1773751.

¹⁸⁷⁴ Record of Interview with HE1, 28/7/97, RCPS Exhibit 3291C, p. 22; Local Court records re HE1, 20/6/86, RCPS Exhibit 3290C, at Doc. 2710680.

¹⁸⁷⁵ Reference provided to HE1 by hospital, 19/8/96, RCPS Exhibit 3287C, at Doc. 2743603.

- since then the Royal Commission has found another witness who alleges that when he was a boy he was indecently assaulted by HE1 at another hospital where HE1 was employed. He alleges that HE1 took polaroid photographs of him while he was naked after having a bath, and attempted to anally penetrate him.

9.60 The Royal Commission has gathered a considerable amount of information in relation to this matter and has interviewed HE1. He has admitted paedophile activities of quite vast proportions extending over 20 years. He has unsuccessfully attempted treatment including the process of desensitisation. Although he believes he is not currently a danger to children, he does not place himself in situations of 'temptation'.¹⁸⁷⁶ In the past, as the brief summary suggests, he has worked in a host of positions placing himself in close contact with children, including social work and counselling, scouting, school teaching, tutoring, welfare work and family therapy. He has also given instruction and written extensively on range of activities concerning children and assisted in the preparation of child protection guidelines and, in particular, on the topic of protective behaviour.

9.61 The series of references that have been given to him by employers since 1968 are, on their face very impressive, and such that it would not be surprising if a prospective new employer had not made any further inquiry into them. It is, however, a matter for real concern that references were provided in such terms by employers who must have had some knowledge of the allegations concerning him, that he was able to move from job to job so easily, that many allegations made concerning him were not reported to police, and that two attempts to prosecute him failed.

9.62 As discussed elsewhere in this Report, references in this area should never be taken at face value. It is imperative that careful checks be made in respect of previous employment, including personal contact with previous employers.

9.63 The Royal Commission has disseminated the material it holds in relation to HE1 to the CPEA. The history of the case is such as to underline the need for more than a check for prior criminal convictions, particularly, in this instance, where HE1 had worked interstate for some years prior to 1983. Had any employer after 1971 been able to make more detailed inquiries concerning his background, a far more reliable assessment could have been made as to whether it was appropriate to offer him a job working with children. This may have saved scores of children from sexual abuse at his hands, as on his admitted history of paedophile activity, he presents as a paradigm case of a person who should have been permanently excluded from working in any position involving children, as an unacceptable risk.

9.64 In line with the approach adopted in respect of child protection workers within DCS, the Royal Commission recommends that health employers should, in relation to prospective employee:

- require the following minimum information, and consents from applicants for positions which involve the care and/or supervision of children:
 - personal details, including details of any allegations that have been made against the applicant involving improper or inappropriate conduct towards or with children;
 - full employment history;
 - details of education qualifications and training;
 - history when not employed;
 - references, including one from the applicant's current supervisor or manager;
 - details of recreational interests;

¹⁸⁷⁶ RCPS, Record of Interview with HE1, 28/7/97, RCPS Exhibit 3291C, p. 56.

- a declaration of good character and confirmation of the truth of the contents of the application, together with a consent for a criminal history check if the applicant is recommended for the position;
- inform applicants that the prospective employer is likely to seek information from previous employers, and to make an assessment whether the applicant is a suitable person to work with children;
- inform applicants that the spent conviction provisions of the *Criminal Records Act 1991* do not apply to convictions for sexual offences, and that the Department intends to make a criminal records check and communicate with the Children's Commission concerning application, before offering employment.

9.65 The Commission also recommends the adoption of a system to deal with allegations of child sexual abuse against a health worker under which:

- the Director-General of Health, Area Health Services or health employer would be required to notify the Children's Commission and the HCCC of any complaint as soon as it is received;
- the HCCC, upon receipt of any such complaint, would be required to notify it to the Children's Commission;
- the HCCC would be responsible for conducting an investigation into the complaint in the same way that complaints of this kind are presently conducted;
- the HCCC or the health employer would be required to keep the Children's Commission informed of the progress of the investigation and of any disciplinary action taken;
- if it at any stage of the investigation the Children's Commissioner formed the view that the health worker may be an unacceptable risk to be employed in the care or supervision of children, then it would be entitled to call upon the health worker to show cause why a certificate to that effect should not be issued;
- if the Children's Commissioner, having heard from the health worker, issues a certificate then such certification would be notified to the HCCC and to the health employer;
- the health worker would have the right of appeal in respect of any certificate that he or she was an unacceptable risk to be employed in the care or supervision of children;
- a person the subject of such a certificate would also have the right to make a subsequent application to the Children's Commission to cancel the certificate, with a right of appeal for any refusal to do so, detail of which is dealt with Volume V, Chapter 20; and
- the right of appeal referred to in the scheme outlined above would lie, properly, in the Commission's view, to the Administrative Decisions Tribunal (ADT), or otherwise to the Industrial Relations Commission (IRC).

9.66 Once the health employer has made appropriate inquiries of prior employers and made a criminal records check, the matter should then be referred to the Employment Information Centre of the Children's Commission for further checks before the position is offered to the applicant, in accordance with the procedures outlined in Volume V, Chapter 20 of this Report.

D. DISCIPLINARY INQUIRIES IN RELATION TO HEALTH WORKERS

9.67 During the 1980s, the Complaints Unit faced a number of difficulties in performing its functions:

- there was no recognition of the Unit under a number of the Acts providing for the registration of health professionals;
- it had no specific powers of its own to pursue an investigation, and relied on the Director-General's approval for the use of the powers of entry or application for search warrants vested in that office; and
- as an administrative arm of the health system it faced both actual and perceived conflicts of interest.¹⁸⁷⁷

9.68 In the Unit's experience, only a small proportion of complaints ever led to disciplinary action. The findings of the Royal Commission into Deep Sleep Therapy¹⁸⁷⁸ in 1990 identified the deficiencies in this system and recommended that:

- the Unit be restructured as an independent statutory authority;
- it contain a prosecuting/investigating arm and a complaints/conciliation arm; and that
- it should have its powers defined by, and be accountable to, Parliament.¹⁸⁷⁹

9.69 The *Health Care Complaints Act 1993* was assented to on 2 December 1993 and commenced on 1 July 1994. The Health Care Complaints Commission (HCCC), created pursuant to that Act, was given power as an independent statutory authority to investigate and prosecute complaints about Health Services and their employees.¹⁸⁸⁰ It also created the Health Conciliation Registry (HCR) as an independent statutory authority to conciliate complaints referred to it by the HCCC. The HCCC is directly responsible to the Minister for Health whilst the HCR is responsible to the Director-General of the Department.¹⁸⁸¹

9.70 The procedures adopted by the HCCC in respect of complaints against health organisations and against health practitioners are outlined, diagrammatically, as follows:

¹⁸⁷⁷ Health Care Complaints Act Review Committee, Review of *Health Care Complaints Act 1993*, Issues paper, June 1997, RCPS Exhibit 3223, pp. 5-6.

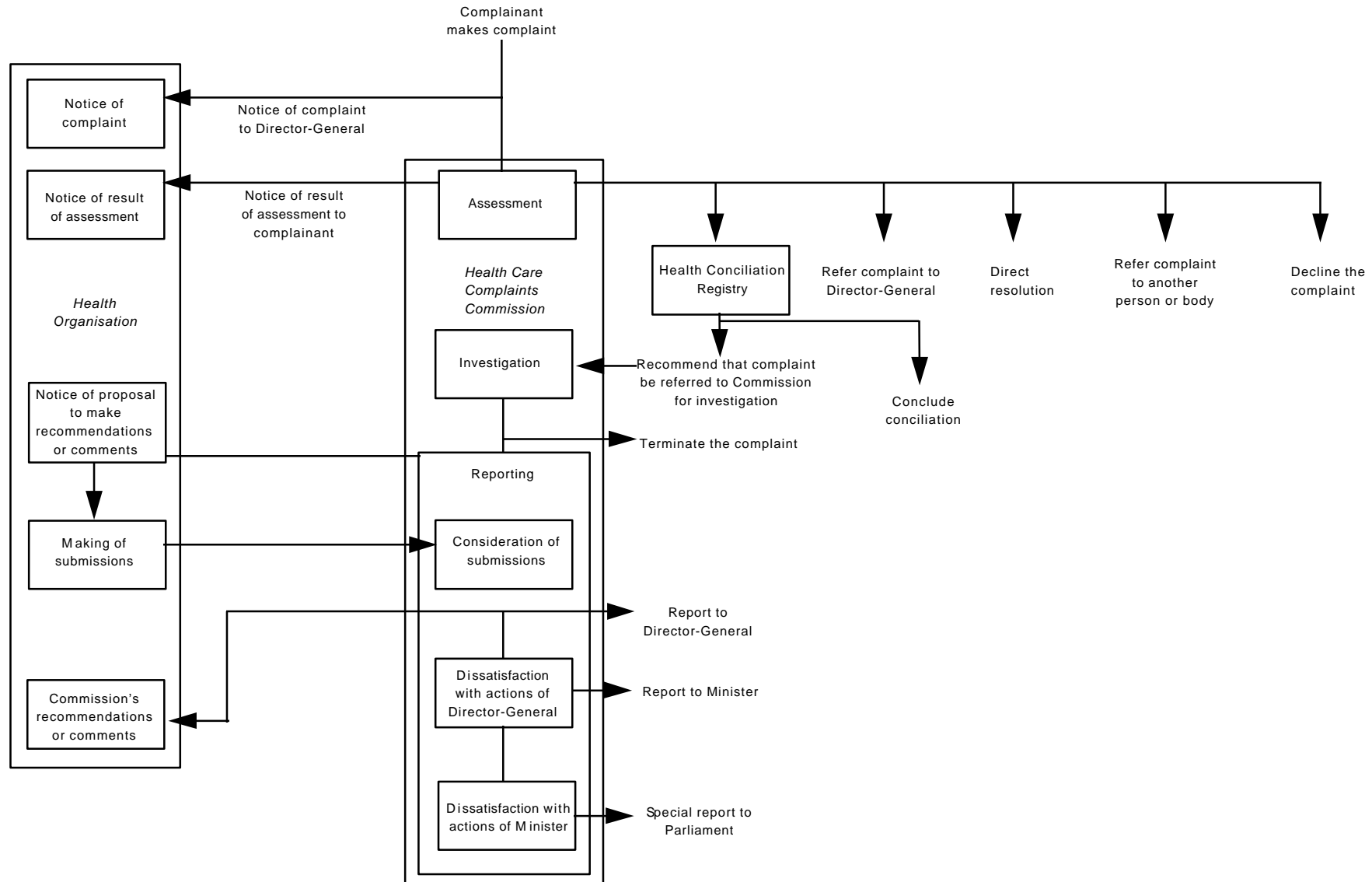
¹⁸⁷⁸ *Report of the Royal Commission into Deep Sleep Therapy*, (J. P. Slattery, Commissioner), 1990, Volume 13 Term 2, p. 33.

¹⁸⁷⁹ Health Care Complaints Act Review Committee, Review of health care complaints act 1993, Issues paper, June 1997, RCPS Exhibit 3223, p. 6.

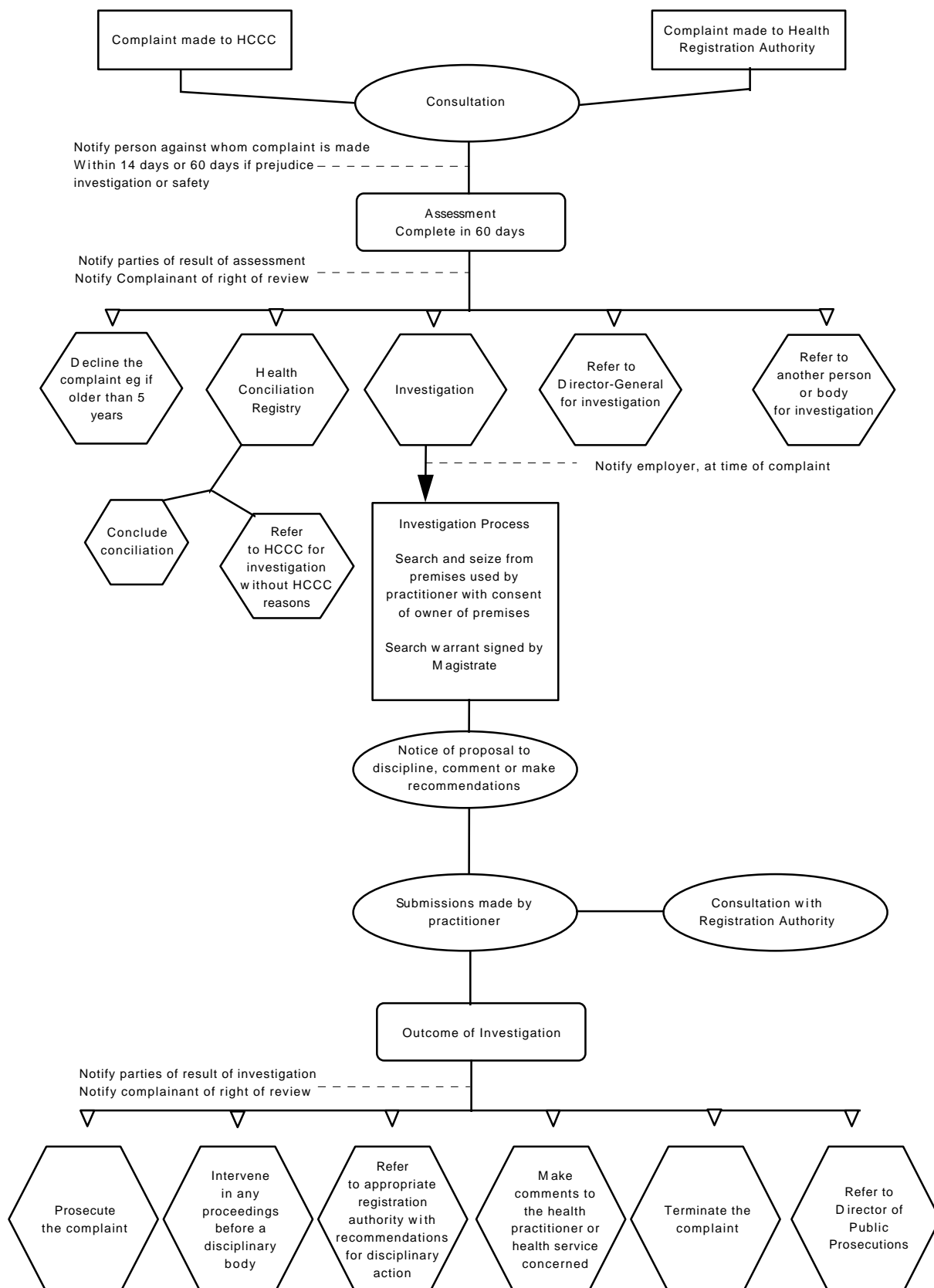
¹⁸⁸⁰ It may, amongst other things, prosecute before a disciplinary body or refer a case to the DPP under s. 39 of the *Health Care Complaints Act 1993*.

¹⁸⁸¹ Health Care Complaints Act Review Committee, Review of health care complaints act 1993, Issues paper, June 1997, RCPS Exhibit 3223, p. 5.

The Complaints Process against health organisations



The Complaints Process against practitioners



9.71 The formation of the HCCC has removed the conflict of interest which arose with an internal complaints and disciplinary system in which the Department had an interest to protect its reputation, and to limit its possible financial exposure to a client, on the one hand, and its duty to discipline its staff, and to protect its clients, on the other.

9.72 A number of different employment arrangements exist in relation to health workers. The majority are employed by or under contract to one of the following:

- Area Health Services under the *Area Health Services Act 1986*;
- Public Hospitals under the *Public Hospitals Act 1929*; or the
- Health Administration Corporation under the *Health Administration Act 1982*.

A limited group of administrative staff within the Department are subject to the disciplinary regime under the *Public Sector Management Act 1988*, and employees of the Ambulance Service of NSW are subject to the disciplinary regime under the Ambulance Services (Staff) Regulation 1995.

9.73 There are a variety of registration boards with jurisdiction in relation to the professional conduct of registered health workers. Although the procedures, structures and limits of jurisdiction differ across the professions¹⁸⁸² the disciplinary regime can be summarised as follows:

- all relevant Registration Boards must notify the HCCC whenever they receive a complaint in respect of a registered health worker;
- in respect of all categories except medical practitioners, nurses, osteopaths and chiropractors, the Registration Boards may investigate the matter and in some instances may conduct a hearing or refer it to the relevant Professional Standards Committee (the Committee) or Tribunal for hearing; however in practice the investigation is usually conducted by the HCCC after consultation with the Registration Board before referral to a Board, Committee or Tribunal for hearing;
- in respect of medical practitioners, nurses, chiropractors and osteopaths the complaint cannot be referred to a Committee or Tribunal before it has been investigated by the HCCC;
- the Committees are constituted by members of the profession of the person against whom the allegation is made and one lay member. They conduct an inquiry into the allegations and although the person against whom an allegation is made may have a legal representative present from whom advice can be sought no formal representation is permitted;
- the Committees have disciplinary powers including a power to caution, reprimand and/or impose conditions of practice but do not have power to deregister;
- the more serious complaints of professional misconduct are usually referred to the Boards (in professions where there is no Tribunal) or Tribunals (in the case of medical practitioners, nurses and osteopaths and chiropractors). The Boards and Tribunals have all the powers of a Committee but in addition have the power to deregister;
- the Medical Tribunal is constituted by a judge of the District Court, two members of the profession (one of whom is of the same specialty or category as the practitioner against whom the complaint is made) and a lay member. Other Tribunals are constituted by a judge or legal practitioner, members of the relevant profession and a lay member; and
- appeals from the Medical Tribunal are to the Supreme Court with respect to a point of law or in relation to penalty. The appeals from Registration Boards lie to the District Court and are *de novo* hearings.

¹⁸⁸² *Chiropractors and Osteopaths Act 1991; Dentists Act 1989; Medical Practice Act 1992; Nurses Act 1991; Optical Dispensers Act 1963; Optometrists Act 1930; Pharmacy Act 1964; Physiotherapy Registration Act 1945; Podiatrists Act 1989; Psychologists Act 1989.*

9.74 It is not within the province of the Royal Commission to make recommendations which will change the current employment and disciplinary arrangements of the various classes of employees working within the health field. However, the need for proper screening and ongoing monitoring of workers to deal with those who pose an unacceptable risk to children, is pressing.

E. DEFICIENCIES IN CURRENT PROCEDURES WHICH MAY ADVERSELY AFFECT AN INVESTIGATION OR PROSECUTION

9.75 The health workers with whom a sexually abused child may come into contact include medical practitioners, nurses, social workers, psychologists and counsellors, who may be either sexual assault specialists or generalists. There is a potential for contamination of evidence should they inappropriately interview a child.

9.76 Dr Mulcahy, a paediatrician based in Orange, who conducts outreach clinics in the central western area of the State, outlined an acceptable approach to overcome this risk, which the Commission would endorse. His usual practice in conducting a clinical examination, where a prosecution is envisaged, is not to take any history from the child but to rely on that supplied by the DCS and to conduct his examination within those parameters.¹⁸⁸³

9.77 This practice may not be entirely appropriate for those involved in counselling and rehabilitation, since there may be a need for some explanation of the incident which is the subject of the charge, and of the surrounding history. The introduction of the system examined in Volume V, Chapter 15, to have the child's evidence received in a preliminary hearing, might alleviate the position to some extent.¹⁸⁸⁴ As a general principle, however, the Commission considers it desirable for those involved in any therapeutic intervention to refrain from canvassing the facts constituting the offence any more than is absolutely necessary, unless the incident is raised by the child, and even then with considerable care.

9.78 If the facts are to be opened up in any such counselling or therapeutic intervention, then it is recommended that a very careful record be made of the discussion, by audio or video recording where possible. This will enable an accurate record to be available to both the Crown and the accused should that be necessary at any subsequent criminal trial.¹⁸⁸⁵

9.79 There also needs to be careful recognition by all health workers of the particular dangers of the contamination of evidence in cases where there are alleged multiple victims, such as in a kindergarten setting. Unnecessary exploration of the facts, and the release of information to parents concerning the experience of other children, can prove fatal in these cases.

9.80 DCS, Health and the Police Service must assume that anxious parents will discuss 'the case' and they need to tailor their procedures and practices to accommodate that inevitability.

9.81 The Royal Commission was concerned, as a result of its examination of a number of reports prepared by health workers in these cases, as to their impartiality and reliability. Very often conclusions were expressed as to the 'fact' of abuse on the basis of clinical examinations and histories which simply could not support those conclusions. Two extreme examples revealed the problem on their face:

¹⁸⁸³ D. L. Mulcahy, RCT, 2/9/96, pp. 31290-91.

¹⁸⁸⁴ See Volume V, Chapter 15 of this Report.

¹⁸⁸⁵ The Evidence Amendment (Confidential Communications) Bill 1997 proposes an amendment to the *Evidence Act 1995* requiring leave for the admission of such evidence.

- '[names] have been exposed to a range of sexual and physical abuse ... the precise nature of that abuse is difficult to ascertain';¹⁸⁸⁶ and
- '[names] were victims of abuse the details of which have been difficult to ascertain by us.'¹⁸⁸⁷

Without an ability to ascertain the details or nature of the abuse, it is impossible to understand how its existence could have been found or reported as a fact.

9.82 The release to parents, or the circulation of reports of this kind is highly undesirable. They are of no use for forensic purposes, they risk exciting possibly unjustified concern and they may lead to contamination of any case.

9.83 Health workers should not be making positive 'findings' that abuse has occurred, in such matters, particularly when the 'detail' cannot be ascertained. The more appropriate role for them is to report on clinical or behavioural observations and to state whether such observations are consistent with the presently accepted indications of such abuse (although bearing in mind the limitations in that kind of evidence). Where criminal prosecution is contemplated, it is highly preferable that any interviews in which details of the alleged abuse are sought be conducted in the multi-disciplinary setting of the JIT or by trained CPEA staff.

F. COUNSELLING SERVICES

9.84 There is concern amongst health care professionals that some of the persons presently holding themselves out as sexual assault counsellors, lack sufficient qualifications for this work, or conduct themselves in a way that is unprofessional,¹⁸⁸⁸ and that they should be subject to registration and peer review.

9.85 The Commission considers it imperative that children who have been subjected to the trauma of sexual abuse not be subjected to a process which is unchecked by peer review, or unregulated by reference to appropriate professional standards.

9.86 The Commission was concerned to obtain expert assistance in relation to this matter. The Section of Psychiatry of the Australian Medical Association informed the Royal Commission that, in view of the skill needed to deal with victims of child sexual abuse,¹⁸⁸⁹ counselling conducted in organisations in which governments play a role, or have an influence, should be carried out only by those staff who are suitably qualified and registered with a professional body which has its own peer review/professional standards structure.

9.87 The Commission considers it appropriate for minimum standards to be developed, along with an accreditation process for any counsellor who purports to provide counselling services to sexually abused children.

¹⁸⁸⁶ Confidential Report, RCPS Exhibit 2302C, at Doc. 2377051.

¹⁸⁸⁷ *ibid*, at Doc. 2377088.

¹⁸⁸⁸ A. Schlebaum, RCT, 29/10/96, p. 33547.

¹⁸⁸⁹ NSW AMA, Counselling Services Information, 13/5/97, RCPS Exhibit 3125.

G. RELATIONSHIPS WITH OTHER AGENCIES

EXPERT EVIDENCE

9.88 The Commission was also informed of the concerns some paediatric specialists held in providing medical services in sexual assault cases because of the delays and inconveniences encountered in giving evidence in criminal prosecutions. Not only was the remuneration inadequate for the time involved, but there was also a good deal of dead time,¹⁸⁹⁰ which would be better spent seeing other patients. Particularly is this the case when in many cases the evidence is of formal nature, is uncontested, and relatively brief.

9.89 Dr Mulcahy gave instances of the inconvenience sometimes involved, including an instance when he had cancelled all patients on a particular day, and travelled from Orange to Sydney to give evidence only to find that he was not needed.¹⁸⁹¹ This was not necessarily the fault of the ODDP, because it cannot always predict when there will be a late plea of guilty or an adjournment, or other event interfering with a proposed listing. It is, however, very important for abused children, and for the Police Service, to have access to experienced paediatricians. If private practitioners are driven from the system by frustration of this kind, the community is the loser.

9.90 The reception of expert evidence in these cases would be assisted by:

- an exchange of reports between experts prior to trial defining any medical issues which were seen to arise; and
- the reception of the evidence in the form of a report,¹⁸⁹² or where cross-examination is sought, and leave is given, by video link.¹⁸⁹³

NEW INTERAGENCY GUIDELINES AND JITS

9.91 The Interagency Guidelines issued in February 1997 came into force on 1 July 1997.¹⁸⁹⁴ The four key agencies involved (DCS, the Police Service, Health and DSE) are revising their internal procedures to bring them into line with these provisions. The advantages of interagency co-operation are obvious and include:

- the provision of a structure for shared decision-making, and for greater responsibility and accountability;
- enhancement of the assistance given to children and their families;
- the provision of professional support for the workers involved;
- reduction of the risk of systems abuse for children;
- the combination of different skills and resources;
- facilitation of the exchange of information and the development of networks; and
- assistance in breaking down the barriers between different professionals and agencies.¹⁸⁹⁵

¹⁸⁹⁰ M. A. Reid, RCT, 6/3/97, p. 36776.

¹⁸⁹¹ D. L. Mulcahy, RCT, 2/9/96, p. 31292.

¹⁸⁹² *Evidence Act 1995*, s. 177.

¹⁸⁹³ D. L. Mulcahy, RCT, 2/9/96, pp. 31293 & 31301.

¹⁸⁹⁴ The Interagency Guidelines are attached as Annexure P.19 to this Report.

¹⁸⁹⁵ C. Hallett, *Interagency Work in Child Protection*, NSW Child Protection Council, Sydney, 1993 cited in K. McCarthy, 'The Joint Investigative Team Experience', *Current Issues in Criminal Justice*, vol. 7, no. 2, November 1995, pp. 231-38 at 234.

9.92 The CPC has co-ordinated the implementation of the Interagency Guidelines and the training of staff. The program has included briefings for senior departmental staff and training for two groups (Child Protection Managers and Child Protection Special Staff) across the key departments. Staff within Health were nominated to conduct locally-based interagency workshops, to ensure a consistent and co-ordinated response based on the new guidelines.¹⁸⁹⁶

9.93 The Commission was informed by Health that it would also take steps to ensure that generalist health professionals were trained to recognise and notify cases of suspected child abuse emerging in the course of their duties. In addition, a 'train the trainer' strategy has been developed to ensure that the Areas can offer training to generalist health workers on an ongoing basis.¹⁸⁹⁷

9.94 This last mentioned development is a significant matter. Although funding has been made available in the past for training, no ongoing program was implemented. This was a recommendation of the 1985 Task Force and its lack of implementation has had serious ramifications. The continuing Child Protection Education (CPE) program recommended in respect of DCS workers is also recommended for Health workers.

9.95 The Commission supports the current Health approach to training, which it recognises is necessary to secure consistency in practice.¹⁸⁹⁸ Additionally, it considers it important that the training incorporate an interagency approach, so that workers from Health, DCS and the Police Service can be trained together in the core matters such as child development, the consequences of child abuse, and the way children need to be interviewed, managed or supported in these cases. This would be substantially enhanced by short-term placements or transfers to the other agencies involved to obtain an understanding of the way in which they work, and to foster a team approach.¹⁸⁹⁹

9.96 Health has recently signed a memorandum of understanding with the DCS and Police Service to secure its involvement in the JITS. It has been involved in the implementation committee, although not yet invited to participate on an operational level.¹⁹⁰⁰ Its Sexual Assault Policy Analyst, however, contributed to the development of the JITS operational protocol by defining the role of Health in the management of sexual abuse cases. This has been an important contribution as sexual assault services are contacted by the JITS to arrange a forensic clinical examination and crisis/ongoing counselling for the victims and their non-offending family members.¹⁹⁰¹

9.97 Together these are positive steps forward, and provide an opportunity for the co-ordinated, co-operative and professional approach to the investigation and management of child sexual abuse cases which was lacking when the Royal Commission began its inquiries. The progress gained will, however, be lost unless the agencies observe the Interagency Guidelines and provide proper ongoing training for their staff. This process should be pursued in conjunction with the Centre for Child Protection in the Children's Commission outlined in the final chapter of this Report.

¹⁸⁹⁶ NSW Health Department, Statement of Information, January 1997, RCPS Exhibit 5984/2, p. 5.

¹⁸⁹⁷ *ibid.*

¹⁸⁹⁸ *ibid.*

¹⁸⁹⁹ The New Children's Hospital, Submission to RCPS, 20/7/96, RCPS Exhibit 2521, p. 1.

¹⁹⁰⁰ NSW Health Department, Statement of Information, January 1997, RCPS Exhibit 5984/2, pp. 16-17.

¹⁹⁰¹ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 5.

EXPERT CHILDREN'S CENTRES

9.98 The Commission supports the concept of the 'one stop shop' along the lines of the Child Advocacy Center in Dallas,¹⁹⁰² outlined earlier in this Report.¹⁹⁰³ The JIT model could provide a basis for such an arrangement and there would be merit in trialing such a centre at the New Children's Hospital at Westmead.

TRAINING

9.99 There is a particular need to introduce undergraduate and postgraduate training in the treatment and management of child sexual abuse in all courses qualifying graduates to work in the care or supervision of children including medicine, nursing, social work, and child welfare, and also in postgraduate training in paediatrics and child psychiatry. There also needs to be an opportunity for practical experience during the intern, resident and registrar phases of medical training, including some exposure to the other agencies involved in child protection work.¹⁹⁰⁴

9.100 Additionally a valuable precedent for consideration is the San Diego Annual Conference on Child Mistreatment, conducted under the auspices of the American Society on the Abuse of Children. Such a conference could be organised by the proposed Children's Commission, on a State basis, to assist in fostering a uniform and acceptable standard of training for the staff of all agencies and encouraging the exchange of experiences.

SANE NURSES

9.101 The Forensic Nurse Examiners or Sexual Assault Nurse Examiners (SANE) who are currently used in sexual assault cases in the USA, provide adult and paediatric sexual assault examinations and also physical assault examinations. Their role includes:

- the objective collection of physical evidence, particularly by way of video colposcopy in sexual assault cases;
- photography of injuries using forensic photography techniques;
- the provision of prophylactic antibiotics and referrals; and
- the giving of evidence in criminal and civil cases.

The discipline is now well established, and there are a number of highly trained expert practitioners in this area. In some quarters their evidence is regarded as more practical and better understood by jurors than that of paediatricians.

9.102 Typically in hospitals employing a forensic nurse examiners team,¹⁹⁰⁵ a victim bypasses triage and registration and is interviewed by the forensic nurse and investigator together. The use of such nurses is less traumatic for the child.¹⁹⁰⁶ One distinct advantage is that these nurses do not have the competing needs of a private practice.

¹⁹⁰² Children's Advocacy Centres 'coordinate the activities of agencies relating to the investigation and civil and criminal prosecution of child abuse cases and the provision of services to and the treatment of victims of child abuse and their families.' (Doc. 2515462) 'Multi-disciplinary Teams are community child protection teams composed of representatives of agencies, offices and institutions that investigate child abuse reports, provide services to child abuse victims and their families or conduct civil or criminal prosecution of child abuse cases.' See Chapter 8 of this Volume.

¹⁹⁰³ See Chapter 8 of this Volume.

¹⁹⁰⁴ S. Booth, The New Children's Hospital, Submission to RCPS, 20/7/96, RCPS Exhibit 2529/47, p. 2.

¹⁹⁰⁵ Forensic Nurse Examiners of St Mary's Hospital, Material supplied to RCPS, 18/11/96, RCPS Exhibit 3051/24, p. 1.

¹⁹⁰⁶ File note re telephone call regarding forensic nurses and sexual assault nurse examiners in Richmond, Virginia, RCPS 3249C.

9.103 The current Director-General of Health acknowledged that the forensic nurse concept may have advantages, but explained that considerable legislative and cultural change would be required for it to be accommodated in NSW.¹⁹⁰⁷ While NSW registered nurses can perform a limited range of the functions of a SANE, they are neither trained nor legally capable of performing all of them. Accordingly, under current practice conditions, this model is not practicable¹⁹⁰⁸ and is not the subject of any immediate recommendation by the Commission. It is, however, apparent that the role of nurses within the health system has grown considerably in recent years, as has their training. The introduction of specialist training and the possible deployment of forensic nursing staff within a Children's Advocacy Centre or JIT is worthy of future consideration.

TELE-MEDICINE

9.104 Health is currently conducting a trial of 12 tele-medicine projects across the State as part of the government's 'Vision for Rural Health'. Its purpose is to test the worth and practicability of using current telecommunications facilities for the provision of clinical advice, consultation, peer support, education and training between health units.¹⁹⁰⁹ The 12 projects cover 31 sites across rural and metropolitan NSW and encompass the clinical specialties of psychiatry, pathology, radiology, obstetrics, ophthalmology and paediatrics which will be evaluated over the next 12 months.

9.105 The Commission is aware that similar facilities are employed in the United States for expert evaluation, and peer assessment of the results of video colposcopy and other forms of examination used in relation to child sexual abuse cases.

9.106 A facility of this kind would be particularly advantageous in cases of child abuse occurring in rural areas.¹⁹¹⁰ It would provide savings in time,¹⁹¹¹ and permit expert evaluation of the results of child sexual assault examination conducted by local medical specialists who lack any great experience in this area, particularly if video colposcopy is used. The Royal Commission sees merit in the use of this system for child sexual abuse cases.

H. CONCLUSION

9.107 Although Health is a very large organisation, and its history in respect of interagency co-operation on this topic has not been good, the Royal Commission is satisfied that there has been a positive change for the better.

9.108 Health workers have an important contribution to make in relation to the investigation of child sexual abuse cases and their integration or formal association with the JITs, and the possible development of the Advocacy Centre approach are worthy of careful consideration and trialing through a Sydney-based children's hospital.

9.109 Once a combination of the three agencies, NSW Police, DCS and Health develop trust in the multi-disciplinary setting with case conferencing, with the input of the ODPP, a more effective system providing better protection for children, and more reliable investigations, will be secured.

¹⁹⁰⁷ M. A. Reid, RCT, 6/3/97, p. 36777.

¹⁹⁰⁸ NSW Health Department, Letter re SANE nurses, 7/2/97, RCPS Exhibit 3051/38, p. 2.

¹⁹⁰⁹ NSW Health Department, NSW Health Department Telemedicine Initiative, RCPS Exhibit 5985/2.

¹⁹¹⁰ NSW Health Department, Submission to RCPS, September 1996, RCPS Exhibit 2541/1, p. 7.

¹⁹¹¹ M. A. Reid, RCT, 6/3/97, pp. 36778-79.

RECOMMENDATIONS

The Commission recommends the following:

- ◆ In conjunction with the Department of Corrective Services and Department of Juvenile Justice, exploration of the means by which Health can contribute in providing an effective and co-ordinated community-based program or programs for the treatment of child sexual abuse offenders (both adult and adolescent) in accordance with the matters outlined in Volume V, Chapter 19 of this Report (para. 9.18).
- ◆ Adoption of detailed pre-employment screening checks as outlined in this chapter, applicable to all Health employees, along with notification to the Children's Commission in accordance with the recommendations in Volume V, Chapter 20 (para. 9.64).
- ◆ Adoption of a system to deal with allegations of child sexual abuse against a health worker under which:
 - the Health Care Complaints Commission would be responsible to conduct an investigation into the complaint in consultation with the Children's Commission;
 - the Children's Commissioner would be able to exercise the power to issue a certificate that an employee is an unacceptable risk to occupy a position involving the care or supervision of children as outlined in Volume V, Chapter 20 (para. 9.65).

- ◆ Introduction of specialist training for health service providers working in the area of child sexual abuse so that they are able to deal with children in ways that will minimise the risk of system abuse, and avoid the contamination of any criminal investigation, as outlined in this Report (paras. 9.77 - 9.79 & 9.93).
- ◆ Introduction of a continuing Child Protection Education program (para. 9.94).
- ◆ Specialist training on an interagency approach, with provision for short-term transfer of health workers to other agencies, in the course of that training (para. 9.95).
- ◆ Training for generalist health service providers in the recognition and notification of suspected cases of child abuse, and in the procedures to be followed in such cases (para. 9.93).
- ◆ Introduction of undergraduate and postgraduate training in the treatment and management of child sexual abuse into all courses qualifying graduates to work in the care or supervision of children (paras. 9.99 - 9.100).
- ◆ Clear guidance as to the proper roles of health service providers in child sexual abuse cases, and as to the need for investigative interviewing to be conducted by police or DCS workers specially trained in such techniques (paras. 9.77 - 9.83).
- ◆ Development, in conjunction with the Australian Medical Association and relevant colleges, of a system for accreditation of those who carry on a practice of counselling the victims of child sexual abuse (paras. 9.84 - 9.87).

- ◆ Consideration be given to amendment of the *Crimes Act 1900*, s. 405D-E, to permit expert evidence to be taken by video link, and to the issue of Practice Directions to facilitate the reception of expert evidence in trials involving the sexual assault of children (para. 9.90).
- ◆ Encouragement be given to the trialing of an Expert Children's Centre, and of tele-medicine, in order to secure expert and peer evaluation of sexual assault examination by practitioners from outside the Child Protection Units (para. 9.98).

CHAPTER 10

THE EDUCATION SYSTEM

10.1 The Royal Commission received a considerable body of material in the form of evidence, complaints and submissions in relation to the manner in which the school education system, both in its government and non-government components, has managed allegations of child sexual abuse. As mentioned in this chapter, a number of problems emerged, of a similar kind to those identified in relation to Department of Community Services (DCS), the Church and other agencies or bodies entrusted with the care and supervision of children.

10.2 Some of the deficiencies which emerged, in the concealment, inadequate investigation and inappropriate management of these cases, were mirrored by the findings of the Honourable J. P. Slattery QC following an inquiry conducted by him upon reference from the Government, arising out of the revelations of the Royal Commission.¹⁹¹² In this chapter an overview of the education system and its failings is provided, together with a summary of the reforms achieved during the Commission and recommendations for further reform.

A. ADMINISTRATIVE STRUCTURE OF SCHOOL EDUCATION WITHIN NSW

DEPARTMENT OF SCHOOL EDUCATION

10.3 In 1848 the Governor of NSW appointed a Board to establish and maintain a public school system for the Colony. In 1880, administration of the system was vested in the Department of Public Instruction, which in 1915, became the Department of Education, and in 1989, the Department of School Education (DSE).¹⁹¹³

10.4 The *Public Instruction Act 1880*, and its amendments, were consolidated in the *Education and Public Instruction Act 1987*. This Act was repealed and replaced by the *Education Reform Act 1990*. Other current legislation with direct relevance to the DSE and its staff comprises the *Teaching Services Act 1980* and the *Public Sector Management Act 1988*.¹⁹¹⁴

10.5 The DSE administers 2,220 public schools which cater for approximately 750,000 students throughout the State. In 1996 these comprised:¹⁹¹⁵

| | |
|-------------------------------------|-------|
| Primary Schools | 1,630 |
| Separate Infants Schools | 18 |
| Central Schools | 65 |
| High Schools | 389 |
| Schools for Specific Purposes (SSP) | 99 |
| Field Study Centres | 19 |
| | 2,220 |

¹⁹¹² This review is described in more detail in paras. 10.125 to 10.128 of this chapter.

¹⁹¹³ DSE, *Annual Report 1995*, Overview, p. 12.

¹⁹¹⁴ *ibid.*

¹⁹¹⁵ *ibid.*

There are approximately 50,000 teachers employed to teach within DSE schools, including casual teachers.¹⁹¹⁶

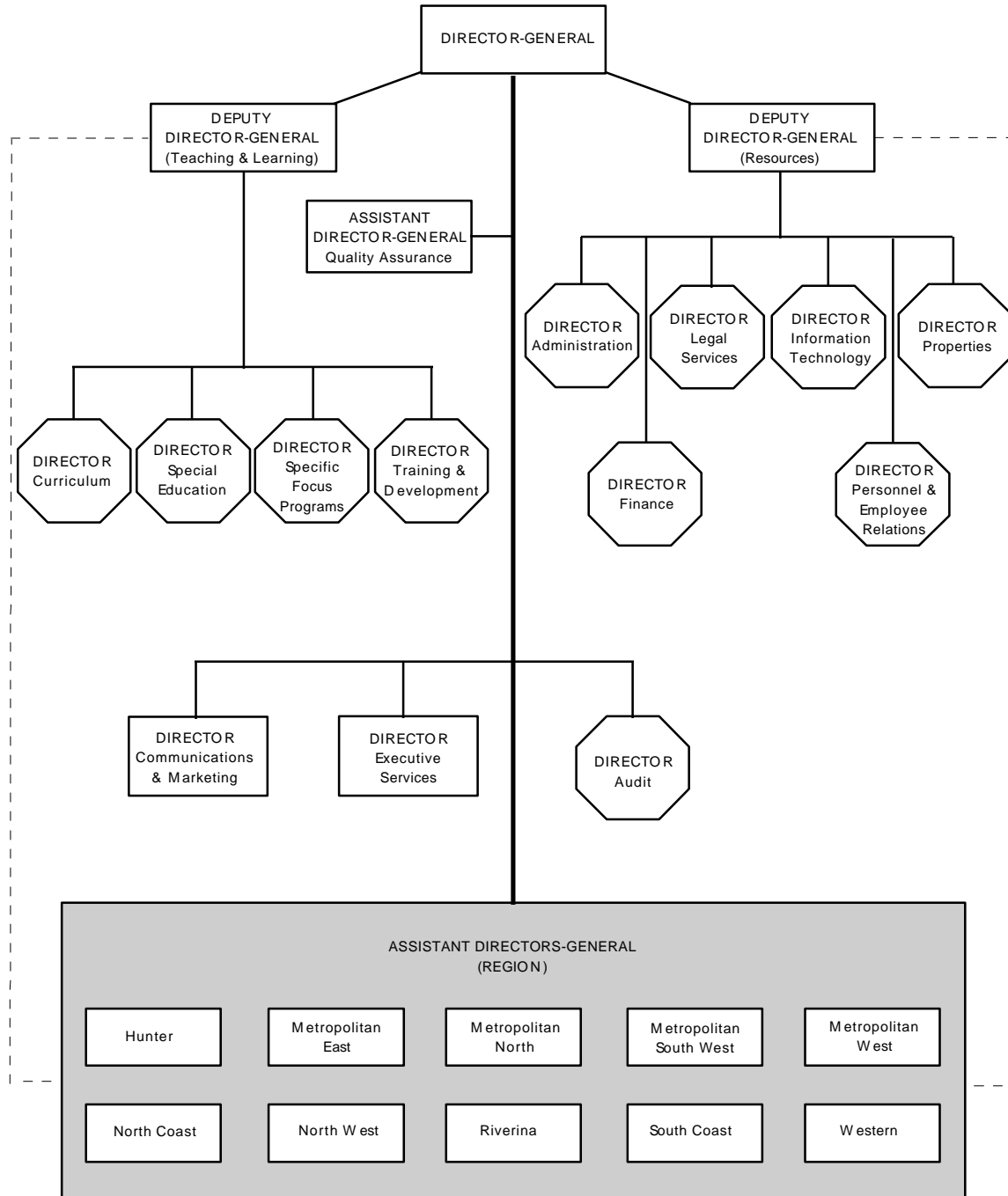
10.6 During the period of interest to the Royal Commission, up to 1996, the DSE was organised in a three-tier management structure of Areas (later known as Clusters), Regions and State Office. The Cluster directors reported to the Assistant Directors-General of the various regions, who then reported to the Director-General through the relevant Deputy Directors-General. Offices within the DSE, for example, the Legal Services Directorate, were administered by directors, who reported through the relevant Deputy Director-General to the Director-General.

10.7 At the time the Director-General, Dr Ken Boston first gave evidence to the Royal Commission, in May 1996, the structure was as follows:¹⁹¹⁷

¹⁹¹⁶ *ibid*, p. 15.

¹⁹¹⁷ DSE, Structure of State Executive and Staff Office Directors, RCPS Exhibit 1795.

State Executive and State Office Directors



10.8 In August 1995 the Minister for Education and Training had announced a restructure of the Department which was incomplete by the time Dr Boston gave his evidence but has now been completed. The objectives for the restructure were:

- to achieve a balanced budget in 1996/97, by producing 'savings' in corporate services and by reducing the number of senior executive positions by at least 33%; and to
- reshape the administration so that it was 'driven essentially by educational rather than financial imperatives'.¹⁹¹⁸

10.9 The restructure removed the system of Clusters within Regions, and replaced the 10 Regions with 40 Districts. Each District has within it a District Office, responsible for 50 schools. One of the advantages of this flattened structure was to place the District Office staff closer to individual schools. The school principal reports directly to the State office on matters of school staffing, funding and capital works, however the District Office is responsible for other functions. Within each District there is a District Superintendent to:

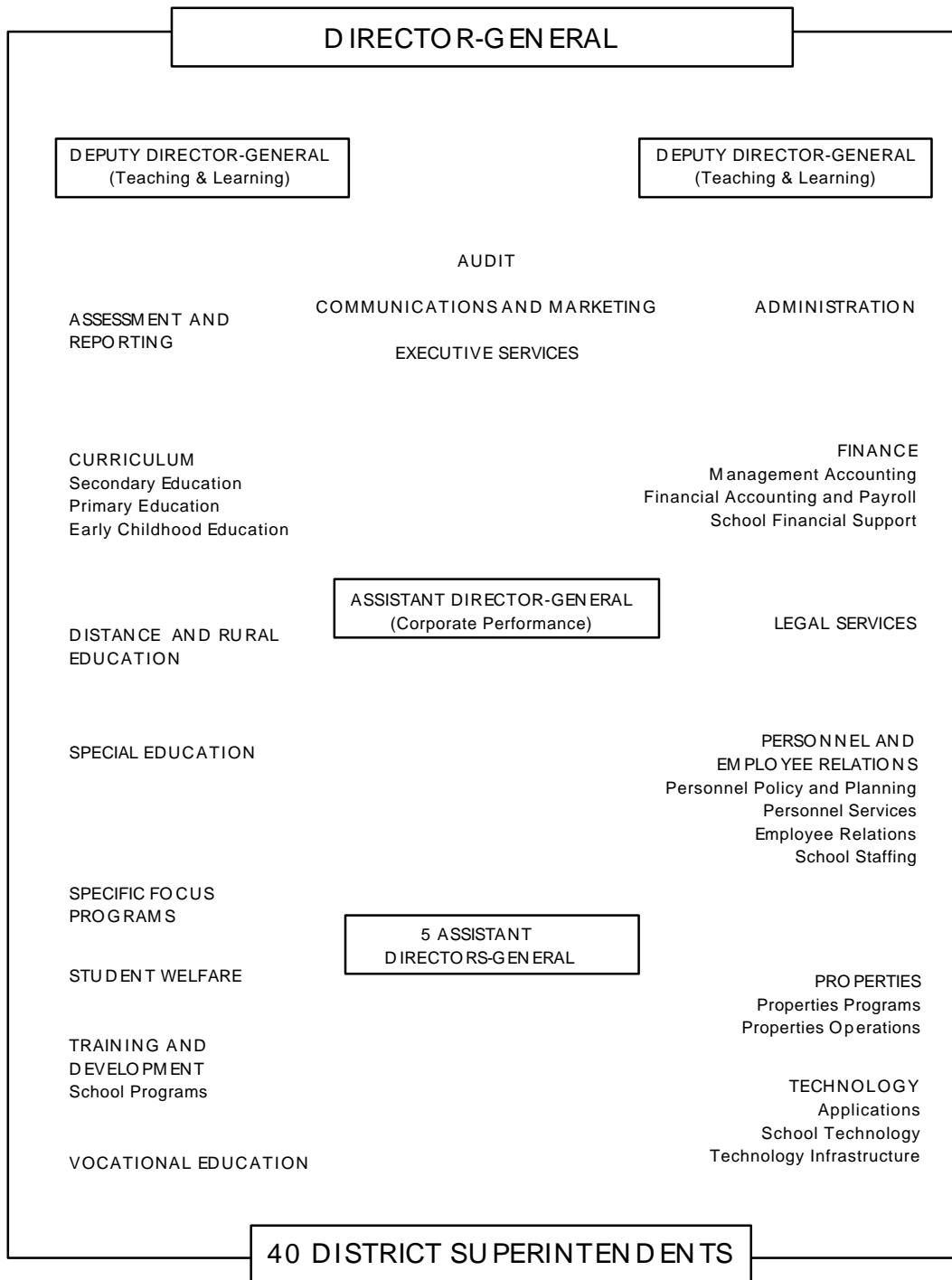
- ensure that specified standards are being achieved;
- provide professional support for schools in achieving those standards;
- monitor educational and financial audit processes; and to
- plan and manage the provision of public education within the District.¹⁹¹⁹

10.10 The new structure is as follows:¹⁹²⁰

¹⁹¹⁸ K. G. Boston, DSE, Statement of Information, 11/4/96, RCPS Exhibit 1794, at Doc. 2049970.

¹⁹¹⁹ *ibid*, at Doc. 2049973.

¹⁹²⁰ DSE, *Annual Report 1996*, Overview, p. 17.



NON-GOVERNMENT SCHOOLS

10.11 It is an offence to conduct, or knowingly permit or assist in the conduct of a school (other than a government school), for the education of children of compulsory school age unless the school is registered under the *Education Reform Act 1990*.¹⁹²¹ Compulsory school age is any age of or above six years and below 15 years.¹⁹²²

10.12 An approved authority may seek registration of a system of non-government schools under the *Education Reform Act*¹⁹²³ for a group of 20 or more schools (or less than 20 but more than 10 if approved by the Minister in special circumstances on the recommendation of the Board of Studies).¹⁹²⁴ The approved authority is required to provide a description of the manner in which compliance with requirements for registration is to be monitored.¹⁹²⁵ Alternatively, a non-government school can be registered as an individual school.¹⁹²⁶

10.13 Registration of any school is subject to cancellation by the Minister on the recommendation of the Board of Studies if satisfied that there is non-compliance with the requirements for registration.¹⁹²⁷

10.14 Those requirements include employment of teaching staff who have the necessary experience or qualifications (or who are regularly supervised by teaching staff with such experience or qualifications).¹⁹²⁸

10.15 There are approximately 500 Catholic systemic schools operated under the Diocesan Catholic Education Office, and an additional 450 (approximately) independent non-systemic schools responsible to various school councils and boards, churches or religious orders. There are approximately 18,500 employees in non-government schools, including support staff and those employed in early childhood centres and private business colleges.¹⁹²⁹

¹⁹²¹ *Education Reform Act 1990* , s. 65.

¹⁹²² *Education Reform Act 1990* , s. 3.

¹⁹²³ *Education Reform Act 1990* , ss. 38 & 39.

¹⁹²⁴ *Education Reform Act 1990* , s. 39.

¹⁹²⁵ *Education Reform Act 1990* , ss. 40 & 41.

¹⁹²⁶ *Education Reform Act 1990* , s. 38.

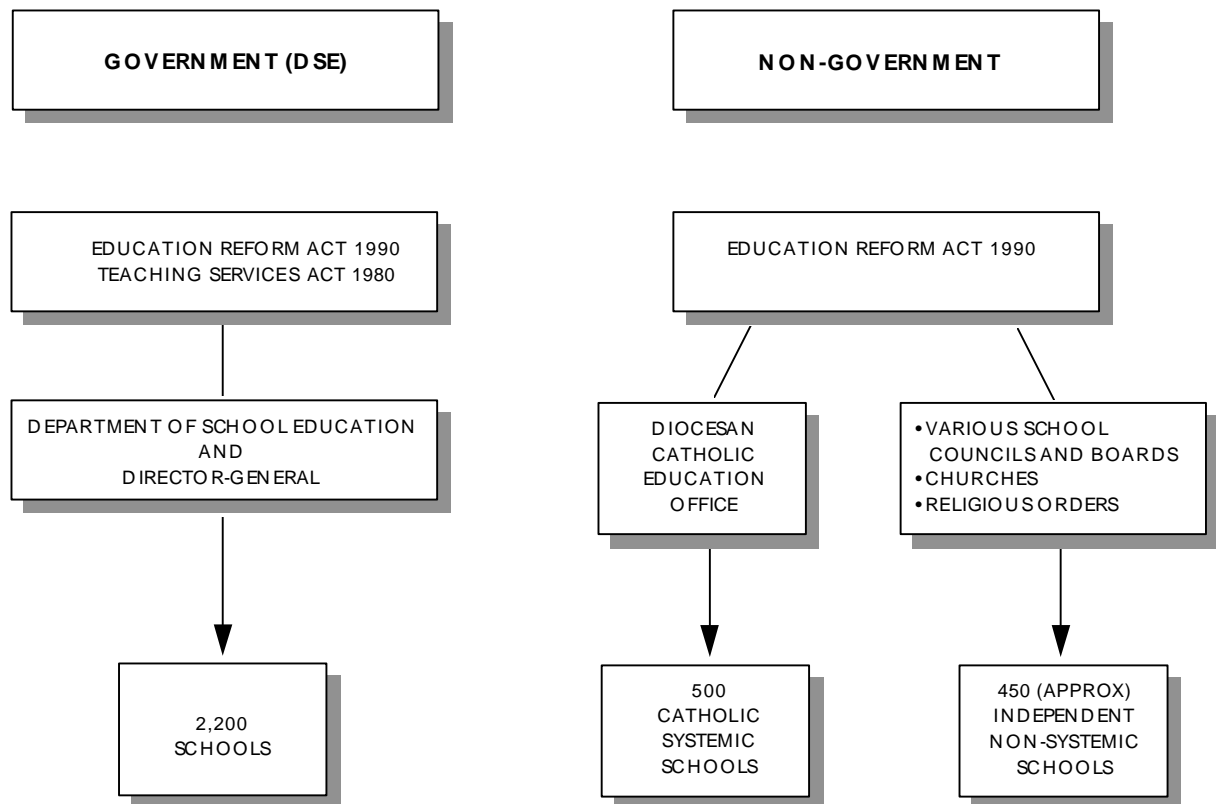
¹⁹²⁷ *Education Reform Act 1990* , s. 59.

¹⁹²⁸ *Education Reform Act 1990* , s. 47.

¹⁹²⁹ NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184.

OVERVIEW

10.16 The following diagram provides a broad overview of the teaching structure within NSW:



B. REGULATION OF TEACHERS

EMPLOYMENT OF TEACHERS

DSE Schools

10.17 Teachers are appointed pursuant to the *Teaching Services Act 1980*. They are expected to disclose details of any criminal history and are informed that the DSE will make a criminal records check with the Police Service. There is a face to face interview with the District Superintendent. Whilst awaiting approval for permanent employment, applicants are able to undertake casual work if it is available and if they are approved for casual teaching.¹⁹³⁰ No system for registration applies, appointment being dependent on demonstration of suitable qualifications and good character.

¹⁹³⁰ NSW Teachers Federation, Submission to RCPS, 11/6/97, RCPS Exhibit 3224, p. 6.

Non-Government Schools

10.18 In almost all cases teaching staff are appointed by the principal. Although within the Catholic school system the employment contract is with the central authority, the appointment is made at the local level. For independent schools the contract is with the authority or board conducting the school, each of which is free to adopt its own selection procedures. There are approximately 400 separate employing authorities relying on formal and informal processes to assess staff at the point of employment.¹⁹³¹ Again, no system of registration or official accreditation applies.

TERMINATION OF EMPLOYMENT

DSE Schools

10.19 The *Teaching Services Act 1980*¹⁹³² governs the procedures to be followed in respect of alleged breaches of discipline by teachers which may lead, *inter alia*, to dismissal. The process is very similar to that under the *Public Sector Management Act 1988* for DCS employees, as outlined in Chapter 8 of this Report. Under the Teaching Services Act a breach of discipline includes engaging in misconduct or disgraceful or improper conduct.¹⁹³³

10.20 If a teacher is charged with a breach of discipline a hearing may be conducted, or a written submission called for, by prescribed officers of the Department. At the conclusion of a hearing, or on review of a submission, a decision is made whether the charge has been proved.¹⁹³⁴ The penalties available include caution, reprimand, fine, reduction in wages or demotion.¹⁹³⁵ In addition, the teacher can be dismissed from the Service or directed to resign.¹⁹³⁶ An appeal lies to the Government and Related Employees Appeals Tribunal (GREAT) in respect of the finding of breach and penalty.¹⁹³⁷ There is an appeal to the Supreme Court from GREAT but only on a question of law.¹⁹³⁸ There is also an appeal to the Industrial Relations Commission (IRC) in respect of dismissal or threatened dismissal.¹⁹³⁹

10.21 The Director-General or a prescribed officer may suspend an employee who has been:

- charged with a breach of discipline; or
- charged with a 'serious' offence punishable by imprisonment for 12 months or more.¹⁹⁴⁰ Such a suspension may be removed at any time.

¹⁹³¹ NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184, at Doc. 2710135.

¹⁹³² *Teaching Services Act 1980*, Division 6 (Discipline and Conduct) Part 4.

¹⁹³³ *Teaching Services Act 1980*, s. 83(b) & (f).

¹⁹³⁴ *Teaching Services Act 1980*, Regulations cl. 13-20.

¹⁹³⁵ *Teaching Services Act 1980*, s. 85(1)(a).

¹⁹³⁶ *Teaching Services Act 1980*, s. 85(b).

¹⁹³⁷ *Teaching Services Act 1980*, s. 85(4).

¹⁹³⁸ *Government and Related Employees Appeal Act 1980*, s. 54.

¹⁹³⁹ *Industrial Relations Act 1980*, Part 6.

¹⁹⁴⁰ *Teaching Services Act 1980*, s. 87.

10.22 Until April 1997, clause 19 of the Regulations under the Teaching Services Act required that in cases in which a charge for breach of discipline was not proven 'the charge' must not be recorded in (or, if already recorded, must be removed from) the member's personal record.

10.23 In April 1997, an amendment was made to this regulation to provide that a 'charge' that a member of staff engaged in 'conduct of a sexual nature involving children or students' is to be recorded separately from the member's personal record, and is to be kept under strictly limited access as approved by the Director-General. The amendment also requires that if the 'charge' is found not to be proved that fact must also be noted on the record that is kept.¹⁹⁴¹ The effect of the amendment is to permit a 'charge' of this kind to be retained, whereas other charges involving a breach of discipline which are found not proved, are not to be recorded, or if already recorded, are to be removed.

10.24 By reason of the vulnerability of children, and the repetitive and compulsive behaviour of child sex offenders, the Royal Commission endorses this initiative and supports a similar approach for all departments which have an involvement in the care or supervision of children.

Non-Government Schools

10.25 The terms of each teacher's employment contract govern the manner in which a teacher can be dismissed or a resignation required. Any decision for dismissal based on fitness to continue in employment is essentially a matter for the principal of the school and the employing authority. So far as the Commission is aware, none have specific disciplinary procedures, although staff within Catholic systemic schools may come within the new protocols adopted by that Church. In accordance with the general law, a teacher dissatisfied with a dismissal would have a right to appeal to the IRC on the ground of unjust dismissal.

MANDATORY NOTIFICATION

10.26 In 1982, the Community Welfare Act came into force and required 'prescribed persons' to notify the director of Youth and Community Services (YACS) of cases where they suspected a child had been or was in danger of being abused.¹⁹⁴²

10.27 From 1982 to 1987 no persons other than medical practitioners were prescribed by regulation as mandatory notifiers. However in 1987, school principals, school deputy principals, schoolteachers, early childhood teachers who were employed in a school, school counsellors and school social workers became prescribed persons, required to notify pursuant to s. 22(3) which deals only with sexual assault.¹⁹⁴³ At this time 'school' was defined to include both government and non-government schools.

10.28 Following enactment of the *Children (Care and Protection) Act 1987*, similar categories of persons were prescribed as mandatory notifiers.¹⁹⁴⁴ However, when the Regulations were reissued in 1996 the definition of school was so expressed as to apply only to government schools. This was an oversight¹⁹⁴⁵ which was cured by an amending regulation in March 1997.

¹⁹⁴¹ Teaching Services (Education Teaching Services) Amendment Regulation 1997, cl. 19(3) & 19(4).

¹⁹⁴² *Community Welfare Act 1982*, ss. 102(1).

¹⁹⁴³ Child Welfare Act Regulation, cl. 74(1)(a) to (f) inclusive.

¹⁹⁴⁴ Children (Care and Protection) - General Regulation 1988.

¹⁹⁴⁵ P. Bergin, RCT, 13/3/97, p. 37183; H. M. Bauer, DCS, Letter to RCPS, 6/5/97, RCPS Exhibit 3149.

10.29 Under the Act it is an offence for a prescribed person to fail to promptly notify or cause the Director-General to be notified of the suspicion that a child has been abused.¹⁹⁴⁶ A possible ambiguity arises in the legislation in that s. 22(3) speaks of an obligation to comply with the requirement in s. 22(4) to notify the Director-General where a person has 'reasonable grounds' to suspect abuse, yet s. 22(4) assumes an obligation to comply with the provision where 'any grounds' for such suspicion are entertained. Although a minor point, this needs to be addressed in the legislative review presently being conducted by DCS.¹⁹⁴⁷

10.30 The evidence before the Commission indicates that mandatory notification provisions have largely been ignored by teachers and school principals, in that:

- the incidence of reporting has been very low; and in that
- few prosecutions or disciplinary proceedings have been instituted for non-compliance.

10.31 In what was described as a 'test case' in 1995, proceedings were brought against a school principal for an offence under this section but were dismissed. Various difficulties with the legislative scheme were highlighted¹⁹⁴⁸ including:

- the ambiguity referred to in paragraph 10.29 above; and
- the circumstance that while the wider class of persons were prescribed by regulation to notify sexual assault, no persons were prescribed by regulation to notify other forms of abuse.

This omission continues and it should be rectified, otherwise the sole mandatory notifiers of physical or emotional abuse will be medical practitioners.

C. COMPLAINT MANAGEMENT

GUIDELINES

10.32 The DSE guidelines current as at May 1996 in relation to the notification of suspected cases of child abuse, *Responding to Child Sexual Assault - Guidelines for Teachers*,¹⁹⁴⁹ were somewhat out of date¹⁹⁵⁰ but are diagrammatically depicted as follows:¹⁹⁵¹

¹⁹⁴⁶ *Children (Care and Protection) Act 1987*, s. 22(6).

¹⁹⁴⁷ See Chapter 8 of this Volume.

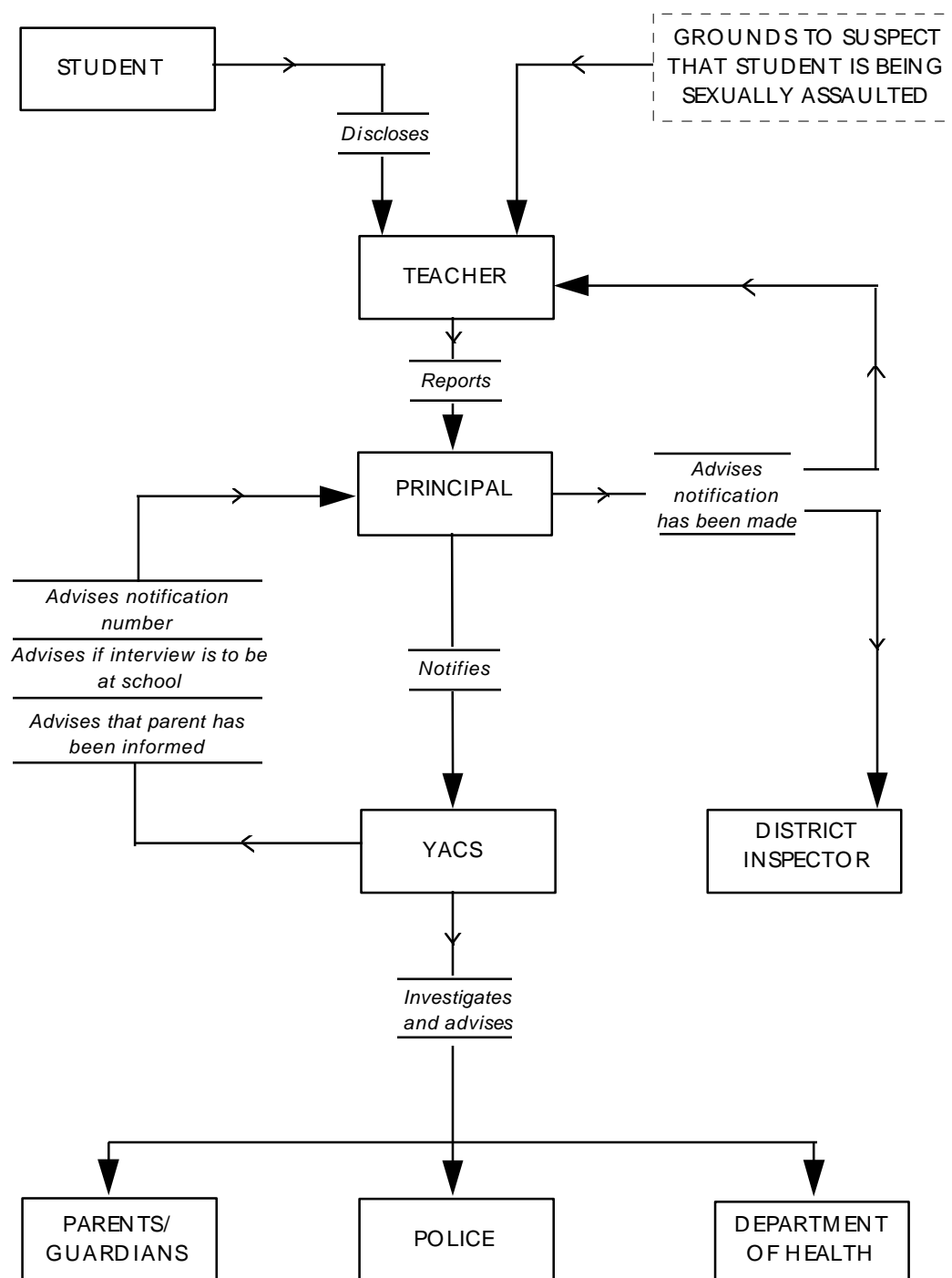
¹⁹⁴⁸ 'Court throws out test case', *Sydney Morning Herald*, 28/2/95, RCPS Exhibit 3262, p. 3; NSW Department of Courts, Local Court file, RCPS Exhibit 3256C.

¹⁹⁴⁹ *Responding to Child Sexual Assault - Guidelines for Teachers*, DSE, Sydney, c1987, RCPS Exhibit 1796.

¹⁹⁵⁰ They directed teachers to notify YACS, whereas YACS has been changed to FACS in 1988 and DCS in the early 1990s.

¹⁹⁵¹ *Responding to Child Sexual Assault - Guidelines for Teachers*, DSE, Sydney, c1987, RCPS Exhibit 1796, p. 5.

NOTIFICATION STEPS



10.33 The primary emphasis of these guidelines was upon the notification of abuse by family members or members of the public. The possibility of abuse by a teacher was mentioned only in passing in a section dealing with 'legal questions and concerns' containing the following question and answer:

Do I have to notify if the abuser is a colleague or someone I know?

Yes. The identity of the abuser is irrelevant. If you choose not to notify then you could be prosecuted for a failure to notify and the penalty provisions of the Act may apply.¹⁹⁵²

10.34 A draft document entitled 'Procedures to be followed in Cases of Improper Conduct of a Sexual Nature involving Students and Staff' was also prepared in 1994. Dr Boston was unable to answer in May 1996 why the draft had remained as a draft for so long,¹⁹⁵³ other than to suggest that 'the ground [had] shifted' since the work had begun,¹⁹⁵⁴ and that changes in the DSE, and work with the Department of Community Services (DCS) and Child Protection Council (CPC) needed to be reflected. He accepted that 'all stops should be pulled out' to settle the procedures.¹⁹⁵⁵

10.35 Although acknowledging that he was not able to be satisfied as to the true position concerning the State's 2,220 schools, Dr Boston was of the view that the DSE child protection and reporting programs were working.¹⁹⁵⁶

SERIOUS FLAWS ARE IDENTIFIED

10.36 Notwithstanding this evidence, Dr Boston admitted that under the system in force as at May 1996, a paedophile could escape detection and move from school to school without being sufficiently identified.¹⁹⁵⁷

10.37 This was a direct result of the fact that there was no uniform system across the State for reporting matters to head office, or for recording or dealing with complaints of sexual misconduct against teachers, nor any system for the registration of teachers. It emerged, for example, that:

- in Metropolitan North Region the complaints were registered in a confidential complaints register and each case was then managed through individual personnel files;
- in Metropolitan West Region there was no complaints register so that complaints were kept on a 'school file' subtitled with the teacher's name and the details of the complaints;
- in Metropolitan South Region the complaints were kept on personnel files with no reporting back to the Central Office;
- in Metropolitan East Region and South East Region the complaints were investigated within the particular region and not reported to Central;
- in the Hunter Region there was a 'return' of complaints to the Legal Services Director from time to time;
- in the North Coast Region the complaints were dealt with locally and the files were locally stored;
- in the Riverina Region the complaints were kept on personnel files within the region;
- in the North West Region the complaints were placed into a file relating to the particular staff member without returns to Central Office; and

¹⁹⁵² *ibid*, p. 16.

¹⁹⁵³ K. G. Boston, RCT, 6/5/96, p. 24713.

¹⁹⁵⁴ K. G. Boston, RCT, 6/5/96, p. 24713.

¹⁹⁵⁵ K. G. Boston, RCT, 6/5/96, p. 24713.

¹⁹⁵⁶ K. G. Boston, RCT, 6/5/96, p. 24713.

¹⁹⁵⁷ K. G. Boston, RCT, 6/5/96, p. 24714.

- in the Western Region there had been no returns to Central Office since 1993.¹⁹⁵⁸

10.38 In recognition of the obvious problem which arises where different practices existed in various regions, a decision was made to establish a central complaints register, to be kept on a consolidated database under the control of the Legal Services Directorate.¹⁹⁵⁹ By reason of the hotchpotch recording practices the department was, however, presented with a very difficult problem in establishing a complaints register that might be of any use in providing an accurate record of past complaints or investigations.¹⁹⁶⁰

10.39 This quickly became apparent from the number of cases examined by the Royal Commission where complaints had either been inadequately recorded or insufficiently investigated. Some examples may be briefly mentioned:

Case Study One

- one teacher, Z10, complained that another teacher, Z2, was having an inappropriate relationship with a young female student, sending her flowers and meeting her alone in the staff room before school. It was Z10, and not Z2, who was recorded on the complaints register as the subject of the complaint;¹⁹⁶¹

Case Study Two

- complaints concerning a teacher's aide, Z7, who had been found locking young children in a darkened room, asking young girls if he could kiss their legs, lying semi-conscious on a table outside a classroom and exposing himself in the playground, did not reach the register;¹⁹⁶²

Case Study Three

- a principal's desire to proceed departmentally against a teacher, Z5, in relation to allegations of sexual misconduct was frustrated by reason of an absence of records of previous similar incidents;¹⁹⁶³ as a consequence of which the teacher was transferred to another school in the face of allegations that were neither properly investigated or documented;¹⁹⁶⁴

Case Study Four

- a male teacher, Z4, was alleged to have pursued a sexual relationship with a Year 10 female student in his class. Although police action in respect of a charge of carnally knowing the girl was considered the student did not wish to give evidence. The teacher then requested a transfer from the school which was granted. The information in relation to the allegation was not passed on to the principal of that new school;
- within 12 months of the transfer further allegations were made at the school to which Z4 had transferred in respect of his relationship with female students including allegations that he had taken one student to a motel, and had engaged in 'suggestive talk' with other female students. As a result of these complaints the relieving principal decided to counsel Z4.¹⁹⁶⁵ The principal requested that the matter be dealt with by the school rather than in a disciplinary setting, a suggestion that was accepted by the Area Inspector;¹⁹⁶⁶

¹⁹⁵⁸ K. G. Boston, RCT, 6/5/96, pp. 24711-13; K. G. Boston, Statement of Information, 11/4/96, RCPS Exhibit 1794.

¹⁹⁵⁹ K. G. Boston, RCT, 6/5/96, p. 24677.

¹⁹⁶⁰ K. G. Boston, RCT, 6/5/96, p. 24712.

¹⁹⁶¹ K. G. Boston, RCT, 6/5/96, p. 24707.

¹⁹⁶² K. G. Boston, RCT, 6/5/96, p. 24692.

¹⁹⁶³ DSE, Personnel file of Z5, RCPS Exhibit 1814C/12, at Doc. 2002039-41.

¹⁹⁶⁴ DSE, Personnel file of Z5, RCPS Exhibit 1814C/14, at Doc. 2002035-36.

¹⁹⁶⁵ DSE, Record of Interview with 7 students re Z4, Personnel file of Z4, 1/5/89, RCPS Exhibit 1816C/5a.02, at Doc. 2002121.

¹⁹⁶⁶ DSE, Personnel file of Z4, RCPS Exhibit 3225C, at Doc. 2002099-100.

- Z4 was given a warning and the complaint was then kept in a 'private file' in the region. The complaints register noted that Z4 had been involved in 'improper conduct' but contained no details other than recording that he had 'resigned'.¹⁹⁶⁷

10.40 The evidence established the ease with which teachers could move from DSE schools to non-government schools, without adverse comment, even in the face of serious allegations of sexual misconduct.

10.41 By the end of his evidence in May 1996, Dr Boston acknowledged that:

- these and other files demonstrated that teachers who were the subject of allegations of sexual misconduct had been transferred, without a proper investigation and without the new principal being warned of previous problems;¹⁹⁶⁸
- the transfer of teachers in such circumstances was merely moving the problem from one place to another rather than curing it;¹⁹⁶⁹
- it was important that any risk of children being the subject of sexual misconduct by DSE staff be resolved in favour of protecting the children; and that¹⁹⁷⁰
- the confidential complaints register needed to be attended to most urgently either to make it accurate, or perhaps by replacing it with a new system.¹⁹⁷¹

10.42 In response to this evidence, the Minister for Education and Training, the Honourable John Aquilina MLA, announced, on 16 July 1996, that:

- NSW would seek a co-ordinated effort by all States and Territories to keep paedophiles out of schools;
- NSW had called for a national task force to prepare a report on action being taken by the education systems in each of the States and Territories and a strategy for co-ordination of State action in this area; and that
- the perceived way forward was by a nationally consistent checking mechanism for teachers seeking employment.¹⁹⁷²

10.43 At the meeting of the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA) in Melbourne in March 1997, the State and Territory Education Ministers supported 'in principle' a scheme to establish a national register of persons deemed unsuitable for teaching because of criminal convictions or dismissal for sexual misconduct.¹⁹⁷³

10.44 The Royal Commission endorses this approach and suggests that the proposed unacceptable risk test discussed later in this Report be considered as an appropriate test for such a scheme. It would be appropriate for the Children's Commission to have access to this register.

¹⁹⁶⁷ K. G. Boston, DSE, Statement of Information, 11/4/96, RCPS Exhibit 1794, at Doc. 2049991.

¹⁹⁶⁸ K. G. Boston, RCT, 6/5/96, p. 24700.

¹⁹⁶⁹ K. G. Boston, RCT, 6/5/96, p. 24702.

¹⁹⁷⁰ K. G. Boston, RCT, 6/5/96, p. 24703.

¹⁹⁷¹ K. G. Boston, RCT, 6/5/96, p. 24710.

¹⁹⁷² Minister for Education and Training, Media Release, 16/7/96, RCPS Exhibit 2526, at Doc. 2409003.

¹⁹⁷³ NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184, at Doc. 2710138.

THE CASE MANAGEMENT UNIT 1996

10.45 When Dr Boston returned to give further evidence in September 1996 he informed the Commission that the DSE had now established a Case Management Unit (CMU) consisting of six people which had brought together the records kept in the Regions,¹⁹⁷⁴ and developed a Case Management System (CMS).

10.46 This system he explained:

- was computerised and would allocate cases into categories of either closed or open;
- would allow the department to manage cases at a central level in a more controlled way;
- would allow dissection of the information into the following categories:
 - activities;
 - people;
 - locations; and
 - patterns of behaviour; and
- would document all future cases and build up a pattern over time.¹⁹⁷⁵

10.47 Dr Boston said that 302 cases had been recorded on the database, of which 232 had been marked as closed. This left 70 open cases to be investigated. He added that there were grounds for some of the closed cases to be reopened and for individual teachers to have their behaviour monitored.¹⁹⁷⁶

10.48 He also said that the DSE had commenced a comprehensive review of all policies and procedures relating to child sexual assault.¹⁹⁷⁷ The draft document created in 1994 had been expanded to take into account the establishment of the CMU and the CMS.¹⁹⁷⁸ It identified improper conduct by a staff member as including:

- inappropriate conversation of a sexual nature;
- obscene language;
- suggestive remarks or actions;
- jokes of a sexual nature;
- obscene gestures;
- unwarranted touching;
- sexual exhibitionism;
- personal correspondence with students in respect of the teacher's sexual feelings for the student(s); and
- deliberate exposure of students to sexual behaviour of others (except in the case of prescribed curriculum material in which sexual themes are contextual).

¹⁹⁷⁴ K. G. Boston, RCT, 3/9/96, p. 31459.

¹⁹⁷⁵ K. G. Boston, RCT, 3/9/96, p. 31459.

¹⁹⁷⁶ K. G. Boston, RCT, 3/9/96, p. 31459.

¹⁹⁷⁷ K. G. Boston, DSE, Letter to RCPS, 16/8/96, RCPS Exhibit 2526, at Doc. 2409001.

¹⁹⁷⁸ The document was entitled: Procedures to be followed in cases of improper conduct of a sexual nature by a staff member against a student(s).

10.49 This was an inclusory definition but curiously it omitted the most obvious and serious forms of misconduct involving sexual intercourse or maintenance of a sexual relationship with a student.¹⁹⁷⁹ The final document produced in March 1997 rectified these omissions and included 'sexual intercourse and any other form of child sexual abuse'.¹⁹⁸⁰

10.50 The investigatory system proposed and introduced (with some later refinements) stipulates that:

- any allegation of improper conduct against a staff member is to be made to the principal of the school, or if made to a staff member by the student is to be immediately reported by the staff member to the principal;¹⁹⁸¹
- the principal is to obtain from the person making the allegation a signed statement; alternatively the principal is to record the allegation;¹⁹⁸²
- the principal is not to investigate the allegations but is to arrange counselling if necessary for any student involved in the incident or the person making the allegation; and
- the principal is to immediately telephone the CMU, inform it of the nature of the allegation, supply details in relation to the student and teacher and advise whether the principal considers that any other families or members of the school community need be informed.¹⁹⁸³

10.51 Upon receipt of the information the CMU, in consultation with the principal is to outline the action that is to follow, concerning:

- the advice to be given to the parents of the student;
- the advice to be given to the staff member, in relation to:
 - the extent of the contact the staff member may have with students or staff at the school;
 - the continued presence of the staff member at the school which may involve a direction to undertake other duties at a specified location or to remain home on full pay;
 - the process of the investigation; and
 - the advice to be provided to families other than those directly involved in the incident or to any other members of the school community.¹⁹⁸⁴

10.52 Thereafter the CMU is to:

- register the allegation(s) on the CMS;
- assess the seriousness of the allegation(s); and
- arrange for the allegations to be investigated.

¹⁹⁷⁹ DSE, Procedures to be followed in cases of improper conduct of a sexual nature by a staff member against a student(s), RCPS Exhibit 2526, at Doc. 2409017.

¹⁹⁸⁰ *Child Protection: Procedures to be Followed in Response to Allegations of Improper Conduct of a Sexual Nature by a Staff Member against a Student 97/018 (s.017)*, RCPS Exhibit 3114.

¹⁹⁸¹ DSE, Procedures to be followed in cases of improper conduct of a sexual nature by a staff member against a student(s), RCPS Exhibit 2526, at Doc. 2409017-18.

¹⁹⁸² *ibid*, at Doc. 2409018.

¹⁹⁸³ *ibid*, at Doc. 2409019.

¹⁹⁸⁴ *ibid*, at Doc. 2409020-21.

10.53 The plan for the initial investigation is as follows:

- the investigation is to be carried out by an officer assigned by the manager of the CMU;
- the manager of the CMU is to determine the process and time line for the investigation;
- the investigating officer is to interview all relevant students, parents, staff members and other persons in relation to the allegation and prepare statements as a result of these interviews;
- arrange counselling or other support as appropriate for those persons being interviewed; and
- the investigating officer is to provide a report and recommendations to the manager of the CMU.¹⁹⁸⁵

10.54 After the initial investigation the manager of the CMU is to decide, on the basis of the investigating officer's report, whether:

- the allegation was unsubstantiated; or whether
- a further investigation was warranted.¹⁹⁸⁶

10.55 Where allegations are unsubstantiated the CMU is then to inform the parties and place all papers relating to the investigation on a separate volume of the teacher's personal file for filing under restricted access in the Personnel Services Unit.¹⁹⁸⁷

10.56 Where a further investigation is warranted the manager of the CMU is to arrange that investigation, provide details of the allegations to the staff member and invite him or her to provide the CMU with a written response.

10.57 If after this further inquiry the allegations are not substantiated the CMU is to follow the procedure mentioned in paragraph 10.55. If the allegations are substantiated the manager of the CMU is to determine whether:

- the staff member should receive a warning letter; or whether
- the case should be referred to the Legal Services Directorate for the drawing up of charges for a breach of discipline.¹⁹⁸⁸

10.58 Where disciplinary action is to be pursued the manager of the CMU is to refer all material to the Legal Services Directorate. Thereafter the manager of the CMU is to prepare a letter to the staff member and organise for the charges to be presented in person, informing the teacher of the time period of 14 days to respond in writing to the manager of the CMU, admitting or denying the charge.¹⁹⁸⁹

¹⁹⁸⁵ *ibid.*, at Doc. 2409022-23.

¹⁹⁸⁶ *ibid.*, at Doc. 2409023.

¹⁹⁸⁷ *ibid.*

¹⁹⁸⁸ *ibid.*, at Doc. 2409025.

¹⁹⁸⁹ *ibid.*, at Doc. 2409025-26.

10.59 If the charge is admitted, the manager of the CMU is to give the staff member 14 days to address on penalty and thereafter is to determine the penalty to be imposed.¹⁹⁹⁰ If the staff member does not admit the charge then an officer prescribed under the regulations for that purpose (currently the Assistant Director-General) is either to ask for written submissions or conduct a hearing. If the charge is proved, the prescribed officer or the Director-General is to determine the penalty to be imposed. The range of penalties available for imposition include:

- caution;
- reprimand;
- fine;
- reduction in salary or wages;
- reduction to a lower classification or position in the teaching service,¹⁹⁹¹ and
- dismissal.

10.60 There is an appeal to GREAT¹⁹⁹² and in respect of dismissal there is also an appeal to the IRC.¹⁹⁹³

10.61 This is a positive step forward for dealing with complaints on a disciplinary basis, but it cannot replace criminal investigation, nor should inquiries within this system be conducted in a way that might jeopardise that process. It is essential that the inherent conflict in internal investigations be appreciated, and that in any case attracting mandatory reporting:

- the DSE ensures that DCS and the Police Service are informed; and that
- DSE staff co-operate with the Police Service, and defer departmental action where so requested by police.

10.62 Otherwise, the Royal Commission supports the CMU approach as a way of reducing the chaos previously existing in which police had not been called in, files were haphazardly kept, and critical information concerning teachers suspected of child sexual abuse had not been retained or shared. Transparency of the process and centralised data sharing are essential, subject to suitable privacy safeguards, if DSE is to meet its obligations towards the children in its care, and to comply with the objective developed at the Ministerial Conference. Its interaction with the Children's Commission is discussed later in this Report, as is a proposal to move the CMU into a more independent position.

D. FURTHER INVESTIGATIONS

TEACHER T9

10.63 Subsequent to Dr Boston's evidence the Royal Commission received information relating to a teacher who was to become known in Royal Commission proceedings as teacher T9. He was a teacher in DSE high schools between 1974 and 1996. The allegations concerning him, in summary, are that:

- he has been the subject of numerous complaints and reports relating to inappropriate conduct with female students;

¹⁹⁹⁰ *ibid*, at Doc. 2409026.

¹⁹⁹¹ *Teaching Services Act 1980*, s. 85. This does not apply to a Senior Executive Officer.

¹⁹⁹² *Teaching Services Act 1980*, s. 85(4).

¹⁹⁹³ *Industrial Relations Act 1996*.

- at least one member of staff who complained about his conduct had her complaints 'swept under the carpet';
- other teachers who had complained had been met with the response that the pupils' parents were not concerned;
- officers holding senior positions within the department were aware of the allegations; and that
- he had been the subject of a cover-up.¹⁹⁹⁴

10.64 For the purposes of reporting upon this matter, it is appropriate to deal with two aspects of the inquiry in relation to T9:

- the response by DSE to the complaints between 1974 and the time at which the CMU commenced an investigation (which occurred contemporaneously with an examination of the matter by the Royal Commission); and
- the CMU investigation.

10.65 As the matters concerning T9 are currently before the criminal courts, the Commission expressly makes no findings concerning the truth of the allegations of misconduct on his part.

10.66 The teacher and witnesses involved are all referred to by code-names. A number of incidents of abuse alleged are said to have occurred in relation to an organised activity conducted away from the school at which T9 was teaching. It is referred to as an 'external activity', as specific identification of it might reveal the identity of T9.

10.67 The following abbreviations or expressions are also used in the complex history which emerged in the course of Royal Commission investigations:

- 'area' or 'A', with a numeral thereafter, refers to an officer with the department who held a position in the Area Office, at the relevant time, either as an Area Manager or Assistant Manager;
- 'teacher' or 'T', with a numeral, refers to a person who was a teacher during the period under investigation; and
- 'counsellor' or 'C', with a numeral, refers to a person who was a counsellor, either within the DSE or otherwise.

1974-1978

10.68 During this period teacher T1 found a pupil in Year 10, a girl aged 15, in a distressed state.¹⁹⁹⁵ He was informed by two friends of the girl that she was the 'girlfriend' of T9.¹⁹⁹⁶ T1, who was a new teacher at the time, was informed by other staff members that T9 had been involved in a relationship with another student the year before.¹⁹⁹⁷ He did not raise the matter with the principal because he believed that T9's 'activities' were known.¹⁹⁹⁸

¹⁹⁹⁴ RCPS, Confidential call record, 13/11/96, RCPS Exhibit 3102C.

¹⁹⁹⁵ Teacher 1, RCT, 12/2/97, pp. 35467-68.

¹⁹⁹⁶ Teacher 1, RCT, 12/2/97, pp. 35469-71.

¹⁹⁹⁷ Teacher 1, RCT, 12/2/97, p. 35471.

¹⁹⁹⁸ Teacher 1, RCT, 12/2/97, p. 35471.

1980

10.69 In 1980, following his transfer to another school where T9 was also teaching, T1 was informed by another student of a relationship she was having with T9. T1 discussed his concerns with a teacher, T16, although in a somewhat guarded way as he had no direct evidence, and was warned that litigation may result if he pursued the matter.¹⁹⁹⁹

10.70 He also raised his concerns with the deputy principal (DP1) at a school function in the presence of three teachers (T15, T16, and T5). T1 was warned by DP1 that he was making a wild unfounded allegation and that he could be the subject of litigation.²⁰⁰⁰

10.71 T1 later discussed the matter with the principal (P1) as he had been approached by the school captain and asked to raise it on the students' behalf. He was informed by P1 that without evidence, there was only rumour, and little that P1 could do.²⁰⁰¹

1982

10.72 In 1982 another teacher at the school, (T2) went to a camp with 40 to 60 pupils. During this camp T2 observed T9:

- providing alcohol to students between Years 9 and 12;²⁰⁰² and
- removing swimming costumes from female students in Year 9 (aged about 14 years) whilst swimming with them.²⁰⁰³

10.73 Additionally T2 found a Year 8 boy strapped naked to the floor, with his genitals painted, in a dormitory of which T9 was the supervisor. When spoken to about this, T9 claimed that T2 was naive and this was a common occurrence.²⁰⁰⁴

10.74 T2 phoned the school to request somebody in authority to attend the camp to deal with the problem.²⁰⁰⁵ She was unsuccessful in her attempt to speak to P2, but instead spoke to teacher (T13) who was her senior.²⁰⁰⁶

10.75 The following week T2 informed T9 that she intended to speak to P2 about the camp activities and invited him to join her.²⁰⁰⁷ This invitation was declined, T9 asking her not to report the matter as he was seeking promotion and it may jeopardise his chances. When T2 spoke to P2, the latter said to her that:

- T9 had already informed him that there was a complaint that he had allowed a student to purchase beer at the camp; and added
- 'if you're going to say what I think you're going to say, your job will be the first to go'.²⁰⁰⁸

¹⁹⁹⁹ Teacher 1, RCT, 12/2/97, pp. 35475-76.

²⁰⁰⁰ Teacher 1, RCT, 12/2/97, pp. 35477-78.

²⁰⁰¹ Teacher 1, RCT, 12/2/97, p. 35479.

²⁰⁰² Teacher 2, RCT, 12/2/97, pp. 35449-50.

²⁰⁰³ Teacher 2, RCT, 12/2/97, pp. 35450-51.

²⁰⁰⁴ Teacher 2, RCT, 12/2/97, pp. 35453-54.

²⁰⁰⁵ Teacher 2, RCT, 12/2/97, pp. 35455-57; Information provided by Teacher 2 regarding the identity of Principal 2, RCPS Exhibit 5812C.

²⁰⁰⁶ Teacher 2, RCT, 12/2/97, pp. 35457-58.

²⁰⁰⁷ Teacher 2, RCT, 12/2/97, pp. 354458-59.

²⁰⁰⁸ Teacher 2, RCT, 12/2/97, pp. 35458-59.

10.76 Notwithstanding this threat, T2 detailed her concerns as she wanted someone in authority to know what was occurring.²⁰⁰⁹ Soon afterwards T9 was promoted to a prestigious position.²⁰¹⁰

1985-1986

10.77 In about 1985 a teacher (T3) from the same school, who had become concerned that T9's behaviour towards pupils was unprofessional and over-friendly,²⁰¹¹ expressed her concerns to P1.

10.78 In 1986, T3 again raised her concerns about T9 with a teacher, T8.²⁰¹² She took the precaution of reducing her observations, which mainly concerned T9's overly close relationship with students, to paper.²⁰¹³ T8 informed her that the document she had prepared was libellous and questioned whether she had any 'proof'. After this discussion she destroyed the document.²⁰¹⁴

10.79 When T8 gave evidence he confirmed that T3 had raised her concerns with him. He did not recall informing her that her complaint was 'libellous' but accepted that he could have done so.²⁰¹⁵ T8 acknowledged that he had also observed T9 behaving in a way that he regarded as amounting to unsatisfactory professional conduct over a period of some years.²⁰¹⁶ He said that T9 had not been 'receptive' to any discussion concerning his behaviour with students.²⁰¹⁷ T8 did not report his observations to anyone.²⁰¹⁸

Late 1980s

10.80 Counsellor (C1) gave evidence that sometime in the latter part of the 1980s, a former pupil had reported to him that she had been involved in a relationship with T9 while at the school, in the course of which she had been wined and dined and had become 'his lover'.²⁰¹⁹ This ex-pupil expressed concern for other girls at the school, as she had replaced another student when commencing her relationship with T9 and had herself been replaced by another pupil.²⁰²⁰

10.81 C1 said that within days he informed Area 1 (A1) of these allegations, and supplied him with the names of the students.²⁰²¹ A1 said that he would pass the matter on to his second-in-charge to investigate.²⁰²²

1989

10.82 In February 1989, P7, a pupil in T9's external activity, and her mother informed A1 that her daughter had been involved in a sexual relationship with T9 which had continued for some period. A1 gave evidence that:

- he spoke to A4 and asked him to inquire into the matter; and
- notified the police, although at this time the pupil did not wish to proceed with the matter.

²⁰⁰⁹ Teacher 2, RCT, 12/2/97, p. 35460.

²⁰¹⁰ Teacher 2, RCT, 12/2/97, pp. 35460-61.

²⁰¹¹ Teacher 3, RCT, 12/2/97, p. 35503.

²⁰¹² Teacher 3, RCT, 12/2/97, p. 35502.

²⁰¹³ Teacher 3, RCT, 12/2/97, p. 35503.

²⁰¹⁴ Teacher 3, RCT, 12/2/97, p. 35506.

²⁰¹⁵ Teacher 8, RCT, 12/2/97, p. 35515.

²⁰¹⁶ Teacher 8, RCT, 12/2/97, p. 35519.

²⁰¹⁷ Teacher 8, RCT, 12/2/97, p. 35520.

²⁰¹⁸ Teacher 8, RCT, 12/2/97, pp. 35521-22.

²⁰¹⁹ Counsellor 1, RCT, 13/2/97, pp. 35563-64.

²⁰²⁰ Counsellor 1, RCT, 13/2/97, p. 35562.

²⁰²¹ Counsellor 1, RCT, 13/2/97, pp. 35563-64.

²⁰²² Counsellor 1, RCT, 13/2/97, p. 35564.

10.83 A4 denied being asked to investigate the matter or knowing anything about the allegations in 1989.²⁰²³ However, Area 8 (A8) recalled that in the late 1980s he was requested by A1 to interview T9 about an allegation he had received from a parent and a student.²⁰²⁴ All that A8 could recall of the allegation was that T9 had ‘fondled’ the student.²⁰²⁵

10.84 A8 interviewed T9 in the presence of a representative. He did not record the interview but recalled that T9 ‘reserved his right to silence’²⁰²⁶ and asked for a copy of the allegation in writing.²⁰²⁷ A8 had never conducted such an interview before and was not sure whether it was a criminal or disciplinary interview.²⁰²⁸

10.85 After the interview A8 informed A1²⁰²⁹ of the outcome. He did not tell his immediate superior, A4, about the investigation.²⁰³⁰

10.86 A local member of Parliament (LM1) who had been a supporter of the external activity in which T9 was involved, gave evidence that:

- after receiving a complaint from the parent of P7 he had asked to be kept informed of the investigation; and that
- A1 had reported back to him that the ‘relationship’ had been investigated, that the girl was over 16, that the incidents had occurred outside school hours, and that while nothing further could be done, ‘an eye’ would be kept on the situation.²⁰³¹

10.87 LM1 said that he would relinquish his position on a committee involved in an imminent tour for the external activity if T9 remained involved.²⁰³² Subsequently he was informed by A1 that T9 would not be proceeding on the tour.²⁰³³ A1 regarded the removal of T9 from the tour as a ‘punishment’.²⁰³⁴ He did not record any of these matters on a file.²⁰³⁵

10.88 At the end of the 1980s counsellor (C2) was spoken to by an ex-pupil in relation to T9.²⁰³⁶ Although this conversation was very brief C2 spoke to a third counsellor (C3) about it.²⁰³⁷

10.89 Within a couple of hours of this conversation, A4 contacted C2 and informed him that there was a departmental inquiry into T9, and that he was interested to hear what C2 had to say. C2 reported the brief information he had received.²⁰³⁸ He heard no more about that inquiry.

1990-1991

10.90 In either 1990 or 1991,²⁰³⁹ C2 and teacher T6 received a complaint from a pupil, (P8), that T9 had touched her on the breasts. This allegation was reported to P1.²⁰⁴⁰ Similarly, C2 heard nothing further in relation to this matter.²⁰⁴¹

²⁰²³ Area 4, RCT, 17/2/97, p. 35704.

²⁰²⁴ Area 8, RCT, 17/2/97, pp. 35673-74.

²⁰²⁵ Area 8, RCT, 17/2/97, p. 35674.

²⁰²⁶ Area 8, RCT, 17/2/97, p. 35675.

²⁰²⁷ Area 8, RCT, 17/2/97, p. 35675.

²⁰²⁸ Area 8, RCT, 17/2/97, pp. 35677 & 35691.

²⁰²⁹ Area 8, RCT, 17/2/97, p. 35678.

²⁰³⁰ Area 8, RCT, 17/2/97, p. 35678.

²⁰³¹ Local Member 1, RCT, 17/2/97, p. 35728.

²⁰³² Local Member 1, RCT, 17/2/97, p. 35728.

²⁰³³ Local Member 1, RCT, 17/2/97, p. 35729.

²⁰³⁴ Area 1, RCT, 13/2/97, pp. 35603-04.

²⁰³⁵ See Area 1, RCT, 13/2/97, p. 35588.

²⁰³⁶ Counsellor 2, RCT, 13/2/97, p. 35545.

²⁰³⁷ Counsellor 2, RCT, 13/2/97, p. 35546.

²⁰³⁸ Counsellor 2, RCT, 13/2/97, p. 35548.

²⁰³⁹ Counsellor 2, RCT, 13/2/97, p. 35550.

²⁰⁴⁰ Counsellor 2, RCT, 13/2/97, p. 35552.

²⁰⁴¹ Counsellor 2, RCT, 13/2/97, pp. 35558-59.

10.91 A4 gave evidence that he knew T9 but did not ask him why he had resigned from the external activity. He had no recollection of speaking to C2 concerning him, or of any allegation of sexual impropriety involving T9 being raised at this time.²⁰⁴² A4 admitted that he had a feeling of 'discomfort' about the resignation.²⁰⁴³

1993

10.92 In March 1993 a police officer (PO2) asked A4 whether:

- he was aware of an allegation of sexual misconduct by T9; and whether
- the school had notified DCS.

10.93 A4 contacted P1 and went to the school to view the notes of the deputy principal (DP1) in respect of the matter.²⁰⁴⁴ He learned that T9 had denied the allegation which was to the effect that he had inappropriately touched three girls on their bottoms. The explanation given was that he had been teaching skills in a game. A4 was informed that P1 had instructed T9 to refrain from touching students in the future.²⁰⁴⁵

10.94 A4 informed PO2 that the allegations had been made to the school, and that there had not been any notification to DCS.²⁰⁴⁶

10.95 Subsequently A4 saw a letter from Parent 1, the father of one of the girls who had alleged inappropriate sexual touching by T9.²⁰⁴⁷ This parent complained that the school had not notified his wife or himself of the allegation made by his daughter,²⁰⁴⁸ and asked for a departmental inquiry. As the police were looking into the matter A4 did not respond to the letter until July, when he advised that a departmental inquiry directed by A6, would be conducted.²⁰⁴⁹

10.96 Police Officer 1 (PO1) informed A4 that he thought there had been a previous complaint against T9. The letter received from Parent 1 had similarly alleged that there had been previous allegations. A4 said that he provided this letter to P1, but in a handwritten response was advised by the latter that there had been no allegations made to him.²⁰⁵⁰

10.97 Although A4 was concerned that there may have been previous allegations of a sexual nature against T9, he did not speak to any of the teachers at the school. He said that he searched the files and found no records of any previous allegation. When T9 was interviewed he maintained his denial of touching the girls in any sexual way.

10.98 On 26 August 1993, A4 drafted a letter to T9 in which he informed him that:

- while improper conduct of a sexual nature had not been proved he wanted T9 to refrain from:
 - physical contact with students;
 - using inappropriate language whilst teaching students; and also
- warned him that any further incidents would jeopardise his employment.

The contents of this letter were discussed with T9 by A4.

²⁰⁴² Area 4, RCT, 17/2/97, pp. 35696-97.
²⁰⁴³ Area 4, RCT, 17/2/97, pp. 35699-700.
²⁰⁴⁴ Area 4, RCT, 17/2/97, pp. 35705-06.
²⁰⁴⁵ Area 4, RCT, 17/2/97, p. 35707.
²⁰⁴⁶ Area 4, RCT, 17/2/97, p. 35708.
²⁰⁴⁷ Area 4, RCT, 17/2/97, p. 35708.
²⁰⁴⁸ Area 4, RCT, 17/2/97, p. 35709.
²⁰⁴⁹ Area 4, RCT, 17/2/97, p. 35710.
²⁰⁵⁰ Area 4, RCT, 17/2/97, pp. 35716-17.

10.99 In September 1993, the Assistant Director-General wrote to T9 informing him that the DSE viewed the incidents 'most seriously' and directed him to 'not to engage in similar conduct whilst a member of the teaching service'.²⁰⁵¹ In conclusion the Assistant Director-General said 'I want you to clearly understand that if there is any recurrence I will have no hesitation in commencing disciplinary action against you'.²⁰⁵²

10.100 In response to this letter from the Assistant Director-General T9 wrote to A4 informing him that the matter had been 'grossly exaggerated', and that he found it 'extremely insulting and frustrating'.²⁰⁵³ He observed:

I abhor this communication made to me. I believe that you, (A4), have not supported me as our verbal communication had indicated and am extremely disappointed by this.²⁰⁵⁴

10.101 After a series of further letters the file was forwarded to the Director of Personnel and there it sat, without any further inquiry, until 1996.

1994

10.102 In 1994 LM1 attended a social function at which he was informed by a number of teachers that they were concerned about P1 giving preferential treatment to T9.²⁰⁵⁵ LM1 informed the group that if there were any concerns then somebody ought to do something about it, and related to them the instance in 1989 that had been drawn to his attention.

10.103 LM1 gave evidence of other instances in which he had experienced similar difficulties in securing proper investigations into matters within the DSE. It was his view that the DSE required 'prodding' to take action on complaints.²⁰⁵⁶

1996

10.104 No entry concerning T9 appeared on the complaints register.²⁰⁵⁷ However, when fresh complaints of sexual misconduct by T9 were made by a number of former students during that year a further investigation was instituted.

10.105 Although it was obvious that A4 had been involved in the 1993 investigation, and that the police and the parents had been critical of the DSE response at the time,²⁰⁵⁸ the CMU involved A4 in this fresh investigation.

10.106 The CMU Manager said that A4's role was to be the local contact officer. However, it is clear that he conducted several interviews, including two interviews with P1.²⁰⁵⁹ The CMU Manager accepted that A4 had been involved in the previous matter in a way that should have precluded him from assisting with the further investigation.²⁰⁶⁰

Conclusion

10.107 This case is indicative of the conflicts that arise where DSE investigates its own staff:

- the earlier inquiries were hampered by personal associations with T9, and by a desire not to discredit the school or the external activity which had attracted considerable acclaim; and

²⁰⁵¹ J. Cooney, DSE Case Management Unit, Statement of Information, 6/2/97, RCPS Exhibit 5865C/40, at Doc. 2648134-35.

²⁰⁵² *ibid.*

²⁰⁵³ *ibid.*, at Doc. 2648167.

²⁰⁵⁴ *ibid.*, at Doc. 2648168.

²⁰⁵⁵ Local Member 1, RCT, 17/2/97, pp. 35729-30.

²⁰⁵⁶ Local Member 1, RCT, 17/2/97, pp. 35735-37.

²⁰⁵⁷ R. Coomber, RCT, 18/2/97, pp. 35824-25.

²⁰⁵⁸ J. Cooney, DSE Case Management Unit, Statement of Information, 6/2/97, RCPS Exhibit 5865C/40.

²⁰⁵⁹ See R. Coomber, RCT, 18/2/97, p. 35818.

²⁰⁶⁰ R. Coomber, RCT, 18/2/97, p. 35828.

- notwithstanding the attempt to create an investigation unit that was independent (the CMU), it had not been able to undertake the inquiry without using DSE staff.

10.108 Subsequently the police inquiry led to T9 being charged and he is currently before the criminal court. P1 was summonsed to appear at the Royal Commission but took his own life before he gave evidence.

10.109 The DSE has since responded to the disclosures concerning T9 by instituting disciplinary proceedings against several teachers for not reporting his activities earlier.

10.110 It is inappropriate for the Commission to express any view in relation to pending disciplinary proceedings. However, as with the Police Service, it needs to be emphasised that action which might deter internal informants is to be generally avoided. On the contrary, such persons need to be encouraged to report sexual misconduct by other teachers, and given the full statutory protection in respect of such report.

FURTHER FLAWS UNCOVERED

Satisfactory Statements of Service

10.111 In February 1997, the CMU Manager gave evidence that while there were approximately 55 open cases and 25 to 30 pending cases (of the 400 on the CMU register) which represented a 'fairly tall order' for a staff of eight, she was of the view that the unit was sufficiently staffed.²⁰⁶¹

10.112 Dr Boston said, on the same day, that while the confidence he had expressed in September 1996, had been dented²⁰⁶² by the recent hearings in relation to T9, he was 'immensely confident' that he knew far more about what was going on then in relation to these matters than he did six or 12 months earlier.²⁰⁶³

10.113 However, further evidence was to come.

10.114 Mr Irving, the Director of Personnel and Employee Relations, gave evidence on 3 March 1997 concerning the DSE practice of providing satisfactory service statements for teachers, despite recommendations that they not be re-employed. It became clear that a large number of teachers had been permitted to resign, for 'personal reasons', or for medical reasons²⁰⁶⁴ in the face of allegations of sexual misconduct which had either not been properly investigated or not investigated at all.²⁰⁶⁵ One teacher who resigned, after convictions for carnal knowledge, was given a satisfactory service statement.

10.115 Mr Irving accepted that this practice was entirely wrong,²⁰⁶⁶ and that there was a need for a change in policy providing for a review of individual cases. Otherwise there was a serious risk of offering unsatisfactory and possibly dangerous teachers a 'tick of approval',²⁰⁶⁷ which might facilitate their transfer to a non-government school. This was a risk that Dr Boston recognised.²⁰⁶⁸ Clearly it is the case that in these instances, it is inappropriate for:

- an equivocal or positive reference to be supplied; and for
- the problem to be answered by the facilitated transfer of the teacher.

²⁰⁶¹ R. Coomber, RCT, 18/2/97, p. 35817.

²⁰⁶² K. G. Boston, RCT, 18/2/97, p. 35850.

²⁰⁶³ K. G. Boston, RCT, 18/2/97, p. 35853.

²⁰⁶⁴ DSE, Case Management Files, RCPS Exhibits 5961C, 5962C and 5963C.

²⁰⁶⁵ R. P. Irving, RCT, 3/3/97, pp. 36618-26.

²⁰⁶⁶ R. P. Irving, RCT, 3/3/97, pp. 36618-26.

²⁰⁶⁷ R. P. Irving, RCT, 3/3/97, pp. 36630-32.

²⁰⁶⁸ See K. G. Boston, RCT, 5/3/97, p. 36719.

Each practice must cease.

10.116 The Manager of the CMU said that in view of these revelations, the CMU was reviewing all such cases, whether 'closed' or 'open'.²⁰⁶⁹ The further hearings were adjourned until 5 March to allow that assessment to proceed.

10.117 On 5 March 1997, Ms Coomber returned and gave evidence that as a result of this review, the CMU had listed teachers in various categories including the following:

- 106 teachers who required ongoing monitoring to determine the validity of previous allegations of sexual misconduct;
- seven teachers who had resigned and had received a satisfactory statement or favourable reference, but who were not to be re-employed;
- 10 teachers who had resigned and received a statement of service with no indication of satisfactory service but with an inference of trust and satisfaction;
- 37 teachers who had resigned with no known statement issued;
- seven teachers medically retired who had received a satisfactory statement of service and were on the not to be employed list;
- one teacher medically retired without issue of a satisfactory statement;
- 16 teachers who had been medically retired and for whom no known statement of service had been issued; and
- 36 teachers whose 'cases' were to be re-opened.²⁰⁷⁰

10.118 A series of files were then shown to the Manager of the CMU which highlighted real concerns as to whether the assessments made had been accurate. In conclusion, she accepted that:

- the workload of the CMU was beyond its current capacity; and that
- overloading staff in an area dealing with allegations of sexual misconduct with children was dangerous and should be avoided.²⁰⁷¹

She was later to resign from her position as manager of the CMU.

10.119 Mr Irving, who had assisted in the review, also returned to give further evidence on 5 March 1997. He agreed that there was evidence that the DSE had armed teachers with a tick of approval when it knew that there was in fact a problem.²⁰⁷² One example identified involved a reference which he accepted could only be described as 'glowing'.²⁰⁷³ Of the 100 teachers listed within this possible category, Mr Irving could provide no more than conjecture as to the proportion who had received references or certificates of this kind.²⁰⁷⁴

10.120 Concerns in relation to the way in which the CMU had been dealing with allegations of sexual misconduct, were also expressed by the NSW Teachers Federation, it being suggested that:

- teachers had not been informed of their rights before an investigation was commenced;
- departmental investigations were being carried out concurrently with police investigations;
- teachers were not being informed of the nature of the allegations;

²⁰⁶⁹ R. Coomber, RCT, 3/3/97, pp. 36633-39.

²⁰⁷⁰ DSE, List of employees in certain categories, RCPS Exhibit 5965C.

²⁰⁷¹ R. Coomber, RCT, 5/3/97, p. 36683.

²⁰⁷² R. P. Irving, RCT, 5/3/97, p. 36702.

²⁰⁷³ R. P. Irving, RCT, 5/3/97, pp. 36708-09.

²⁰⁷⁴ R. P. Irving, RCT, 5/3/97, pp. 36703-13.

- some CMU investigators had inadequate training or experience for this work;
- there was no public accountability for the procedures employed or decisions taken; and
- the investigations were not being carried out expeditiously.²⁰⁷⁵

10.121 The Teachers Federation suggested that there was a need for greater definition and information to the teaching profession of the procedures followed, and of the meaning given to 'improper conduct', as well as the introduction of safeguards to protect teachers against malicious allegations.²⁰⁷⁶

10.122 After completing his evidence in 1997 Dr Boston issued a circular to all schools²⁰⁷⁷ in which he:

- noted that over many years a teacher 'widely suspected of preying on successive generations of students' had been protected by actions which are at best described as 'incompetent and dereliction of duty, and at worst as professional misconduct and criminal behaviour';
- advised that evidence had been led in the Commission of allegations of improper conduct of a sexual nature by teachers in several other schools which had been investigated either inadequately or not at all;²⁰⁷⁸
- indicated that the CMU, which would hold all records of allegations and investigations as a centralised function, would alone conduct investigations in the future;²⁰⁷⁹ and
- concluded with the exhortation that 'we must now learn the lessons from the Royal Commission, and learn them well.'²⁰⁸⁰

10.123 New policy and procedure documents have been completed. They comprise:

- *Child Protection Procedures for Recognising and Notifying Child Abuse and Neglect*,²⁰⁸¹ and
- *Child Protection Procedures to be Followed in Response to Allegations of Improper Conduct of a Sexual Nature by a Staff Member Against a Student*.²⁰⁸²

10.124 Two memoranda clarifying issues raised within these documents have also been issued.²⁰⁸³ These policy documents are a welcome step but they will need to be monitored and kept abreast of current practice.

²⁰⁷⁵ NSW Teachers Federation, Submission to RCPS, 11/6/97, RCPS Exhibit 3224, p. 6.

²⁰⁷⁶ *ibid*, pp. 8-10.

²⁰⁷⁷ K. G. Boston, DSE, Memorandum to all staff re Child Sexual Assault and Improper Conduct, 18/2/97, RCPS Exhibit 3239C, at Doc. 2729666.

²⁰⁷⁸ *ibid*, at Doc. 2729667.

²⁰⁷⁹ *ibid*, at Doc. 2729669.

²⁰⁸⁰ *ibid*, at Doc. 2729670.

²⁰⁸¹ DSE, Child Protection, Procedures for Recognising and Notifying Child Abuse and Neglect, 97/019 (s. 018), 10/3/97, RCPS Exhibit 3114C, at Doc. 2737219-257.

²⁰⁸² DSE, Child Protection, Procedures to be Followed in Response to Allegations of Improper Conduct of a Sexual Nature by a Staff Member Against a Student, 97/018 (s. 017), 10/3/97, RCPS Exhibit 3114C, at Doc. 2737203-218.

²⁰⁸³ K. G. Boston, DSE, Memorandum, 7/3/97, RCPS Exhibit 3114C, at Doc. 2737258-64.

Slattery Inquiry

10.125 As a result of the evidence before the Royal Commission the Government requested the Honourable J. P. Slattery QC in March and April 1997 to review approximately 175 DSE files.

10.126 Mr Slattery reported to Government that the files were in an 'appalling condition',²⁰⁸⁴ a conclusion which was entirely consistent with the findings of this Commission. He also observed that:

- files were incomplete;²⁰⁸⁵
- files that were more complete did not cover the whole of the teacher's service;²⁰⁸⁶
- there was no order in the files;²⁰⁸⁷
- there was no chronological order of documents;²⁰⁸⁸
- there was little information or action on the file;²⁰⁸⁹
- there seemed to be a reluctance to make relevant entries on the file about an investigation; and²⁰⁹⁰
- there was rarely any official documentation stating the decision or other investigations that had been made by another body or departmental officer.²⁰⁹¹

10.127 Mr Slattery also found that:

- it seemed to be recognised as a common practice by the DSE and the Teachers Federation that upon acquittal of a teacher for an indictable offence, or dismissal of a summary offence, the teacher was reinstated without any further investigation or review of the evidence of the hearing or any other evidence or material which might have been in the possession of the DPP, the Police Service or the DCS;²⁰⁹²
- glowing references had been given to a teacher who was the subject of a complaint about a number of incidents who resigned to take up a teaching appointment at a private school;²⁰⁹³
- there was very little liaison apparent between officers of DSE and DCS about the complaints or attempts to obtain documentation from DCS concerning its investigations and any recommendations;²⁰⁹⁴
- there were seven instances where a principal did not act correctly in respect of his obligations;²⁰⁹⁵
- there were files on eight teachers who had transferred to other schools after investigations of complaints about their conduct;²⁰⁹⁶ and that
- the manner in which the files had been maintained confirmed that there should be an urgent review of all aspects of establishing and maintaining files.²⁰⁹⁷

²⁰⁸⁴ J. P. Slattery, Report to NSW Cabinet on Reference to review certain files held by the Department of Education, 20/3/97, RCPS Exhibit 3158C, at Doc. 2729509, 2729296 & 2729353.

²⁰⁸⁵ *ibid.*, at Doc. 2729509.

²⁰⁸⁶ *ibid.*

²⁰⁸⁷ *ibid.*

²⁰⁸⁸ *ibid.*

²⁰⁸⁹ *ibid.*

²⁰⁹⁰ *ibid.*

²⁰⁹¹ *ibid.*, at Doc. 2729510.

²⁰⁹² *ibid.*, at Doc. 2729513.

²⁰⁹³ *ibid.*, at Doc. 2729516.

²⁰⁹⁴ *ibid.*, at Doc. 2729358.

²⁰⁹⁵ *ibid.*, at Doc. 2729359.

²⁰⁹⁶ *ibid.*, at Doc. 2729360.

²⁰⁹⁷ *ibid.*, at Doc. 2729296.

10.128 These findings mirror those of this Royal Commission. It is essential that the sloppy record keeping and file management of the past cease and be replaced by a standardised and effective record management system. It is similarly essential that allegations of child sexual abuse against teachers be confronted and not swept under the carpet.

DSE Response

10.129 Consequent upon these parallel inquiries, the DSE has

- enlarged the staff of the CMU to 51 members, and tasked it with the thorough, expeditious and fair investigation of new cases, and of those cases that were identified in the Slattery Inquiry, as having been inadequately investigated;
- commenced a review of its procedures for the purpose of developing protocols to ensure that accurate and professional records are kept;²⁰⁹⁸
- is currently revising its code of conduct to strengthen the provisions concerning improper conduct, particularly improper conduct of a sexual nature;
- is reviewing policies relating to excursions, and school and community activities to lessen risk;
- has rescinded its previous policy on statements of service and developed a new policy on records of employment;²⁰⁹⁹
- has ceased the practice of allowing teachers to transfer during the course of an investigation or as a result of a plea bargain;²¹⁰⁰
- has disestablished the former Legal Service Directorate and created a Legal Services Unit within the Executive Services Directorate in its place;²¹⁰¹ and
- has commenced a major child protection training program involving all members of staff at a cost of more than \$500,000.²¹⁰²

Non-Government School Problems

10.130 A number of similar problems were found in relation to non-government schools, which also dealt with teachers the subject of abuse by transfers, concealed those allegations from the police and/or parents, and issued references that were less than frank.

10.131 Moreover, it became apparent that in the absence of any system of registration, or central reference point through which information concerning teachers could be obtained, the screening procedures used by these schools were less than effective.

10.132 The Royal Commission in fact received a number of complaints from parents and former pupils concerning the sexual misconduct of individual teachers, which in some cases had been reported yet had met with no apparent response, and in other cases had not been reported, out of fear or ignorance. Where appropriate, this information has been passed on to the CPEA.

²⁰⁹⁸ K. G. Boston, DSE, Memorandum, 7/3/97, RCPS Exhibit 3114C, at Doc. 2737194-95.

²⁰⁹⁹ Deputy Director-General (Resources), DSE, Action taken by the Department of School Education since the establishment of the Royal Commission, 9/5/97, RCPS Exhibit 3114C, at Doc. 2737196.

²¹⁰⁰ *ibid.*, at Doc. 2737198.

²¹⁰¹ K. G. Boston, DSE, Statement of Information, 16/6/97, RCPS Exhibit 3114C, at Doc. 2737159.

²¹⁰² *ibid.*

10.133 There has obviously been a problem with paedophile teachers in these schools, particularly those which have a boarding facility and engage teachers, or part-time staff, to work in supervisory positions as house masters or assistants. Absent careful screening, strict supervision, and a policy of instant dismissal for sexual misconduct, these schools are a potential haven for paedophiles. Moreover, the release of a positive or equivocal reference to dismissed teachers is only an invitation for them to continue their conduct at another school.

10.134 The problem seems in the past to have been completely unaddressed, if not deliberately ignored, in order to protect the reputation of the schools concerned. Such an approach involves a total abnegation of responsibility to the children involved and their fee paying parents. It must not continue.

10.135 The case of a teacher, PS1, at a prestigious rural preparatory school (PS3) examined by the Commission, illustrates these points.

10.136 The evidence in relation to the teacher PS1 showed that:

- he worked in a DSE school for some years until 1980;²¹⁰³
- he then left the DSE to take up a senior position at school PS3;
- whilst teaching at this school, allegations of sexual misconduct with young male pupils were made against him in 1984 and 1986;²¹⁰⁴
- following the second complaint, the headmaster PS2 realised that PS1 needed to be controlled and set up a system of daily communication with him;²¹⁰⁵
- this involved PS1 writing letters to PS2 concerning his management of the problem, and his feelings in his daily dealing with boys at the school;
- the system, however, lapsed and was followed by a further allegation of sexual misconduct during an excursion, in 1987;²¹⁰⁶
- PS2 then informed PS1 that he had a choice of resignation or dismissal.²¹⁰⁷

10.137 PS1 chose resignation, but was given a very positive reference by PS2, which stated in part:

Both inside and outside the classroom he has the ability to extract from the students performances that neither they nor their parents knew they were capable of achieving

and:

As a schoolmaster he was outstanding.²¹⁰⁸

10.138 After some hedging about the meaning of the expression 'schoolmaster', PS2 accepted that he would not write a reference in those terms today.²¹⁰⁹

10.139 PS1 then sought a return to employment with the DSE and had an interview with an Inspector of Schools PS7.²¹¹⁰ After the interview PS7 received a 'confidential' telephone call from PS2 who informed him that there was something that he should know about PS1.²¹¹¹

²¹⁰³ PS7, RCT, 13/3/97, p. 37189.

²¹⁰⁴ PS2, RCT, 13/3/97, pp. 37202-03.

²¹⁰⁵ PS2, RCT, 13/3/97, pp. 37201-04.

²¹⁰⁶ PS2, RCT, 13/3/97, p. 37210.

²¹⁰⁷ PS2, RCT, 13/3/97, p. 37210.

²¹⁰⁸ PS2, RCT, 13/3/97, p. 37210.

²¹⁰⁹ PS2, RCT, 13/3/97, pp. 37210-12.

²¹¹⁰ PS7, RCT, 13/3/97, pp. 37186-87.

²¹¹¹ PS7, RCT, 13/3/97, pp. 37188-89.

10.140 PS7 went to see PS2 who did not provide him with any detail other than to advise that 'PS1 was suspected of improper sexual conduct with male children' and that he had been asked to resign.²¹¹²

10.141 As a result of this somewhat fortuitous discussion, PS1 was not re-employed by DSE and his file was marked not to be re-employed. Had the DSE relied on the reference alone, it is likely that PS1 would have returned to teaching. He is now facing criminal charges, although not before going on to secure employment with an institution closely involved with children.

10.142 Disturbingly, PS7 was on the board of this institution but felt constrained from advising other members of the Board of PS1's history, because of concern that he might be sued for defamation.²¹¹³

10.143 The new protocols developed by the Catholic Church referred to later in this report²¹¹⁴ will apply to a large number of Catholic systemic schools but many of the non-government schools do not have a proper system for dealing with these allegations as was starkly demonstrated by the case study of teacher PS1. This is a very unsatisfactory situation and permits paedophiles to go unchecked within the non-government school system and to move from one school to another. The system proposed later in this chapter and in the final chapter of this Report will alleviate these deficiencies.

E. DISCIPLINARY PROCEEDINGS AND TEACHER REGISTRATION

10.144 As the evidence unfolded, attention was given to the possible establishment of an independent body to investigate allegations of sexual misconduct involving teachers. The Director-General saw force in the suggestion,²¹¹⁵ but was concerned to define its boundaries. He explained that the CMU had been established as an interim measure to deal with immediate business.²¹¹⁶ He added that its work could be transferred to an independent body.²¹¹⁷

10.145 The Teachers Federation²¹¹⁸ and the NSW Independent Teachers Union²¹¹⁹ both endorsed investigation by an independent agency, so long as it was related to a process of teacher registration,²¹²⁰ which has been the subject of discussion with the government for some time.

10.146 The submission of the NSW Teachers Federation²¹²¹ (representing 65,000 members), proposed:

- a compulsory system of teacher registration compatible with other States, as the best means of ensuring consistency across the States and between systems in assessing 'fitness to teach';
- an independent registration body that would ensure common standards of professional and ethical behaviour across all systems, and to which all teacher employers would be required by law to notify allegations of behaviour which may warrant deregistration or monitoring;
- inclusion within the Registration Board of a Probity Unit to screen employees, and an Investigation Unit (to investigate serious allegations of improper conduct of a sexual nature or of physical assault which are not dealt with by the Police Service or DCS); and

²¹¹² PS7, RCT, 13/3/97, p. 37190.

²¹¹³ PS7, RCT, 13/3/97, pp. 37196-98.

²¹¹⁴ Volume V, Chapter 13 of this Report.

²¹¹⁵ K. G. Boston, RCT, 18/2/97, p. 35865-66.

²¹¹⁶ K. G. Boston, DSE, Memorandum, 7/3/97, RCPS Exhibit 3114C, at Doc. 2737152.

²¹¹⁷ *ibid.*

²¹¹⁸ NSW Teachers Federation, Submission to RCPS, 11/6/97, RCPS Exhibit 3224, at Doc. 2540843.

²¹¹⁹ NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184, at Doc. 2710137.

²¹²⁰ NSW Teachers Federation, Submission to RCPS, 11/6/97, RCPS Exhibit 3224, at Doc. 2540843.; NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184, at Doc. 2710137.

- creation of a right of appeal to the IRC and/or GREAT, in relation to deregistration decisions.

10.147 It argued that precedent for such a system exists in Queensland where a Teacher Registration Authority exists with statutory authority to investigate allegations of inappropriate behaviour, and with jurisdiction for registration and deregistration of both public and private schoolteachers. A similar board exists in South Australia. Registration of this kind, it pointed out, would bring teaching into line with most other professions, which have a regulatory system which is transparent and consistent, and which excludes the unqualified and unsuitable. As the system currently exists it is the employer alone who determines whether a person can practice as a teacher.

10.148 The submission of the NSW Independent Education Union (representing 18,500 members)²¹²² similarly supported the introduction of a State-wide system of teacher registration. It advocated public consultation in relation to the discussion paper on this topic which was prepared in November 1996, by the Ministerial Advisory Committee on the Quality of Teaching, which is still with the Minister.

10.149 It expressed concern in relation to the MCEETYA proposal for a national register of persons deemed unsuitable for teaching, by reason of the number of schools and school principals involved, and the resulting problems of maintaining confidentiality. Its preference was for an independent State registration authority with a probity unit and a related investigative unit. It also expressed concern in relation to malicious allegations and drew to attention an Internet site which advised students to make false accusations of sexual offences by teachers, as a means of settling scores.

10.150 The Ombudsman similarly supported the need for a single body to oversee the conduct of all education agencies, including government and non-government schools.²¹²³ It is understood that at least some of the non-government schools oppose any such system, although the reasons for that opposition are somewhat unclear.

10.151 The evidence received by the Commission points strongly towards the need for an independent registration and investigative agency, whose jurisdiction would extend to employees of both government and non-government schools. Any such system needs to deal with the transfer of teachers between systems and with their possible move into NSW from another State.

10.152 The question of teacher registration is an important issue that requires careful consideration and broad consultation. It could contribute substantially to the effective screening of teachers, and to the creation of an appropriate disciplinary process. Further consideration by the government, in consultation with the unions, the DSE and the non-government schools is highly desirable.²¹²⁴

10.153 The Minister for Education and Training, the Honourable John Aquilina MLA, has advised the Commission that he has recently endorsed a revised discussion paper on the establishment of a Teacher Registration Authority in NSW.²¹²⁵ That discussion paper:

- notes the benefits of teacher registration, in:
 - ensuring that the profession is responsive to changes in education through participation in training and development;
 - establishing a systematic process upon which employers could rely to verify the qualifications and professional standing of potential employees;

²¹²¹ NSW Teachers Federation, Submission to RCPS, 11/6/97 RCPS Exhibit 3224.

²¹²² NSW Independent Education Union, Submission to RCPS, 22/5/97, RCPS Exhibit 3184.

²¹²³ NSW Ombudsman, Letter to RCPS, 3/3/97, RCPS Exhibit 3297.

²¹²⁴ Office of the Minister Assisting the Premier on Youth Affairs, Teacher registration for NSW (draft), consultation paper, 26/2/97, RCPS Exhibit 3259C.

²¹²⁵ J. Aquilina, Minister for Education and Training, Letter to RCPS, 4/8/97, RCPS Exhibit 3238, at Doc. 2478614.

- enhancing the movement of teachers from other States and Territories;
- outlines a possible structure for a NSW Teacher Registration Authority with the following components:
 - a Teacher Registration Authority with authority to develop policy relating to professional development and conduct and establish a code of ethics;
 - a Teacher Registration Authority Hearings Tribunal, with province to hear and determine matters of teacher discipline;
 - a Registration Branch whose function it would be to register and maintain the registration of teachers. It would carry out criminal record checks, verify qualifications, conduct interviews to determine suitability, and monitor professional development; and
 - an Investigations Branch with authority to conduct investigations into teacher competency and allegations of improper conduct. It would replace the CMU.²¹²⁶

10.154 The scheme outlined in this discussion paper would, on the information presently available to the Commission, seem to be a very positive step forward particularly if made applicable both to DSE and non-government schools. Should such an Authority be established, it would be necessary for arrangements to be made for it to participate in the system outlined in Volume V, Chapter 20 as to both pre-employment communication with the Children's Commission and notification to the Children's Commission of allegations of improper sexual conduct, with the possibility of certificates of unacceptable risk being issued in respect of teachers.

10.155 If the scheme does not proceed then the Commission considers that:

- the CMU should be established as an independent unit (either as a standalone entity or as part of the Ombudsman's office) to which allegations of misconduct, including those of sexual misconduct, would be notified;
- the CMU, either as an independent unit or as part of the Ombudsman's office, should conduct the investigation in the context of the disciplinary system as it presently exists;
- the Children's Commission should be kept informed of the progress of the investigation and its outcome;
- if at any stage during the course of an investigation or otherwise the Children's Commissioner formed the view that a teacher may be an unacceptable risk to be employed in the care or supervision of children then the Commissioner would be entitled to call upon the teacher to show cause why a certificate to that effect should not be issued;
- the Children's Commissioner should have the power to require the teacher to answer any questions or to produce any document relevant to the question whether they constitute an unacceptable risk, which answers and documents would not be capable of use in criminal proceedings but could be used in disciplinary proceedings; and
- if the Children's Commissioner issues a certificate that the DSE employee is an unacceptable risk, notification of the certification should be given to the DSE employee, to the Director-General of the DSE and to the CMU/Ombudsman.

10.156 The teacher should have a right of appeal preferably to the Administrative Decisions Tribunal, or otherwise to the IRC, in respect of an unacceptable risk certificate. Similarly, such a person should have the right to make a subsequent application to the Children's Commission to cancel the certificate, with a right of appeal from a refusal to do so.

²¹²⁶ Ministerial Discussion Paper, The Establishment of a Teacher Registration Authority in NSW, August 1997, RCPS Exhibit 3238.

10.157 The Commission considers that such a scheme should apply to all teachers, whether DSE or non-government school teachers. Amendment of the Education Reform Act would be required accordingly.

10.158 By way of clarity, it needs to be emphasised that an unacceptable risk certificate would only exclude a person the subject of such a certificate from working in a position involving direct contact with children. It would not preclude a transfer to other duties where there was no ongoing contact with children.

10.159 Two further points, addressed in the final chapter of this Report, require mention:

- first, it is important that disciplinary investigations be deferred to any criminal investigation, and that the DCS and police be notified of any allegation of criminal conduct or reasonably suspected conduct of this type; and
- express protection from civil action is necessary in respect of the supply in good faith of information, concerning any person suspected on reasonable grounds of unlawful sexual conduct with or towards children. The defence of qualified privilege to a defamation action is not enough.

10.160 As the DSE and non-government school systems together employ the largest number of employees in the State with direct supervision and care of children on a daily basis, it is imperative that there be a proper system for screening out those teachers who pose an unacceptable risk, and for the prompt and thorough investigation of any complaints of sexual abuse. The evidence uncovered is of such concern that it calls for an urgent and co-operative response by the government, the schools and unions alike to establish that system. Any action in respect of teacher registration which flows from it can, in the Royal Commission's view, only enhance such a system, particularly if it caters for the problems presented by interstate transfers, or transfers between systems.

RECOMMENDATIONS

The Commission recommends the following:

- ◆ An urgent review of Department of School Education practices concerning the keeping of teacher files to ensuring that:
 - standardised practices of file management and record keeping are adopted throughout the State; and that
 - information concerning suspicions or allegations of child sexual abuse in relation to DSE teachers is centralised and available for disciplinary investigation, and for notification to the Children's Commission (para. 10.128).

Teacher Registration and Discipline

- ◆ Careful consideration be given to the introduction of a system of teacher registration and disciplinary investigation, applicable to both DSE and non-government school employees, following appropriate consultation with the schools and unions, along the lines proposed in the discussion paper identified in this chapter (para. 10.152).
- ◆ In the event of a Teacher Registration Authority scheme not proceeding, transfer of the DSE Case Management Unit to the Office of the Ombudsman, to be charged with the responsibility of investigating all allegations of misconduct made against DSE teachers, including those of child sexual abuse (para. 10.155).
- ◆ Application of the system proposed in Volume V, Chapter 20 of this Report, in relation to pre-employment inquiry of the Children's Commission, and in relation to the issue of a certificate that a particular teacher is an unacceptable risk to be employed in any position involving the care or supervision of children, both to DSE and non-government school teachers (paras. 10.154 - 10.155).
- ◆ In the case of non-government schools, continued registration of a school under the *Education Reform Act 1990*, be conditional upon that school complying with the scheme proposed in Volume V, Chapter 20 of this Report.

- ◆ Extension of statutory immunity to the provision of information supplied in connection with the scheme proposed in Volume V, Chapter 20 of this Report or otherwise in relation to information supplied to any relevant authority, in good faith, concerning suspected or alleged child sexual abuse on the part of a teacher, whether employed by a DSE school or by a non-government school (para. 10.159).
- ◆ Amendment of s. 22(4) of the *Children (Care and Protection) Act 1987* to remove any ambiguity or inconsistency with s. 22(3) of the Act (para. 10.29).
- ◆ Support be given to the proposed scheme for a national register of persons deemed unsuitable for teaching because of criminal convictions or dismissal for sexual misconduct, to which the Children's Commission would have access (paras. 10.43 - 10.44).
- ◆ Exercise of greater care to ensure accuracy and honesty in relation to the issue of certificates of service and references in relation to teachers who have resigned or been dismissed in the face of allegations of child sexual abuse, and to ensure that allegations or suspicions of sexual abuse are not answered by a transfer alone (paras. 10.115 & 10.154).
- ◆ Exercise of care to ensure that internal DSE informants are given the full protection contemplated under the *Protected Disclosures Act 1994*, and that steps are taken to ensure that such teachers are not victimised, or otherwise disadvantaged when reporting suspected child sexual abuse or other serious misconduct by other teachers (para. 10.112).