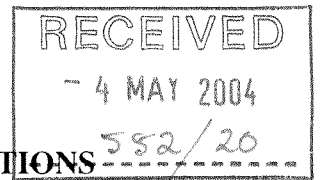


**LAW AND JUSTICE COMMITTEE  
REPORT ON CHILD SEXUAL ASSAULT PROSECUTIONS  
REPORT RECOMMENDATIONS**



**Recommendation 1:**

The Committee's principal recommendation is that the Attorney General establish a pilot project to trial a specialist court for child sexual assault prosecutions. The details of the Committee's proposal are described in Recommendation 43.

**Response:**

The principal recommendation of the Committee was adopted by the Government when the Attorney General announced the establishment of a pilot project to trial a specialist jurisdiction for child sexual assault prosecutions in December 2002. The details of the Government's response are outlined at Recommendation 43.

**Recommendation 2:**

The Committee recommends that the Director of Public Prosecutions and the Commissioner of Police use appropriate internal communication methods to remind staff of the Office of the Director of Public Prosecutions and police officers (respectively) of the necessity of impartially presenting information to complainants and their carers about the consequences of pursuing a prosecution for a child sexual assault.

**Response:**

The Office of the Director of Public Prosecutions (ODPP) has a number of mechanisms for reminding staff of the necessity to impartially present information to child complainants and their carers about the consequences of pursuing a prosecution for child sexual assault. In addition to adhering to external Guidelines such as the NSW Charter of Victims Rights and the Interagency Guidelines for Child Protection Intervention 2000, the following internal policy initiatives also inform the practice of ODPP staff:

- ODPP Prosecution and Policy Guidelines;
- ODPP Strategy for Preparing Defended Indictable Matters;
- ODPP Training Program on "Conducting Conferences"
- ODPP Child Sexual Assault Policy and Guidelines Manual (which outlines the procedures to be followed in relation to communication with victims and their carers); and
- ODPP Witness Assistance Service Manual, Best Practice Referral Flowchart and Child Witness and Childcare Policy

The ODPP Witness Assistance Service operates an early referral protocol to assist in facilitating contact with every child who is a sexual assault complainant. Negotiations between the ODPP and NSW Police are currently underway to ensure the early provision of complainant contact details by the Police where matters are referred to the ODPP for prosecution.

Further actions to be undertaken to address this issue by the NSW Police Force include:

- NSW Police to produce a brochure for police officers to provide to parents and carers about the prosecution process and possible time frames involved in this process;
- Reinforcement of the requirement to provide impartial information is to be reinforced in the JIRT training; and
- A memo from the Commander, Child Protection Squad on this necessity will be distributed to all JIRT officers.

Furthermore, all Police officers are aware of the NSW Charter of Victims Rights which recognises that any victim of crime has a right to information about the investigation of the crime, the prosecution of the accused and the trial process. The NSW Interagency Guidelines for Child Protection and the Victims Rights Act outline what information must be provided to complainants in child sexual assault matters.

**Recommendation 3:**

**The Committee recommends that Joint Investigative Response Teams (JIRT) management assess its officers' provision of information to complainants, and the reasons for shortcomings in communicating the progress of a complaint. An evaluation of the need for a designated case manager to be appointed from within the Joint Investigative Response Teams could be undertaken in this context.**

**Response:**

The Joint Investigative Response Teams (JIRT) are a joint initiative involving officers from both the Department of Community Services and the NSW Police Service. From the perspective of the Department of Community Services ("DoCS"), departmental procedures and instructions will alert staff on the JIRT to issues associated with this recommendation. Procedures for staff clearly articulate the responsibility to keep all parties informed in relation to their case. The new *Case Management Framework* will ensure staff have specific, assigned tasks and that they will be aware of their responsibility in relation to these tasks.

The JIRT team leaders are currently conducting an assessment of the provision of information to complainants. Monitoring of this process will be undertaken by the NSW Police Statewide Management Group and the need for a designated case manager for JIRT will also be considered.

Informing victims of crime about the progress of an investigation is a right within the Charter of Victims Rights. The Victims of Crime Bureau is currently producing a training manual on the Charter and this training could be included in the training program for JIRT officers.

## Recommendations 4-5 – Communication under the Charter of Victims Rights

### Recommendation 4:

The Committee recommends that the Director of Public Prosecutions and the Commissioner of Police use appropriate internal communication methods to remind staff of the Office of the Director of Public Prosecutions and police officers (respectively) of the necessity of informing complainants about the progress of their complaint.

### Recommendation 5:

The Committee recommends that the Charter of Victims Rights be amended so that communication of information about the progress of a complaint is required to be initiated by the Police and the Prosecution, rather than at the instigation of the victim.

### **Response:**

The *Victims Legislation Amendment Act 2003*, passed by Parliament in June, provides for amendments to the *Victims Rights Act 1996* with respect to providing victims of crime with information about the prosecution process. The amendments arose out of the report by the Hon. Gordon Samuels on the Review of the Director of Public Prosecution Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts (the "Samuels Report"). Paragraph 6.5 of the Charter formerly provided that a victim, should, *on request*, be informed about certain aspects of criminal proceedings relating to them, such as the charges laid against the accused, any decision to modify or not to proceed with charges, and the date and place of hearing of any charge laid against the accused. Under recent amendments to the Charter it is no longer necessary for a victim to ask to be given this information. A victim will be informed of these aspects of the criminal proceedings as a matter of course.

A new sub-clause to the Charter also provides that victims of serious crimes involving sexual violence, actual bodily harm, mental illness or nervous shock should be consulted prior to any decision being taken in relation to charge negotiations, unless they indicate otherwise or cannot be located following reasonable inquiry. Furthermore, the definition of a victim of crime in section 5 of the Act has also been amended to provide that, if a person dies as a result of the offence, the victim's family would be able to nominate a representative for the purposes of the Charter.

The ODPP Prosecution Policy and Guidelines are in the process of being amended to reflect the recommendation of the Samuels Report and the recent amendments to the Charter of Victims Rights.

JIRT Police and DOCS officers both document contact with families on their respective computer systems. The NSW Police Service has the required technology to document, update and register contact with victims' families via 'actions' on the case/event on the NSW Police Computerised Operational Policing System (COPS).

In response to the Committee's recommendation, the *Police Weekly* (a restricted publication) Law Notes of 13 January 2003 carried a reminder to all police of their

responsibilities to victims under the Charter of Victims' Rights in a question and answer format. This covered:

- Advice police should provide to victims of crime regarding their entitlements
- Entitlements and services available to victims of crime
- When a victim is entitled to receive free counseling; and
- Victims' entitlements to victims' compensation.

This information on assisting victims of crime is also available to all NSW Police on the NSW Police Intranet.

#### **Recommendation 6:**

**The Committee recommends that the Joint Investigative Response Teams (JIRT) management assess the adequacy of training of its officers in the areas of interview techniques, practical interview experience, child development and refresher courses, with a view to ensuring all Joint Investigative Response Team officers have the necessary expertise to interview children in an effective, sensitive and child-friendly manner.**

#### **Response:**

A JIRT training sub committee links the State-wide JIRT Management Committee and the training branches within DoCS and Police, and the DoCS Rural Trainers/Coordinators. This committee meets monthly and comprises representatives from the three partner agencies and maintains focus on JIRT State-wide training needs and issues.

An evaluation of JIRT training across the State was completed in 2001 by Southern Cross University. This evaluation, funded jointly by NSW Police and DoCS, reviewed training content and training needs for JIRT staff. A critique and clinical review of the JIRT investigation curriculum from a research perspective was conducted by Dr Martine Powell from Deakin University. The evaluations completed by Southern Cross University and Dr Powell were supportive of the existing JIRT training practice. Recommended changes and current research were incorporated into the new JIRT training package and commenced in March 2002.

JIRT training is based on a competency model with agreed performance standards for the assessment of participants at the completion of training and on two further occasions following training by Certificate IV workplace assessors under the National Framework for the Recognition of Training. Additional Training sessions/workshops are identified on a needs basis. In 2001-2002 nationally and internationally recognised experts covered topics such as interviewing children; sibling sexual abuse; communication, child protection and children with disabilities.

Additionally, the Joint Investigation Forums are annual events that bring together staff of the three key partners DoCS, Health and Police to discuss issues pertinent to joint investigation. The forums aim to provide the following:

- Continuous improvement in the forensic child protection services provided by DoCS, Police and Health,
- Sharing of information by all three agencies,

- An opportunity to discuss policy development and any major changes in service delivery,
- Advice to JIRT staff on the latest research evidence and practice knowledge available in this specialised area of work.

The Government has allocated \$18 million over the next 5 years to strengthen JIRT. This will include additional DoCs caseworkers and support. Any additional training needs will be considered as part of this project.

Dr Martine Powell, Melbourne University, is currently evaluating NSW Police officers' skills in interviewing children and young people.

All JIRT Officers receive joint training. This is the fifth year of jointly delivered training for officers. Southern Cross University and Deakin University has reviewed the training in investigative interviewing of children, which has been provided. All training has had a review/evaluation component where presenters have assessed the adequacy of the training. A State-wide Management Group sub-Committee specifically focuses upon monitoring and co-ordinating the training provided to JIRT Officers.

The Joint Investigative Interviewing of Children Course has been re-written and is regularly delivered. The following modules are completed by participants at the course:

- Child development;
- Interviewing Children from an Indigenous Background;
- Cultural Issues and using an interpreter;
- Laws and Organisational Policy and Procedure;
- Joint Investigative Interviewing;
- Recording the Interview;
- Health Issues;
- Investigative Interviewing of Children with Intellectual and Sensory Disabilities; and
- Welfare of Officers responsible for Investigative Interviewing of Children.

Participants in the course are offered constructive feedback during Joint Interviewing training sessions conducted by trained facilitators. A participant must be assessed as competent on each occasion to receive the course award.

**Recommendation 7:**

**The Committee recommends that the New South Wales Police Service review its practices for interviewing adult complainants of child sexual assault, with a view to ensuring optimum levels of privacy, sensitivity and support.**

**Response:**

The investigation of historical child sexual assault matters is conducted both by JIRT officers in the Child Protection Squad, State Crime Command, and investigators at Local Area Commands ("LACs"). Investigations are conducted primarily at LACs.

All investigators in the LACs have received specialised training in criminal investigations. Over 200 officers have completed additional training in the specialised adult sexual assault course, which addresses the investigation of historical child sexual assault matters.

The NSW Police Investigation and Management of Adult Sexual Assault, Police and Standard Operating Procedures are under review. The review committee will highlight best practice in interviewing adults concerning their allegations of historical child sexual assault. This will include identifying and exploring alternative options for interviewing adult victims of child sexual assault to ensure that the sensitive nature of the complaint is considered paramount and interviews conducted accordingly.

### **Recommendations 8-9 – Witness Preparation and Support Services**

#### **Recommendation 8:**

**The Committee recommends that New South Wales Treasury provide funding to the Witness Assistance Service to oversee the development of updated court preparation resources.**

#### **Recommendation 9:**

**The Committee recommends that the Attorney General review the available witness preparation services, with a view to identifying and rationalising any duplication of services, as well as determining and funding future resource needs.**

#### **Response:**

At present court preparation and support services are provided to children involved as witnesses in child sexual assault prosecutions by the Sexual Assault Services section of the Department of Health, community based counselling services funded by the Department of Community Services (CASACs) and the Witness Assistance Service attached to the Office of the Director of Public Prosecutions. As agencies involved in the investigation of child sexual assault allegations, the NSW Police and the Department of Community Services are responsible for making timely and appropriate referrals to counselling and other support services. In practice the majority of referrals are made to a Sexual Assault Service with that service often providing both counselling and subsequent court preparation and support. However, for a variety of reasons not all referrals by the Police and the Department of Community Services are taken up. In the event that a complainant has not accessed counselling or support services at the time that a matter is referred to the ODPP for prosecution the ODPP's Witness Assistance Service will make further referrals to counselling and will take on the role of providing court preparation and support services to the child for the duration of their case.

The current range of court preparation and support services is underpinned by the importance of victims having a choice of services to access. Organisations involved in providing court preparation and support services are guided by interagency and agency guidelines such as the *Standards for Providing Court Support Services for Victims of Crime 2000* produced by the Victims of Crime Bureau and the NSW

*Interagency Guidelines for Child Protection Intervention 2000* adopted by all New South Wales Government departments and agencies involved in the protection of children and young people.

Court preparation resources currently in use have been produced by a range of service providers including the Victims of Crime Bureau, the Department of Health's Education Centre Against Violence, the ODPP Witness Assistance Service and a variety of other Sexual Assault Services.

The key providers of court preparation and support services, including Victims Services, Health Sexual Assault Services and the ODPP Witness Assistance Services are all represented on the Interagency Project Team for the Sydney West Pilot Child Sexual Assault Jurisdiction. A sub-committee on Witness Support Services has been engaged in coordinating preparation and support services in the context of the Sydney West pilot.

The recommendations of the Standing Committee with regards to both support services and preparation resources, will be referred for consideration by a Senior Officers Group, including representatives from all major support agencies, with a view to achieving a greater level of integration and interagency communication in the provision of support services.

**Recommendation 10:**

**The Committee recommends that the Commission for Children and Young People amend the *Interagency Guidelines for Child Protection Intervention 2000* to require that decisions about whether to delay counselling until after the investigative interview should be made on a case-by-case basis, and that the best interests of the child should be given priority in the decision making about the timing of a referral for counselling.**

**Response:**

The *Interagency Guidelines for Child Protection Intervention 2000* state as a "Practice Point" that:

*"...Assessment and investigation should occur as quickly as possible to enable referral of the child or young person for counselling. Therapeutic intervention may be delayed until the child or young person has been interviewed..."*  
(p104)

This reference relates predominantly to counselling provided to children who have experienced sexual abuse. Much of this counselling is provided by NSW Health Sexual Assault Services.

The direction arises from situations in the past where matters have been dismissed at trial following defence counsel argument that the evidence of children who have received counselling at a Sexual Assault Service prior to investigation is contaminated. NSW Health Sexual Assault Services have reported that this view has

at times also been taken by police officers who have decided against proceeding with investigations on this basis.

As a result it is policy in NSW Health Sexual Assault Services that counselling will not be offered to children until they have been spoken to by an officer of the NSW Police or Department of Community Services. It is agreed that this situation is not optimal and that steps should be taken to ensure that counselling for children be offered as soon as possible after the disclosure of abuse. Delays in undertaking an investigative interview can delay children receiving counselling, although support can be provided to the non-offending parents of the child.

This issue will be referred to the Senior Officers Group for Child Protection prior to any action being taken to amend the *Interagency Guidelines for Child Protection Intervention 2000*. It is necessary that attempts be made to identify a legally sound solution. This would involve the participation of NSW Health, NSW Police, the Office of the Director of Public Prosecutions and the Attorney General's Department.

#### **Recommendation 11:**

**The Committee recommends that the Minister for Health examine:**

- **the incidence of 'repressed memories' of child sexual assault**
- **whether the level of regulation of therapists and counsellors is adequate, and**
- **the training of counsellors, in particular the possible perpetuation of techniques that may give rise to 'false memories'.**

#### **Response:**

##### "Repressed memories"

The phenomenon of traumatic amnesia is well recognised, occurring in a sub-population of people who have experienced trauma. It can occur to varying degrees no matter what the traumatic experience and may be an adaptive defence mechanism for some people who have been abused. It should also be acknowledged that memory involves many information processing functions with complex interactions through phases of information registration, storage and recall. The dynamics of memory are complex and this area of ongoing research in terms of both biological and psychosocial processes. It is also noted that memory can be influenced by a range of factors, including techniques such as hypnosis, which if used inappropriately could lead to memory distortion.

The phenomenon of traumatic amnesia with delayed recall, sometimes referred to as "repressed memories" has been well documented for over 100 years. It became controversial when adults sexually abused as children, began both to recall incidents of abuse and to take legal action against those who had abused them (Cossins, 1997). In recent years, the term false memory syndrome (FMS) has been adopted in some quarters, to suggest that such memories are universally unreliable or false, as well as to highlight the 'suggestibility' of adults or children who disclose sexual abuse (Cossins, 1997).



The reported incidence of traumatic amnesia varies across studies, with the following findings reported:

- 28% of women in group therapy for incest survivors reported “severe memory deficits” (Herman and Schatzow 1987)
- 59% of 450 men and women in treatment for sexual abuse reported that at some time before the age of 18 years, they had forgotten the sexual abuse they suffered during childhood (Briere and Conte 1993)
- 38% of women and 55% of men followed up 18 years after admission to an emergency department following child sexual assault, did not recall the documented abuse (Williams and Banyard 1997)
- 32% of women and 58% of men with court substantiated reports of abuse did not report the abuse on re-interview 20 years later (Widom & Morris 1997).

This issue is relevant to two groups of people. The first group are those who present to services, usually Sexual Assault Services, because of problems, which they identify as resulting from past sexual abuse. The second group comprises those who present because of mental health and/or physical symptoms where abuse has not been identified.

Reports from Sexual Assault Services indicate that most frequently the surfacing of memories of childhood abuse, often resulting from a trigger such as a visit to a place known in childhood, is what prompts individuals to seek treatment. The recovery of memories in this way is therefore a phenomenon which many counsellors encounter but do not pursue through treatment.

#### Therapists and counsellors

Employees of NSW Health are directed by Departmental policy, which includes Departmental and Area Codes of Conduct. Health professionals are also regulated by professional boards and associations as appropriate to their qualification.

Counsellors employed by NSW Health Sexual Assault Services are predominantly social workers and psychologists. Psychologists are registered by the Psychologists Registration Board. There is no regulation Board for Social Workers and membership of the Australian Association of Social Work is voluntary. The NSW Department of Health proposes to examine the need and evidence base for the regulation of social workers. This examination will be based on the Australian Health Ministers' Advisory Council criteria for assessing the need for regulation of unregulated Health occupations.

Induction and ongoing training of NSW Health Sexual Assault Service counsellors is provided by the NSW Health Education Centre Against Violence (ECAV). Training is also provided to staff from mental health services, aboriginal health services, drug and alcohol services, community health staff and many acute service providers.

ECAV, which is a nationally and internationally recognised training body, has been training in the area of sexual violence for more than 15 years. The courses are carefully structured and teach practitioners that in cases where an adult client does not

have memory of sexual abuse, clinicians are advised to proceed with caution. Courses are regularly evaluated and evaluation reports are provided to the Department. Through these courses health practitioners are taught that:

- When a client presents with symptoms or behaviours for which abuse is a known risk factor, clinicians are to work with the symptoms experienced by the client. The role of the counsellor is not to assist the client to 'recover' memories, rather it is to establish safety, containment of symptoms and if appropriate, referral to specialist service providers;
- The Office of the Director of Public Prosecutions has produced guidelines on the use of new therapies such as Eye Movement Desensitisation, known as EMDR, directing counsellors not to use these therapies;
- If a client asks a clinician whether their symptoms may be the result of childhood sexual abuse, the clinician is to respond clearly that this assumption cannot be drawn.

NSW Health is satisfied with the quality and content of training by the Education Centre Against Violence, which health workers are receiving on this topic.

**Recommendation 13:**

**The Committee recommends that the Director of Public Prosecutions review the use of section 66EA of the Crimes Act 1900 after it has been operational for five years, with a view to determining whether it could or should be more frequently used.**

**Response:**

The use of section 66EA of the *Crimes Act 1900* will continue to be monitored by that agency on an ongoing basis.

**Recommendations 12, 14-27 & 33 – Changes to the Rules of Evidence**

**Recommendation 12:**

**The Committee recommends that the Evidence Act 1995 be amended to insert a section as follows: With a witness under the age of 18, the court shall take special care to protect him or her from harassment or embarrassment, and to restrict the unnecessary repetition of questions. The court shall also take special care to ensure that questions are stated in a form, which is appropriate to the age of the witness. The court may in the interests of justice forbid the asking of a question, which is in a form that is not reasonably likely to be understood by a person of the age of the witness.**

**Recommendation 14:**

**The Committee recommends that the Attorney General amend the Evidence Act 1995 to provide that:**

- (1) In relation to the prosecution of a child sexual assault offence, and subject to
- (2) and (3), tendency evidence relevant to the facts in issue is admissible and is not affected by the operation of ss 97, 98 and 101.

(2) In relation to evidence admitted under (1) a court must, in applying the balancing test under s137, take into account the following in addition to the matters set out in s 192:

- the nature of the other evidence in the proceeding
- the public interest in admitting all relevant evidence
- the likelihood of any harm that may be caused by excluding the evidence.

(3) In relation to evidence admitted under (1) a court must not, in applying the balancing test under s 137, take into account the prior relationship between the complainant and other witnesses.

**Recommendation 15:**

The Committee recommends that the Attorney General amend the Evidence Act 1995 to provide that, in proceedings for child sexual assault offences, relationship evidence relevant to the facts in issue is admissible and is not subject to sections 97 and 101.

**Recommendation 16:**

The Committee further recommends that the Attorney General amend the Evidence Act 1995 to provide that, in relation to the admission of relationship evidence in a child sexual assault trial, a court must, in applying the balancing test under section 137, take into account the following in addition to the matters set out in section 192:

- the nature of the other evidence in the proceeding
- the public interest in admitting all relevant evidence
- the likelihood of any harm that may be caused by excluding the evidence.

**Recommendation 17:**

The Committee further recommends that the Attorney General amend the Evidence Act 1995 to define the types of related acts that are defined as relationship evidence in the child sexual abuse context and are therefore admissible pursuant to Recommendation 16.

**Recommendation 18:**

The Committee recommends that the Attorney General amend the Criminal Procedure Act 1986 to create a presumption that, in child sexual assault prosecutions, multiple counts of an indictment will be tried together.

**Recommendation 19:**

The Committee further recommends that the Attorney General amend the Criminal Procedure Act 1986, to ensure that, when considering the severance of trials, the court:

- *is not permitted to take into account the prior relationship or acquaintance of the complainants, and*
- must ensure that the interests of justice are at all times paramount.

**Recommendation 20:**

The Committee recommends that the Attorney General amend section 66 of the Evidence Act 1995 to insert a provision defining 'fresh in the memory' in child sexual assault trials as being the quality of the memory (not having deteriorated

or changed by lapse of time) of the asserted fact irrespective of the time that has elapsed between the making of the assertion and the occurrence of the asserted fact.

**Recommendation 21:**

The Committee recommends that the Attorney General amend the Evidence Act 1995 to permit in child sexual assault proceedings the admission of expert evidence relating to child development (including memory development), and the behaviour of child victims of sexual assault along the lines of section 79A of the Evidence Act 2001 (Tas).

**Recommendation 22:**

The Committee recommends that the Attorney General amend the Criminal Procedure Act 1986 to expressly prohibit judicial officers from giving jury directions stating or suggesting that the credibility of a complainant is affected by a failure to report, or delay in reporting, a child sexual assault.

**Recommendation 23:**

The Committee recommends that the Attorney General amend the Criminal Procedure Act 1986 to prohibit the issuing of the Longman judicial warning where there is no evidence or good reason to suppose that the accused was prejudiced by the delay in complaint.

**Recommendation 24:**

The Committee recommends that the Attorney General amend the Criminal Procedure Act 1986 to provide for a judicial warning on the uncorroborated evidence of a child sexual assault complainant. The Committee recommends that this judicial warning should advise the jury that, while they are required to scrutinise the evidence before the court with great care, the evidence of one witness, if believed, is sufficient to prove a fact in issue in the trial.

**Recommendation 25:**

The Committee further recommends that the amendment proposed in Recommendation 24 make clear that the existing Murray warning about uncorroborated evidence of a complainant is no longer to be given in child sexual assault proceedings.

**Recommendation 26:**

The Committee recommends that the Attorney General amend section 165B of the Evidence Act 1995 to ensure that warnings about the reliability of a child's evidence are given only when (1) a party requests the warning and (2) that party can show that there are exceptional circumstances warranting the warning. Exceptional circumstances should not depend on the mere fact that the witness is a child, but on objective evidence that the particular child's evidence may be unreliable.

**Recommendation 27:**

The Committee further recommends that the amendment suggested in Recommendation 26 should require that any warning given relating to the

reliability of a child's evidence should follow the Murray formula that requires the jury to consider the evidence "with great care" before reaching a verdict.

**Recommendation 33:**

The Committee recommends that the Attorney General amend the Evidence (Children) Act 1997 to require that all child witnesses give evidence by closed-circuit television, except where the defence is able to prove that exceptional circumstances exist that render the use of CCTV against the interests of justice. The Committee further recommends that the amendment make clear that a general possibility of prejudice to the accused caused by the use of CCTV is not to be considered an exceptional circumstance for the purpose of determining whether to make an order that CCTV not be used, and that the interests of the child must be paramount. The right for a child to choose not to use CCTV should be retained

**Response:**

The Government is committed to exploring measures aimed at reducing trauma and preventing further victimisation of all sexual assault victims in the court system. Amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* made it easier for evidence or submissions to be received. In 2001, the Government passed further reforms which permitted children over 16 to:

- Give evidence of a recording of a previous representation if this was made at an interview when the child was under 16 years of age; and
- Give evidence in certain proceedings by means of closed-circuit television facilities if the person was under 16 years of age when the charge to which the proceedings relate was laid.

The Government also amended evidence provisions to:

- Prevent a judge from warning or suggesting to a jury that children are an unreliable class of witnesses;
- Set out the circumstances in which a judge can warn or inform a jury about the reliability of a particular child's evidence; and
- Make it clear that a person appointed as an intermediary for the purposes of asking questions of a child witness is not appointed for the purpose of giving legal or other advice.

Legislation to prohibit unrepresented accused persons from cross-examining sexual assault victims was passed by Parliament in early September 2003 and further proposals for change that are being considered by the Attorney General's Department include increasing the closure of courts in sexual assault proceedings; increasing the use of CCTV and support persons; and reviewing the existing evidentiary provisions governing the control of inappropriate cross-examination techniques with a view to further improving the conduct of sexual assault matters.

The Department will also be giving consideration to the additional measures for reform of the rules of evidence recommended by the Committee. In reviewing existing rules, the desirability of enhancing the ability of child witnesses to give evidence will need to be carefully considered and weighed against other important

factors such maintenance of the right of the accused to a fair trial and consistency of approach to the acceptance of evidence in the full range of criminal proceedings. Any legislative proposals developed will be the subject of wide-ranging consultation to ensure appropriate consideration is given to stakeholder interests.

### **Recommendations 28-29 – Provision of Training by the Judicial Commission**

#### **Recommendation 28:**

**The Committee recommends that the Judicial Commission provide training courses to judicial officers regarding child development and the reliability of child witnesses.**

#### **Recommendation 29:**

**The Committee recommends that the Judicial Commission provide training courses to judicial officers regarding the special measures provisions in the Evidence (Children) Act 1997.**

The Judicial Commission is represented on the Interagency Project Team for the Sydney West Pilot Child Sexual Assault Jurisdiction. As part of the process of implementing the pilot project a number of smaller sub-committees have been established to focus on some of the key features of the Standing Committee's original proposals. The Education and Training sub-committee is chaired by the Director of Education for the Judicial Commission and has been responsible, in consultation with the Chief Judge and Deputy Chief Magistrate, for developing a package of training materials, which are being provided to all judicial officers in NSW.

A dedicated reference manual on Child Sexual Abuse, which has recently been distributed by the Judicial Commission to all judicial officers includes a wide range of material on questioning and cross-examining children, children's testimony, managing child witnesses, the impact of evidentiary rules in child sexual assault proceedings, the role of expert evidence and a range of other child sexual assault issues. Lawyers working in the area of child sexual assault are also able to access these materials through the Law Society or the Bar Association.

The District Court Annual Conference hosted by the Judicial Commission in May 2003 featured a seminar on the Sydney West pilot as did the Local Court Annual Conference in early July. The Judicial Commission is also in the process of preparing a series of seminars, featuring presenters with particular expertise in child sexual assault, on a range of topics such as the Pilot Specialist Child Sexual Assault Jurisdiction, childhood development, the role of medical evidence and sexual assault and offenders. The seminars will be held at the Judicial Commission but will also be recorded and made available to all judicial officers on both video and audiotape.

### **Recommendations 30-31 – Electronic Equipment**

#### **Recommendation 30:**

**The Committee recommends that the Attorney General's Department conduct an audit of the numbers, locations and technological standards of existing electronic equipment in New South Wales courts.**

**Recommendation 31:**

**The Committee recommends that the Treasurer provide funding to address the upgrading needs identified by the audit of electronic equipment suggested in recommendation 30, with a view to ensuring that all courts have access to high standard, well maintained, appropriate electronic facilities. Where it is not feasible for remote or rural courtrooms to be equipped with CCTV and video equipment, access to mobile electronic evidence rooms should be ensured.**

**Response:**

There are currently 66 closed circuit television units servicing 100 courtrooms throughout the state. The units are kept in good repair and are regularly maintained every six weeks by contractors. There are also two portable systems, which can be used to supplement existing systems in courts where permanent facilities are currently unavailable.

New projects and major refurbishment works of courts all incorporate an assessment of technology requirements as a matter of course. Upgrades to the existing infrastructure will be prioritised according to the level of demand.

**Recommendation 32:**

**The Committee recommends that the Attorney General's Department assess the adequacy of the training of court staff in the use of electronic equipment, with a view to ensuring that all relevant staff are able to operate the equipment.**

**Response:**

Local court staff, Sheriff's Officers and judicial officers are provided with hands on training in the use of court based technology by qualified technicians based in the Attorney General's Department's Assets Management Division. In addition under the Sydney West pilot a Sub-Committee for Agency Communication and Coordination has been set up to identify and resolve operational issues arising out of the implementation of the pilot project including recruitment and training of staff, and management of the remote witness facility. In this context current training resources are being reviewed by representatives from Courts, the Office of the Sheriff and the Corporate Development and Training Unit of the Department with a view to upgrading existing training tools and resources.

**Recommendations 34-40 – Full Pre-recording of Evidence**

**Recommendation 34:**

**The Committee recommends that the Attorney General amend the Evidence (Children) Act 1997 to provide for child witnesses' evidence to be recorded in full prior to the trial and to enable the electronic-recording to be admitted into evidence at trial to replace the child's evidence-in-chief, cross-examination and any re-examination.**

**Recommendation 35:**

The Committee also recommends that the Attorney General amend the Evidence (Children) Act 1997 to enable the video recording of a child's evidence to be admitted into evidence at any committal proceedings, re-trials or appeals.

**Recommendation 36:**

The Committee recommends that the Attorney General ensure that pre-trial recording provisions allow for the court to order the editing of the video recording in order to omit irrelevant or prejudicial material prior to the trial.

**Recommendation 37:**

The Committee recommends that the pre-trial recording provisions proposed in recommendations 34 and 35 include provision for the creation of guidelines for pre-recording evidence. The guidelines should ensure that children's evidence is recorded from a remote CCTV room, in a child-friendly and non-intimidatory environment, with access to a support person. The guidelines should also ensure that the child complainant does not come into contact or view of the accused.

**Recommendation 38:**

The Committee recommends that the legislative amendments to provide for pre-trial recording suggested in Recommendations 34 and 35 should create a presumption that a child witness will have his or her entire evidence pre-recorded and admitted into trial.

**Recommendation 39:**

The Committee further recommends that the provisions for pre-trial recording suggested in Recommendations 34 and 35 should enable courts to order that a child's evidence not be pre-recorded or admitted into trial if, in the specific circumstances of the trial, it is not in the child's best interests, or the child prefers not to have the evidence pre-recorded or admitted electronically, or particular circumstances render it contrary to the interests of justice for the evidence to be pre-recorded or admitted electronically. The possibility of generalised prejudice should not be considered sufficient for an order against pre-recording to be made.

**Recommendation 40:**

The Committee recommends that the provisions for pre-trial recording suggested in Recommendations 34 and 35 should specify that a child witness is not required to attend the trial for further examination, unless further examination is required in circumstances that make an additional pre-trial recording unfeasible.

**Response:**

The *Evidence (Children) Act 1997* currently allows for a pre-recorded Police interview with a child witness to be admitted as evidence in place of that child appearing to give evidence in chief in any criminal proceeding. The recording may form the whole of a child's evidence in chief or may be supplemented by further questioning led by prosecuting counsel to assist the child in preparing for any cross-examination which may follow. Provision for pre-trial hearings to conduct pre-



recording would have a significant impact on the current listing arrangements for all criminal proceedings in the District Court and would have substantial resource implications. A new system would need to be developed, which would involve more than just a simple extension of existing systems. As with potential reforms to the rules of evidence any legislative proposals to implement full-pre-recording would need to be the subject of wide-ranging consultation with relevant stakeholders, prior to Cabinet consideration.

**Recommendation 41:**

**The Committee recommends that the Attorney General establish mobile witness rooms, to be used by child witnesses in rural and remote areas that lack the necessary facilities for pre-trial recording of evidence.**

**Response:**

The Attorney General's Department has been operating two portable remote witness systems since 2001, which have the capacity to service more remote court locations as required. Use of these systems is on the increase with three matters in 2001, seven matters in 2002 and approximately 18 matters to September 2003. The portable systems are based in Sydney but can be transported to the relevant court in advance of a trial where they are set-up and dismantled by technical personnel based in the Department's Assets Management Division. Local court staff are trained to operate the equipment and are responsible for the management of normal court procedures. Each unit has a capital cost of approximately \$20,000.00, while recurrent costs for operational staff and transport are incurred on a case by case basis.

Statistics provided by the NSW Bureau of Crime Research and Statistics indicate that outside of the main centres such as Sydney, Sydney West, Newcastle and Wollongong the number of matters requiring the use of CCTV facilities would often be no more than one case annually. In the circumstances, exploring alternatives to permanent court based facilities is clearly necessary to ensure service provision by the courts is cost effective. In addition to continuing to provide access to mobile units where required, the Department will seek to ensure that upgraded technology is concentrated in regional centres with the greatest level of demand for services consistent with the Department's commitment to improving regional service delivery.

**Recommendations 42-43 – Establishment of the Pilot Specialist Jurisdiction**

**Recommendation 42:**

**The Committee recommends that the Attorney General convene an appropriate forum, such as a Working Group, to assess the merits of the proposal for the pilot project to incorporate a provision for judge-alone trials.**

**Recommendation 43:**

**The Committee recommends that a pilot project be established to trial a specialist child assault jurisdiction with the following characteristics:**

- retention of existing criminal standard of proof and application of the Evidence Act 1995
- trial by jury, unless both parties agree to trial by judge alone

- **selection of interested judicial officers, prosecutors and court staff, with relevant specialised training in child development and child sexual assault issues**
- **pre-trial hearings between judges and counsel to determine the special needs of the child and readiness to proceed**
- **presumption in favour of using special measures, including admission of pre-recorded evidence and support persons**
- **the equipping of the court/s with high standard electronic facilities for the use of special measures and proper training of staff in the use of the equipment**
- **mobile units to ensure that rural and remote child witnesses have access to electronic facilities**
- **specially trained prosecutors with a focus on continuity of representation and early contact with the complainant**
- **presumption that children will not be required to give evidence at committal hearings**
- **appropriate, child-friendly facilities, furnishings and schedules, including disrobing of judicial officers and counsel**
- **to guard against burn-out of judicial officers and staff, a rotation system could be employed, or specialist judges and officers could serve part-time in the specialist court, and part-time in general duties, following their training and induction. For example, they could sit for several weeks or months in the specialist court, followed by a similar period outside it.**

#### **Response:**

An Interagency Project Team, including representatives from the judiciary, the Attorney General's Department, the Sheriff's Office, the Bureau of Crime Statistics and Research, the Office of the Director of Public Prosecutions, Police, NSW Health, the Legal Aid Commission, the Department of Community Services, the Law Society and the Bar Association, has been established to develop and oversee the implementation of a pilot specialist child sexual assault jurisdiction. The pilot will initially be based in Sydney West, where it commenced operation on 24 March 2003, however, there is provision to extend the pilot out to a rural location before the end of the 2003/2004 financial year.

A key feature of the pilot is the use of upgraded technology both within existing courtrooms and at a dedicated child-friendly remote witness facility at Parramatta. State of the art technology has been installed at a District Court and a Local Court at Parramatta, including dual 42-inch plasma screens to allow for split screen capabilities and document cameras for high quality transmission of exhibits. Similar equipment has recently been installed in courtrooms at Campbelltown and Penrith Courts with those courts being brought online during September 2003. Court staff and Sheriff's officers at the pilot locations are receiving ongoing training in the operation of the equipment.

The Committee identified the following as significant problems with existing court facilities:

- The absence of child-appropriate furniture;

- The lack of appropriate waiting areas to accommodate children and their carers during lengthy trials; and
- The ongoing potential for child complainants who give evidence at a court complex to come into contact with the accused and his or her family.

To address these concerns and to minimise the trauma children usually experience when required to give evidence in criminal cases, a remote witness facility has been set up a few blocks from the Parramatta Court House, using excess floor space in offices occupied by the Attorney General's Department. The remote witness facility is close to the train and bus stations at Parramatta for ease of access and is staffed by court staff and Sheriff's officers from Parramatta.

The remote witness facility includes:

- 2 CCTV witness rooms to allow for a double booking of the facility where there are multiple child sexual assault matters listed in Sydney West;
- A child-friendly waiting room with tea and coffee facilities and a play area to accommodate children and their carers during lengthy trials;
- A separate room to conduct private interviews with child witnesses as necessary; and
- Telephone and fax facilities to allow for communication between the court and the remote witness facility.
- Secure access at a non-court location avoiding the risk that the child will come into contact with the defendant while on the premises.

Initial feedback from children involved in the pilot to date has been very positive with regards to the facilities provided at the dedicated remote witness facility. The ongoing monitoring and evaluation of the pilot is discussed in more details in the response to Recommendation 44.

All judicial officers rostered to sit in the Sydney West registry will be taking part in the pilot project and specialised training in childhood development and child sexual assault issues is being made available to all participating judicial and legal officers.

In addition, a draft Practice Note is being developed to provide guidance to pilot participants on pre-trial hearings and other related matters. The Practice Note will assist in reducing pre-trial legal argument leading to delay and ensure that child sexual assault matters are identified and targeted for case management at an early stage with appropriate consideration being given to employing the full range of special measures available under the *Evidence (Children) Act 1997*.

A presumption that children not be required to give evidence at committal was also a key feature of the Committee's principal recommendation. The recent *Crimes Legislation Amendment Act 2003* included an amendment to section 91 *Criminal Procedure Act 1986* to exempt child complainants in sexual assault proceedings from being required to attend committal proceedings to give oral evidence under any circumstances. This amendment will assist in minimising the trauma of being involved in criminal proceedings by reducing the number of times child victims of sexual assault are subject to cross-examination.

The *Crimes Legislation Amendment Act 2003* also contained two amendments to the *Evidence (Children) Act 1997*, which will ensure that existing special measures, which aim to assist children in the evidence giving process, can be used more frequently and to better effect. Section 11 of the *Evidence (Children) Act* currently provides for a recording of a child's initial investigative interview with the Police to be admitted as that child's evidence in chief. One of the amendments to that Act will overcome an unintended practice which has arisen to make it clear that children are not required to be present in or visible to the Court when the recording of their initial Police interview is being played as evidence in chief. The other amendment clarifies the role of transcripts in the evidentiary process by making it clear that the Court may exercise its discretion to permit a transcript of the recorded Police interview to be used to assist the jury in understanding the child's evidence.

**Recommendation 44:**

**The Committee recommends that an extensive evaluation be conducted, after an appropriate trial period, of the success of the pilot project to inform the decision about whether to establish the specialist court on a permanent basis.**

**Response:**

The Sydney West pilot is being monitored on an ongoing basis by the pilot Interagency Project Team to ensure any deficiencies are identified and remedied at an early stage. The pilot will also be formally evaluated by the NSW Bureau of Crime Statistics and Research ("BOCSAR") over a two year period with a view to informing a more comprehensive state-wide rollout of the specialist jurisdiction. Dr Judy Cashmore of the University of New South Wales Social Policy Research Centre, who already has extensive experience in conducting research into the area of child sexual assault, has recently been approved to conduct the evaluation with BOCSAR. It is expected that an interim report on the evaluation process will be presented to the Interagency project Team by September 2004. The final report on the outcome of the Pilot will be made in May 2005.

**Recommendation 45:**

**The Committee recommends that the pilot specialist court deal with all child sexual assault cases involving witnesses who are under the age of 16, plus child witnesses between the ages of 16 years and 18 years if the offence to which the evidence relates was committed before the child reached 16 years.**

**Response:**

Under the Sydney West pilot, the *Evidence (Children) Act 1997* is being used as the legislative basis to determine which matters come within the scope of the pilot. All trials and defended hearings listed at Parramatta, Penrith and Campbelltown District and Local Courts involving an assault offence of a sexual nature, where the complainant is under the age of 16 years at the time of giving evidence or is under the age of 18 years at the time of giving evidence but the charge was laid when the complainant was under 16 years, come within the scope of the pilot project.

**Recommendation 46:**

**The Committee recommends that the Premier consider the recommendation of the Ombudsman that the *Public Sector Management Act 1988* be amended to enable the public sector to incorporate a risk management approach to disciplinary proceedings.**

**Response:**

This recommendation has been incorporated into the *Management of Conduct and Performance (Part 2.7)* provisions of the new *Public Sector Employment and Management Act 2002*.

**Recommendation 47:**

**The Committee recommends that the Department of Juvenile Justice, the Department of Health, the Department of Corrective Services, and the Department of Community Services jointly review their child sex offender treatment services, with a view to ensuring that the full range of treatment services are available. These should include programs for adults and adolescents, in custodial and non-custodial settings, residential and non-residential settings, in metropolitan and rural areas, whether court mandated or voluntary.**

**Response:**

The Department of Juvenile Justice's Sex Offender Program has recently undergone an independent review by the Internal Audit Bureau. The review examined aspects of appropriateness, quality and effectiveness of treatment services to sex offender clients according to "best practice" models used worldwide. The review produced a number of recommendations, which the Department is currently examining.

NSW Health provides two treatment services for sex offenders, which are established to protect child victims and as preventative models:

**New Street Adolescent Service**

The New Street Adolescent Service based in Western Sydney Area Health Service provides an intensive 1-2 year program with adolescents and families where the young person has not been charged. In order to ensure the safety of victims, program participants must not live with victims or potential victims. An independent evaluation of the two programs by Professor Tony Vinson of the University of New South Wales (UNSW) was completed in December 1999. This process evaluation supported the model and outcomes from the program and indicated the need for expansion of access to the service. NSW Health is considering possibilities for expanding the program within its existing budgetary and program framework.

**Cedar Cottage**

The Pre-Trial Diversion of Offenders Program provides a state-wide treatment program to adults who have sexually assaulted their own or their partner's children. The program is linked to the criminal justice system and entry to the program is dependant on the offender pleading guilty and being assessed as suitable to enter the program. It protects children from being called to give evidence against their own

parent and also undertakes intensive work with the family group to ensure that the child is protected and not blamed, should the child's mother choose to continue contact with the offender.

The program is supported by an interagency advisory board and provides a model, which is seen as best practice in the sector. Demand for the program is influenced by the low level of offenders prepared to plead guilty and enter assessment for the program.

Legislative amendments to address this matter and provide further incentive for offenders to undergo assessment for the program are currently being considered by the Attorney General's Department. Discussions are also underway with the Departments of Corrective Services and Juvenile Justice, which are the other providers of sex offender treatment programs, to review the current scope of sex offender treatment provision.

**Recommendation 48:**

**The Committee recommends that the functions of the Child Protection Chief Executive Officers Group be expanded to allow for meetings with non-government associations, community groups and victims of child sexual assault to discuss issues of concern as they arise.**

**Response:**

This recommendation will be considered by the Child Protection Chief Executive Officers Group.