REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CHILD SEXUAL ASSAULT MATTERS

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At Sydney on Thursday 2 May 2002

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The Committee met at 10.15 a.m.

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PRESENT

The Hon. Ron Dyer (Chair)

The Hon. John Hatzistergos
The Hon. John Ryan

CATHERINE CARNEY, Principal Solicitor, Women's Legal Resource Centre, PO Box 206, Lidcombe 1825, sworn and examined:

PIA VAN DE ZANDT, Solicitor, Women's Legal Resource Centre, PO Box 206, Lidcombe 1825, affirmed and examined,

RACHAEL ANNE MARTIN, Principal Solicitor and co-representative of the Combined Community Legal Centres Group of New South Wales, Wirringa Baiya Aboriginal Women's Legal Centre, PO Box 785, Marrickville 1475, affirmed and examined, and

GABRIELLE McKINNON, Children's Solicitor and co-representative of the Combined Community Legal Centres Group of New South Wales, Marrickville Legal Centre, 338 Illawarra Road, Marrickville 2204, affirmed and examined:

CHAIR: Thank you for agreeing to give evidence before the Committee and thank you for making your submissions. Did you each receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act and are you conversant with the terms of reference of this inquiry?

Ms CARNEY: Yes.

Ms VAN DE ZANDT: Yes.

Ms MARTIN: Yes.

Ms McKINNON: Yes.

CHAIR: Ms Carney, could you briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Ms CARNEY: I have been Principal Solicitor at the Women's Legal Resource Centre for four years. We are a community legal centre that serves disadvantaged women and children and we run outreaches throughout western Sydney as well as rural programs. We have an indigenous women's program, the Walgett violence prevention unit and more than 10,000 client contacts a year. The evidence that I have given in our submission is based on the knowledge that those clients provide.

CHAIR: Your organisation has made a written submission. Do wish that submission to be included as part of your sworn evidence?

Ms CARNEY: Yes.

CHAIR: Ms Van de Zandt, could you briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Ms VAN DE ZANDT: I have degrees in social work and in law and I have worked as a solicitor at the Women's Legal Resource Centre for four years. Prior to that I worked as a researcher on "Heroines of Fortitude", which was a research study that looked at the experiences in court of adult victims of sexual assault.

CHAIR: Your organisation has made a written submission to the inquiry. Do you wish that to be included as part of your affirmed evidence?

Ms VAN DE ZANDT: Yes.

CHAIR: Ms Martin, could you briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Ms MARTIN: I have been employed as a solicitor at Wirringa Baiya Aboriginal Women's Legal Centre for four and a half years. It is a statewide service that provides legal services to Aboriginal women and children. The primary focus of our service is to assist Aboriginal women and children who are the victims of violence, and consequently we deal with many clients who have been the victims of domestic violence, sexual assault and child sexual assault. Prior to working at Wirringa Baiya Aboriginal Women's Legal Centre, I worked at Dubbo Legal Centre for 12 months as a women's outreach solicitor and, once again, in that position I dealt with women and children who had been victims of sexual assault.

CHAIR: The Combined Community Legal Centres Group of New South Wales has made a written submission to this inquiry. Do you wish that to be included as part of your evidence?

Ms MARTIN: Yes.

CHAIR: Ms McKinnon, could you briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Ms McKINNON: I have been a children's solicitor, managing the Children's Legal Service at Marrickville Legal Centre for the past year and a half. It is a statewide service that provides legal advice and representation to young people under the age of 18. A substantial part of my work as a children's solicitor involves victims, particularly child victims, of sexual assault and victims' compensation work. Prior to my work at Marrickville Legal Centre, I worked for a year and a half at the Shopfront Youth Legal Centre, which is a legal advice and representation centre for homeless young people, and in that capacity I also worked with victims of child sexual assault.

CHAIR: Your organisation has made a written submission to the inquiry. Do you wish that to be included as part of your evidence?

Ms McKINNON: Yes.

CHAIR: If any of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, I must point out that the House has the right to override our decision in that regard if it so decides. I understand that you do not wish to make a preliminary oral statement. Any question that I or my colleague might ask may be responded to by one or more of you as you choose—one is certainly sufficient but more of you may respond if you feel it is necessary.

I refer initially to the submission from the Combined Community Legal Centres Group. It commences with a case study describing the circumstances relating to a matter involving Susie and her daughter Lucy. What particular points do you believe the Committee should draw from that case study? Are you pointing out that the system is not sufficiently child friendly? For example, the submission states:

> Susie was told that there was insufficient evidence from the interview to pursue criminal charges, although there was a "high probability" that abuse had occurred.

The point seems to be that the system is rather harsh as far as the interests of children are concerned. Am I correct in making that assumption?

Ms McKINNON: You are right: that is one of the points made by the case study. In terms of its showing a lack of child focus, the case study illustrates the fact that the welfare and interests of Lucy, the child involved, were not given priority in the investigation and did not appear—certainly from the perspectives of the child and the mother—to be an important consideration in the investigation of that matter. Aspects of the case that illustrate this point include the environment in which the statement was taken from the child. It was apparent that the atmosphere in the interview room was not conducive to that child's being comfortable and being able to give a full and truthful disclosure. She was obviously very young—three years old—and, as the submission describes, the atmosphere in the interview room was quite intimidating and abrupt. There did not seem to be much consideration given to her need for a quiet and supportive atmosphere in which she would feel able to make certain disclosures.

One of the issue that arises is that after the JIT team had concluded that perhaps it was not a matter that could go on to prosecution, there was no ongoing support or assistance given to either the mother or the child, even though they can concluded that the assault had probably happened. They left Susie and Lucy to deal with the consequences of the assault without any follow-up support, and further they gave the mother the impression that she was becoming a nuisance and that they were not interested in any further follow up of the matter.

CHAIR: I am very disturbed to read in this case study that Lucy found the JIT officer to have become abrupt and dismissive in manner. Do you attribute that to the personality of the officer in question? Have you had any similar experiences?

Ms McKINNON: From my experience it seems that there is often attention between the case load of the officers involved, and perhaps there is not enough time or enough focus provided on the child in question. I am not sure if that was a matter of the personality of the people involved. It seems that it is perhaps a combination of the people not being sufficiently aware of the needs of the child, but also the physical environment not being set up to adequately deal with a child in that situation.

CHAIR: You may or may not know that as Minister for Community Services I established the JIT teams. I jointly launched them with the former Commissioner of Police, Commissioner Ryan, at Ashfield. The intention was that there should be an interagency approach to these child sexual assault matters, with the police obviously having a primary responsibility regarding criminal prosecution and the DOCS officer having responsibility to look after the welfare of the child, including any necessary court proceedings that might ensue. Are the criticisms you are making of the JIT teams largely on the basis of your understanding that they are stressed by having too many matters, or are there more fundamental problems with the way in which they are organised?

Ms McKINNON: I probably cannot comment much further about the JIT teams, apart from some experience, and that case study is obviously one of them. I wonder whether anyone else on the panel might have further comments about their experiences with the JIT team.

Ms MARTIN: Equally, I do not have the capacity to comment about the JIT team other than from some experience we have had. Certainly, the impression I get is that they are very busy and they are very overworked. That is the impression I get generally of the Department of Community Services in dealing with child protection matters. The very strong impression is that they are very busy and very stressed.

Ms CARNEY: From our experience the police do what they need to do and that is beyond reasonable doubt, so they are trying to prepare a case for criminal prosecution and then you have DOCS. The police may not go ahead with it for all the reasons that have come out, such as the difficulty in collecting children's evidence, et cetera. Our main problem has been with DOCS not doing anything after that. The case is sent back and they may have said: Yes, there has been abuse, but we cannot prove it beyond reasonable doubt so we cannot take it further. That child is then cut free, so to speak. Nothing is done for that child. The department tends to close off the file. Then you have the mother of the child trying to seek some sort of assistance. We come across instances where, more and more, the person who may have been abusing the child, but that cannot be proven criminally, then proceeds somewhere like the Family Court or the Children's Court seeking to have contact or access with that child. That is a terrible problem at the present time and thus we talk about the Magellan project in our submission.

CHAIR: One of the factors in the submission, which is highlighted by the case study to which I am referring, is, "the limited capacity of the investigation teams to deal with the evidence of children who are preverbal or who have limited verbal skills". To be fair, is not that always going to be a difficulty—particularly if it goes into the criminal justice system—a hearing before a court? It is an obvious and legitimate point you have made, but it is less obvious how it can be overcome. Do you agree with that?

Ms McKINNON: It is a great difficulty, and it is clear that the JIT team, particularly the police in the JIT team, would look at the evidence from the point of view of whether it will be sufficient to launch a prosecution. I agree that is probably a very difficult issue, and with some

children the evidence will not be sufficient because of their age or maturity. But the other aspect is that where they are dealing with a very young child, support and the ongoing assistance might be given to that child to make sure that if the interview process is conducted, it is conducted in a way that is not overly intrusive and frightening for the child. If the interview process goes ahead, it should be done in very supportive conditions.

Ms VAN DE ZANDT: From the clients we speak with, obviously there are real problems with children who are preverbal. For lots of the mothers we speak with, they are told by different JIT teams that if the child is under school age there is no point even coming in and talking with them or interviewing them because it is unlikely they would make clear enough disclosure to support a prosecution. Often, the DOCS part of the JIT team will not follow up with that family or that child either. Mothers are being left with no other option. A lot of services hang on the fact that a child has been through the JIT process so they are then not able to access counselling and protective behaviour services, for example, that would at least allow four-year-olds or five-year-olds to in some way handle what has happened to them. We are certainly very supportive of the JIT model, but the problem is that it has become very forensically lead as a process. The risk-assessment aside, which is the DOCS side, has fallen away, I suppose, from the clients we speak with. If there is not enough evidence to substantiate a criminal prosecution then the case is closed and that is the end of the matter. DOCS officers do not often do their own risk-assessment process and, therefore, children cannot access other much-needed services like counselling.

CHAIR: The Community Legal Centre's submission says at page 8 that the communication between complainant and the police, the Director of Public Prosecutions and the court needs to be improved. The Committee certainly has heard other evidence along those lines, and it is a matter that we are concerned about. On the next page you draw attention to the fact that in your view the police fail to inform complainants and their families on the progress of the cases. Is that a common experience on your part?

Ms MARTIN: It certainly is a common experience with the experience I have the clients, absolutely. Once again, obviously, everyone who works in this area is incredibly busy, but there is also an assumption that the victim will be an advocate and, perhaps, a bit more assertive in seeking that information, but that is a mistake to make. You need to understand how difficult it is for a victim to go through this whole process, yet they are not going to necessarily follow up and ask questions and seek information about the progress of the matter. Responsibility very much is on the police officers and the DPP, if it gets to that stage, to keep the victim informed. Particularly in relation to children, obviously, if the child is quite young then their advocate will obviously be their parent, and in my experience mostly their mothers.

The experience is equally stressful for the mother. Particularly when dealing with Aboriginal women there is a whole range of issues as to why they are not confident in approaching the police to talk about these things. There are historical reasons and fear for a whole heap of other reasons, not being particularly confident to explain what they are going through and lack of literacy. There is an even more important role when dealing with victims, particularly Aboriginal victims, to have the appropriate person, preferably an Aboriginal officer or an Aboriginal support officer from the DPP to particularly support Aboriginal victims going through the process.

CHAIR: Further on your submission states, "when police inform complainants that there is not enough evidence or substance to a case, complainants are not provided with an explanation of what this means. They are left feeling that the legitimacy of the report is being judged before it comes to court." I assume you would agree with me that the police are sometimes in a position where they have to say that; that the case might be such that in their view it will not succeed if it comes to court? Are you saying that the matter or the explanation is not conveyed in a sufficiently supportive or understanding way? Can I also assume that you would agree with me that people coming before the JIT team, not being lawyers, are not necessarily in a position to assess evidence? There is a fundamental difficulty there, is there not? What are you saying to the Committee regarding the role of the police in that respect?

Ms MARTIN: I can comment, and perhaps Ms McKinnon could comment, too. I think you are right. Trying to explain to a layperson what it means to be able to have sufficient evidence to prove something beyond reasonable doubt is a difficult thing to do. But that is not to say that it cannot

be done. Certainly, working in community legal centres we regularly conduct workshops for the community to inform lay people about legal concepts. If people have sufficient training and sufficient patience and a sufficient willingness to try to explain those terms, it can be done. It is about having the will and the time, and setting up a process to allow that to happen.

CHAIR: The submission mentions what you described as a welcome presence of witnesses assistance officers, although you say that community legal centre solicitors still have to explain police and court procedures to clients throughout the prosecution process. As you know, the witness assistance service is located within the office of the Director of Public Prosecutions. Are they coping with their workload? You seem to say that they play a good role, but it is limited. I draw the conclusion, rightly or wrongly, that you are suggesting that sometimes you have to do the explaining to the clients in their absence because they are too busy.

Ms McKINNON: Where they are involved they certainly provide and carry out a very valuable function. It is our experience that where the witness assistance program is involved, it is involved at a later stage, and perhaps it is often at the early stage where the matter is being investigated by police that the witness assistance program is not generally involved.

I refer back to your previous point about police making decisions perhaps not to proceed with the matter because evidence is insufficient. I think at that stage, certainly young clients I have dealt with sometimes feel that they have not had a full chance to present all the evidence that perhaps they might have been able to present to police and that sometimes the judgment is made at a very early stage. They sometimes feel that not enough investigation has been done: perhaps it is that the decision appears to have been taken out of their hands at a very early stage in addition to perhaps not having given a full explanation to the young person about exactly why matters are not proceeding. Perhaps at that stage they should be given an opportunity to provide or suggest any further avenues of inquiry, and we should just give them an opportunity to have their say about a matter.

I will move on to your next point. Indeed perhaps there needs to be more of a focus on keeping the child and parents informed throughout the process, not just when the matter is going to court. I think that often that transition between the police and the Director of Public Prosecutions [DPP] can be very confusing to children. Often they do not understand exactly what is happening with the matter and there can be huge delays when they just do not know what is going on. I often find that even when I ring the police I have trouble getting through and getting responses. Without an advocate, I think that often children would not receive any information.

CHAIR: Do you see that responsibility of keeping people informed as a function of the joint investigation team [JIT] essentially, or as someone else's responsibility?

Ms McKINNON: I think it should be the responsibility of all the players in the system to the extent that police are involved, but obviously there does need to be responsibility allocated to one person—whether or not that is the Department of Community Services [DOCS] representative or the police and the JIT.

CHAIR: When the submission discusses the term of reference regarding the role of sexual assault counsellors in the complaint process, the comment is made, with which I agree, that in indigenous communities in urban and rural areas there are high rates of victimisation of women and children. I would clearly agree with that. You go on to say from the understanding of the community legal centre [CLC] solicitors who work in indigenous communities that it appears that non-indigenous agencies are unwilling to appear to be too interventionist; consequently, children's safety is compromised. While I would also agree with you that they are unwilling to appear to be too interventionist—and I make the comment that there are very longstanding, historical reasons for that—how is that difficulty to be resolved, though? It is not easy, is it?

Ms MARTIN: No, it is not easy, but I suppose the fundamental issue is that we are dealing with the safety and protection of children. When you talk about historical reasons, I understand what you are referring to and I think that that is something that non-indigenous services have to overcome. In some ways I find that view, too, a little bit patronising because it is associated with an assumption of not wishing to get involved and letting someone else sort it out. Certainly from speaking to clients and from speaking to many Aboriginal people I know, who have worked in this area for a very long

time and who are very concerned about the rates of sexual assault among Aboriginal communities, I know that they want help and they want assistance. They get very frustrated by the lack of assistance and the reluctance of all services, such as the Department of Community Services and the police, to actually work with them to address this issue.

I suppose the key is to work with Aboriginal community centre workers, with those Aboriginal organisations on the ground and with various key people within the community to have a collective and a partnership approach on this very issue. Because it is difficult, that does not mean that you ignore it and hope it will go away. Clearly we refer in our report to the recent statistics released by the New South Wales Bureau of Crime Statistics and Research which show very dramatic and significant overrepresentation of Aboriginal children who are victims of sexual assault. I think that is something that simply we cannot ignore.

CHAIR: When the submission addresses the matter of the impact of the application of the rules of evidence, the comment is made that many clients of community legal centres have great difficulty understanding court procedures, especially the rules of evidence, and that this is particularly so for children. The comment you make is clearly correct: However, it is hardly surprising, is it, that an ordinary person would find difficulty in coping with court procedures and the rules of evidence. Before you respond in any way to what I am putting to you, I should add that the Committee has received a considerable degree of evidence during this inquiry from experts on the law of evidence as it applies in child sexual assault matters—for example, from Professor Patrick Parkinson from the University of Sydney and from Dr Ann Cossins from the University New South Wales. You would be aware that certain statutory warnings now have to be given regarding the matter of delay in complaining, but in addition to that many judges feel that they still have to give common law warnings as well. Mr Justice Wood, the chief judge at common law, in a recently decided case drew attention to the complexity of warnings and the number of warnings that have to be given. What is your view regarding that? Do you think that there is room for warnings in these matters to be rationalised and simplified?

Ms MARTIN: I am not a prosecutor.

Ms McKINNON: I must admit that perhaps the role of community legal centres tends to be more focused on assisting victims outside the court process and we become involved primarily when they are going through the court process, so we are not integral to the prosecution process itself. I am afraid we are probably not in a position to comment on that particular issue.

CHAIR: All right. On page 12, the comment is made that community legal centre workers feel that inter-agency and government/non-government dialogue has almost disappeared since the demise of the New South Wales Child Protection Council. What about the Commissioner for Children and Young People? My understanding is that the functions of the Child Protection Council were folded into that office. Is that not the body within the bureaucracy that is intended to have that co-ordinating role?

Ms McKINNON: I would agree with you on that issue, but I suppose from our experience at this point perhaps the commission is not being as active in that role as the former council was—certainly in terms of involving community legal centres as partners in the decision making. That is not currently happening. We are not aware of the commission taking that role and perhaps that is an issue that could be looked that.

Ms MARTIN: I would agree. Once upon a time you would always get information from the New South Wales Child Protection Council about what they were doing and what was happening and meetings that they were having, as well as information that they were producing in terms of resources but we do not get anything from the children's commissioner at all. We seem to be very much out of the loop.

Ms McKINNON: My understanding is that it seems that perhaps the work of the checks on people working with children seem to have become one of the main functions of the commission in terms of intervening in proceedings in which people's records are being considered. They certainly do play a role in that aspect, but in terms of general child sexual assault issues, I am not aware that the commission is playing a great role in that area.

CHAIR: There is considerable comment made in the community legal centre's submission regarding the matter of victims compensation. We have read what you have said. Is there anything that you would like to say in summary regarding any needed amendments to the victims compensation legislation, or in any other respects?

Ms McKINNON: I think that to be fair probably the detail of our submission is not anything that I could quickly summarise now. The detail there is what we would rely on. As a general comment on that I would say that the impact of the interaction between the police or the JIT in interviewing children and taking statements on subsequent victims compensation applications is quite a significant one. I think often police—certainly from my experience—feel that those processes should be completely separate and they are not interested in the victim's compensation, yet the way the statements are taken and the fact of the proceedings have an enormous effect on whether or not a child is able to be compensated for sexual abuse matters. Perhaps the police do require further training or awareness about victims compensation and see it as a genuine entitlement of victims.

The Hon. JOHN RYAN: I am not sure that I entirely understand what is going wrong with the claims for victims compensation. Are you saying that you can only sustain a claim for victims compensation when a charge is laid? If a change is not laid, there is no opportunity for victims compensation. Is that it?

Ms McKINNON: No, that is not the case. You can have a successful application for victims compensation without a charge but the tribunal, in assessing an application for compensation, relies heavily on police statements of evidence. When a statement is taken perhaps in a quick manner or has not incorporated all the evidence of the applicant and when perhaps later evidence needs to be provided by a statutory declaration from the victims, the tribunal tends not to have regard to the statutory declaration and tends to give a lot of priority to the police evidence in those matters. It can very well affect the outcome of an application. Certainly the tribunal takes into account whether the matter proceeded to trial. That is an important factor, otherwise if it did not proceed, then you have to spend a lot of time on submissions establishing on the balance of probabilities that the act of violence occurred.

The Hon. JOHN RYAN: I notice that both you and the Women's Legal Resources Centre made a comment about victims compensation and essentially one of the questions that would inevitably arise in assessing your recommendation is that there must necessarily be some need to ration the resources that are available for victims compensation. I am just presuming that, but while you are here I would rather put it to you instead of having it given in evidence later and leaving you without the chance to respond. Would it be fair to say that victims compensation fairly is going to people who are most in need? Would these other provisions simply extend the number of people who are providing compensation? What is the case for extending access to victims compensation? Are there people who are in significant need who are missing out?

Ms VAN DE ZANDT We do a lot of applications for victims compensation at our centre. There are a couple of different issues that we have raised in our submission. One of them in relation to child sexual assault would be the two-year time limits for applications for victims compensation and a presumption in the Act that out-of-time applications will be considered favourably for child sexual assault victims. It has been our experience for probably the past two years that more and more of our out-of-time applications have been knocked back, seemingly quite arbitrarily, by assessors. That presumption is not being applied as it says in the legislation. Would you agree with that?

Ms CARNEY Yes. That would be one of the difficulties we have with victims compensation and therefore a lot of victims of child sexual assault are missing out. Those provisions were added into the legislation in recognition of the difficulties that exist for children and adult survivors of child sexual assault in coming forward to talk about what happened to them.

We are finding increasingly that applications in child sexual assault matters are being knocked out, particularly where there has not been a conviction. So, although the legislation says you can make an application without there being a conviction, we are finding that assessors are relying on that and therefore saying that they do not find it proven.

The Hon. JOHN RYAN: You have said that plea bargaining has an impact on the success or otherwise of claims for victims compensation. Could you explain how it has that impact?

Ms McKINNON: That was part of our submission. It is a simple point: If the charge is reduced, for example, from an assault occasioning grievous bodily harm to an assault occasion actual bodily harm, or if the charge that goes ahead does not adequately reflect the full facts of the matter, the tribunal is more likely to regard the eventual charge of which the person is convicted as indicative of what in fact happened, whereas perhaps it does not reflect the full nature of the violence suffered by the victim.

The submission also makes the point that plea bargaining generally happens without consultation with the victim, or that the victim is not always told that plea bargaining is happening, and perhaps the outcome for victims compensation is not considered when those matters are brought before the court. In one recent example—not one that we were involved with, but a recent high-profile rape case—evidence about a knife being used was not presented to the court. The victim was upset about that. Apart from affecting sentencing, it would also affect victims compensation. The Victims Compensation Tribunal has access to court transcripts and would rely on that evidence.

The Hon. JOHN RYAN: At the end of your submission you also raised the issue of integrated advocacy for children and young people, and you appear to be saying in your submission that legal aid is largely offered in a couple of Sydney locations, such as Macarthur and Marrickville, and that there is difficulty in getting it outside those locations. Am I reading your submission correctly?

Ms McKINNON: Perhaps I should clarify that it is not in fact legal aid. There are children's legal services run by community legal centres which are independent, community-based organisations separate from legal aid. But, yes, there is very little funding, particularly in New South Wales, for any legal advocates for young people. I am a children's solicitor at the Marrickville Legal Centre, but it is not a funded position for a children's solicitor; it is just a general legal centre that has decided to allocate some of its funding to that position.

The Hon. JOHN RYAN: How would funding assist in child sexual assault matters?

Ms McKINNON: Throughout our submission we have identified areas where children really need advocates in the process of going through court proceedings in that matters are not adequately explained to them, or perhaps there needs to be further liaison with the police, or where other services are needed for young people. We consider that more children having access to a funded service with children's advocates, perhaps at a multi-discipline level, with perhaps legal and other professionals, would much better ensure that children's rights are respected. A combination of legal and other services would be of great advantage. Those tend to be very separate services at this stage, as health services and legal services, but a combination of different professionals would certainly assist.

The Hon. JOHN RYAN: If I could read a sentence or two from page 10 of your submission:

> Agencies appear to be like rabbits caught in headlights, they know that they need to act but don't know what to do. From the understanding of CLC solicitors who work in indigenous communities it appears that non-indigenous agencies are unwilling to appear too interventionist, consequently children's safety is compromised.

You go on to relate a story about a person who got action only after being taken to hospital with bleeding. That appears to be a comment that relates more to rural and regional areas. Is that so?

Ms MARTIN: No. In fact, that case refers to a client based in metropolitan Sydney. From my experience, the problem is across the board. I work for a statewide service. In fact, most of the calls that I get are from Sydney. That is because the biggest populations of Aboriginal people live in the Sydney area. But the experience is across the board, across the State.

The Hon. JOHN RYAN: What is the antidote? Would it be better to train the non-indigenous people who are operating in agencies to be more interventionist, or would it be preferable to establish more indigenous-specific positions and fund those positions for counsellors who have an indigenous background as a means of resolving that obvious problem?

Ms MARTIN: This is something that we have discussed before. This is the whole issue about how to address this issue. I think it is a combination of things. Yes, you certainly do need more Aboriginal workers in DOCS, police and in counselling services. I know from personal experience that I have a real problem trying to find appropriate Aboriginal councillors for Aboriginal women and children. There is equally a problem finding counselling for non-Aboriginal women and children. I think there needs to be a lot more focus on, and resources for, appropriate counselling services and support services. Once again my response is that we are talking about the safety and protection of children. It is not about labelling someone as being too interventionist. It is basically about people doing their job and protecting children. Many of the people I speak to in the Aboriginal community are concerned about the protection of their children, not about whether someone is interventionist or not. I think it is as simple as that, really.

Ms VAN DE ZANDT: Might I add a comment about our experience in Aboriginal communities? I would echo everything that Rachael is saying, but inertia is not a response to these sorts of issues. We know of whole communities in which child sexual assault is entrenched, and has been entrenched for generation after generation. Local Department of Community Services officers feel overwhelmed by the problem and do nothing. I am certainly sympathetic about the difficulties that they have, and, given the historical reasons for intervening, that is very understandable. But, really, I think employing culturally competent non-indigenous people as well as employing Aboriginal people is the key, as is thinking creatively about ways of intervening.

When we contact DOCS officers we are not expecting them to go in and take all of the children from that community, or apply for care orders for all of those children, but there have been some really creative ways of working with Aboriginal communities that are led by those communities and led by, for the most part, the women of those communities who say, "This is what you need to do." It is just a matter of employing those community women to start doing the job, to start having conversations about child sexual assault, and I suppose thinking outside the square. But a lot of what we see is just complete inertia and overwhelming feelings of not knowing what to do. That cannot be the response for the women in those communities.

CHAIR: My experience is that there are some highly effective women, in particular in Aboriginal communities, usually called aunties. They play a very positive role. However, when I was questioning you sometime ago about intervention by government agencies, I had in mind the long history of conflict, the stolen children episode and so on, which clearly engender an atmosphere of distrust and makes relations difficult.

Ms VAN DE ZANDT: Yes.

Ms MARTIN: I would reiterate what I have said before: There is a real concern within the Aboriginal community about this issue. There are many women at both my service and I am sure at the Women's Legal Resource Centre who can offer themselves as potential contacts if those services are interested in working with these women. They meet on a regular basis. There are all sorts of wonderful people to tap into and use. They approach us and say, "What can we do? We are prepared to work with you to address this issue." The resources and contacts are there; the services just have to tap into them and work with them. I agree with Pia: it is about being creative, and it is about thinking outside the square. But it can be done if people are prepared to listen, and it is about setting up a forum to enable those people to talk and to be listened to.

CHAIR: If I could revert for one moment to the matter of victims compensation. I note the comment made it page 16 to the effect that Community Legal Centre solicitors have also found that the Victims Compensation Tribunal is highly discretionary in its decision-making. You add that it does not have clear and transparent procedures and guidelines. Magistrates sit on that tribunal, do they not?

Ms McKINNON: At first instance decisions are made by assessors, who are not magistrates. So, when you lodge an application for compensation, the matter is determined on documentary evidence provided by the victim and on any evidence subpoenaed by the tribunal, and the initial determinations by an assessor, who prepares a written determination. If compensation is refused or considered inadequate, the victim has a right of appeal, and that appeal is dealt with by a tribunal

magistrate. It has been our general experience that tribunal magistrates tend to be more consistent and adopt a more beneficial approach in determining matters. What concerns us as community legal centres is that, for matters in which we are assisting the client, we may well know that and advise clients to appeal. But for the many clients who do their own applications, or who have private solicitors helping with their applications, an appeal process is more expensive where a solicitor is engaged, or the client might think: It is just not worth it; I have been refused once, so why would it be different of appeal? We are worried about inconsistency in decision-making at the assessor level.

CHAIR: If I could turn now to the Women's Legal Resources Centre submission. You make the somewhat startling proposal—even though I might be attracted to it myself—that there should be a trial of an inquisitorial model for prosecuting child sexual assault. I understand why you make that suggestion. All sorts of criticisms have been made to us about the unfairness of the system as it operates or is perceived to operate, that is, in a way that is not child friendly. How viable is it, though, to propose an inquisitorial model within an age-old adversarial system?

Ms CARNEY: Obviously, it is something that is put up for people to think about, because it does come up as an issue all the time. We were not proposing that the adversarial system be put to one side, but that elements of the inquisitorial model be used. The Coroners Court or the ATT refugee tribunal incorporate models that one would see as inquisitorial. For instance, the ATT tribunal has professional experts sitting with and assisting the judge. I note that the Director of Public Prosecutions submission talks about an expert interviewer to assist the court. They were talking about someone being with the child and able to intervene. Again, that is along the lines of the model we were thinking about. Basically, it is just getting the facts before the court, not overly assisting so that there is unfairness. Where the child is having difficulty, the person assisting could interrupt to make the judge aware of a problem, such as that the child did not understand a question or that question could be asked in a different and better way.

Also, it would be good if the judge would intervene. I know that judges do ask questions, I have seen judges asking questions of witnesses. In my previous life in private practice the defence counsel would usually stand up immediately and make it known to the judge that they do not appreciate it, and start making noises about appeal, and the judge will immediately pull back, because the Director of Public Prosecutions, the defence, the judge and everyone seems to have an eye on the appeal court. That makes it difficult. Also, children are often represented by their own solicitor in care and protection matters, and the family court has a separate representative. That is already done. But there have been several instances in which we have been contacted where criminal proceedings have been going on in a sexual assault matter and documents are about to be tendered that are privileged communications. At that stage a judge who is up to speed on the latest law stopped the proceedings and told the victim, "There is a privilege issue here and you should go and seek legal advice." They have come to us, and we have represented them. Providing the victim with someone to advocate for them on those issues is something to consider.

CHAIR: On the question of the reluctance of judicial officers to intervene in questioning if it is becoming intimidatory or unfair, we have had previous evidence from the Deputy Chief Magistrate, Ms Helen Syme, who pointed out to us that quite often in her experience the child, quite apart from facing hostile questioning, might not understand the question. Her practice is to say to Mr or Ms so and so, "The child does not understand the question. How will this assist the court?" Do you think that will receive hostile attention from an appeals court if judicial officers are more attuned to the demeanour of the child and realise that the question is couched in such a way that the child clearly does not understand what is being put?

Ms CARNEY: I do not think it should. I think it is fairly reasonable. Certainly, if there was a court appointed person to advocate on behalf of the witness, that may be even more helpful because that would be their clear role. I think the problem for judges is that they have to be neutral and be perceived to be neutral, and it is probably no fault of the judge—if there was a defence counsel who was carrying on with this line of questioning, the judge would have to intervene more and more and more, and in a transcript that could look like the judge was being unduly interfering. So I think it would depend very much on the facts of the case. The Court of Criminal Appeal, I think if it was the judge just clarifying once or twice, you would not imagine that that would be a major problem. But it will always be difficult for judges.

CHAIR: If you have seen the DPP's submission to us you will realise that he has made a proposal that there should be a trial or a model court where judicial officers and court staff are specially trained and the equipment is available to make the court as child friendly as possible. Do you think that that is a useful idea?

Ms CARNEY: Yes, I would be very supportive. From the feedback we get from community workers and our clients, the trialling of something like that could be useful on many levels, including the training given to all the professionals involved. You would also need some expanding of the witness assistance scheme. I imagine they would be part of that trial. If you had expect interviewers, this is where you may be able to broaden it to include people who may be seen to assist the victim in court as a victim's advocate or the model that they were proposing that the professional person be with the child in the other room when they are giving the evidence and be able to tell the judge that the child did not understand the question.

Judges often do have their heads down. It is a hard job. They are taking down everything they can and they cannot be expected to observe everything. So I think it would be very useful. We would be very supportive. I know we were asked to talk about the child advocacy centre. If one was set up, that may be a model that could be incorporated into that. We already have the JIT. The child advocacy centre is just, in a way, expanding that to include councillors and for the back-up for the children. Also they would make sure that they gather evidence in such a way that it can be useful and transferred to other jurisdictions for the care and protection if that is necessary, or the Family Court or civil jurisdictions.

CHAIR: There is a passage in your submission dealing with Project Magellan. I understand the Committee has received some material from the Chief Judge of the Family Court about Project Magellan. I note that you are proposing that it should be established at the Family Court registry at Parramatta. You mention that Project Magellan involve State child protection agencies, the Family Court and legal aid commissions working together. Can you say something briefly for the record about why you believe Project Magellan might be a useful initiative?

Ms CARNEY: We believe it would be a useful initiative. We would like to see it started certainly in Parramatta but eventually to see it in all Family Court registries. The Family Court is now finding that a lot of its core work are these intractable cases that involve allegations of sexual abuse. They have to be carefully managed and tracked through the system, otherwise they can get lost going through directions hearings and several registrars. Also, some of these matters would find themselves in the Family Court without having any assistance from the Department of Community Services [DOCS] or legal aid. Once an application is in the Family Court and it is brought to the attention that there are allegations made, it is put down a track where it is carefully case managed so that these children are helped through the system without falling into it. The Department of Community Services and legal aid must intervene and give assistance until they are resolved one way or the other.

CHAIR: The Women's Legal Resource Centre submission also deals with the matter of the joint investigation teams [JITs], or joint investigation response teams [JIRTs] as they are now called. You mentioned that some of your clients have reported JIT officers, to use your expression, "painting bleak pictures of the court process", highlighting the trauma for children of making child sexual assault complaints in what you describe as "an effort to actively discourage parents from proceeding with an interview and complaint". Do you think possibly the JIT officers are only being honest? Before you respond, can I say that hearing the evidence that has been given to this inquiry I have formed rather a bleak view of the system as well.

Ms CARNEY: Yes, and it is. I think they are being honest but to actively discourage is another thing. We often talk to clients about what they can expect, but as you know there are supports for the children, putting into the witness assistance scheme, being able to give evidence via video link-ups, having panels in place. There are things in place which can deal with that trauma to some extent. Obviously it will be a difficult process, there is no doubt about that, and the child will be expected to give evidence. The child has to be questioned in the interests of fairness, but there are things in place that can help ameliorate that and help the child through it and support people. And I think they should be pointed out. We are often contacted by the mothers of these children or other community workers or sexual assault councillors and this is when we try to tell them exactly how it will be without

completely discouraging them and being untruthful. It is in the interests of justice that these matters are proceeded with.

CHAIR: How generally available and how effective do you believe closed-circuit television [CCTV] technology is in hearing these matters?

Ms CARNEY: It depends on the availability of it, how well it is handled and whether the screens are big screens or small screens. It does not seem to be just coming in in the one model, from what we can gather. There may be times when it is just not available. The child is told that they can use it but there is nothing available. We were told recently about a matter where the child was told they had a panel and on the day there was none available, they did not, and the child retracted in the witness box when faced with the abuser. There just does not seem to be consistency. I think they can be very useful if it is done properly. I must say that I am puzzled because I always remember very early in my career going to the Supreme Court on a bail application and there was no problem at all with the prisoners being brought up on very big screens to give their evidence and listen. I do not know why it would not be operating on that level and that sophistication if that was over 10 years ago now. In all matters of child sexual assault and the designated courts may be able to deal with that.

CHAIR: It has been said to us that one of the criticisms of the CCTV technology is that the image of the child might appear unrealistically small to the judicial officer and to the jury, if it is a trial, and that the demeanour and the reactions of the child might be somewhat difficult to discern. Are you saying that better technology is available on hearing a bail application?

Ms CARNEY: I have seen quite big screens and quite a clear picture of the defendant or the prisoner being present. Obviously I am not a technical expert but from my own experience I have seen things that I think would be much better than small screens with a small child's face on it.

CHAIR: Are you saying that technology is certainly capable of improvement and should be improved?

Ms CARNEY: Yes I am. As far as I know, yes.

CHAIR: The submission deals with a suggested establishment of what you call child advocacy centres, which evidently operate in some jurisdictions in the United States of America. You say that you support the establishment of a child advocacy centre in New South Wales on a trial basis. Can you tell us what the function of such a centre is and why you make the suggestion?

Ms CARNEY: The function is that there is a very specialised team of professionals dealing with the child. We already have the witness assistance scheme, we have the JIT team, and we have other people assisting. If they could all be brought together there would be one interview of the child which would be kept on video link so the child does not have to deal with countless interviews. There is ongoing counselling and there are health professionals. The lawyers and witness advocates all in this scheme—I actually have some information here. Rather than me going through it all with you, I could tender it if the Committee would like that?

CHAIR: Yes, thank you.

Ms CARNEY: The main thing is that it is very co-ordinated, people all working together, not separate people working in separate areas, and the child focus continues even after the trial or if it is discontinued for some instance. So there is continuing counselling and assistance given to the family even after the court process.

CHAIR: Are you saying that there is a need for some separate entity distinct from, shall we say, the witness assistance service?

Ms CARNEY: What I was thinking was that they could be incorporated so that it could all become part of it. I mean incorporated and expanded. No-one criticises the witness systems scheme; they just think there should be more of it. There is considerable criticism of DOCS' involvement and that may be resources and all sorts of reasons that they would be involved in this, plus health professionals. There is care and protection workers within the health department who could be

brought into it. There will probably be a role for the witness advocates which the DPP talk about, support of the child victim but also most importantly if it fails for whatever reason that the evidence can be used to protect the child in other jurisdictions. In civil jurisdictions the protection of the child can proceed and that evidence can be used. That is often a problem now where you cannot introduce that evidence in different proceedings. If there are no further criminal proceedings or they are acquitted or for whatever reason, the continuing support of the children and the support to the family, the counselling, et cetera, are important. I suppose a one-stop shop would be one way of thinking about it, rather than getting lost in the system or going between organisations.

CHAIR: The issue of the rules of evidence is dealt with in this submission. You concede or draw attention to the fact that legislative changes have been made over recent years, for example, to remove the mandatory requirement that the judicial officer should give a corroboration warning. You say though that it is your view that the removal of the requirement for judges to give such a warning is continually undermined by higher courts of appeal. You say it is your experience that when trial judges do not give a corroboration warning their decisions are often successfully appealed. That is your experience, is it?

Ms CARNEY: Yes it is, and we have often noted that many matters going to the Court of Criminal Appeal appear to be child sexual assault matters and they appear to be either acquitted or sent back for a retrial. It is very technical, extremely technical. It does not necessarily seem to hinge on the innocence or guilt. Warnings to juries, judges' summings up, if the judge has intervened, all these are very technical aspects. It was interesting to see that the director of the DPP estimated 75 per cent. If I had estimated that I would have thought I was over but that is the feeling I certainly have because we get the reports coming in monthly. When you see them every month it does hit you that they are nearly all child sexual assault matters. We have often thought we would like to get some money to research that or get a student to research the actual numbers and what is happening there.

Ms VAN DE ZANDT: Could I just add a comment on that, and it goes back to your question earlier about the simplification of warnings. As Catherine says, our experience is that so many of them do get appealed to the Court of Criminal Appeal and I think there is some research or some statistics by the New South Wales Bureau of Crime Statistics and Research showing that 65 per cent of appeals to the CCA were upheld last year generally, and I am assuming a lot of them would be child sexual assault matters, but obviously there is a strong historical basis for a lot of the warnings that were required to be given by judges but are now no longer required to be given but are still given by so many judges and I think it shows that legislation does not seem to prevent judges from still giving their common law warnings. It must be incredibly confusing for juries where they are told that there are good reasons for a child's delay in complaining but they also need to scrutinise the child's evidence because it is not corroborated and they are given probably quite conflicting warnings in many matters in their summings up by the judges but we know that judges are very wary of appeals, and given that so many are upheld it is no wonder.

We would be very supportive of warnings being simplified, whether that is done by legislation, but also very aware of the need for attitudinal changes, I think, of judges, given that they are very careful about what the CCA says. District Court Judges are notorious for being aware of that and probably there needs to be an attitudinal shift before the spirit of any legislation passed is then enacted in our courts.

CHAIR: Mr Justice Wood in a recent decision, as I mentioned earlier, has drawn attention to the complexities that arise, particularly for a jury, in regard to the warnings that are given, such as you have just described. So you do agree with me that some attention does need to be given to rationalising or simplifying the warnings?

Ms VAN DE ZANDT: Absolutely. I am probably just not very hopeful of strategies that can be put in place by, say, parliament to simplify warnings where, given that there has been already a number of different legislative moves to remove requirements to give warnings that come from medieval times and still that hasn't worked, I am less hopeful but I am certainly very supportive of it, yes.

CHAIR: In summary, Dr Cossins, when she gave evidence to the Committee recently, was advocating that we should leave the negative warnings intact but, that is the ones that explain why the

child might have delayed in making the complaint but that the legislature ought to consider abolishing the common law warning about scrutinising the evidence with great care and so on.

Ms VAN DE ZANDT: We would be very supportive of it.

CHAIR: That is an approach that ought to be considered?

Ms VAN DE ZANDT: Yes definitely, we would be supportive of that, yes.

CHAIR: It does seem to be a very difficult matter given that in regard to the corroboration warning the legislature has said that it does not not have to be given and you say that it has been undermined by the judges. I am tempted to ask who is running the State?

Ms VAN DE ZANDT: There are actually some findings in the Heroines of Fortitude research about that precisely. I cannot think of them off hand but it was quite shocking. Even though it is not required to be given maybe as much as 30 per cent of judges were still giving the corroboration warning but I could refer you to that. I could maybe fax that through to you actually. We have that at work so I could get that for you because it is just a really clear example of the legislature making a very clear statement about not giving them but judges giving them anyway.

CHAIR: Is there anything else that you would like to say that we have overlooked before we conclude?

Ms VAN DE ZANDT: The only thing we wanted to add was, the third main point of our submission was that in talking about the issues of child sexual assault in criminal matters, from my understanding or from reading the submissions made or the evidence, a lot of it is anecdotal information and it is so difficult to get good research that has looked at the trial experience or the court experience for child sexual assault survivors. I know that there has been research by the Judicial Commission and by Dr Cashmore* and a lot of other academics, on parts of the process but there has not been any research that takes a snapshot of the court experience for children or adult survivors and we have been talking about getting something like that going for a long time and we would be very much again trying to reiterate the importance of that using similar methodology as the Heroines of Fortitude Research which took a year's long snapshot of what happened for people in court at sentencing and trial and the report procedures because a lot of the information that the committee is asking about, there is only anecdotal information to give you about what our clients say or what people who have gone through the process say but there is no general quantitative study so some research would be invaluable, I think, in making some broader policy directions for the future.

CHAIR: Well, thank you very much for your evidence this morning and also for the care and attention you have given making the written submissions to the committee. It is very much appreciated. Thank you for your time.

(The witnesses withdrew)

(Evidence continued in camera)