REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CHILD SEXUAL ASSAULT MATTERS

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At Sydney on Tuesday 23 April 2002

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. Ron Dyer (Chair)

The Hon. John Hatzistergos
The Hon. John Ryan

Dr ANNE COSSINS, Senior Lecturer, Faculty of Law, University of New South Wales, affirmed and examined:

CHAIR: Dr Cossins, in what capacity do you appear before the Committee?

Dr COSSINS: I am appearing on behalf of the Centre for Gender Related Violence Studies, which is a research centre at the university.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Dr COSSINS: Yes.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Dr COSSINS: Yes.

CHAIR: Could you briefly outline your qualifications and experience as they are relevant to the terms of reference of the inquiry?

Dr COSSINS: I have a law degree from the University of New South Wales and a PhD in Law from the University of New South Wales. My PhD was on the behaviour of child sex offenders and the way that we prosecute child sex offences in adversarial systems.

CHAIR: You have made a detailed written submission to the Committee. Is it your wish that the submission be included as part of your sworn evidence?

Dr COSSINS: Yes.

CHAIR: If 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 seen or heard only by the Committee, the Committee would be willing to accede to your request in that regard. However, the House itself does have the right to override our decision. Am I correct in thinking that you do not necessarily want to make an opening statement?

Dr COSSINS: That is right.

CHAIR: I will commence by dealing with the issue of declining conviction rates, a matter we have discussed with some previous witnesses. You indicate on page 5 of your submission that between 16 and 42 per cent of the New South Wales District Court case load comprises child sexual assault cases, yet only a fifth to a third are likely to result in a conviction where a not guilty plea is entered. We have learned from other witnesses that there has been a decline in the conviction rate. There has been some speculation that a possible reason for that might be that in some respects the standard of proof has been lowered in the sense that there has been an amendment to the Evidence Act in regard to corroboration of a child's evidence. What is your view as to why the conviction rate might be less than it once was? Before you respond I will explain what I just said in regard to the law being amended in regard to corroboration. The theory in that respect is that cases being brought possibly are of lower quality in the sense of available prove than was once the case.

Dr COSSINS: That was certainly a view that Judy Cashmore discussed in a paper of hers in 1995. Since 1995 my research and even the latest stats that I have from the Bureau of Crime Statistics and Research show that that conviction rate is still between one-fifth to one-third. I can give you those latest stats if you want. It is very hard. I am just giving you an opinion because unless I carry out statistical analysis I cannot tell you what the features are of the cases in which the acquittal is returned. So what I am about to say to you is not based on statistical data. Certainly there is a view that because there is no longer a requirement that a child's evidence be corroborated the DPP has possibly been proceeding with more cases in which there is uncorroborated evidence—where it is just word against word. That is certainly a viable explanation. Also, changes to competency

requirements—I am here referring to section 12 of the Evidence Act—probably mean that cases involving younger children are going to trial whereas in the past they may not have. There is a view that the younger the child the more vulnerable that child will be to damaging styles of cross-examination by the defence, the more likely the child will be confused, will misunderstand questions put to them and so on. In New South Wales there is evidence to show that judges still give the common law corroboration warning. So if you have lack of corroboration coupled with a fairly strong corroboration warning by the judge that could also be an explanation for an acquittal being returned.

The other thing I would like to say is that at the same time that more cases have been going to trial there has been a declining guilty plea rate. You have more cases going to trial but the DPP would certainly hope that a fairly high proportion of them would result in a conviction as a result of a guilty plea. So it might be the case that with more cases going to trial the declining guilty plea rate means that you have got many more cases actually being prosecuted where the defendant defends the charges. So that is a possibility as well.

CHAIR: In any event, you have recommended in your submission to the Committee that there ought to be a research project funded for the purpose of investigating the reasons for the decline in convictions?

Dr COSSINS: That is right. It is all very well to speculate and what I have just said to you is educated speculation but it is still speculation nonetheless. I have always thought that speculation is much better if it is backed by empirical data. That is my reason. I think we should not operate in an empirical vacuum when it comes to cases of this nature because of the seriousness of child sexual abuse in the community. If I get funded this year by the Australian Research Council I will have the money to carry out that study.

CHAIR: Your submission contains a very detailed and interesting discussion of the rules of evidence as they apply to child sexual assault prosecutions. You make a recommendation arising out of that part of your submission dealing with the hearsay rule and recent complaint evidence in sexual assault trials. That recommendation is that the words "fresh in the memory" under section 66 of the Evidence Act be defined as pertaining to:

> 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 asserted fact and the occurrence of the asserted fact.

That is your recommendation. I realise that a lot of material has led to your making that recommendation. Can you summarise why you believe that recommended change is worthwhile?

Dr COSSINS: That recommendation is made in light of the High Court's decision in the Graham case. In that case the High Court interpreted the words "fresh in the memory"—which appear in section 66 (2) of the Evidence Act. Let us picture the circumstances of the Graham case. A teenage girl reported that she was sexually assaulted by a close family friend when she was between the ages of 10 and 16 years. It was not until six years after the first alleged sexual assault that she informed a close friend what had happened to her as a child. That constitutes a delay in complaint of six years. For her friend to give evidence in court and say, "My friend told me what happened to her and this is what she said" that is hearsay. When I give evidence about what someone said to me that is hearsay evidence. The friend's hearsay evidence is admissible only under section 66 of the Evidence Act. It is caught by the hearsay rule as an exception under that section. However, that exception states that hearsay evidence will be admitted only if the asserted fact—that is, what the complainant told her friend—was "fresh in the memory" of the complainant at the time the complainant told her friend.

CHAIR: Is not the essential element the fact that the High Court interpreted the word "fresh" to mean "recent" or "immediate"?

Dr COSSINS: That is right. The High Court is basically saying that hearsay evidence will be admissible but only if the asserted fact in the mind of the complainant is recent or immediate—that is, the asserted fact happened within hours or perhaps days prior to the complainant telling her friend, the police, her mother or whoever. It is a very small time period. That is the problem. In child sexual assault cases the most common response of children is not to tell anyone for periods of perhaps months or years. It is very uncommon in all the studies that I have seen for a child to tell someone within hours, days or weeks about what happened to them. This means that in the vast majority of

cases—which will usually be situations when the child delayed the complaint—the person to whom the child first disclosed will not be able to give evidence of that child's very first disclosure. It seems to me that that type of evidence could be critical in the minds of a jury when assessing the credibility of the complainant's evidence.

CHAIR: So you are saying that the essential aspect requiring attention is the quality of the memory rather than its freshness?

Dr COSSINS: Yes. My view—which is endorsed by a number of experts who work in this field—is that an incident of child sexual assault is a traumatic event in the child's life. It is unlike many other things that happen to children. Not every child will experience long-term psychological damage as a result of abuse but if the abuse is ongoing and continuing the likelihood of psychological damage is increased. It seems to me that with an event such as child sexual abuse the quality of the memory is not likely to deteriorate over time. It is certainly true, as we all know, that the quality of certain facts surrounding the events may deteriorate over time. It is quite possible that the child will not remember whether it was a Monday or Tuesday, the year, the clothes they were wearing, who was in the house or in the room with them. But the fact that someone cannot remember those details does not mean that the traumatic event did not occur. Psychiatrists and psychologists have documented this fact in relation to a whole range of dramatic incidents that occur in a person's life, from car accidents, to torture and so on.

The Hon. JOHN HATZISTERGOS: In terms of conviction rates, are you saying that the ability to admit that form of hearsay evidence within the exception of section 66 (2) would be effective? In other words, if that evidence could be admitted it would somehow assist in securing a greater number of convictions than is currently the case. Is that your assertion?

Dr COSSINS: I can say only that that is a possible outcome. As I do not have any statistical data to back that assertion I can say only that it is a possibility.

The Hon. JOHN HATZISTERGOS: On what basis would that evidence be admitted? If that evidence is admitted as to the fact of the statement having been made that is one thing; if it is admitted as to the truth of the statement that seems to me to be totally different. Are you saying that it would assist a conviction if that evidence could be admitted as a fact—that is, the complainant made the statement to her friend? Are you saying that that would go somehow to supporting the truth of the complainant's statement? On what basis do you assert that it would assist and on what basis do you assert that the law should be reformed to allow that form of evidence to be admitted, notwithstanding that it may not be "fresh" within the terms of the Graham case?

Dr COSSINS: The High Court itself has recognised that recent complaint evidence is relevant to the facts in issue in an adult sexual assault trial. That was the case of Papakosmas. So that is one of the bases on which my argument stands. Under the evidence, Papakosmas was a New South Wales case. The High Court made a finding that recent complaint evidence—that is, evidence made within hours or days after the alleged events—was relevant under section 55 to the issue of consent which, in most adult sexual assault trials, is the main fact in issue. I am of the view that, in a child sexual assault trial, if there is recent complaint evidence, that evidence would also be relevant—not to the issue of consent, because that is not a fact in issue in most child sexual assault cases—to the fact in issue which is: Did the alleged sexual behaviour occur? I think the High Court would probably agree with my point on that.

So if recent complaint evidence is relevant in an adult sexual assault trial, it is likely to be relevant in a child sexual assault trial. I am taking the argument one step further and I am saying: We have to look at child sexual assault cases and recognise that they are distinct and unique from other types of sexual assault cases. One of the characteristics of the majority of child sexual assault cases is that children do not make recent complaints. The appendix to my submission details all the psychological studies that have been carried out that show that the vast majority of children complain months or years after the alleged events. One of the interesting things about children's disclosures is that they may disclose—the Director of Public Prosecutions [DPP] puts it in his submission in quite a nice way—bits and pieces over a period of time to try to test out the adult's response to them. So their pattern of disclosure is different.

If a child has been subject to ongoing abuse over a period of time they are also going to be subject to a different type of sexual abuse probably than most adults because they are easily manipulated, they are easily subjected to threats, coercion and so on. So again, their pattern of disclosure will be a function of the type of coercion or threats that they are subject to at the hands of the abuser. That is another unique aspect of child sexual assault cases. Because of the nature of the type of abuse that children suffer and because of the different patterns of disclosure I am saying that delayed disclosure is relevant to the facts in issue in a child sexual assault trial because it can give the jury a picture of the overall context, if you like, in which the child has disclosed. I think that evidence, in my mind—and it is a subjective decision that we all make—is relevant to the fact in issue: Did the sexual conduct occur in the first place? Whether it is persuasive evidence and whether that evidence will always result in a conviction is an entirely different question, but it may assist the jury.

The Hon. JOHN HATZISTERGOS: A child can still give evidence of having made a statement to a third party?

Dr COSSINS: That is right

The Hon. JOHN HATZISTERGOS: That is not hearsay?

Dr COSSINS: No, the child's evidence is direct evidence.

The Hon. JOHN HATZISTERGOS: So the child can say, "I had a conversation and I said to so and so that this occurred?"

Dr COSSINS: Yes.

The Hon. JOHN HATZISTERGOS: Six, 12 years or whenever after the event, and that is admissible?

Dr COSSINS: That is right.

The Hon. JOHN HATZISTERGOS: So the fact of the statement can be disclosed and brought to the jury. You are saying that what you also need is evidence of the third party. Is that right?

Dr COSSINS: Yes.

The Hon. JOHN HATZISTERGOS: What does that add to the situation when the child has given evidence that he or she has made a disclosure after so many years?

Dr COSSINS: It adds the same thing as evidence of a third party. Well, it is the same type of evidence. It is called a prior consistent statement. It is the same type of evidence as someone giving evidence of a complainant's recent complaint, as happened in Papakosmas. I think that when a third party gets in a witness box and takes an oath and says, "Yes, this is what the child said to me", they can confirm the veracity of the child's evidence, thereby confirming—

The Hon. JOHN HATZISTERGOS: How can you confirm the veracity of a child's evidence when that person was not there during the relevant criminal acts? The whole point of hearsay evidence is that it cannot be cross-examined unless it is true.

Dr COSSINS: It confirms the veracity of that aspect of the child's evidence.

The Hon. JOHN HATZISTERGOS: It confirms the veracity of the fact that the child has made a complaint; it does not verify the veracity of the complaint as such.

Dr COSSINS: No. Can I just explain? It confirms that aspect of the child's evidence when that child said, "I first complained to my mother." It confirms that aspect of it.

The Hon. JOHN HATZISTERGOS: That is all that it does.

Dr COSSINS: I think that is important evidence that should go to the jury. The jury's job is to assess the credibility of all the witnesses. I think it assists the jury in making an assessment of the child complainant's credibility.

The Hon. JOHN HATZISTERGOS: But that evidence can go to the jury anyhow if the child says so.

Dr COSSINS: Yes, it will. But I am saying that I think it is of great assistance in confirming that aspect of the child's evidence. The High Court certainly considers that to be a valid point, or else they would not have made the decision that they did make in Papakosmas. They also are of the view that recent complaint evidence—a third party saying, "This is what she said to me"—assists in the jury's assessment of an adult complainant in an adult sexual assault trial.

CHAIR: You go on in your submission to discuss the rules governing tendency and coincidence evidence and their impact in a child sexual assault trial?

Dr COSSINS: Yes.

CHAIR: At page 17 you indicate, in summary, that the approach the courts have taken to tendency evidence "distorts the reality of the experiences in children who are sexually abused." You go on to state:

> ... a wealth of research tells us that child sex offenders are notorious recidivists who usually have more than one victim and that it is not uncommon for an offender to select victims from the same family, school, kindergarten, scouting group etc.

Ultimately, you make a recommendation for an amendment, in terms you specify, to section 97. Are you able, in summary form, to tell us why you form the conclusion that you do and why you make that recommendation?

Dr COSSINS: Yes. Mind you, I do not think that the recommendation is foolproof, but there it is. My recommendation is made in relation to cases where an offender has been charged with offences against more than one child—those particular cases, or cases in which evidence can be given by another child other than the complainant, although charges may not have been laid. That other child can give evidence about what the accused did to them on a previous occasion. It is called tendency evidence because evidence of what another child will say the accused did to them indicates—if that evidence is admitted—that the accused has a propensity, or a tendency, to carry out sexual behaviour with children. Any tendency or propensity evidence is highly prejudicial, irrespective of the nature of the criminal trial. That is why the Evidence Act and the common law before it makes it quite difficult to admit that type of evidence because of the highly prejudicial effect.

However, the evidence does provide for admission if the probity force of the evidence is greater than the prejudicial effect. There have been many situations, many quite well-known cases, in which tendency evidence has been admitted. When it comes to a child sexual assault trial, the High Court has said that, where you have, say, two or more children giving evidence about the accused's sexual behaviour with them, the evidence of the other child will only be admitted if the possibility of concoction can be excluded by the DPP, by the prosecutor. That is a problem because, again, we have to take account of the reality of the way that child sex offenders target children and carry out the sexual abuse of children. Dozens of studies have interviewed child sex offenders and documented the strategies of child sex offenders.

If you think back to the Wood royal commission days, we saw quite a lot of evidence come out of the Wood royal commission which also documented how certain rather notorious child sex offenders, like Phillip Bell, targeted the children that they subsequently abused. Some of these children were, of course, known to each other. So what do we do in cases where the two or more children that have been targeted and sexually abused are known to each other? Maybe they are friends or maybe they are siblings. The question that I am thinking about here is: Why can the evidence of children who know each other not be given at the trial of the accused person? Maybe it will be a lucky child who has been sexually abused by the accused and the DPP manages to find another child and that child also alleges that they have been sexually abused by the same accused, but the children do

not know each other. That is probably going to be quite an uncommon situation just because of the nature or the patterns of the targeting behaviour of child sex offenders.

They are opportunistic. That is the conclusion of a number of studies. Child sex offenders are opportunistic. They tend to place themselves in situations where children will be around them. So they might join a youth club or become a volunteer at a youth club. If they become a volunteer at a youth club they are going to target the children at that youth club; they are not necessarily going to have to go anywhere else to find victims. So I think it is unrealistic for the High Court to say that, where you have two victims who know each other, somehow the evidence of those victims is tainted unless you can exclude the possibility of concoction. It certainly is a very unrealistic and naive view about how child sex offenders target children.

CHAIR: At page 18 of your submission you deal with the matter of the rape shield provision, as it is commonly described. You indicate that section 105 of the Criminal Procedure Act 1986 was recently the subject of a New South Wales Law Reform Commission report, which documented a number of cases in which evidence of sexual experience was held to be admissible in a child sexual assault trial. You go on a little later to say that your own view is that the concept of sexual experience in relation to sex offences against children is redundant since consent is not a factor in issue in relation to most such offences. Speaking for myself, I find it difficult to disagree with that. Would you like to say something to the Committee about that?

Dr COSSINS: Yes. There has been an attempt over a number of years on the part of defence counsel to admit what they describe as the previous sexual experience of the trial complainant. There are three quite important cases that I did not talk about in my submission, so maybe I should talk about them now. In these three cases so-called previous sexual experience was held to be inadmissible under the New South Wales rape shield provision. I can give you the names of those cases, if you like.

CHAIR: Yes, please.

Dr COSSINS: The first one is *Regina v M*, 1993 67 Australian Criminal Reports 549. The second is *Regina v Bernthaler*, unreported New South Wales Court of Criminal Appeal, 17 December 1993. The third case is *Regina v PJE*, again unreported New South Wales Court of Criminal Appeal, 9 October 1995. Even though I think these cases were correctly decided, there is always a risk that because section 409B embodies discretionary powers to enable sexual experience to be admitted in certain circumstances—I keep calling it section 409B, that is how I still think of it. I should say section 105 rather—there is a risk that so-called sexual experience of a child complainant could be admitted. The problem with the admission of any evidence that comes under this description is that it is usually an unsubstantiated allegation that is made by the defence.

For example, one possible line of argument is: "The complainant told me she had been sexually abused by someone else", or "The complainant has told me she has had fantasies of having sex with the accused.". These allegations are all very well, but if they are unsubstantiated allegations that are put to the complainant, all the complainant can do is deny that she ever said those things. Once they are put to the complainant that is it. The jury hears the question, the child can deny but nonetheless the idea is being given to the jury that maybe she is fantasiser or maybe she is making things up. When it is an unsubstantiated allegation like that, I do not think that is appropriate in a child sexual assault trial. It would be different if the defence were required to substantiate the allegation, but we do not have a rule of evidence that requires the defence to do that. These sorts of unsubstantiated allegations are a common ploy of defence counsel and I think they are highly prejudicial in the jury's mind. The rape shield provision should be tightened to prevent these sorts of allegations being made in a child sexual assault trial.

The Hon. JOHN HATZISTERGOS: What happens if the questions were put and admitted by the complainant so that it is not an issue? Do you say in that case the evidence still should not be admitted? Your recommendation is prefaced on the basis of denial. What happens if there were an admission? Should the jury not know that?

Dr COSSINS: I guess my argument is if the defence has evidence that the child complainant has said these things to the accused or to another person, then why cannot the defence bring a witness, have the witness take an oath and give evidence of that assertion?

The Hon. JOHN HATZISTERGOS: The answer to that is because the Evidence Act prohibits you going to the issue of credit. This is an issue of credit. The evidence of the person to whom the question is put is final. The Evidence Act does not allow you to go behind it. The question should not be put unless there are instructions.

Dr COSSINS: I do not agree it is solely an issue of credit. Evidence of that nature does go to a fact in issue.

The Hon. JOHN HATZISTERGOS: It is not that fact in issue. The fact in issue is the issue of the sexual assault which is the subject of the charge. It does not relate to some other allegation of sexual assault on some other occasion. The question is put and can only be put on the basis of instructions, because it would be contrary to advocacy rules and the issue of professional complaint if it were done otherwise. If the question is put and an affirmative answer is extracted, why should the jury not know that and take that into account as to the credibility of the complainant?

Dr COSSINS: I will go back to what I said previously. I am of the view that it is not an issue that goes to credit. I am not going to argue that; but that is my opinion. You are entitled to have a different opinion. If there is evidence of it, again the defence should be required to produce that evidence either by placing the accused or any other witness in the witness box. The nature of these unsubstantiated allegations, the prejudice that is created in the mind of the jury, vis-à-vis, the credibility of the complainant, is highly prejudicial. The rape shield provision should be tightened to prevent the admission of that evidence.

The Hon. JOHN RYAN: If the answer were yes, how would counsel ask a question in such a way that they would know the answer in advance? The evidence may be that the accused is the only person who can substantiate the allegation. I imagine if I were in the position of an accused I might consider it to be an appropriate issue to raise. How would the defence be able to substantiate such an allegation other than by asking the person a question in court? They would not be able to do it any other way, would they?

Dr COSSINS: Not unless the accused is prepared to take the stand.

The Hon. JOHN RYAN: In other words, you would accept that defence could do that provided the accused took the stand as well?

Dr COSSINS: Provided there is some substantiation of the allegation.

The Hon. JOHN HATZISTERGOS: The accused may not have the relevant evidence if it is an unsubstantiated complaint, for example, involving a third party.

Dr COSSINS: If someone gets in a witness box and says on oath what another person has said to him, that constitutes evidence.

The Hon. JOHN HATZISTERGOS: If the information comes to the defence from another source, why cannot the defence use that evidence as a forensic tool in the trial?

Dr COSSINS: If it comes from another source they can, whatever the other source is.

The Hon. JOHN HATZISTERGOS: The defence puts the allegation to the complainant and might extract an affirmative answer. If a negative answer is obtained, it would seem to me that would not assist the defence very much because the jury would take into account the fact that the question was asked and a negative answer was obtained. The fact that it was not established in some other form of evidence would seem to me to count against the defence. On the other hand, if an affirmative answer is obtained, that might count against the complainant. I do not know that section 105 is problematical and that it will really do much difference if we go down the path that you have suggested.

Dr COSSINS: That is my opinion. I accept that you have a different opinion, but unless we have some sort of statistical data to back up my point of view or your point of view, I do not really see—you are giving me your subjective opinion, and I am giving you mine.

The Hon. JOHN RYAN: It is probably fair to point out that my colleague the Hon. John Hatzistergos is asking questions that may not necessarily reflect his opinion.

The Hon. JOHN HATZISTERGOS: That is right.

Dr COSSINS: Unless you have statistical data to back up your view that juries are not prejudiced by such questions, I do not see—

The Hon. JOHN HATZISTERGOS: The point you make is that these questions are put, but if they are denied by the complainant some prejudice arises from the fact that the questions exposed certain allegations that are not substantiated and the jury's mind may be contaminated by the fact that those questions were asked. What I say to you is: Do you really think that is so? Do you think that a jury would take the view that counsel has put forward some questions, the complainant has denied them, there is no proof or evidence to establish the allegation, therefore, it was just an attack that has backfired? You have all the protection of the judge's summing up.

Dr COSSINS: You have to remember that juries are comprised of 12 people. I do not necessarily think that 12 people think as one mind. They are all different people, they all have different backgrounds, they are all bring different valued judgments to their assessment of people. The jury does not usually have one mind until the point that they all decide on acquittal or conviction. Anecdotal evidence shows that juries often argue these very types of issues in the jury room Some jury members may be unaffected, but some may change their opinion of the evidence of the child complainant upon hearing such questions.

CHAIR: You deal in your submission with the issue of judicial warnings. You commence by discussing the matter of warnings relating to the delay in making a complaint. You point out that under section 107 of the Criminal Procedure Act 1986 a trial judge is required to, first of all, warn a jury that the absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false and, also, inform a jury there may be good reasons why a victim of sexual assault may hesitate in making or may refrain from making a complaint about assault. You go on to make some observations about the fact that, in your view, those provisions in section 107 have not displaced the mandatory requirement that a warning be given about a complainant's delay in making a complaint. After considerable discussion you make a recommendation to us that section 107 be amended to prohibit a judge from giving any warning to a jury about the significance of delay in complaint to the credibility of the complainant. Would you like to address that issue briefly?

Dr COSSINS: The High Court has indicated that the failure by a trial judge to give a common law delay-in-complaint warning is a basis for quashing a conviction. Crofts case concerned the Victorian provision that deals with delay in complaint. That provision is analogous to section 107. When that case was handed down, of course the New South Wales trial judges were put on notice that if they also failed to give the common law delay-in-complaint warning that would be a ground for appeal if the accused were subsequently convicted. Trial judges are careful because they do not like appeals, they do not like their summings up being critiqued by judges of the High Court or Court of Appeal.

Trial judges do not like the idea of creating grounds for appeal, they understand the waste of resources through misdirecting a jury. They tend to listen to what the High Court says. The "Heroines of Fortitude" study provides statistical data. It was a one-year study of adult sexual assault trials in New South Wales and the vast majority of trial judges had given the delay-in-complaint warning. Trial judges are required to give the section 107 direction, and Crofts case requires them to give the common law delay-in-complaint warning.

CHAIR: You recommend that the section ought to be amended to prohibit a judge from giving any such warning to a jury.

Dr COSSINS: If you analyse the Crofts case, which I have done in my submission, the High Court decision in that case shows a misunderstanding of the nature of child sexual assault cases. I have already gone through the fact that a typical response of children who are sexually abused is to delay in telling anyone. The vast majority of cases will involve some delay of some kind. Defence counsel are quite clever at suggesting that even a period of five hours can constitute a delay which warrants the delay-in-complaint warning. That comes from the "Heroines of Fortitude" study; a delay of five hours or 12 hours in documented cases that were analysed.

The Hon. JOHN RYAN: What is that study that you have referred to?

Dr COSSINS: It is the "Heroines of Fortitude" study, carried out by the Department of Women. The facts in Crofts case were of significant delay, but the child's pattern of disclosure in that case was typical rather than atypical as the High Court characterised it. We have to deal with the reality of what happens to children who are sexually abused. There is no empirical evidence to show that someone who delays in complaining is thereby fabricating their allegations.

The Hon. JOHN RYAN: You said that they should be prohibited from giving a warning at all. Would it not be more appropriate to take the middle course that if a warning were given, perhaps it ought to be modified in some way or other to take account of what might be typical features of child sexual assault cases? It seems a bit unfair to suggest that there is no significance in a delay, because there might be.

Dr COSSINS: That is exactly what section 107 does; it tells the trial judge that he or she is required to warn the jury that absence of complaint or delay does not necessarily indicate that the allegation is false, and to inform the jury that there may be good reasons why a victim of sexual assault may hesitate in making a complaint. That is already there.

The Hon. JOHN RYAN: So, what is the problem?

CHAIR: It is couched in negative language. For example, the warning about the absence of complaint or delay required by section 107 (2) (a) is expressed as "it does not necessarily indicate".

Dr COSSINS: Yes, that is correct.

The Hon. JOHN HATZISTERGOS: Is that not intended to overcome statements that the defence may seek to make in advance of their client's case? The defence will raise the point that the jury should be sceptical about these allegations because there was a delay in making a complaint. Section 107 allows the trial judge to say to the jury, "Hold on a moment, the fact that there was a delay does not mean that this allegation is false and there may be very good reasons why the complainant may have delayed in making or not making the complaint of the assault". As I understand Crofts case, section 107 is still to be viewed in a balanced context.

I think that is reasonable because you are applying the law in a myriad of different circumstances. This sort of statute cannot be a straitjacket for every trial. You have to balance it in the context of the factual circumstances of the case. Correct me if I am wrong, but you seem to be saying that on the basis of research we should take out this stuff and, in effect, the trial judge should make a statement not of law but of research and empirical evidence. That is a novel proposition.

Dr COSSINS: The analysis I have given in my submission is the historical background to the delay-in-complaint warning. The basis for the delay-in-complaint warning is not based on any empirical data; it is based on prejudice, on an assumption that derives from the thirteenth century, that the failure to make a prompt complaint indicates fabrication. That myth, or value judgment, has followed the law throughout the centuries. I am saying that in this day and age we need to abandon that prejudicial thinking, unless there is some empirical evidence to back it up—and there is none. We need to take account of the reality of child sexual abuse and the effect of child sexual abuse on children, which is that they do not make a proper complaint. They do not run out into the street, which was the thirteenth century prescription, and tell the first person they see what had happened to them.

Delay in complaint is indicative of nothing; it is only a delay in complaint, but it is not indicative of fabrication. A recent complaint is not indicative of the fact that the alleged assault

occurred, either; it is just that someone has made a complaint. When a person makes a complaint is irrelevant to an assessment of the veracity of the complaint. That is what provisions such as section 107 were designed to deal with. Unfortunately, section 107 did not abrogate the common law delay-in-complaint warning. We are long past the time when the delay-in-complaint warning should be removed as a legal requirement, for the very reasons that I have stated.

The Hon. JOHN HATZISTERGOS: If it is removed and that is raised by the defence as an issue, what does the trial judge do?

Dr COSSINS: I agree with you that the defence can raise that in cross-examination of the complainant, but the trial judge will then be required to give the section 107 direction.

The Hon. JOHN HATZISTERGOS: I thought you wanted it abolished?

Dr COSSINS: No, not section 107. I want the common law delay-in-complaint warning abrogated by inserting a subsection.

CHAIR: I am not sure that the drafting you have adopted achieves the object that you are seeking.

Dr COSSINS: I see what you are saying, you are exactly right. Obviously I have written that in a hurry. That section should read something to the effect that the trial judge is prohibited from giving any other common law warning regarding the significance of delay in complaint.

The Hon. JOHN RYAN: The Director of Public Prosecutions [DPP] advised the Committee that 75 per cent of guilty verdicts for sexual assault trials are appealed. Many are sent back for retrial but some are not because the victim does not wish to proceed any further, having become worn out. You have made a few comments about matters on appeal, would you like to make any comment about the issue raised by the DPP in addition to your submission?

Dr COSSINS: Yes, I did address that; I wrote another submission in response to those questions. Any criminal appeal proceeds on the basis of very technical arguments about the admissibility of evidence, the interpretation of particular rules of evidence, or shortcomings in the trial judge's summing up. The technicality of the argument really does not necessarily have any bearing on whether the accused is innocent or guilty; that is one point I would like to make. The fact that many child sexual assault appeals are not retried after a successful appeal, must have ramifications on the administration of justice resources and on child protection in the community.

Even if a retrial does occur, we have to think about things like retraumatisation of the child and court resources. I do not know whether the figure of 75 per cent is unique to child sexual assault trials. It would be interesting to compare that figure to all other criminal appeals. I do not know whether child sexual assault trials are unique in that respect. My comments really only pertain to child sexual assault trials.

CHAIR: The figure of 75 per cent was an estimate by the DPP.

Dr COSSINS: Okay. I obtained some data from the Bureau of Crime Statistics and Research. I have the figures for the success rate of appeals for child sexual assault cases in 1998, 1999, 2000 and 2001. The number of appeals that were upheld are relatively high, although they vary from year to year. In 1998, 33 per cent of appeals were upheld, in 1999 it rose to 57 per cent, in 2000 it dropped to 30.8 per cent and in 2001 it rose to 62.5 per cent. The data for 2001 covers only the first nine months, that is all that is available.

The Hon. JOHN RYAN: Are they New South Wales figures?

Dr COSSINS: Yes, from the Bureau of Crime Statistics and Research. The fact that 75 per cent go on appeal indicates the success rate. They are relatively high figures, particularly for 1999 and 2001.

The Hon. JOHN RYAN: You raised the matter of questioning people in court and dealt to some extent with some of these issues. The representatives from Legal Aid said in evidence to this Committee that oppressive questioning by defence lawyers of child witnesses is really a problem, because defence lawyers know that juries are put offside when child witnesses are questioned aggressively and judicial officers can disallow unfair questioning. Does that reflect your knowledge of child sexual assault trials?

Dr COSSINS: No, it does not. At the outset, with regard to the assertion by the Legal Aid Commission that oppressive questioning is rarely a problem, the submission by the Director of Public Prosecutions [DPP] contradicts that point of view, at page 10. That point of view is also contradicted by the Wood royal commission report of 1997; the Australian Law Reform Commission and Human Rights and Equal Opportunity report of 1997; a parliamentary report by the Victorian Crime Prevention Committee of 1995; and a study carried out by Cashmore and Bussey in 1995. All of those reports indicate that cross-examination techniques by the defence have complex consequences, whether or not the style is overtly aggressive. I can go through and give you all the details if you want.

CHAIR: I understand that you have developed a supplementary document.

Dr COSSINS: Yes.

CHAIR: Could I invite you to tender that either now or later so that the Committee may have the benefit of it.

Document tendered.

Dr COSSINS: Yes. I have given you a summary of what all of those reports concluded about the style and nature of cross-examination techniques in child sexual assault trials. Those reports contradict the view of the Legal Aid Commission quite clearly. The other aspect is the role of the judicial officer in preventing unfair questioning. I have written about the study by Cashmore and Bussey who interviewed 50 judicial officers in New South Wales, 50 per cent of whom indicated they would be reluctant to intervene in cross-examination in a child sexual assault trial. There are a couple of quotes that I think make interesting reading.

CHAIR: Yes. That evidence came through very clearly to the Committee from previous witnesses. The particular concern I have goes beyond oppressive or unduly intimidatory questioning. I also have a concern, I must say, regarding whether a child in fact understands the nature of the question. It has been said to us that sometimes the judicial officer might have his or her head down reading material and might not even notice that the child appears to be perplexed by the nature of the question. For example, the question might contain a double negative or it might be a leading question and might be quite beyond the child's stage of intellectual development. What can be done about that?

Dr COSSINS: That is a very difficult question. I think the answer to get us into the big picture analysis, and I think possibly the only way that those styles of cross-examination could be properly policed, if you like, by a trial judge is if we moved to a specialist court system whereby we had judges who were specially appointed and only sat in that particular court; and received a type of training that the Director Of Public Prosecutions suggested in his submission, such that trial judges would be more alert to all the problems that arise from confusing and repetitive questioning.

CHAIR: As you have raised the matter of the suitability of judicial officers, could I invite you to comment on Mr Cowdery's proposal for a pilot specialist court by way of a project to trial changed procedures, more child-friendly procedures? I understand you have had access to what Mr Cowdery said to the Committee. Would you comment on that matter?

Dr COSSINS: Yes. Well, I am broadly in agreement with the proposal for a designated court that hears all child sexual assault matters in New South Wales. The first thing I would say is that there are some specialist courts overseas that deal with sex offences and I think it would be useful to learn from the evaluations that have been made of those courts. I can give you details about those evaluations later. In thinking about a designated court you have to start at the beginning and decide what your aims and objectives are. From having a look at the overseas models, I have put down five

objectives that I think a designated court should have. I then analysed the DPP's submission and decided to what extent each aspect of the submission would meet those objectives.

The first objective I have stated is to minimise the risk of child sexual abuse in the community; two, to minimise the secondary victimisation of child complainants; three, to increase the reporting, prosecution and conviction rates of child sex offences; four, to develop a co-ordinated integrated approach to the processing and management of child sexual assault cases by all agencies involved in the criminal justice process; and, five, to rehabilitate those convicted of child sex offences and thereby reduce the recidivism rate of offenders. They are my five aims and objectives. Different aspects of the DPP's proposals meet or do not meet those different aims and objectives. Do you want me to keep going?

CHAIR: If you have reduced to writing the material, as you have tendered that that is sufficient.

Dr COSSINS: We were talking about designated judges. I will go over just that aspect. I think if we had designated judges who were appropriately trained—I think that appropriately trained staff are essential to combating the misunderstandings and misconceptions to do with the developmental and intellectual capacities children. I think that having that type of staff in a designated court would assist in minimising secondary trauma to victims. That aspect meets my second aim, and that is the type of analysis that I have undertaken.

CHAIR: I am not sure whether you have addressed this aspect in the supplementary document that you have tendered, but Mr Cowdery also made a recommendation that we ought to consider what he termed an expert interviewer. What view do you have regarding the proposal?

Dr COSSINS: Before you move to an expert interviewer you would need to think about the advantages of an expert interview over the present system we have, whereby children are interviewed by the joint investigative response teams [JIRT]. What is the expert interviewer going to do that is better than or different to what the JIRTs presently do? There is that evaluations of the JIRTs that is presently being undertaken by someone in the Police Service. She told me that her evaluation would be completed sometime in May. It will be interesting to have a look at what her findings are, and if there are shortcomings in the JIRTs model perhaps Nick Cowdery's suggestion might be useful.

I like the idea of the expert interviewer as being an adviser to the court, an adviser in terms of that child's particular requirements. I think that would minimise the secondary trauma that the child would experience. It might also have the effect of increasing prosecution rates because, at the moment, one-third of trials of people charged with a child sexual assault offence are not proceeded with as a result of applications by the Crown. That is an incredibly high figure and I do not know what those applications are based on. Certainly, there are a lot of cases set down for trial that are subsequently not proceeded with. It may be that there is some problem within the DPP's office that could be addressed.

CHAIR: On a related issue, the Committee has received evidence about a video-taped recording of a child's initial interview. The Deputy Chief Magistrate, for example, placed great stress on the usefulness of that material and was suggesting that it is very rarely introduced in evidence. There seem to be varying views about this. One is that that is very cogent and impressive evidence. As against that the interviews tend to be unduly lengthy; also, at a trial they might arguably prevent the child settling in, so to speak, prior to cross-examination. In other words, there would be a formal introduction of the video material and then the child would be straight into cross-examination. What views do you have regarding the way in which video-taped interviews could be used?

Dr COSSINS: Yes, I agree it probably is very cogent evidence. There is certainly a problem that the admission of that initial recording could address, which is the problem arises as a result of the delay in the case coming to trial. How old was the child when the abuse occurred? How long does it take to get to trial? There is a major problem, I think, particularly with children under the age of 10 being required to give evidence in chief one year or 18 months after the alleged events in question. They are probably likely to forget the type of detail that might be recorded in the initial interview. There is certainly a problem when it comes to cross-examination. If the child cannot give the same

amount of detail that, of course, is an avenue for exploration in cross-examination. I think overall it might be to a child's advantage for that evidence to be admitted.

CHAIR: The many other supplementary comment you want to make before we conclude?

Dr COSSINS: No, everything I have to say is in my answers to the proposed questions.

(The witness withdrew)

TRUDI GEORGINA PETERS, Child Sexual Assault Counsellor, Rosebank Child Sexual Assault Service Inc., P.O. Box 869, Liverpool,

MELLISA MARY WIGHTMAN, Sexual Assault Counsellor, Rosie's Place Inc. Sexual Assault Service, P.O. Box 40, Rooty Hill,

JULIANNE FRECKELTON, Co-ordinator, Dympna House Child Sexual Assault Counselling and Resource Centre, P.O. Box 22 Haberfield, and

NICOLE HINCHCLIFF, Child and Adolescent Sexual Assault Counsellor, Dympna House Child Sexual Assault Counselling and Resource Centre, P.O. Box 22 Haberfield, affirmed and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act?

Ms PETERS: Yes, I did.

Ms WIGHTMAN: I did.

Ms FRECKELTON: Yes, I did.

Ms HINCHCLIFF: Yes.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms PETERS: Yes, I am.

Ms WIGHTMAN: I am.

Ms FRECKELTON: Yes, I am.

Ms HINCHCLIFF: Yes.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Ms PETERS: Yes. I have a Bachelor of Social Science, Psychology, and an honours degree in psychology. I am a registered psychologist and have been working in child sexual assault for about five years.

Ms WIGHTMAN: Bachelor of Science with Psychology, and I have eight years experience working as a sexual assault counsellor.

Ms FRECKELTON: Bachelor of Arts with a major in psychology. I have 18 years experience working in sexual assault and related areas.

Ms HINCHCLIFF: I have a Bachelor of Science, and Master of Arts in Psychology and in Couple and Family Therapy, and I am a registered psychologist.

CHAIR: You have made a joint written submission. Is it your wish that that be part of your sworn evidence?

Ms PETERS: Yes.

Ms WIGHTMAN: It is, and we have included some additional material.

Ms FRECKELTON: Yes.

Ms HINCHCLIFF: 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 the House itself has the right to override any decision we might make in that regard. I understand that one of you would like to make a brief opening statement?

Ms WIGHTMAN: It is in relation to our position in child sexual assault and the criminal justice legal system. To be clear, it is our position that child sexual assault is a crime. We believe increasingly that child sexual assault is being decriminalised by the system. If we believe that children have a right to be heard within the system—which we do—then we believe that children have a right to a service and that children and their families have a right to be interviewed by police in response to their allegations of child sexual assault and that it is their right that this crime will be investigated by police. It is our experience that increasingly sexual assault, particularly of children, is being decriminalised within the system and that increasingly there is an unwillingness for children to be interviewed in relation to their disclosures of sexual assault.

CHAIR: You used the term "decriminalised" in regard to child sexual assault offences. What do you mean when you use that term?

Ms WIGHTMAN: We mean that it is our experience that other types of intervention seem to be preferred over criminal processes. For example, the safety of children is considered to be paramount so AVOs may be put in place, or other protective measures, to ensure that the offender does not have continued access to the child, but the willingness to pursue the criminal proceedings is not happening. So, maybe AVOs are being used—this is a very common experience—or other protective measures to ensure the safety of child, which is being considered more important than the criminal process.

CHAIR: The indications we have had in evidence to date are that, if anything, many more prosecutions are being made now than was the case even a few years ago. Various reasons have been speculated as being responsible for that. Could I put it to you that a number of responses can be made when a child comes under notice. It is not unimportant, surely, that the child should be rendered safe. Are you saying, though, that in your view the prosecution is taking a back seat to other responses?

Ms WIGHTMAN: Certainly that would be our experience. Obviously safety is one of the most important steps initially, but it seems for very young children, particularly children under 10, more and more we are being contacted by families where there is just no movement with the prosecution or lots of reasons why a prosecution cannot proceed. So, the intervention seems to stop once the child is safe, which is absolutely fundamental, but we believe too that child sexual assault must be responded to as a crime and that children have a right for it to be investigated and for them to be interviewed. Particularly for young children that seems to be happening less and less.

Ms FRECKELTON: Just to add to that, one of the points we have made, particularly for children under five, is that a double edge is happening where, not only is the prosecution not proceeding for them because of the issues around evidence, but it then happens that they are also not getting the protection they need, because they seem to get lost in the system. For us it is an added concern that where it is deemed there is not enough evidence or because of the age of the child, even the protection of the child is not happening. It adds to the issue of the safety of the child that the proceedings need to be happening and sometimes they are just not happening for a lot of children.

The Hon. JOHN HATZISTERGOS: What sort of cases are we talking about? What are the features of these cases where you say delays are occurring? Is it assaults within families?

Ms WIGHTMAN: Often involving children under 10, particularly the preschoolers, children under five, where they perhaps have made limited disclosures about the abuse, where police feel there is no other evidence or where children are able to give very little detail due to their age.

The Hon. JOHN HATZISTERGOS: I am not sure what the complaint is. Is the complaint that they are not being prosecuted or is it that they are not being pursued as vigilantly as they should be?

Ms FRECKELTON: They get lost in the system. The concern that we have is that not only are the cases not getting to court but, because large parts of the system such as the JIRT teams and the DOCS are overworked, the process is not happening and those children are not being responded to. Particularly for children under five, it is a frequent occurrence that cases involving them are not being prosecuted. The other instance is when the offender is quite young, under 12. Then there is an equal problem occurring. The cases of children who have experienced sexual assault with an offender under 12 are not being proceeded with either. Those children are not being picked up, they are not getting the safety that they require in the circumstances.

The Hon. JOHN RYAN: What you mean by not being picked up?

Ms FRECKELTON: There is not a response to them a lot of the time.

The Hon. JOHN RYAN: By whom?

Ms FRECKELTON: From anywhere. There is not a counselling response. There is not a safety response, simply because there is deemed not to be enough evidence in those situations. Often that is based on age, not anything else. That is one of the problems that we have identified.

The Hon. JOHN RYAN: Is a possible explanation for not many cases involving a child under five being the victim of a sexual assault being pursued that they are very difficult cases to prosecute? It seems that would be a rational difficulty.

Ms FRECKELTON: That is the simple answer to it but they are difficult to prosecute for a whole range of reasons. One involves what is considered to be evidence. This is what the inquiry is looking at, how you address those issues. What we are identifying is that it is an issue for children of that age to even get to court, and in the process of not getting to court to be responded to and to be safe. It is difficult to prosecute but I do not think that that is the answer to the problem. It is identifying how you can address the fact that evidence from younger children needs to be done in a way that responds to their developmental age—a whole range of issues. That does not currently happen within the court system. That is one of the problems that we are identifying, that these children are simply not being responded to.

The Hon. JOHN RYAN: A few days ago someone giving evidence said that the system of using JIRTs was good but it distorted the reaction of the Department of Community Services in that they only tended to respond further to matters where a case could be proven and that there were other matters on which it might have been appropriate to take a care and protection approach to the child. Those matters were not being responded to as diligently because the benchmark had now become whether the police could take the matter further, and other cases were not necessarily being proceeded with. Is that what you are trying to tell us?

Ms FRECKELTON: That is one of the problems. We are agreeing with Rosie's, that it is two sided. It seems that a lot of cases are just not getting to court. It is now more increasingly happening that the weight of evidence becomes the issue and not the care and needs of the child. It is a concern for us that there are a lot of children who are not being responded to under those circumstances.

CHAIR: The CASAC submission commences by saying that your workers statewide have recorded difficulties with the communication between the joint investigation response teams and the victims of sexual assault and their families. You add that counsellors have found that at times the police have not kept clients informed of what was happening with their case. Would you like to say something to us about that concern?

Ms PETERS: We have had experiences with families that have not heard for weeks about what is happening. They do not get any information. They try to contact people and they cannot seem to get through. That seems to be a big problem. Many of the cases we were talking about that are not being investigated, or not being investigated quickly, happen when children are already deemed to be safe. The offender might be someone outside the home. In those cases it is not getting investigated or it is done months down the track. Often families do not understand why that is the case. They feel

forgotten in a way. They do not understand what is going on and they do not understand the system. So it is very difficult for them.

CHAIR: Both the CASAC submission and the Dympna House submission expressed a concern that the joint investigation response teams speaking with families about the negative aspects of proceeding to court appears to be serving to discourage families from following through with legal action. I suppose it would be legitimate, would it not, for the family and the child to be put fully in the picture of what legal action involves and what trauma might ensue?

Ms PETERS: Definitely, it is a very negative experience in many situations but the feedback we have received from some families is that they feel that they are being discouraged from going ahead because of all the negative stuff around it.

CHAIR: That would not necessarily be a matter of the police or anyone persuading them not to proceed; it might be their understandable response to the opinions or facts that are set out as to the various courses of action available?

Ms WIGHTMAN: Many victims have said to us—it has been said even privately with police—that there seems to be a culture that they believe that the court process is so traumatic that police are not willing to put children and young people through that. Having sat in many sexual assault trials with children and young people, I agree. But my fear is that that becomes a reason not to pursue the criminal process for children. Privately police have many worries and fears about the effect of the traumatic nature of the court process on children and see that to be continuing their victimisation. That is then a reason they will not pursue having a child go to court. Therefore we need to be looking at the system. I think it is very traumatic but it is very dangerous to use that as a reason not to be proceeding with criminal investigations.

CHAIR: It is said in the CASAC submission that with children under the age of five no action is taken. Is that your invariable experience?

Ms WIGHTMAN: I would say in our service, yes. Last year we were becoming increasingly aware of issues for preschoolers and their families. Many families contacted us about no action happening.

The Hon. JOHN HATZISTERGOS: They are very difficult cases to prosecute.

Ms WIGHTMAN: They are. They may have been cases involving access visits, usually with a father who is not living in the family. As the Dympna House submission has pointed out, there are very real concerns about the safety of the children, as well as no criminal process happening—

The Hon. JOHN HATZISTERGOS: But the criminal process has all sorts of problems. The cognitive skills of the child are not fully developed. The ability to speak, particularly in a court context, is highly restricted. Invariably a family member is involved. It is a one-on-one evidentiary situation which has all sorts of problems. If you prosecute them many will fail. In those sorts of cases the AVOs at least provide some sort of protection to the child. They do not require the same standard of proof to get them. They can take the child out of a position of danger. Maybe prosecution is something that comes down the track when the child gets a bit older.

Ms FRECKELTON: Our concern is that the child has not been taken out of a position of danger as a consequence—

The Hon. JOHN HATZISTERGOS: I can understand that, and that of course should happen, but you have similar evidentiary problems. Correct me if I am wrong but from what I have read those situations invariably are littered with cover-ups. Families tend not to take the child seriously.

Ms WIGHTMAN: Very often disclosures from young children do not have a lot of credibility within the system. In many cases it is a trusted adult in the family. This makes it very difficult for children to disclose.

CHAIR: What professional qualifications do counsellors in your services normally have? Is there some standard or basic qualification? You have told us what your qualifications are.

Ms WIGHTMAN: We would be fairly representative of counsellors in sexual assault services. Most of us have had many years experience working with sexual assault and children and families.

Ms FRECKELTON: Usually a psychology or social work background.

CHAIR: What role do you ordinarily play in these matters where a child sexual assault prosecution is a possibility or a likelihood, given the need not the contaminated evidence and considerations of that sort?

Ms WIGHTMAN: The typical role with a child or young person that has a court process coming up would obviously be the counselling process but in addition to that there is court preparation and support. Sexual assault counsellors provide several weeks of court preparation, which is not about preparing the child in relation to the evidence but emotional preparation as well as familiarity with the court process, given that it is such an alien experience for most children and young people who have never been in a court room, advocating between the DPP office and the child, letting them know about what is involved and what will be expected of them, and then very often being a support person. Usually counsellors are not in a position of being a witness in the proceedings. Often those close to the child are, such as a mother. So that puts us in a position to be able to be a support person to the child.

The Hon. JOHN HATZISTERGOS: Have you had much contact with the witness assistance program of the DPP?

Ms WIGHTMAN: We have.

The Hon. JOHN HATZISTERGOS: What sort of experience are you able to relate to the Committee about that organisation?

Ms WIGHTMAN: From my experience, it is a very important organisation but I think it is very limited because usually only one person deals with many cases. As a result, sexual assault matters are usually referred back to the sexual assault services. However, it is certainly very helpful in helping us to link our services with the DPP, with pre-trial conferences and that sort of thing.

CHAIR: Ms Freckelton, I had the impression that you wished to talk about the issue that the Hon. John Hatzistergos described as a "family cover-up".

Ms FRECKELTON: I guess I have a general concern. As Melissa said, if we rely only on the position that nothing can be done, nothing will be done. There are difficulties with evidence from children under five, but part of the difficulty comes from the fact that not enough understanding or research has been done about how that evidence can be taken. In 1997 the Law Reform Commission looked at that issue and made a number of suggestions. There are ways of taking that evidence that are not entered into in many circumstances. We are concerned that in some way there is a bit of the myth that a matter simply cannot be dealt with because of the age of the child. This is happening more and more. We are focusing on this issue because it tends to be the way in which things are shifted around when dealing with child sexual assault: when it gets too hard it is not dealt with. There are probably ways of dealing with this issue but it requires attention to discover those ways.

The Hon. JOHN HATZISTERGOS: What are those ways?

Ms FRECKELTON: There are ways of looking at the developmental age of the child, for instance, and videotaping evidence has been suggested to deal with that. We have suggested establishing treatment centres that look at the whole issue and focus on a number of things apart from going to court. This would deal with all a child's issues. We think this area is lacking enough investigation simply because people say, "Well, they're five so we can't do anything about it." Our response is, "Yes, but they're unprotected." That is why we believe we must focus on this area.

The Hon. JOHN HATZISTERGOS: In the course of this inquiry we have been confronted with the fact that the DPP tends to prosecute a much larger range of cases now than ever before. It has been suggested that the DPP does that partly as a consequence of the community's reaction to these kinds of matters—if issues are not prosecuted there could be criticism of the DPP so he will prosecute a larger number of cases then he would otherwise in order to answer that potential criticism. The conviction rate statistics we have for these sorts of matters suggest that there is a higher acquittal rate now than in the past. The acquittal rate is about 25 per cent today, which means that 75 per cent of cases return a not guilty verdict. Can you respond to that issue? The DPP makes the point that he could increase his conviction rate simply by being much more selective about the cases that he takes on.

Ms WIGHTMAN: Taking on fewer cases.

The Hon. JOHN HATZISTERGOS: Yes, taking on fewer cases and the sure winners. However, he does not do that: he takes on a broad range of cases and, as a consequence, he has a high proportion of losers—if you regard a not guilty verdict as a loss. If the DPP took on a larger number of cases with further evidentiary problems beyond those that he has already, there is a risk that more cases would be added to those in which an acquittal decision is obtained.

Ms FRECKELTON: I guess, by necessity, we take a different position: we come from the position of the child and the child's safety. Yes, there is an issue about evidence, acquittal rates and those sorts of things, but at the end of the day we are dealing with the safety and well-being of children. Our argument is made from the perspective that not enough children are being responded to and that, if the system is not working, we must address what is not working. If the rules of evidence in regard to children are a problem, they should be looked at—how we get the evidence, what we accept as evidence and what we measure the child against in those situations. That is where our focus should be. Part of the problem may be looking at how the whole system operates in relation to children. Because of the powerlessness of children, it is very unlikely that they will be in a position to produce the sort of evidence that is required of them. That is a problem to begin with. I do not know what innovative methods may be used to address that issue but something must change. The end result is that children will be unsafe if it does not.

Ms HINCHCLIFF: It is often the safety not just of the child involved in the case being prosecuted but of other children that paedophiles may access.

The Hon. JOHN HATZISTERGOS: What is the effect on a child and a child's family when the child goes through a prosecution process, gives evidence and the defendant is found not guilty? What impact does that outcome have on a young person?

Ms WIGHTMAN: It depends on the individual. Children are often devastated by not guilty verdicts because they have a clear sense of right and wrong: they have been wronged and they understand that the person will go to gaol because that person has done the wrong thing. In the court preparation process we try to address the outcome realistically and ensure that the healing of the child and the family does not depend upon a guilty verdict. In eight years in this line of work I have been involved with more than 100 trials and had one guilty verdict. So it is a very unlikely possibility. However, that does not protect children and families from the devastation that they feel. Even though they perhaps understand rationally that it is not about their not being believed but about a process, it is obviously very hard for them to take that on. The impact varies according to the amount of support that children have in their lives. Many children have said that a not guilty verdict does not mean that they would not have gone through the process, but it becomes a significant issue to address in ongoing counselling.

CHAIR: Many people must feel very much aggrieved and traumatised by the process, particularly if an appeal is lodged and the Court of Appeal trawls through the transcript and orders a new trial. I would imagine that some people would give up in disgust at that point and indicate that they are not prepared to put their child through the process for a second time.

Ms WIGHTMAN: For sure. Another problem is that cases are often continually adjourned. I went to court with a child earlier this year whose matter was first listed in November 1999 and has been adjourned 15 times since then until February this year. It is very traumatic for this family to

repeatedly turn up at court ready to proceed only to see the matter be adjourned again. That is another big problem. That is an extreme example, but extreme delays—at least two or three adjournments—are often experienced.

The Hon. JOHN RYAN: Have you been working personally with that child?

Ms WIGHTMAN: Yes.

The Hon. JOHN RYAN: Can you give us an idea of the reasons for those adjournments?

Ms WIGHTMAN: They all related to the defence. The prosecution was always ready. The defence made repeated applications.

The Hon. JOHN HATZISTERGOS: For what sorts of issues?

Ms WIGHTMAN: A couple of times the person charged was unwell and not in a fit state to give evidence. A few times he sacked his legal representation so the trial could not proceed.

The Hon. JOHN HATZISTERGOS: That is unusual, is it not?

Ms WIGHTMAN: That many delays and problems is unusual in my experience, but I was surprised as the amount of leeway that he seemed to be given.

The Hon. JOHN HATZISTERGOS: What do you think about a proposal that would involve child sexual assault matters being prosecuted without juries? Does that have some attraction? What about specialist tribunals, for that matter?

Ms FRECKELTON: That is quite a good proposal. The education and understanding of what is required in those circumstances is the first issue and that piece is often missing. Not enough people within the court system understand what happens to the child, so we would also recommend specialist courts.

CHAIR: One of the main reasons for this inquiry is to put forward recommendations in an endeavour to make the court process more child friendly. Mr Cowdery suggested that there should be a pilot or trial to that end and that judicial officers and court staff should be specially trained to be responsive to the needs of children. One of the inevitable difficulties with that suggestion is that defendants would obviously be able to engage whatever barristers they choose, who might not necessarily fit in with the child-friendly pattern. However, I take it that you believe Mr Cowdery's suggestion is at least worth trying.

Ms FRECKELTON: Yes, we see a lot of merit in that. Our position is: the more friendly the system is towards the child, the better it will be.

CHAIR: As to the present system and what you have said about the high probability or likelihood of not guilty findings, leaving aside for a moment the interests of the State in securing convictions against offenders—which I do not discount in any way—from a sociological point of view would children be better off not being involved in the existing process, getting on with their lives and receiving necessary support in other ways? I know that is a difficult question, but I want to press it. Would children be better off?

Ms WIGHTMAN: I feel quite torn by a question such as that. On the one hand, I know that children have found the whole process extremely traumatic. A young woman told me yesterday that she felt she was treated so badly throughout the court system that she would never go through anything like it again. I really respect those experiences and the voices of young people who have felt incredibly traumatised by the process. But that is not true in every case: I have also met children who felt it was a very positive experience. However, I return to the basic premise that child sexual assault is a crime and must be responded to in a criminal offence.

CHAIR: I take it that children who felt it was a positive experience had a guilty verdict returned in their cases?

Ms WIGHTMAN: The cases in which there has been a guilty verdict have proved much more positive for children. I do not know about the experience of others, but there is a feeling, at a minimum, of being incredibly let down, perhaps not being believed and feeling that, "I told the truth and I did my job as a child in this process."

Ms PETERS: As you said before, it depends a lot on the support that a child has and the court preparation that is done with a child. That can make a difference to how a child feels afterwards if there is a not guilty finding.

The Hon. JOHN RYAN: The impact of child sexual assault is known to ruin people's lives—for example, our gaols are full of people who were sexually assaulted as children. Can you give the Committee any impression as to whether the experience of having been traumatised and having a case result in acquittal damages children's lives to that extent? Is it an experience that they can shake off and live through? Do you know of cases where prosecuting has made the situation much worse?

Ms FRECKELTON: It is the way in which the child is supported through the process that matters at the end of the day. I heard the question: What if we did not do it? Again it comes back to what Melissa was saying about it being a criminal offence. Then who protects the children? What happens in that instance? How are they going to be safe? I would say that the systems that we have in place are not working in a lot of instances, but I do not know whether removing them will make it any less traumatising for a child that is already traumatised. Whether or not they get to court, it is our experience that children are traumatised by not being able to get to court as much as they are by getting there. It is the whole experience that is traumatising. We will be arguing that the system should be made much more effective as opposed to being removed, because I do not think that that will make the children safe.

The Hon. JOHN RYAN: Let me rephrase my question. What services could we provide that will ensure for those who have a non-guilty outcome that the potentially horrific circumstances that might occur do not occur? What critical services would make a difference to the experiences that damage them as opposed to experiences through which they can live and lead a successful life afterwards?

Ms WIGHTMAN: The worst thing that has happened to them has already happened—the abuse or the assault has happened. In relation to what Julie just said, obviously counselling is a part of the support. It makes a huge difference if counsellors support the family and the environment that the child is living in. It is our experience that children are traumatised by not being able to proceed. Families feel let down if their experiences are not being taken seriously. Children do recover. Even with a not guilty verdict those systems are already in place. Counselling will ensure that a significant number of those issues are addressed following a not guilty verdict.

Ms PETERS: We often spend a lot of time with families because they are so distressed that nothing is being done. They feel let down. If it had been a different crime something might have been done straightaway. Their child has been abused and this person is getting away with it. That is how many people see it.

CHAIR: If it were a child within one of your families, what decision would you make if that child disclosed sexual abuse? Would you seek to proceed with a prosecution or would you take the view that it is really not worth the trauma and that other supportive mechanisms ought to be employed? I apologise for the directness of the question, but it is a really central issue.

Ms WIGHTMAN: It is. It is not a totally unfair question either. We do not necessarily want to separate ourselves from people that we are working with. We do have continued conversations in our agencies about issues like this, for example, what we would do about our own children. You would have those parallel processes in mind—the wellbeing of the child next to wanting a criminal response; wanting the system to respond to a crime that has been committed against your child.

CHAIR: How can the criminal response be made more supportive? I note that a recurring theme throughout both submissions is that contact as between, shall we say, the police, other

prosecuting authorities, the DPP, the child and the child's family, appear not to be what they ought to be. Am I correct in believing that?

Ms WIGHTMAN: Yes.

CHAIR: How do you think that matters can be improved?

Ms WIGHTMAN: I would suggest some very simple things. I hear repeatedly from families that they do not even get their phone calls returned. I am not wanting to put down the joint investigation response teams [JIRTs] because I recognise how underresourced and busy they are. However, yesterday a young woman told me that she made her statement 18 months ago and she has not received a single phone call. She has no idea where the matter is up to. She is wanting to proceed. All it would take in that case is a couple of phone calls—just some communication—but it just does not happen.

The Hon. JOHN RYAN: Who does she contact in order to make contact with the JIRTs? Does she contact the police or the Department of Community Services [DOCS]?

Ms WIGHTMAN: She makes contact with the JIRT office.

The Hon. JOHN RYAN: Do you mean by that the people who conducted her interview?

Ms WIGHTMAN: The people who did her interview. This actually involved a child, so it was her mother talking to me on her behalf. She has made repeated phone calls to the office, but she has just not had them returned. The detective involved is now working in another area. There are problems when they leave the office. That is a really significant issue. I do not think it would take very much to get that direct sort of communication between JIRTs and families. It is very significant.

CHAIR: Would it be true say that you are generally supportive of the joint investigation response team initiative, but you feel that it may be underresourced or, for whatever reason, it is not maintaining proper contact with clients?

Ms FRECKELTON: I think they are hugely underresourced. We probably should not underestimate the impact of actually working in that area. I think that can lead to people feeling like there is no positive outcome. That leads to people perhaps not responding as frequently or as often as they should. I do not know whether that is an area that can be responded to. Resources are one of those issues. Enough resources should be allocated to enable them to respond. What gets thrown up is the possibility of prosecution, but at the end of the day maybe that should not be the primary position.

CHAIR: When you say they, that is, the JIRTs, are hugely underresourced, to use your words, typically, as I understand it, "they" involve a police officer and a DOCS officer. Are you saying that there simply are not enough police officers and DOCS officers to meet the caseloads?

Ms WIGHTMAN: It is interesting. Some of us have had experience of previous systems. We were talking earlier about the days when they had the child mistreatment units—quite a few years ago; well before JIRT was introduced—when specialist teams of police responded to child sexual assault. We were saying, anecdotally, that it seemed to be so different. You had much more contact between counselling agencies and police. We knew them personally. A lot more children seemed to be interviewed in much greater numbers. This system of involving DOCS and police in the JIRTs sometimes seems a bit contradictory. You have the safety and the DOCS processes in with the criminal processes. We have been talking about the fact that safety has become paramount but JIRTs seem to be wanting to take only those cases that have a very high probability of criminal success.

The Hon. JOHN RYAN: Do any of you attend on those occasions when a joint investigation response team is actually conducting an interview with a child?

Ms WIGHTMAN: Yes.

The Hon. JOHN RYAN: The Committee was told by the Deputy Chief Magistrate that frequently the DOCS officer does not participate in the interview; it is largely conducted by the police.

Whilst the two may do things prior to that, the overwhelming number of interviews are conducted by police. Is that your experience?

Ms WIGHTMAN: That is certainly my experience. It is also my experience, just from my feeling of working with the agency, that although these agencies are correlated and they are working together, they actually work separately. If a criminal prosecution is proceeding it is very much a police issue within the JIRT. If there is no criminal process it is pretty much left to DOCS to look at safety concerns. If they feel that there is no ongoing role for DOCS that is when we seem to drop out and the case goes nowhere.

The Hon. JOHN RYAN: If the overwhelming number of interviews are conducted by police, the clients, if you like—the parents and the children who are involved—probably believe the agency that they should be relating to is the New South Wales Police Service. Let us face it, it is not a social service. They do not have to intervene or be as focused on following up an issue or returning to people and things of that nature as would be a service such as the Department of Community Services. What has occurred—and I do not believe that this was intended—is that people are expecting a service from police that they are not used to providing. All those sorts of social services that you are expecting to come out of the process get lost. The Department of Community Services officer who accompanies the police must then mentally take the view that the issue is now in the hands of the police. The clients believe that the issue is in the hands of the police and the sorts of services that you were expecting simply fall out because DOCS—because of other pressures—have left it to the police to continue. Is that what you feel might be occurring?

Ms HINCHCLIFF: That is a possibility. There is another aspect that could be influencing what we have been reporting about JIRTs. It seems as though they cover a huge area. However, perhaps the teams that you were talking about earlier that involved the police were more localised and you could get to know them individually. I refer to the balance between police and DOCS work within the office. The reports that I have received from my local JIRT indicate that there are often more police than there are DOCS officers in JIRTs.

The Hon. JOHN RYAN: Do you tend to find that different police are involved every time? The impression that we have from your evidence is that the police have more opportunity to gain a level of expertise through repeatedly doing interviews than perhaps DOCS people. It has been alleged that sometimes DOCS officers were given a manual and they appeared to be fairly inexperienced, whereas the police had a lot of experience. You said that different detectives appeared to be involved every time.

Ms PETERS: I do not think that that is necessarily true. I have found with the JIRT officers with whom I have been involved that there is a high turnover. It is like that with the department anyway. There is a high turnover because it is stressful work. We do not want to take that away. We understand that the people working in those offices are under a lot of pressure and they are working in a stressful field. Often they are understaffed. From what I have seen or from what I have heard they are understaffed. It makes it difficult for them to keep in contact with families when they are getting new families all the time. So that is something that is really important to remember. They are very underresourced.

Ms WIGHTMAN: As part of our counselling role we try to support that link as much as possible by making phone calls to JIRTs on behalf of our clients. We try to support that process as much as we can.

CHAIR: In the Dympna House submission there is reference to what is described as the Children's Advocacy Centre model as previously recommended at the Wood royal commission. That seems to be an attempt to comprehensively meet the needs of children, perhaps on a more expanded basis than the joint investigation response teams. Could you tell us what you understand the Children's Advocacy Centre model to involve?

Ms HINCHCLIFF: My understanding of it is that it is a multidisciplinary team that includes medical investigators, medical people, legal people, police, community services, counsellors and child or witness advocates.

CHAIR: Having regard to what you said a short time ago about the JIRTs, the difficulty of getting responses, the teams being underresourced and so forth, would the model that you are contemplating there not be even more complex and likely to break down in various directions?

Ms HINCHCLIFF: I assume that, if they were all located in the one place, there would be a lot of complexity in how they interrelate. The research that has been done so far—there is not a great deal of if it, but currently one big study is under way nationally in America—shows that there is a lot more communication between professionals and the service is a lot more co-ordinated. We have been talking about getting phone calls back. A lot of the work for the JIRT officers would be calling different people, which under this model would all be under the one roof.

Ms FRECKELTON: The co-ordination of it is a really important factor. That is one of the things I would have answered to the question that was asked before. It is the co-ordination that is missing sometimes in how people are being responded to. There is confusion between whose role it is to be doing that. I think that confusion happens on a large number of levels. One of the reasons why treatment centres may be much better is they would be much more clearly defined and in one place. The other side of it is that it can respond to the shifts in what actually happens for the child. If the prosecution does not go ahead, then there is a way to responding to that for the child. If it goes to court but does not go beyond, there is a way of responding to that. If it does get through the process, there is a way of responding to that. So the overall response to the child would be much more comprehensive.

CHAIR: The JIRTs are co-located, are they not?

Ms HINCHCLIFF: Yes.

CHAIR: As Minister for Community Services at the time, I launched them with the recently departed Commissioner of Police Mr Ryan. I am very interested, to say the least, to hear you say that you believe the child mistreatment units perhaps had a sharper focus and a better response to clients. The JITs, as they were called when I established them, were intended to provide a more adequate response to the needs of children. You talk about a more co-ordinated response. That was the whole purpose of the JITs, or JIRTs as they now are. If that is the case, why is it not working properly?

Ms FRECKELTON: One of the things is the lack of clarity. The point is a lot of the services are overworked in the number of people that are responding. It may not be in terms of how many are going to court, but certainly there are a lot of responses coming to the services. What tends to happen is there are not enough resources to respond to that. Then you start getting prioritising of what is going to be dealt with, and that is where the problem starts. The basis on how that is being prioritised is often not with the focus on the child. Also, the other layer is the lack of clarity between whose role it is, as was pointed out by the Hon. John Ryan, in terms of is it the role of the police or is it the role of DOCS? It also happens in cases that move between DOCS and the Family Law Court that we often find the children get caught in between and no-one seems willing to take on the responsibility of the child in those circumstances.

CHAIR: I am having difficulty coming to grips with why the proposed Wood royal commission children's advocacy centre model would be better, given that inevitably, one would presume, it would be more complex with more prongs within it? Why would that model not be more susceptible to breakdown and dysfunction?

Ms FRECKELTON: I would think because the focus of it would be different. The idea of the JIT teams is a really good idea, but the overall co-ordination of it is not clear. I hesitate to say this but it is an issue of accountability on some levels. Unless the roles are clearly defined and unless there is somewhere for people to go when they are not being responded to, how do you hold a system accountable to itself? One of the things about an overall centre is that it has an umbrella of accountability in how it operates. That is one of the issues. The complexity also addresses a broader range of issues. The police tend to think that DOCS picks up the human side of what is happening and the police pick up the criminal side. But often the focus is on the criminal side, and there is an important reason why that is. The human side does not get a look in a lot of the time because there is a broader umbrella of what DOCS is dealing with a lot of the time and it gets lost in that. That is part of the problem.

CHAIR: The police have a duty not to contaminate the evidence and to present the prosecution in the best possible way. That has to be the initial focus if there is to be a prosecution. That brings me back to my awkward question about which path to follow. Do you follow the path of preferring as the number one objective the prosecution or do you take a broader view as to what is in the interests of the child?

Ms HINCHCLIFF: Ideally it should be in the interests of the child to have a prosecution.

Ms WIGHTMAN: We would actually see that they can go together.

CHAIR: Ideally they should go together. But do they go together if the child is going to be intimidated in the form of questioning that occurs?

Ms PETERS: If they have to go through the legal system the way it is at the moment, it is obviously not particularly good for the child. There have to be changes to the legal process. I have been involved in cases where the JIRT team has worked extremely well. It is a wonderful concept really, but one of the major problems is the difficulties with the legal system and the rules of evidence and the way children are treated. If that was responded to, then that may have an effect on how the JIRT team work, all those things may be affected by the changes that could be made to the legal process.

CHAIR: Are there particular problems in rural and remote areas regarding children who are the subject of child sexual assault so far as accessing services?

Ms WIGHTMAN: Anecdotally from talking to workers in rural areas, often workers in rural areas cover very large distances and travel several hours to provide services in outreach areas. Access is certainly a problem. As well, there are issues around confidentiality in counselling and accessing services in communities where everybody knows everybody. It is very difficult to personally speak to those issues because I have never worked in a rural area.

CHAIR: There is a reference in the Dympna House submission to a concept known as parental alienation syndrome. Would you tell us what that involves?

Ms FRECKELTON: One of the reasons we raise that is because we found some things happening in the Family Law Court. One of the things that has been raised is what is called the parental alienation syndrome. Our concern is more in regard to how those things get introduced into legal proceedings. It does not have any validity, it has not been researched. It is based on anecdotal evidence of the person who introduced the syndrome. But it has on a number of occasions been used in a way that it is supposed to have credibility. Our concern is that there is not a process of questioning those types of terms being entered into court hearings.

The Hon. JOHN RYAN: Would you explain to me what you mean by parental alienation syndrome?

Ms FRECKELTON: I can read something out. Would that make it easier, just as an explanation?

The Hon. JOHN RYAN: Yes.

Ms FRECKELTON: It is an invalid term that has been introduced into family law proceedings. It has been used where allegations of sexual abuse have been raised. It is usually used to cast doubt on the credibility of the caregiver's claim of child sexual abuse. It is a term that was coined by an American psychiatrist Richard Gardiner. The term has not been scientifically proven or undergone any peer review to show that it is valid. It is not recognised by the American Medical Association or the American Psychiatric Association as a valid syndrome and is only based on anecdotal incidences in Gardiner's practice. In terms of how it is presented, it is biased against women. Mothers are more often labelled with parental alienation syndrome than fathers. It is suggested that the rejected and scorned woman will make false allegations of child sexual abuse as a way of getting the upper hand in custody or divorce proceedings.

It is suggested that the mother deliberately vilifies the father and brainwashes the children against the father in order to get sole custody. The mother is then presented as having produced parental alienation syndrome and it is used as a means to dismiss the alleged abuse by the father. Gardiner has stated that the only way the child can be cured from parental alienation syndrome is to remove the child from the mother's care and be placed with the father; the child should be sent to therapy where therapists are not chosen by the mother but are court appointed and mandated to ignore the child's comments; the child should not be believed because it is assumed that the child has been contaminated by the mother. Do you want me to continue?

The Hon. JOHN RYAN: I am still a little lost as to what is meant. I will state what I believe you are trying to describe to me. Parental alienation syndromes seems to be a description of a syndrome suffered by one parent in an estranged relationship. The features of the syndrome are that the parent is inclined to see the other parent as an enemy and a person who is likely to assault the child. The parent with this syndrome is likely to either fantasise or dramatise or overemphasise areas of evidence. For example, if the child turns up with a cut on the leg, immediately the parent comes to the conclusion that it was caused by abuse from the other party. The parent may coach the child to say that is what happened. I take it you are saying that this syndrome is alleged, one, to be well-documented and, two, to be introduced in court cases as a defence to defeat an allegation by a child of either sexual assault or other forms of child assault.

Ms FRECKELTON: It is introduced but in fact is not well-documented. That is the issue we are raising.

The Hon. JOHN RYAN: Are you aware of it being introduced in many cases and of it being successful as a defence?

Ms FRECKELTON: We have heard of it being introduced. I am not sure of its level of success, but we have been told that it has been successful. Our concern is that there seems to be a trend of increasing use of it. We are concerned about simply introducing the term "syndrome". There is not a process to look at the validity of the term that is being used in court hearings. It gains validity in its own right by the use of the term and it has been used in that way. That is our concern.

Ms HINCHCLIFF: I am not particularly concerned with the label, but I am concerned that in the family court generally and even in family court documents it has been referred to and there is a belief that if there are allegations of child sexual assault in family court proceedings then they are falsified because it is alleged that one parent is encouraging the child to say that.

The Hon. JOHN RYAN: There is little doubt that there are large numbers of child sexual assault allegations made between estranged parents. It would be fair to say that the system generally regards them with some level of suspicion. That would be true, would it not?

Ms HINCHCLIFF: It has been found that the actual false allegation rate in terms of allegations made in the family court is the same as outside the family court. It is only 9 per cent.

The Hon. JOHN RYAN: What it is 9 per cent?

Ms HINCHCLIFF: The rate of false allegations.

The Hon. JOHN RYAN: How has that been determined?

Ms HINCHCLIFF: I do not know exactly. It is in a family court report called "Child Abuse Protection and Welfare".

CHAIR: On another perhaps equally controversial matter, to what extent is the creation of what are known as false memories of child sexual assault a problem in relation to counselling?

Ms WIGHTMAN: It is a really big question. Many years ago the issue of false memories and the idea of false memories syndrome was introduced in America in relation to parents who had been charged with sexual assault offences over their children. This term was coined as a way of

explaining memories that adult children had spoken about after many years of supposedly not remembering the abuse. There are people who have ideas that counsellors put ideas or are capable of putting ideas into children's minds or making their minimal disclosures into a story about abuse. As counsellors working with children and adolescents, it is not something that we are repeatedly confronting. We are far more likely to be involved with much more recent disclosures in children and young people's lives. It is quite hard. I do not know what else to say.

Ms HINCHCLIFF: When counselling we are not investigating. We do not set out to hear the details of the abuse. We are interested in how it is affecting them rather than details of what happened.

Ms WIGHTMAN: We are usually very cautious in our contact with families from which a child has made a disclosure but has not been interviewed by a JIT detective. We work with the non-offending family members to try to support that. We may work with the mother around advocacy issues and supporting her child. We do not aim to investigate, or try to take on the role of finding out what has happened to the child. As Nicole said, the perceived idea of counselling is investigative, but it is actually the process of the effects of the trauma.

The Hon. JOHN RYAN: When you have been appointed as a counsellor to a child, you said that sometimes people have difficulty following the process. Would it be more appropriate that you be the person that they make contact with to follow the process? Of course it would be irritating for you to have to deal with the Police Service and the DPP, but if they were dealing only with you and asking where the case was going, would that be a better way to interact with the system rather than having to try to find the two people who have to do the interview?

Ms PETERS: We do that. We advocate for our clients and families. That is part of our job and it is something we are happy to do. As I said, we spend a lot of time, especially initially when we meet the families, explaining the system, explaining who is whom and explaining all the processes that will be involved. That is part of our role. Often when they come to us that are very confused and not sure what is going on. That could be because they are in crisis and have not taken on all the information; it is all coming at them so quickly.

Ms WIGHTMAN: Sometimes families find their way to us, as counsellors, quite accidentally. For example, it could be very dependent on JIT making a referral, and that can be a very big problem. We may get a phone call from a mother whose child has made some kind of disclosure and JIT is not willing to interview that child or have any contact with the child. It is only by accident that the family finds our service. Often it is dependent on JIT making the referral to us. What you are suggesting is valid, but how do those families contact us without JIT?

CHAIR: I thank you all for agreeing to give evidence today and for your submissions. If you have no objection, I intend to convey the transcript of today's hearing to both the Police Service and the Department of Community Services in the context of the Joint Investigation Response Teams to examine your criticisms and to get them thinking about improvements that ought to be made. Do you have any objection to me doing that?

Ms WIGHTMAN: No.

Ms PETERS: No.

Ms FRECKELTON: No.

Ms HINCHCLIFF: No.

(The witnesses withdrew)

(The Committee adjourned at 12.50 p.m.)